



Faculty Research Working Papers Series

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

Michael Blake
University of Washington

Matthias Risse
John F. Kennedy School of Government
Harvard University

April 2006

(Revised July 2006)

RWP06-012

This paper can be downloaded without charge from:
<http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP06-012>

or

The Social Science Research Network:
<http://ssrn.com/abstract=902383>

The views expressed in the [KSG Faculty Research Working Paper Series](#) are those of the author(s) and do not necessarily reflect those of the John F. Kennedy School of Government or Harvard University. Copyright belongs to the author(s). Papers may be downloaded for personal use only.

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

July 4, 2006

1. Among the most striking features of the political arrangements on this planet is the fact that it is divided into sovereign states.¹ To be sure, in recent times, globalization has woven together, in highly complex systems, the fates of communities and individuals in distant parts of the world; it is partly for this reason that hardly anybody now champions a notion of sovereignty that limits liability for how a state's actions affect foreign nationals. Still, state sovereignty persists as a political fact. The number of states has increased enormously through the upheavals of the 20th century, 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 or

¹ Many thanks to Eric Cavallero and Nicole Hassoun for comments and discussion. Thanks to Bill Clark for an exchange regarding the proposed measure of relative over- and under-use of resources, as well as for his assistance in making contacts to other scientists interested in this question (to be mentioned below); it was thanks to this exchange that we were able to get some sense of the kind of work scientists have done on measuring the overall value for human purposes of whole regions, and of what kind of interest they have in such matters. 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 (forthcoming). What "in principle" means is, of course, at stake in this study.

pollution? What obligations arise through trading? This study seeks to explore yet another question: to what extent is a country allowed to regulate immigration, and so to influence who lives on its territory? We approach this question from an angle neglected even now that questions of global justice receive much attention. Specifically, we ask what we can say about immigration based 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 its original ownership is that all humans must have *some* sort of symmetrical claim to it. In some sense the earth must be collectively owned by humanity as a whole, where the philosophically most plausible conception of this needs to be spelled out.³

This is not to say that the world's territory *now* ought to be redistributed. Our contention is, rather, that all humanity has an equal moral claim to physical resources, and that such moral claims may limit acceptable regimes of property, including regimes of immigration. Our views will be compatible with states controlling property within their boundaries, but this will have to flow from an argument assessing how best to understand the view that the earth is originally owned by humanity in common. Original

³ (1) A note on the use of the term "resources:" In general, we use this term for materials that are present on this planet without any human contribution, and thus take resources to include land, air, and raw materials such as minerals, coal, and water. In section 4, an argument will require a terminological distinction between raw materials and resources; we will clearly flag this deviant usage of the terminology, which is hard to avoid without using rather artificial terminology. But we hope that, then, no confusion should arise. (2) Schmidtz (1994) objects to the picture of the lucky first-comers who effortlessly appropriate and leave little for others. "Original acquisition diminishes the stock of what can be originally appropriated, but that is not the same thing as diminishing the stock of what can be owned. On the contrary, in taking control of resources and thereby reducing the stock of what can be originally appropriated, people typically generate massive increases in the stock of what can be owned. (...) Thus the idea that original appropriators have obligations because of what they took away from latecomers is a mistake.... [N]o obligation on the part of people now living has anything to do with the fact that not everyone had a chance to engage in original appropriation" (p 46). Yet if the thesis of common ownership is true, appropriation must be constrained by the fact that it results from privatization of common resources, regardless of whether it was a joy or a pain to be the first occupier. Such constraints may have to accommodate the fact that appropriators are value-adders, but common ownership remains the decisive background fact. Even if there is a duty to cultivate wasteland, as Schmidtz suggests, any use of the privatized property will be constrained by the fact that it used to be common property.

shared ownership of the world exerts moral force, and renders illegitimate certain immigration policies. To be clear: “original” ownership is not connoted with time. Such ownership is a moral status that the earth may have and that would have conceptual and moral priority over individual appropriation.

Acts of immigration amount to a change in *political* relationships, since the immigrant alters her standing within one community and acquires a status elsewhere. Yet such acts also amount to an alteration in *physical* relationship, since immigrants acquire a relationship to a territory, making a life for themselves with the resources offered by a specific part of the earth.⁴ That relationship is worthy of examination from the standpoint of justice. We are not the first to assert this form of original property relationship, or to deduce implications for immigration rights from it. Kant, for instance, asserts that the “communal possession of the earth’s surface” is one foundation of the cosmopolitan right of resort.⁵ This right does not entitle to immigration, but grants mobility and safety in foreign lands. Yet no justification is given for the relatively restricted nature of these rights. We seek to establish that more robust rights to immigration may emerge from a fuller accounting of such ownership.

Most debates about immigration concern policies of this or that country. A significant social-science literature has emerged around the question of what forms of

⁴ This latter form of change, we should note, 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.

⁵ Immanuel Kant, *Metaphysics of Morals*, Doctrine of Right, sections 6, 13; see also Kant, *Perpetual Peace*, 106. For a commentary on these texts, see Simmons (2001). The question of the original ownership status of the earth generally 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 of the ownership of the seas. What was at stake was the original ownership status of the earth and the ways in which appropriation could occur; see Tuck (1999).

immigration are best for this or that country.⁶ What is “best” for a country may be 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 whose distribution is a matter of discretion. This standpoint neglects to ask whether immigration policy is also constrained by duties to the would-be immigrants.⁸ The existing literature will benefit

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? Do immigrants assimilate, and if not, why not, and if so, how fast? What is the impact of immigration on population redistribution and – a major issue in many European countries – 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 specifically in the US, see Smith and Edmonston (1997) and (1998), and Borjas (2000) and (2001); for a history of immigration to the US and the changing immigration policies, see Mackie (1995). For a (now somewhat dated) review of immigration issues across different countries, see Serow et al. (1990). For a collection of articles on assimilation in the US, see Jacoby (2004). For a positive view on the impact of immigrants on the US, see Millman (1997) and Simon (1989); for arguments that recent immigration threatens the core of the US’ alleged Anglo-Protestant identity, see Huntington (2004). For references to the relatively 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. (In fairness to Borjas, it should be mentioned, though, that he refers to the questions of fairness to people excluded later, p 16, and pp 186-188, yet without engaging with them in depth. As opposed to this, 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.)

