

Is There a Human Right to Free Movement? Immigration and Original Ownership of the Earth

Michael Blake

Associate Professor of Public Policy and Philosophy, University of Washington

Mathias Risse

Associate Professor of Public Policy and Philosophy, Harvard University

December 8, 2006

1. Among the most striking features of the political arrangements on this planet is its division into sovereign states.¹ To be sure, in recent times, globalization has woven together the fates of communities and individuals in distant parts of the world in complex ways. It is partly for this reason that now hardly anyone champions a notion of sovereignty that would entirely discount a state's liability the effects that its actions would have on foreign nationals. Still, state sovereignty persists as a political fact. The number of states has increased enormously due to upheavals of the 20th century, and there is nothing in principle morally wrong with the existence of states - or so we will assume.²

What must be explored, then, are the limits of normatively plausible sovereignty. How bad does a government have to be for outsiders to be allowed to interfere? What responsibilities does a country incur because of its contribution to global warming? What obligations arise through trading? In this paper, we explore another pertinent question: to what extent is a country allowed to influence who lives on its territory by regulating immigration? The angle from which we approach this question continues to be neglected even now that questions of global justice are receiving much attention. Immigration amounts to a change in *political* relationships as immigrants alter their standing within one community and acquire a status elsewhere. Yet it also amounts to an alteration in *physical* relationship, since they acquire a relationship to a territory, making a life for themselves with the resources offered by a part of the earth.³ We base our exploration of

¹ Many thanks to Charles Beitz, Eric Cavallero, Howard Chang, Angus Deaton, Nicole Hassoun, Malgorzata Kurjanska, David Miller, Matthew Noah Smith, and two referees for this journal for comments or discussions, as well as to an audience at Princeton University, where the paper was presented in October 2006 (especially to Elizabeth Harman, who was the commentator). Thanks to Bill Clark for an exchange regarding the proposed measure of relative over- and under-use of resources, as well as for help in making contacts to other scientists interested in this question (to be mentioned below). Thanks to George Borjas for a conversation on the economics of immigration.

² See Hinsley (1986) for a classical statement of the view of sovereignty as "absolute" power; see Morris (1998) for the view that such a stance not only fails to describe the reality of states, but is also undesirable; see Chayes and Chayes (1995) and Keohane (2002) for attempts to characterize sovereignty in a way that accounts for increasing political and economic interconnectedness. For an argument in support of states, see Risse (2005a) and Risse (2006). What "in principle" means is at stake in this study, as well as when it comes to answering those questions introduced in the next paragraph.

³ This latter form of change is also potentially understood as a form of political alteration, inasmuch as property relationships are ultimately relationships between persons. Nonetheless, the two forms of alteration are relevantly distinct, and ought to be treated as such.

these questions on reflections on the *original ownership of the earth*. Since the earth is simply *there*, with no-one deserving credit for it, a plausible view on original ownership is that all humans have *some* sort of symmetrical claim to it. The philosophically most plausible conception of this collective ownership needs to be spelled out.⁴

This is not to say that the world's territory *now* ought to be redistributed. Instead, we contend that the collective ownership status of the earth may limit acceptable regimes of property, including regimes of immigration. Our views will be compatible with states controlling property within their boundaries. However, this will have to flow from an argument assessing how to understand the view that the earth is originally collectively owned by humanity. ("Original" ownership is not connoted with time. It is a moral status that the earth may have and one that would have conceptual and moral priority over individual appropriation.) We are not the first to assert such ownership, or to deduce its implications for the movement of individuals. Kant, for one, thought the "communal possession of the earth's surface" is one basis of the cosmopolitan right of resort.⁵ According to Kant, this right does not entitle to immigration, but grants mobility and safety in foreign lands. Yet no reason is given for the relatively restricted nature of this right. More robust rights to immigration emerge from a fuller accounting of such ownership.

Most debates about immigration concern the policies of specific nations. A significant amount of social-science literature has emerged around the question of what forms of immigration are best for a particular state.⁶ What is "best" for a country may be

⁴ (1) A note on the use of the term "resources:" Generally we use this term for materials that are present on this planet without human contribution (air, soil, raw materials such as minerals, coal, and water). In section 3, an argument requires a terminological distinction between raw materials and resources; we will flag this deviant usage of the terminology, which is hard to avoid without using artificial terminology. But we hope that no confusion should arise. (2) Schmidtz (1994) objects to the picture of the lucky first-comers who effortlessly appropriate and leave little for others. Yet if the earth originally is common property, appropriation must be constrained by this fact, regardless of whether it was a joy or a pain to be first occupiers. Even if there is a duty to cultivate wasteland, as Schmidtz suggests, use of the privatized property will be constrained by the original ownership status.

⁵ Immanuel Kant, *Metaphysics of Morals*, Doctrine of Right, sections 6, 13; see also Kant, *Perpetual Peace*, 106. For a commentary, see Simmons (2001). The question of the original ownership of the earth greatly exercised political theorists in the 17th and 18th century. Among the urgent intellectual questions of that age were questions of the legitimacy of colonial acquisition and ownership of the seas, questions related to views about the original ownership status of the earth; see Tuck (1999). For the medieval background of this debate, see <http://www.humanities.mq.edu.au/Ockham/wprop.html>. The ownership perspective is not commonly present in contemporary debates about global justice. However, lest one finds this angle rather peculiar, one should keep in mind the historical dimensions of these issues.

⁶ Questions about immigration that social scientists investigate include: Who wants to immigrate in the first place? How does immigration affect labor markets, tax revenues, and the welfare system? How does it affect crime? How do immigrants assimilate? What is the impact of immigration on population redistribution and on population change? What is the impact of domestic policy on immigration? What does the native population expect from immigration? Who are the losers and beneficiaries from immigration? For a discussion of the economic impact of immigration in the US, see Smith and Edmonston (1997) and (1998), and Borjas (2000) and (2001); for a history of immigration to the US, see Mackie (1995). For a (slightly dated) review of immigration issues across different countries, see Serow et al. (1990). For assimilation in the US, see Jacoby (2004). For a positive view on the impact of immigrants on

hard to assess: it can turn on conflicting cultural, political, or economic considerations, and what is beneficial from any such viewpoint for one segment of the population may not be for others.⁷ Yet this standpoint tends to view immigration as a privilege and neglects to ask whether it is disregarding duties to would-be immigrants.⁸ Hence, this literature would benefit from more normative inquiry. We aspire to fill in this gap by focusing on whether the physical aspect of immigration provides general constraints on immigration policy. One may even talk of a *human right* to immigration that is based on original common ownership. While this is a useful way of thinking about these questions, we will not pursue them in these terms, so as to avoid a belaboring introduction of machinery needed to work with such vocabulary.⁹

the US, see Millman (1997) and Simon (1989); for arguments that recent immigration threatens the core of its alleged Anglo-Protestant identity, see Huntington (2004). For references to the small philosophical literature on immigration, see Blake (2001). Some of that literature will be discussed as we go along.

⁷ As Borjas (2001) puts this point for the US: “The United States will inevitably attract more immigrants than the country is willing to admit. As a result, choices have to be made. Current immigration policy benefits some Americans (the newly arrived immigrants as well as those who employ and use the services the immigrants provide) at the expense of others (those Americans who happen to have skills that compete directly with those immigrants. Before deciding how many and which immigrants to admit, the country must determine which groups of Americans should be the winners and which should be the losers” (p xiv). Borjas counts immigrants among the beneficiaries, but does not count those rejected for immigration among those at whose expense the respective policy goes. (Borjas later refers to questions of fairness to those excluded, p 16, and pp 186-188, but without engaging with them in depth.) Brimelow (1995) calls immigration “a luxury for the US, not (...) a necessity” (p 259), implying that there is no obligation to outsiders on this matter. Beck (1996) expresses outrage at the US government for accepting more immigrants allegedly to keep wages low; no question is raised about entitlements of would-be immigrants.

⁸ (1) Some countries offer support for new immigrants, but none takes redistributive measures to give immigrants credit for being latecomers. For a survey of how US states aid immigrants, see Hing (2002). For an account of EU efforts, see “Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Report on Migration and Integration,” at http://europa.eu.int/eurlex/en/com/cnc/2004/com2004_0508en01.pdf. (2) Some have argued that borders are an economic oddity since returns to labor depend on one’s country (see Anderson and van Wincoop (2004)). This view was also famously defended by Adam Smith and Milton Friedman. On such a view, immigration is a solution to an impediment of the market, one that should follow naturally now that constraints on the movement of services, goods, and capital are lifted more and more. However, such a view is justified only if little can be said for the validity of borders, which in turn must be assessed through an inquiry into the nature of original ownership.

⁹ (1) We ignore two groups who may demand access. The first is individuals with a morally overwhelming case for entry *independently* of any right to immigration based on original ownership; the second consists of those with an overwhelming case for rejection. It is unclear how to draw the contours of these groups, but moral questions about immigration per se arise about people who belong to neither, and we assume that third group is non-empty. (2) A reference to Miller (2005) and Wellman (forthcoming) is appropriate. Miller rejects standard arguments for open borders, his main point being that the alleged rights grounding such a demand do not correspond to duties of others. The common ownership standpoint, however, shows how such duties can be generated. Nevertheless, our overall project is friendly to Miller’s because the (culture and population-size driven) reasons for exclusion he favors can be reproduced from the common ownership standpoint, except that the culture-based argument must be qualified. Wellman argues for a country’s right to control immigration by appeal to the value of freedom of association. Any person X has the right to associate with any Y, says Wellman, but only if Y consents; since we attach much value to such freedom, a right to regulate immigration follows. From the standpoint developed here one must ask whether

2. Our guiding thought is simple: if the earth is originally collectively owned, this fact must affect how political communities can regulate access to the part of the earth they occupy. Yet that thought is surprisingly hard to develop. Since we will be unable to come to conclusive views with regard to all questions that arise in this context, we hope this study triggers more work spelling out the common-ownership perspective on questions of immigration.

