

Natural Resources, Territorial Right and Global Distributive Justice by Margaret Moore

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This paper is interested in the issue of entitlement to resources. It is interested, specifically, in the arguments for state jurisdictional authority over natural resources, and the limits of that authority. The justificatory basis for jurisdictional authority over natural resources is important in assessing an argument, common in the global justice literature, that natural resources are, like talents, a form of undeserved advantage, and should be viewed as common to all mankind.

The term ‘natural resources’ is used, in this paper, in a deliberately open way: to refer to anything, derived from the environment, that is instrumental to satisfying human wants and needs.¹ On this definition, almost anything can be a resource: land, water, air and sunshine are resources, as well as plants, animals and mineral ores. Something can be a resource for one person, because instrumental to the satisfaction of his/her wants and needs; and not a resource for someone else, because the person does not view the object instrumentally. This is consistent with Avery Kolers’ definition of a ‘resource’ as a fungible means that is replaceable by other fungible means.² As in his conception, resources are instrumental not only to the production, but consumption of goods, since the absorption of waste is instrumental for the functioning of the economic system as a whole. Although this paper makes central use of the concept of ‘instrumentality’ in defining a resource, it does not refer to the idea of ‘intentionality’. In this respect, my paper departs from Kolers’ argument that resources are not natural kinds but intentional kinds. Kolers illustrates this point by analogy with the theory of action, pointing out

that just as raising one's hand might signal any number of actions (voting, volunteering, catching a ball), so resources require not only the intention to treat X as a fungible means, but has similar individuation conditions: it cannot be understood apart from the people or person who adopt instrumental intentions towards it. This paper accepts Kolers' view that resources are fundamentally instrumental to other ends, although of course, things can be viewed both instrumentally and non-instrumentally by the same person and by different people.³ It does not make use of the language of intentions, however, for reasons that will be apparent in section 3.

An important question in political theory is the question of who has entitlements to natural resources. The standard view of entitlement to natural resources is the statist view that the modern state can only function as a state if it has control over territory,⁴ and this is what justifies, at least *pro tanto*, the three dimensions of 'territorial right'.⁵ These three dimensions are neatly summarized by A. John Simmons who notes that state sovereignty implies (1) rights to jurisdictional authority (to make laws across the geographical domain), (2) a right to control, extract and tax resources within the territory, and (3) a right to control entry and exit (of goods and people) within the territory. Many international relations theories simply assume this as definitional of what it is to be *sovereign* over a geographical domain, and that whatever justifies states (the production of common goods such as peace and order) will also justify these three different dimensions of state sovereignty. This cluster view of the various rights that are assumed to be embedded in state sovereignty is questioned in this paper, and has also recently been challenged by cosmopolitans. With respect to natural resources, with which this paper is concerned, cosmopolitans argue that state control over natural resources is a form of undeserved advantage to the state and the people within the state, in whose jurisdiction the natural resources

lie. This suggests that the two – state sovereignty and control over resources – can be completely disaggregated.

This paper argues that both the statist argument about the justification of resources and the cosmopolitan view of resources as a form of undeserved advantage are wrong in different ways. The statist position is wrong in assuming that jurisdictional authority of the state extends to all aspects of resources. At best, the idea of collective self-determination, I will argue here, offers a limited and defeasible right to control natural resources. The cosmopolitan position, which is developed in partial reaction to the statist view, focuses on the moral undeservedness of natural resources and this, I argue, fails to take seriously the relationship between collective self-determination and control over resources. Nevertheless, the luck egalitarian intuition about the equality of persons is not defeated by these two criticisms; rather, the two values – equality and collective self-determination – are in tension with each other, and this tension has implications for the limits on state authority over natural resources. The aim of this paper is to develop a middle ground position between the two, which ends up justifying Pogge's basic idea of a resource distribution tax, but defends it in a different way than Pogge. In the conclusion of the paper, I offer a restated account of some form of global resource tax, similar to the one defended by Pogge, but one that is less vulnerable to criticisms than the luck egalitarian arguments he sometimes seems to rely on.

The argument of this paper will be pursued in three sections. In part one, the paper will present two arguments for why *control* over natural resources is an important component of collective self-determination. This is necessary both to establish the justificatory limits of the collective self-determination argument; and to provide a partial correction to the luck egalitarian view that natural resources are purely a matter of undeserved luck. In part two, the paper lays

out and assesses the luck egalitarian view of resources. It criticizes this view in part through arguing that the view sketched in Part 1, which involves a link between control over resources and collective forms of self-determination, is superior to the standard luck egalitarian view. The upshot of this section is that, if we take seriously the relationship between control over resources and self-determination, we must amend or modify the luck egalitarian view of resources. This isn't a fatal criticism of luck egalitarianism, but it does suggest that this view is not easily or directly extended to natural resources, in the way that some cosmopolitans assume. In part three, it reexamines the implications of the collective self-determination argument for global justice theory, and in particular the argument that it is unfair that some groups/states have more resources than another, to suggest that the self-determination argument only justifies control over resources, but not benefits from the resources. It concludes by suggesting a middle position, which involves balancing agent-relative considerations of collective autonomy and control over resources with global justice obligations.

