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Migration, Territoriality, and Culture

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1. Little work has been done to explore the moral foundations of the state's right to territory. In modern times, the state has mostly been assumed to be a territorial unit, and no need was perceived to reflect on precisely what justifies its territorial jurisdiction. The state's territoriality is related to another topic that has remained under-theorized: immigration. There is, moreover, an obvious relationship between these topics: the more powerful a state's rights over its territory, the more powerful the right to constrain access to that territory might become – or so, at any rate, we might suppose. Rights to territory and rights to immigration are usefully theorized together.

Our starting point is a Lockean analysis of the moral foundations of territoriality offered by Simmons (2001). This is a natural starting point not only because Simmons is one of the very few contemporary writers who have taken up philosophical questions about territoriality in the first place, but also because Locke's thought, as Simmons makes clear, actually allows for the development of a sophisticated account of territoriality. This makes Locke stand out simply because generally modern political philosophers (including contemporary figures such as Rawls) fail to offer any such account. Crucially, this Lockean account makes the legitimacy of a state's claim to its territory dependent on a prior claim to land that individuals may have. However, we will

see that this account needs to be amended to give appropriate expression to the view that the earth is common property of humankind, which is central to the Lockean account of ownership. Both an account of the moral foundations of territoriality and an account of what rights individuals have to immigrate - and thus, conversely, what rights states have to prevent immigration - will have to accommodate the fact that each generation of people ought to be morally understood as a generation of co-owners. In this way, Locke's thought leads us to notions of over- and under-use of collectively owned resources that might help us understand the moral nature of immigration.[1]

However, once we have developed this Lockean account to that point, we will leave it behind to develop our main conclusions in a manner that does not depend on a specifically Lockean account. We will embark on a systematic discussion on the notion of collective ownership and explore various ways of thinking about it, and then derive accounts of immigration and territoriality. In doing so, we will be able to offer more precise accounts of the ideas of over- and under-use of resources, so as to introduce the possibility of resource-based constraints on immigration policy. The account that will emerge in this way will be quite different from Simmons, but in line with the revisions of the Lockean account that we will suggest. We will proceed to use this territorial account as a means of criticizing one pattern of argument frequently invoked to legitimate the state's right to constrain immigration: the survival and preservation of culture. The extents to which culture and territory bear on immigration, we assert, are usefully analyzed together. The collective ownership of the world's resources stands as a theoretical tool well suited to examine whether, and how, considerations of culture ought

[1] Immigration was not the kind of issue that posed a challenge for 17th century political thinkers, so we cannot expect to find a well-developed account of immigration in Locke's texts themselves.

to enter into our discussion of rights to immigration. We will conclude with some final reflections on the right to culture more generally, understood here as a right to select immigrants based upon their cultural membership and identity.

2. Forms of governance other than the state are possible.[2] This fact entitles us to ask evaluative questions about this particular form of political organization. What, that is, licenses the state's purported right to legal jurisdiction over a particular territory?

To set the stage, we may begin with Simmons's (2001) Lockean account of these foundations. Simmons distinguishes among three different sorts of rights that make up the state's sovereignty: rights over *subjects*, rights against *aliens*, and rights over *territory*. Rights over territory, as Simmons sees them, encompass rights to exercise jurisdiction over those within the territory, rights to reasonably full control over land and resources within the territory that are not privately owned, rights to tax and regulate uses of land and resources that are privately owned, rights to control movement across

[2] Historians disagree about why states arose. Spruyt (1994) argues that territorial states, alongside city-leagues and city-states, emerged in response to economic changes in the Late Middle Ages. "States won because their institutional logic gave them an advantage in mobilizing their societies' resources" (p 185). As opposed to that, Tilly (1990) claims that states succeeded because France and Spain adopted forms of warfare that temporarily crushed their neighbors and introduced a political model others were compelled to adopt (p 183). But be that as it may, states have arisen in response to particular conditions, and they may disappear in response to such conditions, no matter how familiar we have become with a political reality shaped by them. Political units could be organized rather differently: There could be a system of overlapping allegiances, as the Middle Ages knew it; city-leagues, as the early modern age knew them; a system of vertically dispersed sovereignty, as envisaged by Pogge (2002); states with full territoriality but with strong redistributive duties towards non-members; states whose borders are controlled by international forces supervising a global migration policy; a world state; a world confederacy; regional confederations; or virtual states whose members are dispersed across the globe. But while such political arrangements are logical possibilities, it is a different question whether they are available in any stronger sense. Wendt (2003), for instance, argues that a world state is inevitable at this stage and thus the only practically possible political option for the world. We cannot engage with that sort of view here, but will assume for the sake of our argument that it does not undermine our inquiry.

borders, and rights to limit "dismemberment" of the territory – that is, secession or outright appropriation.