We must first develop the notion of *common ownership* as the most plausible interpretation of the idea that humanity collectively owns the earth. Such ownership is a relatively weak version of collective ownership, one compatible with the existence of states. While it will turn out to be a relatively indeterminate version of ownership, it nonetheless will constrain immigration control. Later, a key move will introduce the notion of *relative over- or under-use* of resources. As no measure of the sort that we envisage is currently in use, for now we will be unable to think through what this measure entails for specific cases. Foremost, we seek to apply the standpoint of common ownership to immigration. If this view is found convincing, it may lead to more empirical work required to construct such a measure. Regardless, there are important implications of this perspective. In particular, it stresses that reflections on immigration must consider more than domestic concerns and ushers forth questions about the extent to which immigration can discharge a duty to aid. Moreover, it entails that certain responsibilities are a matter of justice, rather than charity.

What does it mean that the earth is originally owned by humanity? Initially, one may regard assertions of this form as nonsensical. For instance, Hobbes, in Chapter XIII of the *Leviathan*, claims that “mine” and “thine” are not meaningful absent a state that could enforce ownership. This view gains plausibility if we consider that ownership is a complex system of rights and duties: explicating what it means to own something involves many different concepts and relationships, and one would need a thick moral theory to make sure they are available outside of a legal framework.¹⁰ Yet even if we grant that “mine” and “thine” are fully specified only within legal systems, we may ask whether there are less robust property rights outside of such frameworks that appear plausible in light of facts about physical resources.

It is appropriate to examine such property rights for two reasons: first, such resources are necessary for any human activities to unfold; second, those resources have come into existence without human interference. These reasons must be considered when individual accomplishments are used to justify property rights that are strong enough to determine use across generations. Consider the argument from first occupancy, according to which land belongs to first takers. This view is problematic because the sheer fact that one came to a place first is not of sufficient moral weight to grant ownership that resonates through the ages given that the resources are needed by all and their existence

such freedom of association holds regardless of the size of the association, and we respond negatively. But again, our overall attitude towards this approach is friendly, since much of it can be reproduced from our standpoint, except that, again, arguments to restrict immigration must be modified.

¹⁰ For the concept of property, see Honore (1961), Becker (1977), and Reeve (1986).

is nobody's accomplishment. Yet precisely this is common practice. The same difficulties are true for a Lockean labor theory of acquisition.¹¹

Egalitarian Ownership is the view that the earth originally belongs to humankind collectively. ("Original" ownership, again, does not connote with time but is a moral status.) We assert that this is the most plausible view of the ownership of natural resources. The considerations motivating this view speak to raw materials, not to what human beings have *made* of them. Perhaps people born into a given society should not be favored in terms of access to its achievements. Yet an argument for that view would differ from the one presented here.¹² We return to this issue below. The distinction between what "is just there" and what has been shaped by humans is blurred, say, for land human beings have wrestled from the sea, or for natural gas in garbage deposits that can be harnessed. But by and large, we understand well enough the idea of what exists without human interference.

We can now see how original ownership is relevant today. We seek principles by which we may legitimately understand resources as belonging to groups or individuals. Our view entails that resources, including land, ought to be seen as shared property unless principles of allocation are justifiable to all who have a potential interest in their use. One form of justification may draw on the distinction between natural resources and other things; the more my labor is responsible for an object's existence (at any rate for its existence *as* that object),¹³ the more plausible is my right to it. The original right of property over the earth is now best seen as a right to have *justified* to us whatever principles of allocation exist, in terms we could not reasonably reject.¹⁴

¹¹ There is an enormous literature on the foundations of property and the Lockean theory in particular; see Becker (1977) and Reeve (1986) for overviews, and Sreenivasan (1995) for problems and limitations of Locke's account. What we say may have implications for resource use over time; each generation may be morally precluded, for example, from depleting resources that might be beneficial to future generations. However, we do not pursue this line here.

¹² See, for instance, Beitz (1979) for such an argument.

¹³ The point of that qualification is to distinguish, say, the statue from the clay from which it is made. For that distinction, no creation *ex nihilo* needs to be assumed.

¹⁴ For the notion of reasonable rejection, see Scanlon (1999). One might say that, while it does make sense to ask about the original ownership of resources, originally, resources are unowned, and their appropriation is not subject to moral considerations. Yet if it is granted that questions about pre-legal moral rights of individuals over resources qualify as meaningful, the mere claim that resources are originally unowned does not remove them; one would then have to ask these questions in terms of original acquisition of what has no property status, rather than in terms of privatization of what is collectively owned. Either way, it will be hard to eliminate the intuition that all of humanity has a symmetrical claim to resources. This point is important because some might hesitate to endorse our starting point that the earth has any sort of positive ownership status. But for our argument it makes no difference if one starts with the assumption that the earth originally has no ownership status. One reason for rejecting the Common-Ownership perspective is that it seems to capture an obsession with ownership peculiar to particular cultures. In addition to the point just made one could respond to that by insisting that the global order within which questions of ownership must be assessed is shaped by considerations of ownership; it is by thinking through this ownership perspective that one arrives at the idea of common ownership of the earth. Another objection is that in certain cases of unowned property, we have different intuitions: the twenty-dollar bill on the ground belongs to whoever finds it. Yet this is so because such cases are infrequent and deal with relatively minor

3. We will therefore try to establish that the original ownership of the earth places moral restrictions on principles governing resource allocation.¹⁵ To this end, we now discuss various interpretations of Egalitarian Ownership and assess which is the most plausible way of developing this view. There are roughly four types of ownership-status an entity may have: *no* ownership; *joint* ownership – ownership directed by collective preferences; *common* ownership – in which the entity belongs to several individuals, each equally entitled to using it within constraints; and *private* ownership. While the first and last of these conceptions are self-evident, the distinction between the second and third requires some attention. Common Ownership is a right to use something that does not come with the right to exclude other co-owners from using it. If the Boston Common were held as *common* ownership when it was used for cattle, a constraint on each person’s use could be a limit on the number of cattle he could bring. These restrictions would be based on the particular demands other co-owners make on what is commonly owned, which are motivated by respect for all co-owners and a concern to avoid the infamous Tragedy of the Commons. So long as they abide by such constraints, co-owners can do as they please. In contrast, if they held the Common in *joint* ownership, each individual’s use would be subject to a decision process to be concluded to the satisfaction of each co-owner. Joint ownership ascribes to each co-owner property rights as extensive as rights of private ownership, except that others hold the same rights.

We can now see that there are various interpretations of Egalitarian Ownership: resources could be jointly owned, or commonly owned, or each person could have private ownership of an equal share of resources, or, perhaps, an equivalent of its value. We refer to these interpretations as Joint Ownership; Common Ownership; and Equal Division.¹⁶ We submit that Common Ownership is the most plausible interpretation of Egalitarian Ownership. Our argument for that claim proceeds by rejecting the other interpretations of Egalitarian Ownership.

To begin with, Joint Ownership sets an implausibly high standard of justification for each use of the collectively owned assets. Grunebaum (1987), a rare defender of Joint Ownership, introduces a notion of *autonomy* construed in such a way that any form of ownership of the earth other than Joint Ownership is inconsistent with it. The notion of autonomy needed here necessitates the claim that use of collective property violates an individual’s autonomy unless she approves of such use. One objection is that, although this notion of autonomy may appear strong, it is actually too weak to be plausible. For if each person needs *to be asked* about any use of her property, she also needs *to ask* about any such use. Resources could not become private without everyone’s consent. This view does not allow anybody to make productive use of resources. Yet collective

values. This stance fails for sacks of hundred-dollar bills, and we would want a better story even about twenties if they appeared on trees only grown on some people’s property.

¹⁵ This section follows Risse (2005b).

¹⁶ In capital letters, “Joint Ownership” and “Common Ownership” are names of interpretations of Egalitarian Ownership and hence views about ownership of the earth, whereas in small letters “joint ownership” and “common ownership” are general forms of ownership of anything. We will continue to say that humanity “collectively” owns the earth if the precise form of ownership does not matter.

property, as we saw above, ought to be understood as the right to have principles of allocation justified to reasonable agents; it does not entail the right to veto such principles for possibly rather idiosyncratic reasons.

Perhaps only such a weak notion of autonomy is consistent with each person's having it. However, regardless of the strength of autonomy needed here, it will strike many that this use of the notion of autonomy overstates the normative weight of each person's autonomy. It exaggerates the importance of each individual vis-à-vis the rest of the world, a problem that can not be alleviated simply by pointing out that it overstates each individual's importance. This can be seen in the following considerations about raw materials. First, although we have talked about raw materials and resources interchangeably, strictly speaking many (though by far not all) raw materials become *resources*. They obtain value by being useful for human activities. For instance, crude oil became important only after the invention of motor engines. Second, many resources require work to become "available." Oil must be extracted and refined, minerals must be mined, etc. These two features capture special entitlements to resources ("special" in the sense of "deviating from the original symmetry"). While these features may not entail much, they do entail that the original symmetry of claims any two individuals have to the earth is not well-captured by requiring the justification of *any* use of resources to the satisfaction of *each* person. This is why Joint Ownership is implausible.