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

In this section, I unpack the relationship between state jurisdictional authority, which is easily justified (if we are not anarchists) in terms of people establishing justice and making decisions to govern their collective life together, and natural resources. This justificatory argument goes some way to suggesting that natural resources can be justified as an extension of jurisdictional authority and (like jurisdictional authority) in terms of the moral value of collective self-determination. In this section, I argue that control over natural resources, while not *entailed* in the exercise of jurisdictional authority, is justified in the same way as that authority, in terms of the value inherent in collective self-determination.

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

The first argument appeals to an idea, first articulated by Locke in the context of justifying private property, which is referred to in the literature as ‘the tragedy of the commons’. The basic idea here is that, when land is held in common for general use, and without authoritative rules governing its use in the common interest, there is little incentive for any particular person to invest their time and effort in developing the land to improve its productivity. Since the land is common, there is no way for an individual to ensure that she will benefit from her investment because the prospective investor cannot exclude free-riders from reaping the rewards without contributing to the labour. Moreover, the problem isn’t simply an incentive one: it may be rational to deplete the resources, to prevent other, less scrupulous people from getting there first.⁶ For Locke and Nozick and others, the moral of the story is that, given the tragedy of the commons, exclusive ownership of, and control of, the land (private property) is likely to make everyone, even the property-less, better off overall than before.

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

indicate that, until we have an authoritative (coercive) global political structure, it is necessary for the state to regulate these resources in terms of the common good.

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

A second argument, somewhat in tension with the above, which links natural resources with collective self-determination argues that collective control, in the form of jurisdictional authority over resources, is an important dimension of collective self-determination, particularly the cultural dimension of different rules regarding land. In some ways, this argument is consistent with the spirit of Rawls's account in *A Theory of Justice* according to which one important pre-condition for justice is agreement on the kinds of taxation and property regimes in place. Rawls was at pains to point out that his argument was not necessarily an argument for a capitalist state: it was important that the parties to the original position agree on the appropriate property regime that the principles of justice would operate in. This might mean that there are rules regarding the appropriation or use of resources in nature, but these rules might not be ones about private ownership; they might allow for communal development of resources. Rawls cites,

as among the possibilities, a property-owning democracy and a liberal socialist regime.⁷ Similar to Rawls, the argument here also presupposes that there must be agreement on the property or taxation system, and, given reasonable pluralism about the good life, we might expect that different societies would have different favoured property regimes.

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

The connection between collective self-determination and control over resources is also brought out in an example, initially deployed by Avery Kolers, for slightly different purposes, concerning rival, culturally contested, ideas of what counts as a resource. He examines the case of the Lakota Sioux, who have resisted strip mining in the Black Hills because, for them, the hills are sacred.⁸ Kolers' point is primarily directed against a crude, instrumental view of what counts as a resource – he wants to make the point that it is a culturally contested question what counts as a resource – but the example also illustrates the reason why control over natural resources is thought to be important to collective self-determination. It is hard to think how a group could exercise significant control over the collective conditions of their existence if they were unable to

make decisions about what happened to the land that they live on, the rivers that they drink and swim in, the wetlands close to the river that they enjoy and/or hunt in, and so on. For the Lakota Sioux, any significant form of collective self-determination, for them, would have to involve what rules they would make regarding use or treatment of the Black Hills. It is not simply a question of distribution of existing resources on the assumption that the resources will be used and that some minimum level of resources is necessary to exercise effectively self-determination. Rather, the exercise of collective self-determination might involve eschewing development of a particular piece of land, perhaps because it is fragile wetlands, and development of the resource would be ecologically damaging, or because the land itself is sacred territory, according to the religious beliefs of the people living there.