⁸ (1) Some states offer a support program for newly arrived immigrants to make it easier for them to adjust; however, no state currently takes redistributive measures to give new immigrants credit for being latecomers. For a useful survey of how state governments within the US have sought to aid immigrants, see Hing (2002). For an account of EU efforts to integration, see “Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: First Annual Report on Migration and Integration,” available at http://europa.eu.int/eurlex/en/com/cnc/2004/com2004_0508en01.pdf. (2) It is a curiosity that one sometimes finds outraged accusations of, say, the US government for accepting more immigrants allegedly because they do jobs for the rich in whose interest it is to keep wages down, a goal realized by increasing the number of people on the respective markets (see Beck (1996) for one version of that view) – an outrage uninformed by considerations of whether those immigrants themselves may have rights to entry. Note also that some of the social-science literature suggests that national borders are, from an economic point of view, an oddity, because they create a situation in which returns to labor differ massively, depending on

from more normative inquiry, and many questions might be asked here. Our focus, again, is on whether the physical aspect of immigration provides constraints on legitimate immigration policy, which would be general, rather than country-specific. One might even talk of a *human right* to immigration based on original common ownership. Yet while not much is gained by this manner of talking, it triggers additional issues. So we will refrain from employing such language.⁹

2. We must first explicate and defend the notion of *common ownership* as the most plausible interpretation of the idea that humanity owns the earth in common. This form of ownership is a relatively weak version of collective property rights, one compatible with the existence of states and private property rights over land. Still, it will constrain legitimate forms of immigration control.¹⁰ The key move later will be to introduce a

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 may seem like 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 In what follows, we ignore two groups of people who may demand access. The first group 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 an open question how to draw the contours of these groups. But we take it that moral questions about immigration per se arise about people who belong to neither group, and we assume this group is non-empty.

¹⁰ A reference to Miller (2005) and to Wellman (forthcoming) is appropriate. Miller rejects standard arguments for open borders, and his main point is that the alleged rights grounding such a demand do not correspond to any duties on the side 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. This study also closes a gap Miller notes, namely, that philosophers hardly ever deal with population issues in immigration debates. 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 person Y, says Wellman, but only if Y consents. Since we attach a high degree of value to such freedom, a right to regulate immigration follows. From the standpoint developed here one must ask whether 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 the common-ownership standpoint, except that, parallel to our stance vis-à-vis Miller, arguments to restrict immigration must be modified.

notion of *relative overuse or under-use of resources*. We should say right away that, since no measure of the sort envisaged is in use, we will be unable to think through, at this stage, what prescriptions for immigration this measure provides in specific cases. Yet we seek to apply the standpoint of common ownership to immigration in the first place, and thus to suggest the need for and the importance of such a measure. If this view catches on, it may trigger more of the empirical work needed to construct such a measure. Sometimes the task of philosophy is to demonstrate the need for such an invention.

What does it mean that the earth is originally owned by humanity collectively? Perhaps an initial response is to regard assertions of this form as nonsensical. This view is present in Hobbes's *Leviathan*, where in Chapter XIII we find the claim that "mine" and "thine" are not meaningful terms in the absence of a state that could enforce ownership. This view gains plausibility if we consider that ownership is an intricate and complex system of rights and duties: spelling out what it means to own something involves so many different concepts and relationships that one would need a thick moral theory to make sure they are available outside of a legal framework.¹¹ Yet even if we grant that "mine" and "thine" can be fully specified only within legal systems, we may ask whether there are less robust property rights entailed by facts about physical resources.

It is appropriate to examine such property rights for two reasons: such resources, first, are necessary for any human activities to unfold; and, second, those resources have come into existence without human interference. These reasons must be considered when individual accomplishments are used to justify property rights solid enough to exclude others from any use while including bequest and inheritance. Consider, for instance, the

¹¹ For the concept of property, see Honore (1961), Becker (1977), and Reeve (1986).

argument from first occupancy, according to which land belongs to the person who first occupies it. This view is problematic especially because the sheer fact that somebody came to some place first is not of sufficient moral significance to grant ownership titles that resonate through the ages (although precisely this is common practice), given that the resources he occupies are needed by all and their existence is nobody's accomplishment. The same applies to a Lockean labor theory of acquisition.¹²

Call *Egalitarian Ownership* the view that the world's resources originally belong to humankind collectively. We submit that this is the most plausible view of the ownership of natural resources.¹³ It should be clear that the considerations above speak only to raw materials, not to what human beings have *made* of them. One may hold that individuals born into a society should not be favored over others in terms of access to its material or technological achievements. If so, the argument would have to differ from the one presented here.¹⁴ The distinction between what "is just there" and what has been shaped by humans is sometimes blurred, say, for land human beings have wrestled from the sea, or to natural gas in garbage deposits that can be harnessed. But by and large, we understand well enough the idea of what is just there without human interference.

We can now also see how original ownership of land is of relevance today. We seek principles by which we may legitimately understand resources as being the

¹² There is, of course, an enormous literature on the foundations of property in general and the Lockean theory in particular; see Becker (1977) and Reeve (1986) for overviews, and see Sreenivasan (1995) for a good account of the problems and limitations of Locke's account of property acquisition and the kinds of rights it generates.

¹³ We should also note that what we say here may have implications for resource use over time; each generation may be morally precluded, for example, from depleting resources which might be beneficial to future generations. We do not pursue this line at present, however.

¹⁴ See, for instance, Beitz (1979) for such an argument.

exclusive domain of some individual or group. Our view entails that all usable resources, including land, ought to be regarded as shared property unless there are principles of allocation which can be justified to all with a potential interest in the use of that resource. One form of justification might draw on the distinction between natural resources and other things; the more my labor is responsible for this object's existence, the more plausible it my property right to it. The original right of property over the earth is now best interpreted in this manner: as a right to have whatever more specific principles of property allocation exist *justified* to us, in terms we could not reasonably reject.¹⁵

3. We will therefore try to establish that the original ownership of the earth places moral restrictions on principles governing the allocation of resources.¹⁶ To this end, we now discuss various ways of spelling out Egalitarian Ownership and assess which is the most plausible way of developing that 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

¹⁵ For the notion of reasonable rejection, see Scanlon (1999). Or one might say that, while it does make sense to ask about the original ownership of resources, originally, resources are simply unowned, and that their appropriation is therefore not subject to moral considerations. However, if it is granted that questions about the pre-legal moral rights of individuals over resources qualify as meaningful questions of moral philosophy; the mere claim that resources are originally unowned, rather than collectively owned, does not remove these questions; one would then simply have to ask them 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 dispose of the intuition that, in some intuitive sense, all of humanity has a symmetrical claim to resources. Another objection is to note that in cases of contemporary unowned property, we do not have similar intuitions; the twenty-dollar bill on the ground becomes the property of whoever finds it first. This is true, but only because such cases are infrequent and deal with relatively minor pieces of property. It does not work for sacks of hundred-dollar bills, for example, and we would probably want a better story even about twenties if they grew on trees only grown on some people's property.

¹⁶ This section follows Risse (2005b), where, however, these ownership considerations are introduced with the intention of reflecting on one way of thinking about the question of whether the global order harms the poor (viz., by depriving them of their share of a common resource base, as claimed by Pogge (2002)). Here these considerations are explored for their relevance to questions of immigration.

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. If the inhabitants of Boston held the Boston Common as *common* ownership when it was used for cattle, a constraint on each person's use could be not to bring more than a certain number of cattle – a condition motivated by respect for the other co-owners (and to avoid the Tragedy of the Commons). Other than abiding by such constraints, however, they can do as they please. Yet if they held the Common in *joint* ownership, each individual use would be subject to a collective 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 too: each co-owner must be satisfied on each form of use.