Consider Equal Division, endorsed, for instance, by Steiner (1994). Equal Division gains plausibility from the idea that there is a (figurative) heap of resources to which each human being has an equal claim. But as we saw, materials become resources, and become valuable, through activities that require social contexts in which not all human beings participate equally. The same considerations that conflict with Joint Ownership also conflict with Equal Division. One may object that what people have an equal claim to is raw materials, regardless of whether some are socially useful ("resources") and others not. This objection insists that there is an equal-ownership relationship that must be understood independently of any value objects may have. Yet attempts to define objects of ownership independently of value considerations lack a reason why an ownership relationship should apply *to raw materials* at all. The point of introducing a moral idea of pre-legal ownership is that accidents of time and space should not determine who gets to use what is in principle of value to everybody. It makes no sense to introduce such ownership relationships without recourse to value talk. Hence, we are back with the earlier consideration, that such recourse breaks the equality of the claims. What makes resources valuable entails that not any two individuals are situated equally with regard to all resources.¹⁷

Recall the original intuition in support of Egalitarian Ownership: while natural resources are valuable for human endeavors, their existence is nobody's accomplishment. This intuition is best accommodated neither by Joint Ownership nor Equal Division, but by Common Ownership. Unlike the former two, Common Ownership is sufficiently weak to accommodate special entitlements to resources, which stand in some tension with Egalitarian Ownership and push for an interpretation minimizing this tension. Common

¹⁷ From this point on, we will use the terms "raw materials" and "resources" again in such a way that raw materials are subsumed under resources, so as to avoid somewhat artificial terminology. We hope this will cause no confusion. The distinction that we draw matters only for the argument above.

Ownership only requires that use of collectively owned resources abide by constraints that ensure the respect of each co-owner status. What Common Ownership demands, and thus what is required to respect each co-owner's status as such, must be assessed for given scenarios, taking into account both the legitimate demands of other co-owners (which might include special entitlements) and relevant background facts.

To illustrate what Common Ownership entails, let us review a discussion in Risse (2005b), one without immediate bearing on immigration.¹⁸ That discussion addresses one of Pogge's (2002) ways of arguing that the global political and economic order wrongfully harms the poor:

Pogge's Uncompensated Exclusion: The better-off enjoy ample advantages in the use of a single natural resource base from whose benefits the worse-off are largely, and without compensation, excluded.

What one needs to ask to see if individuals are wrongfully harmed by the global order in the way stated by Uncompensated Exclusion depends on which view on collective ownership one accepts. According to Equal Division, the worse-off are wronged if they get less than a $1/n$ -th share of collectively owned resources (n being the size of the world population). What each person is entitled to is determined in terms of a certain share of resources. What must be explored is whether the worse-off are deprived of their share and, if so, whether this deprivation can be ascribed to the global order. If both points can be shown, the global order wrongs the worse-off as stated by Uncompensated Exclusion.

According to Common Ownership, what must be explored is whether some persons' status as co-owners is violated by the global order. While Equal Division is rigidly committed to the view that what is owed to individuals is such an equal share, Common Ownership is committed to a more indeterminate vision of what individuals deserve. For Common Ownership, respecting individuals as co-owners may entail distinct different things in specific contexts. Suppose resources do not determine relative economic standing within the global order; economic success, that is, does not depend on resource endowment. According to well-established views on development, that claim is true. So supporters of Common Ownership can argue (as Risse (2005b) does) that the global order does not wrong individuals *merely* because they have differential access to resources. Contrary to what is true according to Equal Division, differential access does not by itself show that such individuals' status as co-owners has been disregarded. Defenders of Equal Division can operate with a straightforward notion of a "fair share," where such a share would be an equal share of the collectively owned resources. For defenders of Common Ownership matters are more complicated: what is due each individual must be worked out for different scenarios whose particular features affect what counts as respecting one's status as co-owner. While later we will sometimes talk about "fair shares" from the common-ownership standpoint too, this way of speaking is derivative of working out what that moral status requires, given the circumstances.

¹⁸ This review should not merely illustrate how we think one should reason from the Common-Ownership standpoint, but should also make clear that there are circumstances under which Common Ownership has different implications from Equal Division. It is important to keep this in mind because in the immigration scenario we will end up with a view that also would be open to defenders of Equal Division (were that a plausible view).

Reading Egalitarian Ownership more strongly than Common Ownership overextends what plausibility it gets from the original intuition that supports it. Common Ownership implies that co-owners who unilaterally use resources do not owe compensation *merely* because others do not, or exploit certain resources others fail to find where they live. Still, Common Ownership is a form of Egalitarian Ownership, and its collective aspect must be meaningful.

By way of further elaboration of Common Ownership, consider the following points. First, while common ownership is weaker than joint ownership, the sheer fact that the earth is a collective property implies that it is wrong to assess immigration in purely domestic terms. Instead, it must be discussed in a way that gives voice to those not living on the bound territory. Second, what we get from this division is not ownership in the sense of freehold, by which we are entitled to exclude others from use of resources. We are, instead, co-owners in that we are among those to whom the specific distributions of property rights must be justified. The current allocation of property means that some have control over areas of property, while others do not. There is nothing inherently wrong with this situation. Yet Common Ownership persists as a standing demand that we be respected in our status as co-owners.

Third, we have motivated our inquiry into the ownership status of the earth in terms of forms of ownership that also apply to, say, the Boston Common. Yet there is a major difference: while the farmers took their cattle home at night, peoples of the earth have no place to go except the planet whose ownership is in question. We often take it for granted that individuals live in states, and have a collective right to self-determination. But how is this right related to Egalitarian Ownership? We contend that there is nothing about the sheer fact that individuals occupy a certain area and live there in a self-determined way that is inconsistent with Common Ownership. Still, not just any way of doing so is consistent with it (thus the “in principle qualification). Self-determination and Egalitarian Ownership are more harmonious than it may appear, but constraints on self-determination must be explored.

4. Common Ownership does not grant entry to a country under any circumstances. Still, certain forms of use are obviously inconsistent with it. Suppose somebody claimed 50% of the Boston Common on a given day but only owns 1% of the cattle currently there. While any co-owner is entitled to using the area, there is a sense in which one may engage in overuse and thereby disregard the status of others as co-owners. Others could now demand access to that area. More relevantly, suppose the population of the US shrank to two, other countries remaining unaffected. Suppose those two can control its borders by means of sophisticated electronics. Clearly others can demand entry, and the perspective of original ownership helps understand why. In a manner parallel to the Lockean proviso (to leave “enough and as good,” *Second Treatise*, section 27), Common Ownership gives individuals a claim to have exclusion justified to them.

A special feature of the situation under which individuals can claim to have exclusion justified to them (and this is a difference between the Boston-Common and the US case) is that the commonly owned area (the earth, or anyway most of its land mass) is entirely divided up by states. Co-owners born into one state may be denied entrance to

the others (a fact that like no other, statistically speaking, shapes prospects),¹⁹ without having other areas to retreat to. It is under such conditions that we must explore co-owners' claims to consideration. What are the conditions under which individuals can demand permission to immigrate in virtue of being co-owners? To reverse the perspective: under what conditions do people not need to share their territory?

Yet before we pursue this question further we must address one issue that may render this inquiry moot. Some have argued that it lies in the nature of a just political relationship that there can be no barriers to immigration. If so, there is no need to explore under what conditions the sheer fact that somebody is a co-owner would give her a claim to immigrate. Conversely, if there is nothing in the nature of a just political community that excludes immigration constraints, our inquiry becomes important. We assume a just political community is just in the liberal sense. While other views require different ways of assessing the question of whether features of justice exclude immigration restrictions, we choose to engage with the liberal view not simply because we are sympathetic to it, but also because its compatibility with immigration restrictions has recently mustered considerable discussion. Liberalism is committed to moral equality of all persons; it is this commitment that has been used to argue that immigration restrictions are at odds with liberal justice.

The best-developed version of this argument is presented by Joseph Carens.²⁰ Liberalism, Carens notes, condemns the use of morally arbitrary facts about persons to justify inequalities. Examples are race, sex, and ethnicity. A political community that treated people differently on the basis of such features would be illiberal and unjust. Yet citizenship seems as arbitrary as any of those factors. None of us chose our place of birth, and we deserve neither advantages nor disadvantages for it. Carens (1987) compares the existence of states to medieval feudalism. Restricting immigration, on this view, is as offensive as other, perhaps more obvious cases of injustice because it differentiates rights based upon one's origins. To complement this argument, Carens offers a cosmopolitan reading of Rawls, according to which, following Beitz (1979) and Pogge (1989), the Original Position used to derive principles of justice is extended globally. Given the contingent nature of borders, it would be inconsistent to limit applications of the Original Position to states. Carens concludes that, from within an extended Original Position, we would accept principles guaranteeing the freedom to move across borders.

While Rawls (1999) rejects this cosmopolitan reading of his position, Carens's basic argument is independent of views on Rawls. While he is correct that moral equality cannot stop at the border, this does not mean shared citizenship is a morally irrelevant factor such as race or ethnicity. While shared citizenship, just like those, has arisen in a manner for which individuals deserve neither credit nor blame and is in that sense *arbitrary*, this does not mean it is morally *irrelevant*. A border marks something of moral importance, an area of shared liability to a community. The state can do powerful things

¹⁹ "Like no other, statistically speaking:" Milanovic (2005) shows that inequality among countries is much larger than inequality within states.