These two arguments, taken together, suggest good reasons why we might think that control over natural resources is an important part of collective self-determination. If people lack this kind of control, then, to that extent, they lack robust forms of collective self-determination (although they might still be self-determining over other things). Of course, this doesn't tell us that control has to be embedded in the state; rather, it makes clear that control over resources is an important part of self-determination; and one could imagine different theories of political or institutional arrangements locating these forms of control both above and below the state. Moreover, it is limited to showing that control over resources is crucial, but it does not follow from this that the state, or self-determining entity, is entitled to a full stream of benefit from the exploitation of the resource. In contrast to the typical statist view, which has a cluster view of the various rights embedded in state sovereignty, these two arguments can justify why there is a link between collective self-determination and control over resources, and it can also justify some benefits that might flow from the exploitation of a resource – particularly to the

extent that this is necessary to achieve meaningful self-determination – but it does not follow that the group is entitled to exclusive benefit from the resource.

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

Although both the arguments have some merits, the second argument establishes an important link between collective self-determination and control over natural resources. This is not the strong claim that control over natural resources is necessarily *entailed* in the idea of collective self-determination. However, it does suggest the weaker claim that meaningful self-determination will involve decisions about the rules surrounding the acquisition, transfer and use of natural resources. These are important dimensions of collective life, and if a people lack this capacity, they are, to that extent, unnecessarily and unjustifiably limited in their self-determination.

2. Global Luck Egalitarianism with respect to Natural Resources

Once we allow that significant political self-determination typically involves control over natural resources, we run up against the problem of how to divide up fairly the land or territory amongst the various groups that live on the land. Specifically, it seems unjust if one group's land is large, fertile and resource-rich, while another group's land is meager, barren and resource-poor. Even if we concede that the mere fact of differential natural resources does not automatically mean that resource-endowed countries are wealthy, and resource-poor countries are actually poor – indeed, it may be the case that the opposite is true, as the literature on the 'resource curse' suggests⁹ – it would seem *prima facie* better to have control over a territory rich in resources than a territory poor in resources. This is because we might expect secondary benefits from control over natural resources; benefits such as the power to tax the resources, or employment or other related positive effects from proximity to important resources. If this is so, it is problematic from a justice perspective if group A controls a territory rich in many kinds of resources, while group B exercises their self-determination, such as it is, over a small, resource-less, land-locked desert.

A significant strand in the global justice literature extends luck egalitarianism from the domestic sphere, where it requires that people are compensated for undeserved bad luck – people who lack some fundamental natural endowments, suffer from accidents or illness, and / or are disadvantaged by social class – to the global sphere, where birth in relatively rich or poor states also seems to be a matter of good (or bad) fortune. Distributive justice involves redistribution with an aim to mitigate (or sometimes equalize) the effects of these undeserved advantages, just as Rawls's difference principle is in part justified by the idea that talent itself is undeserved. One of the most plausible luck egalitarian arguments in the global justice literature refers to the arbitrary distribution of natural resources amongst countries. Charles Beitz develops an argument for thinking that the distribution of natural resources amongst countries is analogous,

but even more powerful, than arguments premised on the arbitrary distribution of talents among people. He write that “the fact that someone happens to be located advantageously with respect to natural resources does not provide a reason why he or she should be entitled to exclude others from the benefits that might be derived from them.”¹⁰ Therefore, the parties to the international original position, from which principle of international justice are derived, would think that the resources (or the benefits derived from them) “should be subject to a resource redistribution principle.”¹¹ and argue, on luck egalitarian grounds, for redistribution of (benefits) to natural resources.

This claim about arbitrary distribution of natural resources is also made by Thomas Pogge, in support of his global resource dividend, and by Mathias Risse in the context of immigration and resources.¹² One of the proposals put forward by Thomas Pogge in his book *World Poverty and Human Rights* is for a global resources dividend, which is a tax on natural resources, designed to transfer substantial but not staggering amounts of money from well-off states to poorer ones by charging a small tax on certain limited natural resources. This tax is meant to be used to address serious global inequalities (or deprivation). In line with his ecumenical strategy for arguing for various reforms, he puts forward a number of distinct but not necessarily compatible arguments for such a tax. In this section, I do not argue against his global resources dividend proposal, conceived of as a mechanism to transfer money from well-off to poorer states,¹³ but focus only on his most foundational and controversial argument against jurisdictional control over natural resources.

In his discussion of the global resources dividend, Pogge argues that the rich world ‘harms’ the poor by conferring on them a ‘resource privilege’. Here, Pogge is referring to the ‘territorial right’ implicit in self-government, whereby governments have jurisdictional authority

over natural resources. Pogge describes rich countries as complicit in harm because they negotiate with poorer countries (or, more accurately, the governments of poorer countries) about their resources. Pogge cites an empirical relationship worked out by two Yale economists between the possession of rich natural resources and poverty (and mediated through the tendency to military dictatorship).¹⁴ According to this thesis, the affluent countries are thereby implicated in a cycle where the possession of resources generates various negative effects on the poor (but resource-rich) country, especially military coups and dictatorships and corruption. This cycle is caused by the fact that there is a very strong motive to seize political power, namely, to gain control over the resource; and that possession of the resource then generates income to help them maintain power (it enables them to buy off loyal soldiers and fund the police and military). Rich countries are implicated in this ‘harm’ because they assume that all governments have ‘territorial right’-- the right to make decisions about the use and transfer of resources in their territory – and that this territorial right helps to fuel the cycle.