We can now see that there are various interpretations of Egalitarian Ownership. First, resources could be jointly owned; second, they could be commonly owned; and third, each person in the world could have private ownership of an equal share of the world's resources – or, perhaps, its value equivalent. We will refer to these interpretations as, respectively, Joint Ownership; Common Ownership; and Equal Division.¹⁷ We submit that the most plausible way of understanding Egalitarian Ownership is in terms of Common Ownership. We now sketch an argument for that claim.

There are two problems with Joint Ownership. First: it sets an illegitimately high standard of justification for each use of the collectively owned assets, and it is hard to see what aspect of the person could support this notion of justification. For instance, James

¹⁷ So 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.

Grunebaum, a rare defender of Joint Ownership, introduces a notion of *autonomy* construed in such a way that any ownership form of the earth other than Joint Ownership is impermissibly inconsistent with it.¹⁸ The notion of autonomy needed here entails that use of the collective property violates an individual's autonomy unless she gives her approval. One objection to this is that, although this notion of autonomy may at first appear strong, it is actually too weak to be plausible. For if each individual needs *to be asked* about any use of the property, any individual also needs *to ask* about any such use. If so, the resources could not be brought under private ownership without everyone's consent. This view of collective property does not provide individuals with the tools needed to make productive use of resources. Yet collective 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 idiosyncratic reasons.

That this use of autonomy overstates its importance can be seen in light of 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*, and obtain value through being useful for human activities, through activities requiring a social context: crude oil, say, 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 with regard to the

¹⁸ See Grunebaum (1987).

earth is not well-captured in terms requiring the justification of *any* individual use of resources to the satisfaction of *each* person (demanded on the strength of autonomy). This exaggerates the normative weight of autonomy. So Joint Ownership is implausible.

Next consider Equal Division. 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 valuable, through activities that require social contexts, contexts in which not all human beings participate equally. So the same considerations that conflict with Joint Ownership also conflict with Equal Division.

One may object that what persons have an equal claim to is raw materials, regardless of whether some of those 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 of this relationship may have. Yet if one tries to define objects of ownership independently of value considerations, one is at a loss for a reason why an ownership relationship should apply *to raw materials* in the first place. 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. So since it makes no sense to introduce such ownership relationships without recourse to value talk, we are back with the earlier consideration that shows 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.¹⁹

¹⁹ 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 we drew only matters for this argument above.

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 not by Joint Ownership or Equal Division, but by Common Ownership. Unlike the former two, Common Ownership is sufficiently weak to accommodate considerations of special entitlements to resources, which stand in some tension with Egalitarian Ownership and push for an interpretation minimizing this tension. Common Ownership only requires that use of collectively owned resources abide by constraints ensuring each co-owner's status is respected as such. Reading Egalitarian Ownership more strongly overextends the plausibility derived 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 so use resources, or exploit certain resources others do not find where they live. Still, Common Ownership is a form of Egalitarian Ownership, and its collective aspect must be meaningful.

All this requires elaboration. First of all, while common ownership is weaker than joint ownership, the sheer fact that the earth is 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 who do not live on the 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, after all, means that some have control over areas of property, while others do not. We do not think there is anything inherently wrong with this state of

affairs. What is required, however, is that Common Ownership persists as a standing demand that we be allowed to obtain our fair share of those things real property provides.

Third, we have motivated our inquiry into the ownership status of the earth in term 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, leaving the Common for collective use the next day, peoples of the earth have no other place to go except the planet whose ownership is in question. We often take it for granted that individuals live in states, and that they have a collective right to self-determination. But how is this right related to common ownership rights? We contend that the right to self-determination can be shown to be an aspect of the rights entailed by Common Ownership. What is to be allocated is not merely the surface of the earth, but also the goods it makes possible. These goods are twofold: the first is productive resources, and the second is the space within which political communities might develop. In this way, we hope to show self-determination and Common Ownership to be more harmonious than it may appear.

4. Recall that we seek to explore the impact of the most plausible account of the original ownership of the earth on issues of immigration. We can infer from the discussion above that Common Ownership itself does not provide a sufficient reason to demand entry to a country. Still, certain forms of land use are inconsistent with Common Ownership. Suppose somebody claimed 50% of the Boston Common for his use on a given day although he only owns 1% of the cattle currently present. While any co-owner is entitled to using the common property, there is a sense in which some of them may engage in overusing and thereby disregard the status of others as co-owners. Other co-owners could

now demand access to the area currently claimed by their fellow co-owners. Or suppose the population of the US shrank to two, other countries remaining unaffected. Suppose these two have full control over the borders, by means of sophisticated electronic equipment. Clearly, now, others can demand entry, and the perspective of original ownership helps us 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. It is this claim to consideration that we must explore in detail. What exactly are the conditions under which individuals can demand permission to immigrate in virtue of being co-owners?²⁰

However, before we pursue this question further we must address one issue that, in the eyes of some, would 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 this person a claim to immigrate. Conversely, if there is nothing in the nature of a just political community that excludes immigration constraints, the inquiry sketched above becomes important. We assume a just political community is just in the liberal sense. This is not the place to argue for that assumption, and other views on justice require different treatment when it comes to assessing the question of whether features of a just political community entail that there can be no restrictions on immigration. Yet this liberal view is not just one to which we are sympathetic, but also one whose compatibility with restrictions on immigration has come up for much discussion recently. Liberalism is

²⁰ Or, to reverse the perspective: what are the conditions under which a group of people can claim that they are not obliged to share their territory with others?

committed to the idea of moral equality of all persons; it is this basic commitment that has been used to argue that restrictions on immigration are at odds with liberal justice.

The best-developed version of this argument is due to Joseph Carens.²¹ Liberalism, Carens notes, condemns the use of morally arbitrary facts about persons to justify inequalities in their treatment. Examples are race, sex, and ethnicity. A political community that treated people differently on the basis of such features would be an illiberal and unjust community. Yet citizenship seems as arbitrary as any of those factors. None of us chose our place of birth or our parents, and thus we deserve neither blame nor praise for either. For this reason Carens compares the existence of states to medieval feudalism.²² Restrictions on immigration, on this view, are as offensive as other, perhaps more obvious cases of injustice because they differentiate rights based upon arbitrary facts about 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.

Rawls himself denies that this cosmopolitan reading of his position is appropriate (see Rawls (1999)), but Carens's basic argument is independent of his claim about Rawls. And surely, his insistence that moral equality cannot stop at the border is correct. This,

²¹ 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)

²² See Carens (1987)

however, does not mean we must regard shared citizenship as one other morally irrelevant factor such as race or ethnicity. While shared citizenship, just like those, has come about in a manner for which individuals deserve neither credit nor blame and is in that sense morally *arbitrary*, this does not mean shared citizenship is morally *irrelevant*. A border does mark something of moral importance -- an area of shared liability to a community. The state can do many powerful things to those who live within its borders that it cannot do to others. The institutional framework it employs and the measures it takes must be justifiable to those thus subject to its authority, not to others. Moral equality does not require equal political rights, and so does not require political equality. What moral equality means depends on the political structure shared by the individuals.