²⁰ See, for instance, Carens (2003) and Carens (1992); for related views, see Ackerman (1980); Dummett (2001); Tushnet (1995); Hayter (2000); Nett (1971), and Kukathas (2005)

to those living within its borders that it cannot do to others, and the special demands on the justifiability of its institutions and measures vis-à-vis those subject to its authority create a morally relevant relationship among its subjects. Moral equality does not require equal political rights, and so does not require political equality. What moral equality means depends on the political structures shared by individuals. So shared citizenship is not like shared status under feudalism. The right to mobility is not an implication of moral equality. Liberal principles of justice are not inconsistent with immigration constraints.²¹

5. So what are the conditions under which individuals can demand entry *in virtue of being co-owners*? Suppose inhabitants claim that their land is too crowded for them to take in more people. This argument is generally buttressed by a claim about a specific activity immigration would undermine, so that a claim of overuse tends to be a claim of overuse-with-regard-to-a-certain-purpose. “We are,” it is said, “too crowded as it is; more immigrants would destroy the distinctive character of our state.” While these points (overcrowding per se vs. overcrowding in view of a purpose) are often conflated, we must keep them separate for analytical purposes.

To make sense of the idea that co-owners are *overusing* commonly owned resources (and so would not need to admit more people) or *under-using* them (so we would have to) one needs a measure of the value for human purposes of all commonly owned resources located in an area. Such a measure would not just be concerned with square mileage and thus population density. After all, its purpose is to evaluate claims that a group uses more or less than what they should be using *qua* co-owners, arguments deployed to deny or demand entry. Yet areas with the same population density may differ dramatically otherwise: one may consist of arable land (with an evenly spread population), another mostly of desert (with the population crowded in a small fertile area); one may come with lots of minerals, another be deplete of them; one may be adjacent to the sea and include many navigable rivers, another landlocked. Such a measure would have to include not merely the size of the land, but also resources like minerals and water, and the quality of the location as captured by a range of biophysical factors. In short, this measure would have to evaluate a region’s overall usefulness for human activities. It needs to allow for comparisons of sets of such factors, which is most straightforwardly accomplished by a one-dimensional measure, something like an aggregated world-market value. Since we want to use this measure to say that one area, plus its resources and biophysical parameters, is taken up to a *larger* or *smaller* extent than others, all-things-considered comparability is essential.

World-market values would reflect demand for commodity sets in light of supply constraints. Prices reflect the usefulness of entities for human purposes given the state of technology and limitations on availability. This does not mean there could be no other sense in which the entities being assessed have value; nor that those who possess resources may do with them entirely as they please; nor that all of them would be for sale.

²¹ For elaboration, see Blake (2001). The existence of states must also be justifiable to those who do not belong to a given state. But here the point is to insist that special demands of justifiability arise with regard to citizens, not that all features of the state and their existence must only be justified to members of the state. For an argument in support of states, see Risse (2005a) and (2006).

Yet none of this is true for objects that are usually priced by market value. Using world-market prices also offers a simple way of reflecting technological constraints. Suppose we discover minerals far below the surface, but do not have the technology to extract them. Such resources would enter the overall value of the set of resources to be assessed in a discounted way. The presence of resources we cannot bring into circulation will not, and should not, create much pressure to allow for more immigration; on our account, however, the presence of resources that happen not to be in flow but are part of the stock a country has a ready access to will and should.

Some of this pricing will be novel: biophysical factors shaping the usefulness for human purposes of geographical locations are not normally priced. In an optimistic mode, one might think that humanity has so far had no trouble adding more entities to the set of those with a price ticket. However, recent reflections on the desirability to broaden the US National Income and Product Accounts (which measure economic activities in the US economy) to include activities and assets not immediately tied to market transactions and thus not presently captured in those accounts have revealed difficulties in doing so, difficulties of a sort we cannot address here. At any rate, *no such measure is in use at this time*. Neither can we turn to economists for well-established methods of extending pricing in this manner, nor can we turn to the biophysical sciences for candidates of such a measure whose suitability for our purpose we might ponder. All we can do for now is to explore the conceptual possibility of such a measure, to formulate some desiderata, and to contrast our proposal to use such a measure to assess demands to entry with other proposals. Again, sometimes the task of philosophy is to argue that something is needed for which the work must be done in the sciences.²²

For any state S our measure would deliver an index V_S , measuring the value of the collectively owned resources on S 's territory, including the biophysical conditions determining the usefulness of this territory for human purposes. To assess the extent to which S 's territory is used one would divide V_S by the number P_S of people in S . V_S/P_S is *the per-capita use rate* of commonly-owned resources on S 's territory.²³ V_S/P_S includes resources that are not actually in circulation (not literally used), such as unmined minerals and unextracted oil (possibly suitably discounted). Yet the point is to have a measure of what is at a society's disposal, broadly speaking, that is, actual as well as potential use, and we will address below how to handle situations in which a society is in no position, or has chosen not, to extract resources feeding into its use rate.²⁴ The point is to have a measure of a stock of resources that takes into account how straightforwardly that stock could be transformed into a flow of resources if desired, rather than a measure of only the current flow.

²² For efforts to broaden national economic accounting beyond market activities, see Nordhaus and Kokkelenberg (1999), as well as Abraham and Mackie (2005).

²³ We think of P_S only in terms of counting people. It would be possible to extend this assessment to animal life or the environment if one has independent reasons for wanting to be inclusive in this way.

²⁴ It is important to keep this in mind in light of Pogge's (2002) Global Resource Dividend. Pogge would not tax a society that just sits on its resources. But such resources would be included in our measure.

The territory of S is *relatively underused* (or underused) if V_s/P_s is bigger than the average of these values across states (in which case the average person in that area uses a resource bundle of higher value than the average person in the average country), and that it is *relatively overused* (or overused) if this value is under average. If V_s/P_s is above average, co-owners elsewhere have a pro tanto claim to immigration. (The “pro tanto” character of this claim will be discussed below.) Otherwise they do not. While thinking about immigration is not commonly guided by such ideas, one can envisage a philosophically astute UN Secretary General commissioning a committee to devise such a measure to assess the scope of transnational obligations, including immigration.

Since we are talking about rights entailed by common ownership of the earth, their satisfaction would have to assume the specific shape of allowing for immigration. The object of ownership is the earth itself, and what is at stake is how this physical location can be divided up given that it is held in common. Conceivably the world’s population would agree that people who underuse their territory make payments (say, development aid) to others; but what cannot be reconciled with this ownership status is that they could pay off others, although those would *prefer* to exercise their right to immigrate. They have that right in virtue of being co-owners, and while they may decide to waive it for such payments, it remains their prerogative to do so.²⁵ This point also allows for a link between collective ownership and claims to political membership. Under-users have two ways of responding to would-be immigrants: they can relinquish territory, allowing for the founding of other political entities, or they can admit them to their territory. In that case, prudential and moral reasons will speak against keeping immigrants systematically outside of the political community.²⁶

6. Let us compare relative over- and under-use as a device for assessing demands to entry to two other such measures. First, there is an absolute notion of over-population,

²⁵ (1) The details of this reasoning matter by way of comparison with the argument in Risse (2005b) reviewed above. Risse (2005b) argues that defenders of Common Ownership can resist Pogge’s (2002) Uncompensated Exclusion as a way of showing that the global order wrongs the poor. Showing that such wronging occurs involves showing that people’s status as co-owners has not been respected, which is not just a matter of assessing whether they obtained a certain share of resources. Their status as co-owners might not be violated if development does not depend on resources. In contrast, defenders of Equal Division see the wronging in some individuals’ deprivation of their 1/n-th share of collectively owned resources. One may think no rights of co-owners are denied either if they are denied entry to states that prefer making increased contributions to development aid to admitting people. Yet states could not do so against the preferences of other co-owners to actual entry, preferences we can assume exist. The thought that there are such preferences that have to be overruled has no counterpart in the discussion of whether the global order wrongfully harms the poor as captured by Uncompensated Exclusion, which is why these arguments are consistent. (2) In this regard ownership of the earth is much like ownership of objects in a legal system. A might sell B her car, but B could not take it and leave its market value without A’s consent. A owns *the car*, not a monetary equivalent. There are exceptions to this: If B can only survive by breaking into A’s cabin and has no way of contacting A, B would be allowed to do so and would then have to fix the damage. Thinking about this easily gets complicated, but all we need is that a claim to a specific thing (the physical location “earth”) is the essence of the (commonly held) property claim at stake here. (For the relevant aspects of property involved, see Ellickson et al. (2002).)

²⁶ Gradual integration (such as ascension from visa-holder to permanent resident and from there to citizen) is consistent with this view. Such people would not be guest workers, but actual immigrants.

discussed by Michael Dummett.²⁷ Such a measure decides on requests for entry by asking whether a territory can support more people. More needs to be said about what counts as “supporting.” Is it enough if more people could survive there? Is the assessment made simply through reference to the current population’s standard of living? Or is there yet another account? No matter how these questions are answered, absolute measures are irrelevant to the common-ownership standpoint. My status as co-owner is not violated if entry is denied to areas that are relatively over-used already. However, if all parts of the earth are crowded to an extent an absolute measure would classify as higher than what those regions can support, respectively, Common Ownership may entitle people to entry in areas that are less overcrowded than where they came from, and are thus relatively underused although absolutely overused. I can demand of others that they admit me even if they are in dire straits if my situation is worse. Common Ownership is concerned with the relative standing of co-owners. We take this to be a fact about what it is to own something in common. Comparisons have to be made in terms of *proportionate usage* of areas (considering their value for human purposes) relative to other areas.