Implicit in Pogge’s argument is the assumption that there is a responsibility on the part of all parties to an agreement about natural resources to ensure that no one is improperly excluded from the benefit of natural resources. However, there are at least two different interpretations of his argument, and these interpretations rest on an ambiguity about who is wrongfully excluded. In the first case, the people who live on the land, and are governed by the state are wrongfully excluded. Their interests are not taken into account; the government of the corrupt, dictatorial but resource-rich state enters into an agreement with a multinational oil company, with the expertise to drill, refine and transport oil, and the citizens of the country are excluded both from the decision-making process and from benefit. There is little difficulty understanding (and agreeing with) this argument, since government is standardly thought to be aimed at tracking the

interests of the governed, and fundamentally authorized by the government, so the citizens, on this account, are improperly excluded. And the global order, including rich multinational companies and the countries that fail to regulate them, are complicit in this injustice. This is fairly uncontested, on at least the standard theories of state legitimacy, which posit some kind of pre-existing entitlement, on the part of citizens to have a government authorized by them and operating in their interests. This (interpretation of Pogge's) argument does not undermine the very idea of natural resources being entailed by the collective self-determination argument. Territorial right: it simply suggests that legitimate governments should have jurisdictional authority over their territory, including natural resources. Territorial right should apply to legitimate governments, not illegitimate kleptocratic ones, and the current international order does not do enough to distinguish between legitimate and illegitimate regimes.¹⁵ About this, this paper agrees completely.

The second interpretation is that the global poor in general are improperly excluded from the benefit of global natural resources. This is a much more contentious claim, and rests on different foundational concerns than the first interpretation. While the resources- leads- to- corruption dynamic details the ways in which the citizens of A are not benefiting from the resources of A, it suggests that the citizens of the country are wrongfully excluded. But the global resources dividend proposal suggests that the citizens of many different countries all over the world are improperly excluded from benefit of the resources in A. Indeed, Pogge writes: "... this payment they must make [the Global Resource Dividend] is called a dividend because it is based on the idea that the global poor own an inalienable stake in all limited natural resources."¹⁶ He also says that it should be conceived of as compensation: "The better-off enjoy significant advantages in the use of a single, natural resource base from whose benefits the worse-off are

largely, and without compensation, excluded”¹⁷ and in this section, it seems that the better-off and worse-off are conceived of as the global well-off and the global poor. For this argument to work, we must assume that the world’s poor have some basic (pre-institutional) entitlement to the world’s natural resources, although the exact nature of this entitlement is unclear.

There are two problems, however, with the more extreme version of Pogge’s argument, which suggests that natural resources are properly ‘owned’ or controlled by everyone. Both arguments are variations of the basic point that this fails to take into account the ways in which specific people are attached to natural resources, including (perhaps especially including) land in different, morally important ways, and that these might justify differential rights. The first fairly well-known argument, which is extensively discussed by David Miller, points out that natural resources do not just fall like *manna* from heaven: typically, they stem from material, pre-existing in the world, and are transformed into *resources*, from which value can be derived, by human beings. This argument is aimed against the luck egalitarian intuition as it applies to resources by pointing out that the transformation of things into resources, which have use-value, involves activities that require social contexts or human labour, in which not all human beings participate equally. In many cases, the resource’s value is mediated through social and technological contexts which make it difficult to describe the value as inhering independently in the resource. This raises a problem for luck egalitarians because it questions their central assumption that resources are a matter of pure luck, unconnected to social choices and an account of responsibility.¹⁸ There may be a component of natural value, but Miller points out the difficulty of calculating the unimproved value of land, when much of the value of land stems from its proximity to other places of human creation – proximity to cafes, restaurants, theatres, shopping and so on. Even in less problematic cases, such as oil, diamonds, copper and other

items of value, which could be conceived of as to some extent pre-existing, minerals have to be discovered, mined, often extracted from the contaminated elements and so on – all of which relate the resource to specific people in particular ways. Even if we don't have a crude Lockean labour theory of value, it would seem that people who operate in the world to transform it may have some claim on it, or at least an increased claim vis-à-vis someone thousands of kilometers away who has never even seen the resource or knows how to use it.¹⁹