So Carens's intuitive argument fails. Shared citizenship is not like shared status under feudalism. There is no reason to treat the right to mobility as an implication of moral equality per se. So at least as far as principles of liberal justice are concerned, it is not the case that principles of a just political community by themselves entail that there can be no constraints on immigration.²³

5. We assume for the remainder of this study that it does not lie in the nature of a just political relationship that immigration must be unrestricted. So what are the conditions under which individuals can demand permission to immigrate *in virtue of being co-owners*? Conversely, what are the conditions under which people are not obligated to

²³ For elaboration on these themes, see Blake (2001). Of course, the existence of the state per se must also be justifiable to those who do not belong to a given state. But here the point is to insist that there are features of the state that must be justifiable to all citizens, but not to others, not that all features of the state and their very existence must only be justified to the members of the state. For an argument in support of states from this broader standpoint, see Risse (2005a) and Risse (forthcoming).

share their territory with others? Suppose the inhabitants of a territory claim their land is too crowded for them to take in more people. This argument is rarely found on its own; it is generally buttressed by a claim about a specific form of activity that immigration would undermine, so that a claim of overuse of territory tends to be a claim of overuse-with-regard-to-a-certain-purpose. “We are,” it is said, “too crowded as it is; any more immigrants would destroy the distinctive character of our state.” While these points (overcrowding per se vs. overcrowding in view of a certain purpose) are often conflated, we should keep them separate for analytical purposes. We will look at them in turn.

To make sense of the idea that some co-owners are overusing commonly owned resources (and thus would not need to admit more people) or under-using them (and so would have to) one needs, first of all, to construct a measure of the value for human purposes of all resources that are commonly owned and that happen to be located in a certain area. Over- and under-use will be determined vis-à-vis such a measure. Such a measure would not just be concerned with square mileage, which would give rise to a measure of over- and under-use in terms of population density. After all, the purpose of this measure is to evaluate arguments that claim a certain group uses more or less than what they should be using *qua* co-owners, arguments that in turn are deployed to demand or deny entry. Yet two areas with the same population density might differ dramatically in other regards: one might consist largely of arable land (with an evenly spread population), the other of desert (with the population crowded in a small fertile area); one might come with lots of minerals in the ground, the other might be depleted of such materials; one may be adjacent to the sea and include many navigable rivers, the other might be landlocked. Such a measure would have to include not merely the size of the

actual land, but also resources like minerals and water, and the quality of the location as captured by an assessment of a range of biophysical factors. In short, this measure would have to evaluate a region's overall usefulness for human activities. This measure would have to allow for comparisons of different sets of such factors, which is most straightforwardly accomplished by devising a one-dimensional measure, something like an aggregated world-market dollar value. After all, we would want to use such a measure to say that one area, plus its resources and biophysical parameters, is taken up to a *larger* or *smaller* extent than another, and thus all-things-considered comparability is essential.

Using a world-market dollar value reflects how much demand there is for sets of commodities in light of constraints on the supply. 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 there is value to the entities being assessed here; nor does it mean that those who possess resources priced in this manner may do with them entirely as they please, or that all of them would actually be for sale – but none of this is the case with objects that are usually priced by market value. Using world-market prices also offers a simple way of reflecting technological constraints. Suppose we discover precious minerals far below the surface of the earth, 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 highly discounted way. The presence of resources that human abilities cannot bring into circulation will not put pressure on regions to allow more immigration. Some of the pricing involved will be novel: biophysical factors that shape the usefulness for human purposes of geographical locations are not normally priced. But these are questions of implementation that it would be premature to address

here. Humanity has certainly had no difficulty in the past adding more entities to the class of those with a price ticket.

No such measure is in use at this time. Nor can we turn to the biophysical sciences to provide us with candidates for such a measure on whose suitability for our philosophical purpose we might then reflect. All we can do here and now is to explore the conceptual possibility of such a measure, to formulate some desiderata, and to contrast our proposal to make use of such a measure to assess over- and under-use for the sake of assessing demands to entry with other proposals. Again, sometimes philosophy has to make a case that something is needed for which then the work would have to be done in the empirical sciences.

We may imagine that for any given state S such a measure would deliver an index V_S , measuring the value of the collectively owned resources on S 's territory, as well as those of the biophysical conditions that determine the usefulness of this territory for human purposes. To assess the extent to which this state's territory is used one would then divide V_S by the number P_S of people in S . So V_S/P_S is *the per-capita use rate* of the commonly-owned resources on that territory. The per-capita use rate includes resources that are not actually in circulation, such as unmined minerals and unextracted oil. Yet the point is to have a measure of what is at a society's disposal, broadly speaking, and we will address below how to handle situations in which a society is not in a position, or has chosen not, to extract resources that factor into its per capita use rate.²⁴ We will say that the territory of S is *relatively underused* (or, simply, underused) if V_S/P_S is smaller than

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, for whatever reason. But such resources would be included into our measure.

the average of these values across states. Alternatively, a territory is *relatively overused* (or, simply, overused) if this value is above that average. It should be kept in mind, however, that we would indeed count resources as “used” in the relevant sense if they are at the disposal of a society although they are not actually in circulation.

If V_S/P_S is below average, then, in virtue of the earth’s being common property of humankind, co-owners not yet on that territory have a pro tanto claim to immigration. (The “pro tanto” character of this claim will be taken up below.) Otherwise they do not, because S makes sufficient use of the common resources. There are no demands to entry that can be launched from this standpoint if a territory is not underused; but a country cannot turn away would-be immigrants if it is.²⁵ While thinking about immigration is not commonly guided by such ideas, it is not absurd to envisage a philosophically astute UN Secretary General commissioning a committee of scientists, econometricians, and (perhaps) philosophers to devise such a measure to assess the scope and limits of transnational obligations, and especially of an obligation to allow for immigration – provided an appropriate philosophical defense can be given. Such a measure and the corresponding approach to immigration would then have to become part of international law to become enforceable, or at any rate to become politically credible.

Let us compare relative over- and under-use as a device for distinguishing between legitimate and illegitimate demands to entry from two other such measures discussed in the literature. First, there is an absolute notion of over-population, as discussed, for instance, by Michael Dummett.²⁶ Such a measure would decide on requests

²⁵ Recall that we are here not talking about people with a morally overwhelming case for entry, nor about people for whom there is an overwhelming case against it.

²⁶ Cf. Dummett (2001), chapter 4, and Dummett (2004).

for entry by asking whether a territory can support more people than it does. More needs to be said about what counts as “supporting” people. Is it enough if more people could survive in an area, or is the assessment made by way of reference to the average standard of living of the current population? Or is there yet another account of this? Yet no matter how these questions are answered, such an absolute measure of overpopulation is irrelevant to the common-ownership standpoint. Common Ownership does not license entry to an area *merely* because that area could support more people if it is not under-used in comparison to other areas. My status as a co-owner is not violated if entry is denied to an area that is part of what we collectively own if it is already relatively over-used by other co-owners.