Contrast this measure with the account given by Cavallero (2006). Cavallero observes that countries are subject to emigration and immigration pressure; for a given country there may be some who want to leave it (for roughly economic reasons), and others who want to immigrate. (Some such sets may be empty.) Some countries will be under *positive immigration pressure*: on balance, proportionately more people want to immigrate into these countries than emigrate, “proportionately,” that is, in a manner that factors in differences in population size. Other countries will be under *negative immigration pressure*. They *generate*, rather than *attract*, immigration pressure. These are countries that, on balance, more people want to leave. Cavallero proposes that countries generating immigration pressure have a claim to support. Countries that attract immigration pressure need to allow for immigration or give aid to decrease immigration pressure by making it more appealing for people to stay where they are.²⁸

According to Cavallero, the normative significance of immigration pressure is that it indicates *inequality of opportunity*. A legal system should not create bars to equal opportunity on the basis of arbitrary traits like nation of birth. International law constitutes a legal system that confers on states the right to restrict immigration. Unless those restrictions are balanced by improving opportunities in worse-off countries, international law creates bars to equal opportunity on the basis of nation of birth. In the background is the “Cosmopolitan Premise,” that “Ongoing institutions of international law should not systematically disadvantage anyone on the basis of involuntary national citizenship or national origin” (p 98). Since everybody is at least indirectly subject to international law, it must not discriminate on morally arbitrary grounds such as nation of birth.

The difference between this proposal and ours turns on the “Cosmopolitan Premise.” With this Premise as his starting point, Cavallero thinks about acceptable demands to entry in terms of preferences for immigration. It seems to us, however, that

²⁷ Cf. Dummett (2001), chapter 4, and Dummett (2004).

²⁸ The expression “want to immigrate” refers to hypothetical preferences. Cavallero assesses immigration pressure assuming that visa applications are possible, and means for relocation are provided.

the starting point should be an importantly modified premise, namely that “Ongoing institutions of international law should not systematically disadvantage anyone *in a morally unacceptable way* on the basis of involuntary national citizenship or national origin.” People who share a citizenship or national origin may in principle create a situation in which international law is justified in disadvantaging them, just as individuals can behave in ways that make it acceptable for the law to disadvantage them. To exclude this possibility, the Cosmopolitan Premise should state that what is ruled out is morally unacceptable disadvantage. But once this addition has been made, we are led to the common-ownership standpoint and from there to the view we are proposing. (Notice that Cavallero allows for payments in lieu of allowing for immigration, whereas on our proposal this cannot be done against the would-be immigrants’ preferences.)

This discussion makes clear that our account might not track preferences for immigration, not even hypothetical preferences people may have if practical obstacles to immigration are resolved. To the extent that immigration pressure is generated by income differences, measures of relative over- and under-use cannot track such pressure if the strength of the economy is insignificantly correlated with resource-richness. This strikes us as unproblematic, but serves to illustrate the implications of our proposal. We grant that there are independent duties of aiding other countries in building institutions. Nonetheless, our account does not grant preferences that stem from income differences between nations status as legitimate claims to demands of entry.

7. Let us discuss some worries about our proposal. To begin with, recall that we rejected Equal Division as an interpretation of Egalitarian Ownership. One may say that rejection sits uneasily with what we are doing now. The argument above was that we cannot construct a measure of what humankind collectively owns such that, according to this measure, everybody owns an equal share. Value attributed to resources reflects a social context, thus leading to circumstances where not everybody has identical entitlements. But are we not now proposing such a measure and manipulating it in a way that is meaningful only if everybody should receive an equal share? Moreover, presumably defenders of Equal Division would arrive at the same measure. So why have we bothered to reject Equal Division?

We have rejected Equal Division because it is an incorrect interpretation of Egalitarian Ownership, and it does differ from Common Ownership on other issues (such as the evaluation of Pogge’s Uncompensated Exclusion) even though it does not differ from it on this matter. Defenders of Equal Division would construct a measure to say that everybody *owns* the same share in terms of it. We are proposing a measure to compare the relative intensity with which commonly owned resources are *used*. There is no sense in which everybody should *own* the same share relative to that measure; that intuition plays no role. Evaluating whether a set of commonly owned assets is used more or less than other sets is a meaningful operation even if talk about actual ownership of 1/n-th shares is not. As opposed to Equal Division, Common Ownership entails relatively indeterminate property claims. What it means for all co-owners to be treated as such will have to be developed in light of specific conditions. In this case, the relevant conditions are that what is commonly owned is divided into states, and the question is when somebody located in one state can demand entry to another. Under these circumstances we are led to using the proposed measure of over- and under-use to assess what it means

to treat people as co-owners. But again, this does not entail that each person owns 1/n-th of the collectively owned resources, even though defenders of Equal Division would use this measure to assess how much each person owns.

To make this clearer recall that, earlier, we addressed the view that persons have an equal claim to raw materials, regardless of whether some of those are socially useful (“resources”) and others not. The response was that if one tries to define objects of ownership independently of value considerations, one lacks a reason why an ownership relationship should apply *to raw materials* at all. This way of blocking an endorsement of Equal Division dwelled on the fact that its defenders would argue that each individual has an equal *ownership* claim, and no such claim can be established in this way. But this is conceptually different from asking how commonly owned resources can be used under certain circumstances. No individual ownership claims to shares of what is collectively owned are made, and thus no consistency problem with the earlier argument arises. On the contrary: in both cases we have developed a view of what it means to respect co-owners in the context of a given question. For simplicity’s sake we will talk about “shares” of commonly owned resources; but these will be shares with regard to our measure of intensity of use, not shares to which individuals have ownership claims.²⁹

One may also question the sheer possibility of measuring relative over- or under-use in a meaningful way.³⁰ Again, no such measure is in use. The closest approximation

²⁹ (1) The sort of reasoning just developed can also be illustrated for a scenario involving the Boston Common. Suppose there are 100 commoners and the Common can support 1000 cattle; suppose each day each commoner would like to graze as many cattle as possible. Other things being equal, Equal Division and Common Ownership lead to the same solution: let each commoner graze 10 cattle. However, the reasoning would be different. Defenders of Equal Division would insist that this is so because each person owns 1% of the area, whereas defenders of Common Ownership would argue that this is so because respecting their status as co-owners requires it under the circumstances. Suppose some commoners prefer privatizing their percentages of the Common. According to Equal Division, little could be said to resist this request. But according to Common Ownership, it could be blocked easily. The kind of use provision granted by Common Ownership does not entail that one can take areas out of commonly owned stock. Other co-owners might insist that during days on which not everybody grazes 10 cattle others can bring more cattle. According to Common Ownership, individual co-owners make too much of their status as co-owners if they declare their independence. Or suppose not everybody owns 10 pieces of cattle. Defenders of Equal Division would think it obvious that somebody who owns fewer pieces still has a claim to 1% of the collectively owned area, whereas that would not be obvious on the Common-Ownership view. Nobody’s status as co-owner will be violated if others use space he would be entitled to had he more cattle. (2) One interesting case is germ-line genetic information. Steiner (1994), chapter 7, discusses such information to argue that, although individuals are self-owners, they do not own their offspring: reproduction also involves something that is part of the stock of natural resources, namely such genetic information. Plausibly, such information does belong to the commonly owned stock (which does not mean all individual genetic information does). But this does not cause any problem for our view, except that one should not think of the juxtaposition between property-owning individuals, on the one hand, and the objects of ownership literally as a juxtaposition of human bodies and the rest of nature.

³⁰ The discussion in the following paragraphs draws on correspondence with Bill Clark (Harvard University), Guenther Fischer (International Institute for Applied Systems Analysis, Laxenburg, Austria) B. L. Turner (Clark University), Thomas Parris (ISciences, LLC, Ann Arbor), Robert Kates (Harvard University and Initiative on Science and Technology for Sustainability), and Eric Lambin (University of Louvain). Many thanks to them. See Nordhaus and Kekkelenberg (1999) and Abraham and Mackie (2005) for discussion of ways to account for activities and assets not immediately tied to market transactions.

that has been brought to our attention is a method developed by the UN Food and Agriculture Organization and the International Institute for Applied Systems Analysis, which offers an inventory of land resources and an evaluation of its biophysical potential, the so-called *Agro-Ecological-Zones methodology*.³¹ While any measure that meets our purposes would have to play the role of a general “habitability index,” it is doubtful that biophysical factors can be assessed without accounting for (“normalizing out”) human activities (technology, culture organization, etc.). To illustrate, consider the Netherlands. That area became prime land by the innovation of the polder and a national unity that created and controlled the polder-dikes.³² Previously, the Netherlands was a wasteland by any indicator assessing the value of resources independently of human input. For any suitable measure, the Netherlands would have scored low at one time (prior to the construction of polders and dikes), and high at another (afterwards), with no change in its biophysical conditions. Such an effect would occur whenever the value of a set of resources increases through intervention. To mention another case, eradicating diseases like malaria decisively changes the value for human purposes of whole regions.