Secondly, the global luck egalitarian account (of Pogge, Beitz, Caney and the like) assumes that land is a natural resource, and so instrumental to the satisfaction of human wants and needs. Indeed, at the beginning of the paper, I noted that it is definitional of the term 'resources' that it is instrumental in just this way. And of course, the connection between land and collective self-determination is also instrumental: in this world of territorially defined states, a group can only be self-determining, have meaningful forms of self-determination, if that group also has land. Rights to land are an important precondition for the exercise of self-determination, and this entitlement to land, or the possession of land is valuable in part because it is instrumental to self-determination. But it would be a mistake to think that the only relationship between land and the people is an instrumental one, where the land is viewed, potentially, as a geographical domain in which self-determination is exercised, as a source of wealth, as material to be worked or exploited, or otherwise transformed into economic use-value. But this instrumental conception is not how all people view the land on which they live. In Avery Kolers' compelling example, he notes the Lakota Sioux's refusal to sell or accept any financial compensation for mining in the Black Hills, which they view as sacred, and which they want stopped. The same is true of Maori land in New Zealand, which cannot be sold now, precisely because, when they realized what selling the land actually meant, they stopped the practice.²⁰ As

Kolers points out, it is hard to see how any group that sees itself as a spiritual guardian of the land would have alienated it voluntarily or adopted the instrumental view that land is simply a source of wealth, a stock of resources to be used to fulfill one's own particular conception of the good (to use Rawlsian language).²¹ Nor is this non-instrumental view held only by marginalized (indigenous and/or nomadic) peoples, who some might argue are a relatively small group of people in the world. Even in modern, industrialized societies, the use to which land is put – and the relationship of land to resource-extraction – is, and should be, a hotly contested issue. The instrumental conception is not necessarily the right one, or the dominant one, when we are considering whether to allow strip mining in a wetlands area, or oil drilling in the fragile High Arctic, or whether an old cemetery should be plowed over to make room for a shopping complex. There are other values here, not least of them environmental sustainability, and the kind of society the collective self-determining group wants to create.

In Avery Kolers' account, the Bedouin and Lakota Sioux examples are employed to illustrate a sharp distinction between instrumental and non-instrumental views of lands and the difficulties in characterizing something *as a resource*. I share this concern, but in this paper I use the examples not merely to say that it is wrong to assume that land is of purely instrumental value, that it is a stock of resources from which value can be derived and equalized to all people in the world, but also to argue that this non-instrumental conception is implicit in all particularized territorial claims. If someone has a claim to *this* particular river, rather than to a drinking / swimming / energy resource in general, they must value the river for more than just instrumental reasons, because otherwise they would be willing to accept some other river. Disagreement about whether land is just a resource is a different source of conflict than rival historical claims, because the first represents a disagreement about whether a resource should be

developed, whereas in the second everyone agrees on developing resources, but that they each have an attachment to the same particular set of resources, but the attachment to the particular land can only be explained by appealing to non-instrumental (symbolic or cultural attachment, say) values. Even in cases where the people have a partially instrumental conception of land, in the sense that, unlike the Lakota Sioux, they do intend to fish or farm or mine the land and water, they do not view the land in purely instrumental terms, so that the world's land can be dispensed in straightforwardly just or equal 'packages'. Many national minorities and indigenous groups claim entitlement to particular pieces of land for reasons quite specific to their historical relationship to the land.

3. Land, Resources and Global Justice (Again)

In the section above, I argued that it would be implausible to suppose that everyone has equal entitlement to control over the resource, or to benefit from the existence of resources, when people are so differently related to it. It might be plausible to have equal voice, or equal control over the resource – understood, say, in the model of a veto – if people were equally situated vis-à-vis the land or the resource, but in fact, people are unequally situated with respect to it. They are unequally situated in relation to their labour, the impact that the land has had on their culture and identity; and the attachment that they feel for particular areas of land. All this suggests that entitlement (to land, to resources) cannot take the form of equal control, equal jurisdictional authority over all the land in the world.

However, it might still be the case that people far away have some weaker kind of entitlement to natural resources, even if they cannot claim a specific relationship to any particular resource. The idea of a weaker entitlement to the resources of the world is an

intuitively attractive view, at least since mankind went to space and returned with pictures of a small blue planet which is the ‘home’ of all of us. It is also implicit in Locke’s original formulation of the relationship of human beings to the resources of the world, where he writes:

Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence; or revelation, which gives us an account of those grants God made of the world to Adam, it is very clear that God... has given the earth.. to mankind in common.²²

On this conception of the relationship between human beings and natural resources, all people have a basic right to the fruits of the earth for their own subsistence, but, just as people who hold rights in land commonly held, can use the common land for their subsistence, they do not have rights to control what other people do with it in the pursuit of their subsistence.²³ It is not, therefore, an equal voice or equal jurisdictional control conception.