Yet similarly if all parts of the earth are crowded to an extent an absolute measure would classify as higher than what any of those regions can support, respectively, Common Ownership might entitle people to entry in areas that are less overcrowded than the one they came from, and that are thus relatively underused although absolutely overused. As co-owner I can demand of others that they admit me even if they are in dire straits if my own situation is even worse. Common Ownership is concerned with the relative standing of co-owners. We take it that this is a fact about what it is to own something in common with others. The relevant comparisons have to be made in terms of *proportionate usage* of areas (considering their value for human purposes) relative to other areas, not by looking merely at the extent to which one area itself is used.

Contrast this measure of relative over-or under-use now with the account recently given by Cavallero (2006). Cavallero observes that countries are subject to emigration and immigration pressure; that is, for a given country there may be some who want to

leave it (for roughly economic reasons, and not, for example, to escape prosecution), and others who want to immigrate. (Conceivably some such sets are empty.) Some countries will be under *positive immigration pressure*: on balance (counting those who want to enter and those who want to exit), proportionately more people want to immigrate into these countries than emigrate -- “proportionately,” that is, in a manner that factors in differences in population size.²⁷ 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’s proposal is 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.

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 morally arbitrary traits like nation of birth. International law constitutes a legal system that confers on states the right to restrict immigration, and unless those restrictions are compensated for by improving opportunities in worse-off countries, international law does create bars to equal opportunity on the basis of nation of birth. In the background is what Cavallero calls the “Cosmopolitan Premise,” namely, that “Ongoing institutions of international law should not systematically disadvantage anyone on the basis of involuntary national citizenship or national origin” (p 98). This argument is similar to Carens’, except that the wrongful discrimination happens at the

²⁷ Notice that the expression “want to immigrate” is to be taken to refer not to actual preferences, but to hypothetical preferences, in the sense that Cavallero wants to assess the amount of immigration pressure under the assumption that relocation, if granted, is actually realistic. In particular, the visa application itself must be possible, and material means for relocation must be provided.

level of international law. Since everybody is at least indirectly subject to international law, it must not discriminate on morally arbitrary grounds such as nation of birth.

The crucial difference between this proposal and ours lies indeed in the adoption of the “Cosmopolitan Premise.” Choosing this Premise as his starting point, Cavallero is led to think about acceptable demands to entry in terms of individual preferences for immigration. It seems to us, however, that the starting point should be a slightly but 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.” After all, it is conceivable that people who share the same citizenship or national origin have created a situation in which international law is justified in disadvantaging them, just like individuals can behave in such a way that makes 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 here.

6. To bring our proposal into clearer focus, let us discuss various worries about it. To begin with, recall that we argued that Equal Division fails as an interpretation of Egalitarian Ownership, and one might say that the argument given there sits uneasily (is perhaps inconsistent with) what we are claiming now. The argument above was that we cannot construct any measure of what humankind collectively owns such that, according to this measure, every human being owns an equal share. The reason for this was that any way in which resources might be valued already reflects some form of social background,

and hence creates circumstances under which not everybody has the same entitlement to the resources. But are we not now constructing precisely such a measure, and conducting an operation with it that is meaningful only if everybody should have an equal share?

Note, however, that, in the earlier case, we would have constructed a measure with the intention of being able to say that everybody should have the same share relative to it. Yet in the present case we are only constructing a measure to compare the relative intensity with which commonly owned resources are being used. There is no sense in which everybody should have the same share of the commonly owned assets relative to that measure, and the intuition that this should be so plays no role for this argument. We are merely constructing a measure to evaluate whether a given territory (and hence a given set of commonly owned assets) is used more or less than other territories, and we do so with the intention of assessing the implications of Common Ownership.

One may also question the very possibility of measuring relative over- or under-use in any meaningful way.²⁸ Again, no such measure is in general use. The closest approximation we are aware of is a method, developed by the UN Food and Agriculture Organization and the International Institute for Applied Systems Analysis, that offers an inventory of land resources and an evaluation of its biophysical potential, the so-called *Agro-Ecological-Zones methodology*.²⁹ While any measure that meets our purposes would have to play the role of a general “habitability index,” it is doubtful that

²⁸ 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 for their assistance, which gave us some sense of what the current state of thinking among scientists is on these matters.

²⁹ The best source for this is the IIASA website:
<http://www.iiasa.ac.at/Research/LUC/GAEZ/index.htm?sb=6>

biophysical factors can be assessed without accounting for human activities (technology, culture, organization, etc.). It is doubtful that human factors could be “normalized out.”

To illustrate, consider the Netherlands. The area was made prime land by the technological innovation of the polder and a political and cultural unity that created and controlled the polder-dikes.³⁰ Previous to this human input, the Netherlands was a wasteland by any indicator assessing the value of resources independently of human input. For any measure of the value of resources for human purposes, 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 natural biophysical conditions. A similar effect would occur whenever the value of a set of resources for human use increases through intervention; to mention one other example, eradicating diseases such as malaria, which cripple whole economies and their abilities to exploit what resources they have, would decisively change the value for human purposes of such regions.

As this illustration makes clear, there is an ambiguity in the worry currently under discussion. The worry might be that it is conceptually impossible to separate biophysical conditions as they naturally are from human contributions; or it might be that if we applied such a measure now we would evaluate bundles of resources that have already been shaped, to some extent, by human input. The former version of the worry does not seem to succeed: as both the polder case and the malaria case indicate, it will generally be clear enough just what the human contributions have been. The more urgent concern, then, is how they should factor into the evaluation of what is commonly owned.

³⁰ A polder is reclaimed land of below-sea-level altitude, in a location from which the sea has been channeled or drained away.

An initial response is that, if indeed the value for human purpose of the territory of, say, the Netherlands has increased through ingenuity, then those who have applied such ingenuity should keep the gains. Whether the Dutch over- or under-use their territory must be assessed relative to the value of their resources with the effects of human inventiveness factored out, a task that would have to be left to the biophysical sciences and perhaps to the technical ingenuity of econometricians, who specialize in intricate exercises of measuring value. If this is right, the Netherlands, with its enormous population density, would presumably emerge as one of the most overused areas in the world, with a fairly large population using a set of resources that per se is of comparatively little value. The Netherlands would be in a position to turn down all demands for entry made on the basis of common ownership.

Yet this response is unsatisfactory, since it would give the Dutch all the credit for their ingenuity although others may have applied such creativeness as well had they been at the right time at the right place. This is implausible in much the same way in which claims to land based on first occupancy are: accidents in space and time can hardly serve to ground property claims that resonate through the ages and that can serve in particular to assess claims to immigration.³¹ At least, the value of resources would have to be measured in such a manner that it incorporates the impact of commonly available technology and other human factors that could have been provided by others as well, and in due course would have been. This implies for the case of the Netherlands that the Dutch cannot claim credit for the ingenuity they applied to creating and maintaining the polders in the sense that those could be exempted from what is commonly owned.