As the illustration indicates, there is an ambiguity in this worry. The worry may be that it is conceptually impossible to separate biophysical conditions from human contributions, or that if we applied such a measure now we would evaluate bundles of resources that have already been affected by human input. The former version fails: as the polder and malaria cases suggest, it will generally be clear enough what the human contributions have been. The more urgent concern is how they should factor into evaluations. To make more precise the question we are asking recall that the intuition behind Egalitarian Ownership is that resources came into existence unattached to any human entitlements. But all we can derive from that intuition is that *resources* should be considered collectively owned; what ingenuity has added is not covered. Unless we add another argument, whether, say, the Dutch over- or under-use their territory must be assessed relative to the value of resources with human inventiveness entirely factored out, a task to be left to the biophysical sciences and the ingenuity of econometricians. The Netherlands with its high population density would presumably emerge as a highly overused area. Can a case be made that, perhaps in time, products of human ingenuity should be added to the common stock? Are there conditions under which such products are *sufficiently like* resources for all of humanity to have a symmetrical claim to them?

To stay with the example, consider how the Dutch could block such a claim. They might argue their predecessors could make their contributions only given their cultural background. What made polder-dikes possible, and rendered it feasible to maintain them, was national unity and stability within which the necessary skills could flourish. More generally, it is because of specific social, legal, or political conditions that individuals or groups can improve commonly owned resources, or invent things for which resources were necessary *enablers* (think of the whole area of “intellectual property”).³³

³¹ See IIASA website: <http://www.iiasa.ac.at/Research/LUC/GAEZ/index.htm?sb=6>

³² A polder is land of below the sea level in a location from which the sea has been drained away.

³³ External resources are enablers in trivial ways: the realization of ideas involves materials in some form; and at any rate, external resources provide the background before which human life unfolds to begin with.

So the reason why the legacy of their predecessors (including the complex social, legal, economic, and political world the Dutch have developed over generations) should remain their collective property is not that contemporary Dutchmen have a substantive desert-based claim to that effect. It is, rather, the following two-stage argument: First, if commonly owned resources could be improved and other entities invented only because of the specific culture in which their predecessors participated, then *others* who have not participated in that culture have not acquired a claim to the value thereby added to the common stock. They have not been relevantly connected to this process. Second, contemporary Dutchmen are relevantly connected to that process.³⁴ To begin with, they are the contemporary participants in the culture that made the earlier achievements possible and continues to maintain them (at least in cases where there has been sufficient cultural and political continuity over the last few centuries in which most of those improvements have been made). Moreover, it is plausible that their predecessors would have wanted for them to be the beneficiaries of their achievements. Considerations about what is owed to the dead have recently been applied by Ridge (2003) to reparations for past injustice. Similar considerations hold for inheritance. It is thus up to the current generation of Dutchmen to regulate this legacy, and others have no claim to immigration based on it.³⁵

Yet it is easy to create doubts about the strongest version of the view that contemporary Dutchmen have claims to *all* the value added by their predecessors. (Notice that doubts about that view cannot just point to possible weaknesses of contemporary Dutchmen's connection to the process in which value was added to commonly owned goods. After all, it is part of the above argument that those who have not been participating in that culture fail to be relevantly connected to the value-bestowing process. Their complete lack of connection makes it is easy to show that contemporary Dutchmen have a stronger link to it.) One source of doubt is that this argument makes it sound as if the Dutch had made their accomplishments in isolation. In actuality, there has been much interaction with others, including colonial oppression that persisted for centuries. But let us set aside such issues. To the extent that such interaction was voluntary, it does not generate claims on the side of others. To the extent that it was not, it may generate claims to compensation, whose existence, however, would be orthogonal to our present concerns.

A second sort of doubt is more relevant. Regardless of how deserving of the added value the Dutch predecessors were on the basis of having added it, their acts cannot ground claims that resonate through the ages to the exclusive benefit of relatively

³⁴ One argument not open to us to make that case is to point to general arguments for the existence of states. After all, this study assumes the legitimacy of states, and our question is precisely how to think about the limitations of state sovereignty, specifically the extent to which they can assert special ownership rights.

³⁵ This argument does not bear on the question of how inheritance should be regulated within a given country. On the contrary: the more one emphasizes the relevance of the background culture for the value added by the predecessors, the more there will be pressure to discount the claims of outsiders, but the more there will also be pressure to let the current participants in the national culture as a whole be allowed to benefit from the inheritance. For inheritance, see Haslett (1986).

few heirs. The fact that others *could* have added the increased value, and in due course *would* have, may not undermine the claims of those who actually did so. But this fact does weaken the claims of their *offspring* to the endurance of those entitlements. The point is similar to the objection to the first-occupancy theory of acquisition: perhaps on a sensible understanding of “occupancy,” first-comers can legitimately claim land. Their accomplishments also prevent others from accomplishing the same, but that does not undermine desert-based claims they have because of these accomplishments. But such occupation, regardless of circumstances, cannot ground claims on account of their offspring at the exclusion of others. Employing a term of Waldron’s (1992), the original claims are *superseded* in time. What supersedes them is that with each generation there are more people who have actually been *barred* from improving the external resources at stake because others had already done so, a fact that ever more undermines the claims of heirs of the original improvers. Like the original value improvers, those heirs bar others from making those same accomplishments. Yet unlike them, they themselves are tied to the accomplishments (think of the polders) only by being offspring of those who had originally made them.

This argument undermines the view that the relevance of national culture for the predecessors’ ability to add value to commonly owned resources creates a special entitlement of that culture’s current participants (certainly in its strongest version, in which those participants have a claim to *all* value added). Nonetheless, it is a big step to the conclusion that in time this added value becomes sufficiently like external resources for all of humanity to have a *symmetrical* claim to it. It has often been the case for major technological innovations of the last 150 years that different people were working on them simultaneously (cf. Billington and Billington (2006)). If one of them had not patented a product roughly when he did, somebody else would have. But such ideas do not thereby become *common* property.

So neither would the Dutch have a convincing claim that the specific features of their culture necessary for the value added by their predecessors to commonly owned resources entitle them to all that value; nor is there a plausible case that all such value turns into common property because others would have provided it too. Instead, we are pointed to some intermediate view on whose details we are not clear. One confronts here a bewildering array of counterfactuals whose truth and relevance is hard to assess. Yet sorting out what is sufficiently like eternal resources to make it common property is central to our view. Different views on what is commonly owned have varying implications for how much immigration must be permitted. Still, if our standpoint is convincing, the detailed resolution of this question can be left open for now, as this is the initial articulation of this view. Having made clear what the complexities of resolving this question are, let us only briefly state what seems to us a sensible, if incomplete, standpoint.

We hold that commonly owned resources that have been improved by technology should be counted among the common property when that technology has become readily available. So the polder-dikes should be considered common property. The value of commonly owned resources should be measured in a manner that incorporates the impact of commonly available technology and other human factors that could (and in due course would) have been provided by others. At the same time, artifacts, ideas, legal, economic, political, and social practices and other entities for which such external resources have in

an intuitive sense have been mere enablers should not be counted among the common property. So, say, the value of the Dutch economy beyond the value of improved common resources should not be counted common property. Some arbitrariness in drawing the line is inevitable. Nevertheless, there is nothing incoherent about drawing it, and again, disagreement about where to draw it would be internal to our standpoint. (Anybody who endorses a distinction between choices and circumstances encounters a similar problem.) At a more practical level, implementing our proposal will require a certain degree of global coordination, and just what is considered common property might have to be left to a political process that could be embedded into such coordination.

A final point on this discussion: It is also possible that intervention lowers the value for human purposes of certain resources (deforestation, pollution). Following the same sort of argument, the offspring of those who caused such damage would not be held responsible for it. They would not have to allow for more immigration than demanded by the current per capita use rate because the value of the resources occupied by them is lower than it would be had certain mischief not been done in the past.

8. Above we said complaints of overcrowding are often claims of overuse-with-regard-to-a-purpose. In that spirit one may object, internal to the common-ownership perspective, that our proposed measure does not adequately develop that perspective. Appropriate use is not numerically proportionate use, but turns on what is done with resources. Legitimate ownership, one may say, has a purpose: the development of communities with certain features. What matters about common ownership on such a view is that it might license what we call “arguments from preservation.” Such arguments insist that states should accomplish goal X that can no longer be accomplished without immigration constraints. Whether the common-ownership standpoint does license such arguments (granting that people need not share their territory) depends on whether these goals are morally acceptable. *Prima facie* plausible candidates for X include the preservation of a certain culture, or its purity, a certain economic or technological standing (human and physical capital and know-how; a wage-structure that can be preserved only by regulating labor markets), or a political system (where, e.g., modest inequality may depend on keeping the numbers of unskilled workers low). While often such arguments are based on self-interest, we may reinterpret them in their most morally plausible lights as insisting that there is some independent value to preserving X.

One can criticize such arguments on internal and external grounds. Criticizing them on internal grounds means to suggest that X itself stands in tension with immigration constraints devised to protect X. Criticizing them on external grounds is to suggest that preserving X is not worth the costs involved by imposing constraints. More could be said since arguments from preservation are contentious; but what matters is that, far from capturing this standpoint, such arguments generally do not give proper weight to the common-ownership standpoint. On the contrary, concerns about the reach of arguments from preservation motivate inquiries into implications of this standpoint in the first place. A culture shared only by two people occupying a vast territory might be worth preserving, but such occupancy would not count as appropriate use from the common-ownership standpoint. Preservation arguments do not capture the common-ownership standpoint; rather, that standpoint constrains their use. One may grant that what resources are used for must enter the discussion -- alas in a *supplementary*, not a *conclusive*,

manner. The burden of proof is on those who wish to overrule implications of the common-ownership standpoint by granting certain cultures more resources than numerically they ought to have. After all, the common-ownership standpoint does provide people outside of an underused territory with a claim to entry, and it takes more than appeals to self-interest to defeat it.