This insight is also consistent with Miller’s critique of egalitarianism as it applies to resources. Indeed, Miller’s argument, both in general and especially in terms of natural resources, relies on the luck egalitarian intuition about responsibility that he is objecting to. Luck egalitarianism is a form of egalitarianism that is centrally interested in the issue of responsibility. Indeed, in many ways, luck egalitarianism can be read as an attempt to improve on Rawls by paying more attention to issues of responsibility, e.g, by not subsidizing surfers, as the difference principle was understood to do. Miller points out that part of self-determination is the right to make collective choices, and nations should be held responsible for these choices – they shouldn’t externalize the costs of their choices. This is a powerful objection to global luck egalitarianism, but in an important sense, it also appeals to the same underlying intuition as luck egalitarianism –namely that people(s) should be held responsible for their choices, but should not

be held responsible for unchosen disadvantage. Miller simply applies the same logic at the collective level. Just as individuals shouldn't externalize the costs of their (self-determined) individual choices, so to nations shouldn't externalize the costs of their (self-determined) collective choices. He runs a version of the same argument to apply to natural resources. He points out that natural resources are only rarely the kind of thing that one finds when one digs on the land, or reaches into the water. In many cases, material becomes a resource through human activity, which is a significant component of the creation of their value, and he shows that this is true for a wide number of cases. This doesn't defeat the luck egalitarian case, as it applies to individuals, but it does suggest that the individual and collective logic regarding responsibility are in serious tension with one another. In part, Miller's argument appeals to a luck egalitarian intuition that nations should be responsible for their choices, which is the flip side of the luck egalitarian intuition that unchosen disadvantages are unfair. One could imagine a (modified) form of luck egalitarianism that says that both individuals and nations should be held responsible for their choices, while simultaneously seeking to rectify unchosen disadvantages at both the individual and collective level through some kind of tax, conceived of as a way of remedying unchosen inequalities between nations (due to unequal natural resource endowment), while still holding nations collectively responsible for their choices about how they develop their share of the world's natural resources. This is an interesting point, and Miller's claim also has important implications (as I will argue below) for how we might balance the two kinds of considerations.

The weak right to subsistence, or to basic rights, if included among these is a basic right to a socio-economic minimum, can be interpreted as a weak entitlement to the natural resources of the world. Territorial right – understood as the use and control of natural resources within a jurisdiction – must be consistent with the basic rights of everyone. This would preclude control

over all the fertile land in the world, to the exclusion of all others, and without regard for their rights to subsistence. But it doesn't necessarily mean that the poor or resource-less have entitlement to enter the resource rich land or to an equal share of the fertile land – that would require a separate discussion – because there might be other institutional means to meet their basic rights.

The residual entitlement of everyone to a basic minimum is a limitation on the exercise of collective self-determination, and implies that the use of natural resources is only legitimate if it consistent with the basic subsistence rights of everyone.²⁴ The term 'consistent with' can be used in a number of different ways, some more stringent than others. Here, the term 'consistent with' does not mean that the basic subsistence rights of everyone must already be met, but, rather, the weaker claim that (a) subsistence rights could be met without violating collective self-determination; and (b) collective self-determination is the not the reason why these rights aren't met.

On this view, the general right to basic subsistence does not undermine territorial right – understood as jurisdictional authority over natural resources. In specifying the arguments, both general and particular, for control over territory and resources, it became clear that they could not justify full control and full benefit from all the natural resources within the jurisdictional domain. The general justification for territorial right - - that this is necessary for the exercise of collective self-determination –suggests that people living on the land, who are co-creating rules of justice and exercising control over the collective conditions of their lives - - should be able to make choices over how land is used, whether it should be held individually or collectively, whether some parts of it should be protected wetlands, or left unused in accordance with religious beliefs or way of life. If people do not have this capacity, they cannot exercise any serious form of

collective self-determination. But it does not follow from this justification that the flow of money that is thereby generated after the decision is made to use something as a resource can't be subject to redistribution in line with people's basic subsistence rights. Indeed, this way of understanding the argument – in terms of a distinction between control over a resource, including whether something counts as a resource (i.e., is used instrumentally) and who benefits from resources – makes sense of an otherwise puzzling argument in Pogge's work. Pogge writes: "As in the case of preferred stock, this stake [dividend] confers no right to participate in decision about whether or how natural resources are to be used and so does not interfere with national control over resources, or eminent domain. But it does entitle its holders to a share of the economic value of the resource in question, *if indeed the decision is to use it.*" (Italics mine). Although Pogge does not justify the self-determination component of that argument, the argument here provides an explanation of the two elements in Pogge's work that are in balance - decisions to control and regulate resources by the right-holding group, and (some) benefits flowing from resources to people regardless of their membership in the right-holding group. It also agrees with his institutional proposal that there should be some mechanism in place to ensure that the actual exercise of collective self-government is consistent with meeting the basic rights of everyone and this tax would meet that condition.