³¹ And, again, pace Schmidtz (1994) it does not matter whether being the first occupier is a joy or a pain.

One might ask then whether the current generation of Dutchmen can also take credit for the other accomplishments of their ancestors given that we have granted that they cannot do so for the ways in which they have improved commonly owned resources. Can they take credit for technological innovations, or historically comparatively favorable conditions, which made it possible for them to reach their current level of wealth? After all, their share of commonly owned resources has enabled them to obtain their achievements. This again questions whether we can make a morally important distinction between what is “just there” and what people have accomplished using the commonly owned stock that is “just there,” and the extent to which they can pass it on. Should we not include among the commonly owned assets achievements of the past for which nobody currently living can take credit?

We think there are morally significant differences between materials that indeed are just there without any human intervention, and the products of human ingenuity (with resources that are just there but whose value itself has been improved through human ingenuity being problematic borderline cases of the sort we just discussed). Perhaps a case can be made that, in the course of the time, these products of human ingenuity should be added to the stock of what is commonly owned, with all the consequences that this would have in particular for questions of immigration; but an argument for such a claim would have to come from elsewhere, and could not simply draw on the basic intuition that we appealed to for the case of resources, namely, that they came into existence without any human entitlements whatsoever attached. While such resources have been enablers for just about anything else that ever happened, this is a much weaker basis for adding such accomplishment to the commonly owned stock. The issue is a

rather fundamental one, turning on whether human choices can ever generate anything to which individuals are genuinely entitled. Conflating, morally, resources that exist without human intervention and what such resources have enabled people to do means to give up on any meaningful difference between circumstances and choices.

Note, as a final point on this discussion, that it is also possible that intervention lowers the value for human purposes of certain sets of resources -- think of deforestation. Following the same sort of argument, then, the offspring of those who brought about such damage would not be held responsible for it. In other words, when it comes to an assessment of immigration, 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 now lower than it would be had certain mischief not been done in the past.

7. Recall that above we said complaints of overcrowding are rarely found in isolation, but often buttressed by a claim about a form of activity immigration would prevent, so that claims of overuse tend to be claims of overuse-with-regard-to-a-certain-purpose. In that spirit one may now object, internal to the common-ownership perspective, that providing a measure of relative over- and under-use is not the right way of spelling out that perspective. Appropriate use should not be a matter of numerically proportionate use, but of what is *done* with the resources. Legitimate land ownership, one might say, has a purpose: the development of political communities within which rights – including property rights in their ordinary sense - are respected. Accordingly, there can be no metric of “crowding” enabling us to say when a specific state is too crowded to admit immigrants; it will all depend on what the land is used for.

What matters about common ownership on such a view is that it licenses a class of arguments one might call “arguments from preservation.” Such arguments insist that states should accomplish a goal X that can no longer be accomplished if immigration is unconstrained; whether the common-ownership standpoint licenses such arguments (and thus grants a group that they do not need to share their territory with others) depends on whether these goals are morally acceptable. Arguments from preservation are supposed to license talk of the sort “around here, we are doing something valuable, but cannot do it unless we impose constraints on immigration.” Yet such talk can be licensed in this manner only if the severity of the constraints justifiable in this manner depends on what “we” are trying to do. Prima facie plausible candidates for X include the preservation of a certain culture (or its purity), a certain economic or technological standing (a stock of human and physical capital and know-how, a wage-structure that can be preserved only by regulating access to labor markets), or a certain political system (in which, for instance, relatively modest inequality may depend on keeping the numbers of unskilled workers low). Frequently, such arguments are advanced based on self-interest, and then difficult to understand as morally pressing. We might, however, reinterpret such arguments, so as to see them in their most morally plausible lights. On this analysis, we ought to read them not simply as insisting that the preservation of X matters to those affected by it, but that there is some independent value to such preservation.

One can criticize such arguments on internal and external grounds. Criticizing them on internal grounds means to suggest that the nature of X is inconsistent or otherwise stands in tension with the immigration constraints devised to protect X. Criticizing such arguments on external grounds means to suggest that preserving X is not

worth the costs involved through imposing immigration constraints. More could be said about this since arguments from preservation are highly contentious; but what matters now is that, far from capturing this standpoint properly, such arguments generally do not give proper weight to the standpoint of common ownership. On the contrary, concerns about the reach of arguments from preservation motivate inquiries into implications of this standpoint in the first place.³² A culture shared only by two people occupying a vast territory might well be worth preserving, but such occupancy would not count as appropriate use from the common-ownership standpoint. Preservation arguments should not be taken to capture the common-ownership standpoint; instead, we submit that that standpoint places constraints upon the use of such arguments.

At the same time, however, one might well grant that arguments from preservation show that an assessment of land-use is not merely a matter of dividing a number of people by a measure of the value of a set of resources. What the resources are being used for must enter the discussion, but, crucially, in a *supplementary*, rather than a *conclusive*, manner. The burden of proof is on those who wish to overrule implications of the common-ownership standpoint by arguing that certain forms of culture should be allotted a larger share of common resources than what numerically they should have. Yet while it may well be difficult to meet this burden of proof, it is much easier to justify constraints on immigration countries would like to adopt for their own interest (where we ignore that it is often difficult to say what form of immigration is in the best interest of a country since different forms of immigration benefit or harm different parts of a

³² This point differentiates what we are doing here, for instance, from Coleman and Harding (1995). Coleman and Harding describe how membership in a political community takes on a very different character depending on the respective community. But then they conclude that “[p]olitical communities can exclude” (p 52), without integrating the ownership standpoint developed here.

population). After all, the common-ownership standpoint provides people outside of a relatively underused territory with a claim to entry.

The receiving country will have a good deal of discretion to choose from among the applicants those who suit its goals. For instance, and as far as the common-ownership standpoint is concerned, a country with a strong social system that is under-using its territory would be within its rights to choose people with strong professional credentials; a country with demographic problems would be within its rights to choose young applicants or those deemed likely to have more than the average number of children; a culturally homogenous country would be within its rights to give preference to applicants who already share crucial elements of this culture, or who are willing to adjust, etc.