Since the main source of the demand for entry is the common-ownership status, receiving countries have some discretion to choose the applicants who suit them. A country with a strong social system that is under-using its territory would be within its rights to choose people with professional credentials; a country with demographic problems to choose young applicants or those deemed likely to have several children; and a culturally homogenous country to give preference to applicants who share crucial elements of its culture, or are willing to adjust to it. Yet the common-ownership standpoint also puts constraints on such discretion. First of all, other things being equal, applicants from countries that are over-using their resources have priority. These are the ones who are not getting their share of commonly owned resources. Second, immigration policy should also take into account a duty of aid that applies to rich countries with full ability to exploit resources to countries lacking that ability. Just how immigration policy should do so is a difficult empirical question we cannot address; sometimes immigration supports development because it decreases population pressure or generates remittances; but there is also a “brain-drain” problem if those who leave are the most valuable for development. We would merely like to assert that a country does not have unlimited discretion in admitting immigrants. It matters where those immigrants come from. At any rare, if not enough applicants meet the criteria of the admitting country, that country, as long as it is under-using its resources, would have to choose from among the others.³⁶

As a case study for how preservation arguments might be weighed against considerations drawing on Common Ownership, consider the “White Australia” policy. “White Australia” is a term for the Australian immigration policy in place throughout the first half of the 20th century (to some extent longer). Its goal was to exclude non-whites. Notice that normally land within a society is not uniformly densely populated; there often are relatively under-populated areas (American Great Plains, Canadian Northlands, Australian Outback). Arguments from preservation minimally require a showing that the society as a whole is too densely packed to allow the continuation of the project in question. This is rarely so; immigration into under-populated areas is frequently compatible with maintaining the national project. The common-ownership standpoint generates pressure to permit such immigration. We agree with Michael Walzer, stated that “White Australia” claimed more territory than was acceptable. While *perhaps* the urbanized East coast of Australia could legitimately seek to develop the project of “whiteness,” the largely uninhabited Outback could not. (On the “perhaps,” see the second point below.) “White Australia,” Walzer stated, “could survive only as Little Australia” (Walzer (1983), p 47).

³⁶ There may be reasons why certain immigration preferences are unacceptable on other grounds. Certain minorities might deserve protection of a form that would entail that some people have to be admitted. Considerations of this sort can be understood as preservation arguments of a particular sort as well, and if they are present, the overall weighing would involve common-ownership considerations and different forms of preservation arguments.

Note two instructive points. First, under-populated areas of nations appear to have fewer grounds to exclude immigrants than urbanized areas. This is often the opposite of what potential immigrants desire. Immigrants have a tendency to regard their port of entry as the default location to settle down. These are often cities where recent arrivals can more easily obtain services and establish communities.³⁷ Some nations have programs of advanced immigration status for those willing to settle in uninhabited areas. (Canada seeks to place immigrants in rural areas.³⁸) Our analysis suggests that this is legitimate. While the common-ownership standpoint does create pressure on countries that under-use resources to allow for more immigration, such countries are ipso facto within their rights to channel immigration to less-populated areas (provided this does not involve independently objectionable measures).

The second point is that projects such as “White Australia” may, themselves, be impermissible. As we insisted when introducing arguments from preservation, not just *any* project deserves adequate space to develop. We may only be compelled to accept principles of distribution of land that give space to communities committed to justice. We do not face the same moral pull to allow room for racism. “White Australia” is impermissible because Australia was never purely white; it took place within a multiracial society where the Aborigine population was severely disadvantaged. Aborigines could have launched a preservation argument of their own, insisting that individuals partaking of their culture are not properly respected in a state that asks obedience of them while admitting only whites.

9. Our discussion has left open various questions, specifically these four: First, suppose a population does not under-use its resources, but is concentrated in one corner although the remainder is inhabitable. The general case is a population that does not under-use resources, but decides to leave large shares unused. Do others have a claim to entry? Second, suppose a population under-uses its resources because certain resources play no role in their economy. These may be resources they are even unwilling to trade. (Maybe their religion forbids the required digging.) Or perhaps they value resources in a manner different from the accepted measure, and according to their measure they do not under-use their territory. Do others have a claim to entry? Third, one may ask whether our account does justice to the symmetry of the ownership claims, or leaves too much to luck. It is by luck that some live in areas that many want to enter, and others do not. Should these effects not be minimized, in the sense that either those living in favored regions cannot ever reject people, or at least that their presence at such locations must be subject to a lottery? Finally, one may worry that our proposal sets perverse incentives for environmental and population policy. One way of ensuring that one is not under-using resources is to waste them, another is to increase one’s population.

³⁷ On the question of why immigrants settle in urban areas, see Cohen (1996).

³⁸ More than 94% of Canadian immigrants settled in urban areas in the 1990s; in response, the federal government created “nominee programs” to offer expedited residency to skilled immigrants willing to settle in underpopulated areas. See James McCarten, “Rural areas suffer lack of diversity: Immigration to cities leaves countryside starved for skilled labor, census figures show,” *Vancouver Sun*, January 22, 2003, p. B5.

To illustrate the first concern, recall our discussion of “White Australia,” and set aside any problems that may arise for Aboriginals. What if there had been sufficiently many whites for a territory much larger than the Eastern seaboard, although that is where they lived? There are many reasons why populations want to concentrate in one corner of their territory: they may want to preserve resources for future use; leave buffers between themselves and their neighbors; or hang on to additional territory that has been theirs historically. If they are not under-using resources, their decision to use them in such ways is acceptable from a common-ownership standpoint. This holds so as long as one accepts states as in principle legitimate, as we do. If so, the fact that resources are used ways seen as peculiar by others does not undermine the legitimacy of their use.

What about populations using non-standard measures? For the immigration problems our world faces, this question is only moderately relevant. Most potential immigrants wish to enter countries that are integrated into world markets and thus would find assessments of resources in terms of prices acceptable. Perhaps there is a danger that, say, companies from such countries penetrate regions that do not desire to be so integrated, much as early immigrants to the Americas claimed natives did not make the sort of use of resources that creates entitlements. Yet permission to immigrate does not entitle to doing as one pleases. So even if there were scenarios where countries’ obligations with regard to immigration were to be assessed by evaluating resources they wish to have exempted from such a valuation, or by using a measure they would reject, such dangers of exploitation would not arise. If indeed such cases do not involve primary immigration destinations, one may also accommodate exceptions, much in the same way in which liberal states sometimes accommodate religions if this does little harm.

What about the role of luck? Distinguish two cases. First, suppose all countries abide by a global immigration regime regulated according to our proposal. In that case all is done to preserve the sort of symmetrical claim individuals have with regard to collectively owned resources. Common ownership forbids people from using an undue share of what is collectively owned under circumstances in which much (most of the land mass) of what is so owned is divided up among states. But there is no implication that the use of any particular area must be to each person’s satisfaction, which is what seems to motivate the concerns behind this question. These concerns arise under Joint Ownership, not under Common Ownership. The second case is that some countries do not respect an immigration scheme guided by these ideas. There is again no need for compliant countries to subject their populations to a lottery, but one needs to ask whether they could prevent immigration above the threshold of over-use. Yet this leads to questions about compliance when others are disregarding given standards that are not in any way particular to the common-ownership standpoint (see Cullity (2004) and Murphy (2000) for different proposals regarding compliance under such non-ideal conditions).

As for the fourth question, it may seem that our proposal sets incentives for countries contrary to what is required for implementing globally adequate environmental and population policies. From a global standpoint, a sustainable population size is needed, a goal that is inconsistent with unconstrained population growth in countries, which in turn, however, is in a country’s interest if it wants to stop immigration. Similarly, from a global standpoint environmental policies need to be adopted that do not worsen global warming and pollution. Yet it seems to be in a country’s interest to consume its resources, thus deplete global resource reservoirs, if it wants to stop

immigration, a practice that inevitably contributes to these problems. Like in a Prisoners' Dilemma, individual and collective preferences do not seem to cohere.

Yet incentives of individual countries and global incentives are not so poorly lined up. To begin with, much of what factors into an assessment of under- or overuse cannot straightforwardly be depleted (think of climate). Moreover, countries that waste depletable resources will ipso facto find themselves with a problem, namely, depleted resources. Similarly, countries that set incentives for population growth will have the problem of having to design a social system that can absorb these increases. It seems therefore unlikely that countries would adopt such policies to block demands to entry. As far as population policy is concerned, one should also recall the problems of population decrease facing countries like Germany and Italy. These countries have trouble adopting policies leading to an increase in population size although this is in the current generation's own best interest. It seems hard to imagine that at least liberal democracies would even be able to adopt straightforward policy tools that will motivate couples to have more children than they otherwise would as a means to increase the population and prevent future immigration. It seems that individuals would perceive immigration as a much less immediate threat than such a decrease in their old-age benefits. To the extent that worries about perverse incentives are indeed credible, one could consider contractual arrangements at the global level. Implementing our proposal requires such arrangements anyway (if only to assess how many immigrants each country should take), and could include provisions (denials of benefits) to undermine such incentives. What is true on our proposal is that a country's obligation to accept immigrants is not entirely a matter of its own conditions. What matters is over- and under-use relative to average use across countries. But this seems unproblematic to us.