This happy scenario of course assumes that many peoples, many groups, will decide to use the natural goods over which they have jurisdictional authority and that the two elements – subsistence rights and jurisdictional authority – are not in tension. Indeed, as I've argued above, they are not in necessary tension. But this happy scenario ignores the vexed question of whether nations have obligations of justice to cultivate resources when doing so could help meet the basic needs of the global poor. This problem emerges in relation to groups that, in order to be

effectively collectively self-determining, claim rights over a territory, and this involves the right to set the terms under which natural resources are used in the first place, and they decide not to use X as a resource. If basic needs can be met only if states give up some control over their ‘resources’, are they required to do so? Is it so important for the Bedouin to maintain their nomadic way of life that that they should be permitted to do so *even if* this means that basic needs cannot be met? If we have a strong sense of people’s entitlement to having their basic needs met, then, the failure to cultivate resources to the fullest seems like an expensive taste that no theory of justice should countenance.

The basic strategy I have pursued here is to balance the need for control of resources with the claims of people to basic subsistence, and I have avoided the view that the Bedouins or the Lakota Sioux are merely pursuing an expensive cultural ‘taste’ by arguing that control over resources is necessary to meaningful self-determination, which is itself of significant moral value. This does not occupy the whole moral domain, since the argument also implies that people outside the jurisdictional unit have a weaker entitlement to benefit from the resources, and that wealth (including wealth created by the extraction of natural resources should be taxed and used for the general benefit of the global poor).

Here, however, it is important to see that the argument of this paper – based on the importance of collective self-determination – is markedly different from Avery Kolers’ argument about resources. On his view, the global order should be organized to tax resources, only once the decision is made that they are a resource, that they are bought and sold on a market, and thereby have instrumental value for the people under whose control the resources fall. Indeed, on his view, the fact of something being a resource requires a theory of intentions and if the requisite intentions are lacking, the item in question fails to be classified as a resource. Of

course, he recognizes that the very same thing could be a resource for some group but not for another, and then he argues that the relevant group is the group that has territorial right. My argument is simpler. Although his is very similar to the position I end up with, the conception of resources adumbrated here does not employ the language of intentionality, and does not require scrutiny of the intentions of the people or group in question. It can acknowledge that one group views it instrumentally – as a resource – and another group might view the same thing in non-instrumental terms – because sacred, or simply because they do not view it as a resource. The question of how to resolve this conflict is not determined in advance through the question of intentionality, but through the relative merits of the two cases. On the one hand, I've argued that control over resources is important to collective self-determination, which is itself an important good, and that subsistence rights are also important. In general, this points to a theory of balancing goods that are in conflict, and in most cases this is accomplished by distinguishing between control over the resource, which is absolutely central to self-determination, and the right to full benefit from the resource, which is not central to self-determination, and so some of these benefits can be used to meet the subsistence rights of the global poor. Since there is a basic distinction between control, in the sense of jurisdictional authority, and stream of benefit entitlements to resources, which are not implied by the argument from collective self-determination, there is clearly room for compromise. Moreover, this makes sense of Pogge's view, or some more precise analogue of it, to tax consumption of resources to meet subsistence rights.

Although I believe that a tax on marketable resources and fairer global rules regarding trade and development would suffice to meet subsistence rights, and that this kind of 'balance' is possible, there is always the theoretical possibility that failure to exploit potential resources

(resources in the eyes of some) jeopardizes (someone's) subsistence rights. I do not think it is obvious that subsistence rights should automatically trump the right to collective self-determination. Although people's lives are more important than their capacity to be fully collective self-determining, Jeremy Waldron has helpfully pointed out that, when rights conflict, we do not necessarily look at which right is morally most important, but also at how important, how direct the relationship is between the fundamental interest in question (that the right is supposed to protect) and the policy. Here, I can only express skepticism that mining the Black Hills or tapping the oil from the Bedouin lands, is directly necessary to meet subsistence rights, and that there are no other alternatives. Although the tension (between subsistence rights and control over natural resources) cannot be fully resolved, the argument advanced here suggests that there is at least a presumption against violating people's self-determination as a first method of recourse to ensure the subsistence rights of all.