Yet the common-ownership standpoint also implies constraints on such discretion. First of all, other things being equal, applicants from countries that are over-using their resources need to be given priority. These are the ones who are not getting their share of commonly owned resources. Second, immigration policy must also take into account a duty of aid that applies to rich countries with full ability to exploit resources to countries lacking that ability (on which we say more below). Just how immigration policy should do so is a question we cannot address here; sometimes immigration can be helpful for development because it decreases population pressure or generates remittances to be sent home; but there is also the “brain-drain” problem that arises if those people leave who are most valuable for development. Yet here, we merely would like to record that a country’s discretion in admitting immigrants is not unlimited: it does matter where they come from. Of course, if there are not enough applicants anyway who 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 to grant them their rights as co-owners.³³

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 used for the Australian immigration policy in place throughout the first half of the 20th century, and to some extent longer. Its goal was to exclude non-white people. To begin with, notice that it is rarely the case that land within a society is uniformly densely populated; there often are relatively under-populated areas. This has been so, for instance, for the American Great Plains, the Canadian Northlands, as well as the Australian Outback. We submit that 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 the case; immigration into relatively under-populated areas is frequently compatible with the maintenance of the national project, and if so, the common-ownership standpoint will put on pressure to allow for such immigration. On this point we agree with Michael Walzer, whose commentary upon the policy of “White Australia” was that it claimed more territory than was acceptable. While *perhaps* the urbanized Eastern coast of Australia could legitimately seek to develop the project of “whiteness,” the largely uninhabited Outback

³³ There might always be reasons why certain immigration preferences are unacceptable on other grounds. Such grounds might easily arise given that we have talked about the overall interest of a nation, which is always a source of difficulties. 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.

could not refuse non-white inhabitants. (On the “perhaps”, see the second point in what follows.) “White Australia,” Walzer stated, “could survive only as Little Australia.”³⁴

There are, however, two instructive points to note in connection with this example. The first is that under-populated areas of nations appear to have fewer grounds to exclude immigrants than urbanized areas. This is often the opposite of what prospective immigrants desire. Immigrants have a tendency to regard their port of entry as the default location to settle down, and often ports of entry are cities.³⁵ Immigrants tend to cluster in urban areas, where social services and communities are more easily obtained by recent arrivals. Some nations have begun programs of advanced immigration status for those willing to settle in uninhabited areas. (Canada, for instance, seeks to place immigrants in rural and under-populated areas.³⁶) Our analysis suggests that this is legitimate. That is, while it is the common-ownership standpoint that creates 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 area (provided they are not taking measures in the process that would be independently objectionable).

The second point is that a project such as “White Australia” may, itself, be an impermissible national project. As we pointed out above when introducing arguments from preservation, it is not the case that *any* project deserves adequate space within which to develop, nor does in particular any national project. We may only be compelled,

³⁴ Walzer (1983), pp 46-48; quote from p 47.

³⁵ On the question of why immigrants settle in urban areas, see Cohen (1996).

³⁶ More than 94% of Canadian immigrants settled in urban areas in the 1990s; in response, the federal government began creating “nominee programs,” which provide expedited residency for high-skill 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.

from the outside, to accept principles of distribution of land that give communities committed to justice space within which to work. We do not face the same moral pull to allow racism to have room to grow.

Racist projects such as “White Australia” are, in themselves, impermissible; their continued success, therefore, will not serve as an adequate reason to restrict immigration. The reason for this is that Australia was never purely white; “White Australia” was a project that took place within a multiracial society, in which the Aborigine population was significantly disadvantaged. The Aborigine population could have launched a preservation argument of their own (one pertaining to the preservation of an adequate standing of their culture), insisting that the value of their own culture is, and thus that the individuals partaking of this culture are, not properly respected in a state that asks obedience of them if that state at the same time admits only whites and thus people relevantly unlike them. Such a project is difficult to endorse, even if one would – as indeed we do, following our argument above -- otherwise accept racially homogenous communities, providing they are not under-using their resources. While we cannot here demonstrate the impermissibility of such a racist project, we submit that such a demonstration is not difficult to provide.

8. Let us continue with some more questions about our account of immigration in terms of the common-ownership standpoint. The intuition motivating the adoption of the measure of relative over and under-use is that regions are populated by people who respectively should not use more than their share of commonly owned resources. Our proposal for what it is to use more than one’s share draws on assessing whether a group

of people generates a higher or lower per capita use rate of their territory than others. But our discussion so far has left various questions open, specifically the following three:

First, suppose a population does not under-use their territory, but is concentrated in one corner of their territory although the remainder is highly inhabitable land. That is, the region where they have settled is enormously over-used, whereas the hinterland is empty. The general case is a population that does not under-use its resources, in the sense of our definition, but decides to leave a large share of them unused. Do others then have a legitimate claim to entry? Second, suppose a population under-uses their resources according to the measure that would be accepted, but do so because certain resources play no role in their own economy, and for whatever reason they are not even willing to use them for trading purposes. (Maybe their religion forbids the required digging in the ground.) Or perhaps they value resources in a manner different from the accepted measure, and according to their own measure do not under-use their territory. Do others then have a legitimate claim to entry? Third, suppose some people live in countries where they cannot exercise their ownership rights because those countries are politically oppressive, lag behind economically, are torn apart by a civil war, or otherwise dysfunctional or underdeveloped. Do these people have a claim against others *qua* co-owners? Can they demand assistance in their efforts to come by their rightful share of the commonly owned resources?

Let us start with the first question. To illustrate, recall our discussion of the “White Australia” policy. It was implicit in our response there that white Australians would under-use their territory if they reserved more for themselves than the Eastern seaboard. But what if there had been sufficiently many white Australians to make it true

that there would be no under-use of a territory much larger than the Eastern seaboard, although that is where they lived? There might generally be many reasons why a population would want to live concentrated in one corner of their territory: they might want to preserve the unused area for future purposes; they might want a buffer between themselves and their neighbors; they might just want to hang on to territory that happens to be theirs historically; or they might live concentrated in various parts of their territory, but would want to control the area in between as well so that their country would not be torn apart (and *mutatis mutandis* for other kinds of resources that they may have decided to leave unused). If indeed they are not under-using their resources and have actually elected to use them in a peculiar way, their decisions seem acceptable from a common-ownership standpoint. At least this is so as long as one accepts states as in principle legitimate, which is what we do. For if one does, the sheer fact that resources are used idiosyncratically does not undermine the legitimacy of the use.

What about the population that uses a measure other than world-market prices for evaluating their value? For the kind of immigration problems our world currently faces, this question is not particularly relevant. Most potential immigrants wish to enter developed countries, but all of those are fully integrated into the world market and thus would find an assessment of their resources in terms of world market prices acceptable. One might think there is a potential danger that, say, companies from such countries would penetrate regions that do not desire to be integrated into the world market at all, very much as 17th century immigrants to the Americas would claim that the native population did not make the sort of use of common resources that would entitle them to the use of their resources. But there is no such danger, because a permission to immigrate

does not come with a permission to do in one's new country as one pleases. So even if there were scenarios in which a country's 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 want to reject, the danger of exploitation of this sort would not arise. But given that such situations will at any rate be rare, and not involve countries that are primary destinations of would-be immigrants, one might also accommodate exceptions, in much the same way in which sometimes a liberal state accommodates the religious beliefs of some as long as not much harm is done in this way and as long as the number of people involved remains small.