10. We have not explored whether people who cannot exercise ownership rights because their countries are dysfunctional or underdeveloped have a claim against others *qua* co-owners. Can they demand assistance? We think the common ownership standpoint does give individuals such a claim, but its content depends on the problem. Different measures are required, say, in cases of underdevelopment and in cases of oppression. Exploring what is entailed in such cases would require a more detailed investigation than we have space to undertake, including an assessment of different general proposals for approaching such matters.³⁹ At any rate, our proposal does support the view that there is a *duty* of assistance for people who suffer in such ways.

To sum up: The use of common ownership as an analytic method suggests that although there is nothing objectionable to the existence of states that exercise control over immigration, we may have greater duties to foreigners than we conventionally believe. Such duties are especially greater than what is commonly believed to be the case by those who, like us, think that there is nothing objectionable about states in principle. We conclude noting that we have not tried to provide a complete theory of immigration. We have not tried to articulate all moral constraints and permissions incumbent upon

³⁹ See Risse (2005a) for some of the complications involved in spelling out what is required if it is granted that there is a duty to aid, and see Risse (forthcoming) for connections between the common-ownership standpoint and foundational questions about human rights.

policy-makers dealing with immigration. We are satisfied if we have identified one area of inquiry relevant to the task at hand.

Literature

Abraham, Katharine, and Christopher Mackie. 2005. *Beyond the Market: Designing Nonmarket Accounts for the United States*. Washington, D. C.: The National Academy Press

Ackerman, Bruce. 1980. *Social Justice and the Liberal State*. New Haven: Yale University Press

Anderson, James, and Eric van Wincoop. 2004. "Trade Costs." *Journal of Economic Literature* 42(3), pp 691-751

Barry, Brian, and Robert Goodin (eds.). 1992. *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*. University Park: The Pennsylvania State University Press

Beck, Roy. 1996. *The Case Against Immigration*. New York: Norton

Becker, Lawrence. 1977. *Property Rights: Philosophical Foundations*. Boston: Routledge and Kegan Paul

Beitz, Charles. 1979. *Political Theory and International Relations*. Princeton: Princeton University Press

Billington, David, and David Billington Jr. 2006. *Power, Speed and Form: Engineers and the Making of the Twentieth Century*. Princeton: Princeton University Press

Blake, Michael. 2001. "Immigration," in R. G. Frey and Christopher Wellman (eds.), *A Companion to Applied Ethics*. London: Blackwell

Borjas, George (ed.). 2000. *Issues in the Economics of Immigration*. Chicago: University of Chicago Press

Borjas, George. 2001. *Heaven's Door. Immigration Policy and the American Economy*. Princeton: Princeton University Press

Brimelow, Peter. 1995. *Alien Nation. Common Sense About America's Immigration Disaster*. New York: Random House

Carens, Joseph. 1987. "Aliens and Citizens: The Case for Open Borders," *Review of Politics* 49, pp 251-73

Carens, Joseph. 1992. "Migration and Morality: A Liberal-Egalitarian Perspective." In Barry and Goodin (1992)

Carens, Joseph. 2003. "Who Should Get In? The Ethics of Immigration Decisions," *Ethics and International Affairs*, v. 17, pp 95-110

Cavallero, Eric. 2006. "An Immigration-Pressure Model of Global Distributive Justice." *Politics, Philosophy, and Economics* 5(1), pp 97-127

Chayes, Abram and Antonia Chayes. 1995. *The New Sovereignty. Compliance with International Regulatory Agreements*. Cambridge: Harvard University Press

Cohen, Robin (ed.). 1996. *Theories of Immigration*. International Library of Studies on Migration, vol. 1. Cheltenham, U.K. and Lyme, N.H.: Elgar

Cullity, Garrett. 2004. *The Moral Demands of Affluence*. Oxford: Oxford University Press

Dummett, Michael. 2001. *On Immigration and Refugees*. New York: Routledge

Dummett, Michael. 2004. "Immigration." *Res Publica* 10 (2), pp 115-122

- Ellickson, Robert, Carol Rose and Bruce Ackerman. 2002. *Perspectives on Property Law*. Third Edition. New York: Aspen
- Grunebaum, James. 1987. *Private Ownership*. New York: Routledge and Kegan Paul
- Haslett, D. W. 1986. "Is Inheritance Justified?" *Philosophy and Public Affairs* 15 (2), pp 122-155
- Hayter, Teresa. 2000. *Open Borders: The Case Against Immigration Controls*. London: Pluto Press
- Hing, Bill Ong. 2002. "Answering Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies," *40 Brandeis L. J.* (Summer 2002)
- Hinsley, F. H.. 1986. *Sovereignty*, 2nd edition. Cambridge: Cambridge University Press
- Honore, A. M. 1961. "Ownership." In *Making Law Bind: Essays Legal and Philosophical*. Oxford: Clarendon
- Huntington, Samuel. 2004. *Who are We? The Challenges to America's National Identity*. New York: Simon and Schuster
- Jacoby, Tamar (ed.). 2004. *Reinventing the Melting Pot: The New Immigrants and What it Means to be American*. New York: Basic Books
- Keohane, Robert. 2002. "Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty and World Politics," in Keohane, *Power and Governance in a Partially Globalized World*, New York: Taylor and Frances
- Kukathas, Chandran. 2005. "The Case for Open Immigration." In Andrew Cohen (ed.), *Contemporary Debates in Applied Ethics*. Oxford Blackwell
- Mackie, Gerry. 1995. "U.S. Immigration Policy and Local Justice." In Jon Elster (ed.), *Local Justice in America*. New York: Russell Sage Foundation
- Milanovic, Branco. 2005. *Worlds Apart. Measuring International and Global Inequality*. Princeton: Princeton University Press
- Miller, David. 2005. "Immigration: The Case for Limits." In Andrew Cohen (ed.), *Contemporary Debates in Applied Ethics*. Malden: Blackwell
- Millman, Joel. 1997. *The Other Americans. How Immigrants Renew Our Country, Our Economy, and Our Values*. New York: Viking
- Morris, Christopher. 1998. *An Essay on the Modern State*. Cambridge: Cambridge University Press
- Murphy, Liam. 2000. *Moral Demands in Non-Ideal Theory*. Oxford: Oxford University Press
- Nett, Roger. 1971. "The Civil Right We are Not Ready for: the Right of Free Movement of People on the Face of the Earth." *Ethics* 81, pp 212-227
- Nordhaus, William and Edward Kokkelenberg (eds.). 1999. *Nature's Numbers. Expanding the National Economic Accounts to Include the Environment*. Washington D.C.: National Academy Press
- Pogge, Thomas, 1989. *Realizing Rawls*. Ithaca: Cornell University Press
- Pogge, Thomas. 2002. *World Poverty and Human Rights*. Cambridge: Blackwell
- Reeve, Andrew. 1986. *Property*. Atlantic Highlands: Humanities Press
- Ridge, Michael. 2003. "Giving the Dead Their Due." *Ethics* 114, pp 38-59
- Risse, Mathias. 2005a. "What We Owe to the Global Poor," *The Journal of Ethics*, Vol. 9, No. 1-2, pp 81-117

- Risse, Mathias. 2005b. "How Does the Global Order Harm the Poor?," *Philosophy and Public Affairs*, Vol. 33, No. 4, pp 349-376
- Risse, Mathias. 2006. "What to Say about the State," *Social Theory and Practice*, Vol. 32 (4), pp 671-698
- Risse, Mathias. Forthcoming. "The 'Un-foundational' Character of Human Rights."
- Scanlon, T. M. 1999. *What We Owe to One Another*. Cambridge: Harvard University Press
- Schmidtz, David. 1994. "The Institution of Property." In Ellen Paul, Fred Miller, and Jeffrey Paul (eds.), *Property Rights*. Cambridge: Cambridge University Press
- Serow, Williams, Charles Nam, David Sly, and Robert Weller (eds.). 1990. *Handbook on International Migration*. New York: Greenwood Press
- Simmons, A. John. 2001 "Human Rights and World Citizenship," in Simmons, *Legitimacy and Justification*. Cambridge: Cambridge University Press, pp 179-196
- Simon, Julian. 1989. *The Economic Consequences of Immigration*. Oxford: Blackwell
- Smith, James, and Barry Edmonston (eds.). 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. National Academy Press: Washington D.C.
- Smith, James, and Barry Edmonston (eds.). 1998. *The Immigration Debate: Studies on the Economic, Demographic, and Fiscal Effects of Immigration*. National Academy Press: Washington, D.C.
- Sreenivsan, Gopal. 1995. *The Limits of Lockean Rights in Property*. New York: Oxford University Press
- Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Blackwell
- Tuck, Richard. 1999. *The Rights of War and Peace. Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford University Press
- Tushnet, Mark. 1995. "Immigration policy and Liberal Political Theory." In Warren Schwartz (ed.), *Justice in Immigration*. Cambridge: Cambridge University Press
- Waldron, Jeremy. 1992. "Superseding Past Injustice." *Ethics* 103, pp 4-28
- Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books
- Wellman, Christopher. Forthcoming. "Immigration and Freedom of Association."