The metaphor of 'balancing' different sorts of goods is, however, quite different from Kolers' more deductive argument, where the theory of resources as intentional kinds is used to suggest that something can be a resource only when the controlling group decides it is a resource. In the case of his example of the Bedouin, the case was over-determined: control over resources was central to the Bedouins' interest in collective self-determination, because the entire nomadic way of life of the Bedouin people was in jeopardy by the exploitation of the oil, and this interest clearly outweighed the interest that other peoples had to exploitation of the oil and maintaining a cheap and stable supply of oil. This example, in particular, demonstrates why control over resources is crucial to having control over the collective conditions of one's existence.

In other cases, however, we might think that the language of intentions and intentionality leads to counter-intuitive results. Consider, for example, a serious illness, leading in many cases

to death, which is caused by the bite of a particular kind of mosquito, but which can be cured by a drug which requires access to a mineral, which is found in land X, far away from the mosquito-infested area. The people living on X decide not to mine this mineral. They make the decision not to exploit it. On my account, people living on X (Xers) do have an interest in collective self-determination and this does give them a presumptive right to make this sort of decision. But this interest (in self-determination over the resource) in this case is outweighed by the interests of people living in the mosquito-infested area, who are falling ill from an easily preventable disease. On my account, the interests in self-determination are not absolute, but require the kind of careful assessment and balancing of interests, and especially weighing exactly how necessary is the mineral to the prevention or treatment of the disease (is it the *only* cure?) and whether the interests in collective self-determination absolutely requires the non-exploitation (of the resource) decision. (In the case of the Bedouin, it was clear that exploitation of oil would seriously jeopardize the Bedouin's nomadic way of life). In many cases, however, it might be possible to exploit a resource without serious violence to the way of life of the political community. At best, my argument indicated a presumption in favour of control over resources, grounded in the interests in collective self-determination, but this would be defeasible when strong and essential interests of others were at stake. Kolers' account of resources, by contrast, defined something as a resource by referring to the intentional states of the right-holder, thus making it difficult even to bring into the equation the interests of people outside the self-determining community.

The argument of this paper, concerning a balance between different (not fully resolved) elements, is also suggested by Miller's instructive criticism of global luck egalitarianism as applied to resources, which points out the various ways in which people interact with land, and

with resources, and how these choices and activities give rise to responsibility and to desert. I argued then that Miller's argument suggests two levels of responsibility: if we hold nations responsible for the costs of their collective choices, the inevitable result is that some individuals within the nation will suffer unchosen disadvantages (eg., individuals who were outvoted in the collective decision, future generations etc). In such conflicts, luck egalitarians such as Tan tend to privilege luck egalitarianism at the individual level, even if this requires abandoning any real commitment to national responsibility for collective choices. But one could imagine a form of luck egalitarianism that accepts the need to balance these two levels, holding both individuals and nations responsible for their choices, while still seeking wherever possible to rectify unchosen disadvantages between nations (eg., using a global resource tax to remedy inequalities in natural resource endowment). This sort of modified luck egalitarianism does not really do much more than justify taxation (to remedy unchosen sources of disadvantage), and so my preference would be to not justify it in luck egalitarian terms, but it nicely dovetails with the argument made here, viz., that there are moral claims to the benefits of resources, even if jurisdictional authority over those resources must fall within political communities (if there is to be effective self-determination).

4. Conclusion

Thus far, this paper has defended the idea of rights to control natural resources as implicit in meaningful forms of collective self-determination. It also argued that global luck egalitarianism as applied to natural resources failed to consider the various particularist attachments that people have. The luck egalitarian account of natural resources was criticized as being insensitive to the various morally important ways in which people are related to land, and to the expressive value

of land for peoples and communities, which is not captured in the instrumental view of territory as a source of natural resources, and as a domain in which self-determination can occur. This, though, does not demonstrate that people outside the political community have no claims to benefit from the resources, and the paper then argued that this must take a form consistent with the right to subsistence of everyone. It does not follow from the arguments connected to self-determination that (the self-determining) people should be entitled to the full stream of benefit from the exploitation of resources. There is a distinction between jurisdictional authority over resources and the benefits that one realizes from the resources, and only the first is central to the collective self-determination justification. This implies both a rejection of general luck egalitarianism as it applies to land, with a defense of some of the principles that cosmopolitan global justice theorists have been anxious to uphold, namely, some kind of principle of sharing to address the serious problem of deprivation of millions of people who lack access to basic water, secure food supplies, adequate shelter and clothing, and the minimum conditions for living a decent life.