Finally, consider countries that are dysfunctional or underdeveloped. Inhabitants of such countries, alongside everybody else, have a claim to immigration on countries that under-use their resources. The question is whether, under circumstances such as these, and *qua* co-owners, they also have a claim to be privileged over other possible applicants for immigration into such countries, or whether they also have a claim to immigration into countries that do *not* under-use their resources. We think that the common ownership standpoint does indeed give such individuals some sort of claim, but just what it is depends on the nature of the problem.³⁷

Consider, first, cases of economic underdevelopment. The appropriate remedy is to offer aid. (As we are keenly aware, the phrase "to offer aid" harbors a multitude of complexities. We will say a bit more about some of them below, but what at any rate we are mainly after here is the contrast between "offering aid to the whole society," to be

³⁷ A strange practical problem for this proposal is that if it were implemented it might provide nasty environmental incentive. Countries may have an incentive to use as much as possible so they do not have to allow immigrants to enter. This might not be very sustainable. But at this conceptual level it seems appropriate to set such problems aside.

spelled out, below, in terms of support in building institutions, and “granting a special claim to immigration to certain persons *over and above* what they might be able to claim in terms of over- and under-use of territory because they are from an underdeveloped country.) Most inhabitants of the respective country would be affected by the problem, and they would have an equal claim to support. In such cases, the absorption of whole populations into other, more prosperous countries is no sensible solution, because there may be too many people affected by this particular affliction, and, what is more important, many of those will at any rate prefer being helped where they are rather than to immigrate.³⁸

One might think that, in such cases, the appropriate form of aid, especially in light of the fact of common ownership, is a transfer of resources, or perhaps a tax on unilateral exploitation of resources elsewhere (such as Pogge’s (2002) Global Recourse Dividend). However, what form of aid is generally appropriate in cases of underdevelopment is determined by what drives economies, by what it is about certain countries that makes them prosperous whereas others are poor. Economists and historians have long debated what makes countries rich or poor. This debate has recently gained sophistication through econometric techniques that allow for the testing of broad hypotheses about the causes of growth against cross-country data. Three major views have emerged:

Geography: Growth is primarily determined by factors such as location, climate, endowment of resources (including soils), disease burden, and thus agricultural productivity, quality of human resources, and transportation costs.

Integration: Growth is primarily determined by world market integration.

Institutions: Prosperity depends on the quality of institutions, such as stable property rights, rule of law, bureaucratic capacity, appropriate regulatory

³⁸ Pogge (1997) also rejects immigration as a solution to problems of global poverty.

structures to curtail at least the worst forms of fraud, anti-competitive behavior, and graft, quality and independence of courts, but also cohesiveness of society, existence of trust and social cooperation, and thus overall quality of civil society.

This is not the occasion to explore this debate, which has been done elsewhere in a manner that we will endorse for our purposes (cf. Risse (2005a), who adopts the institutional stance as most plausible). Suffice it to point out that institutions such as a constitution guiding generations through political disputes, a legal system enforcing property rights and contracts, but most importantly a culture of trust, shared understandings of what are reasonable benefits from and sacrifices imposed by cooperation, commitment to the common good, and other hallmarks of civil society can under most circumstances not be imposed by outsider: what is needed cannot be “imported.” In fact, the stability of institutions might be undermined if those whose participation maintains them rely on support from the outside.

If the institutional stance is correct, the common-ownership perspective delivers a claim to support in institution-building. Transferring resources may not only not help that purpose, but may be harmful to it.³⁹ Still, the standpoint of common ownership provides a perspective from which it can be argued that claims to development aid are a matter of *justice*, not charity. At any rate this is so if Common Ownership is supplemented with a claim that the realization of the implications of this standpoint are a shared responsibility of all co-owners, which strikes us as plausible at least in the limited sense that co-owners who are, in a manner that is not their fault, deprived of access to their resources should be assisted in their efforts to obtain such access. One version of this is that countries with

³⁹ See Risse (2005a) for elaboration of all this. Notice that the institutional stance does not entail that resources are unimportant; instead, it means that their importance is channeled through the importance of institutions – good resource endowment may well facilitate the possibility of building good institutions.

rich resources also have claims to other countries to offer assistance in accessing these resources if they do not themselves possess the relevant technology. Conceivably, allowing immigration can be part of an aid program, to release population pressure or to generate remittances. But, as we pointed out above, whether this is a sensible development strategy (in light of brain-drain problems) is a hard empirical question we cannot address. We do *not* think, however, that the common-ownership standpoint gives individuals from underdeveloped countries a special claim to immigration into other countries *over and above* claims to immigration they have against countries that under-use their resources and claims to development aid of the sort just sketched.

Suppose the problem is not underdevelopment but political oppression. (Often these scenarios will coincide, in which case the solution will have to be adjusted accordingly.) If so, we must further distinguish various cases. If the problem is one of relatively few people needing political asylum, the common ownership standpoint offers an argument as to why such a claim to asylum, too, is a matter of justice, not of charity, if, again, one accept the claim that the realization of claims that flow from Common Ownership is a shared responsibility of all co-owners.⁴⁰ Those whose political community disenfranchises them are violated not only in their political rights, but also indirectly in that they no longer have those rights derived from the common ownership of the earth. Such individuals therefore have a claim on other societies.

If, however, we are talking about large-scale oppression of whole countries, the solution can hardly be to make sure all of the population can emigrate somewhere else, partly for the same reasons as in the case of economic underdevelopment, and partly

⁴⁰ These would be people with a morally overwhelming case for admission and thus not the kind of people we are actually interested in here. Still, there is the implication just stated for these cases.

because any such large-scale migration would be possible politically only if the oppressive government could be defeated, in which case presumably many if not most people would no longer want to emigrate in the first place. Instead, the solution again would be appropriate institutional support, which in this case would amount to support in overturning the ruling circles. Yet this comes with all the problems involved in humanitarian intervention, and here the standpoint of common ownership will easily turn out to be a comparatively irrelevant one, but still one that gives the victims of oppression a claim in justice, rather than merely an appeal to charity.

9. In general, then, 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 burdened foreigners than we conventionally believe, and especially more than those believe who, like us, do indeed think that there is nothing objectionable about states in principle. We conclude by noting that we have not attempted to provide a complete theory of immigration. We have not attempted to articulate all the moral constraints and permissions incumbent upon policy-makers dealing with prospective immigrants. We will be satisfied if we have identified one area of political inquiry relevant to the larger task at hand.

Literature

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

Bader, Veit (ed.). 1997. *Citizenship and Exclusion*. New York: St. Martin's Press

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

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

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

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

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;

Coleman, Jules, and Sarah Harding. 1995. "Citizenship, the Demands of Justice, and the Moral Relevance of Political Borders." In Schwartz (1995)

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

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

Grunebaum, James. 1987. *Private Ownership*. New York: Routledge and Kegan Paul

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

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

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

Pogge, Thomas, 1989. *Realizing Rawls*. Ithaca: Cornell University Press

Pogge, Thomas. 1997. "Migration and Poverty." In Bader (1997)

Pogge, Thomas. 2002. *World Poverty and Human Rights*. Cambridge: Blackwell

Reeve, Andrew. 1986. *Property*. Atlantic Highlands: Humanities Press

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. Forthcoming. "What to Say about the State," to appear in *Social Theory and Practice*

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

Schwartz, Warren (ed.). 1995. *Justice in Immigration*. 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, 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

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 Schwartz (1995)

Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books

Wellman, Christopher. Forthcoming. "Immigration and Freedom of Association."