Simmons asks what we can say about how those three categories of rights are related to each other, and thus what their justificatory priority is. In response he offers an hierarchical account according to which the state's rights over its subjects are basic, rights that, on the Lockean view that Simmons adopts, in turn are justified through consent to be ruled by the state. Rights against aliens are derived from these rights; the scope of such rights is determined by what is needed to maintain the political community. Rights over territory may also be derived from rights over individuals: a state's territory is simply that territory justly acquired by the individuals subject to the state's authority.

Simmons acknowledges that, since in reality the scope and limits of state power have not been determined in this way, this view of the rights of states condemns all states to some amount of illegitimacy. That is, this account is one of ideal theory to which actual states may correspond in varying degrees. Nevertheless, as far as this account of territoriality is concerned, Simmons finds this picture quite plausible:

> Where states' territories have histories that approximate Locke's conjectural history – where persons have (relatively) innocently acquired or (relatively) exclusively used land that has been (relatively) freely subjected to state jurisdiction – we tend to be least skeptical about states' claims to territorial sovereignty and most skeptical about rival claims to that territory. (p 316)[3]

Locke's primary concern is to determine the scope and limits of justified state power and in particular to justify the existence of property vis-à-vis possible interferences by the government. In general modern political philosophy was concerned to assess the justifiability of the state to those who are subject to it, but not to aliens and outsiders.

[3] Baldwin (1992) argues that other modern thinkers took the same approach to territory (that is, based it on acquisition of individuals, to the extent that they thought about it at all.

"The Supream Power cannot take from any Man any part of his Property without his own consent," Locke tells us; "it is a mistake to think, that the Supream or Legislative Power of any Commonwealth, can do what it will, and dispose of the Estate of the Subject arbitrarily, or take any part of them at pleasure" (II, 138). If governmental violations of the rights of citizens go too far, that is, citizens may have a right to rebellion. The rights and interests of those outside the coercive power of the state, in contrast, are generally ignored. Unsurprisingly, Locke does not offer any well-developed account of immigration.[4]

3. Nevertheless, Simmons' Lockean account does offer resources to address the question of the conditions under which immigration should be allowed. A good way of approaching this question is by way of looking at how states come to have continuous borders. As Simmons points out, Locke assumes that there will be no "interior dissenters," and he assumes that land in between parcels used by citizens can also be appropriated by the state (p 314). What is more interesting in our context is the second point, that is, the ownership of the commons, which Locke thinks occurs by international consensus. As Simmons explains:

> [T]he spirit of Locke's theory of property is, I think, consistent with allowing that *modest* common holdings of land can be legitimated by the exclusive use of the commons by society's members for gathering, recreation, or shared activities, independently of any "common consent" to this that other societies may have given. (p 314; italics in the original)

[4] Locke's two treatises are commonly quoted by first specifying the treatise and then the section. So (II, 138) means Section 138 in the *Second Treatise*. Concerns about migration were occasionally important to writers in Locke's age primarily because of a need for some philosophical account to ground the legitimacy of colonization, as well as an account of what kind of ownership there could be of the seas (see Tuck (1999)). Concerns about immigration in the sense in which we are worried about it today - high numbers of people from poorer countries eager to move into richer countries - were not pressing.

Assuming this is correct, it also provides the beginnings of a Lockean account of constraints on immigration. The state would have to allow immigration at least up to a point where the enclosed areas are in fact reduced to the *modest* common holdings Simmons envisages. The state would not be entitled, say, to keep land free for future purposes; a state demanding the right to enclose immodestly large tracts of land would, on this account, have no moral title to such territory. The right to exclude prospective outsiders from entering these lands is similarly suspect.

This much is straightforward, but not very informative since the "age of abundance" (as it is sometimes called, following Olivecrona (1974)), in which land is still available for acquisition, is a temporary stage. Plausibly, all land will have been acquired before questions about large-scale immigration arise. Our contention, however, is that Lockean obligations to allow for immigration do not end with the age of abundance. Before we can say more about that, however, we need to look at the "age of scarcity" independently of any concerns about immigration. At that stage, there will be people without any opportunity to acquire land. Such people pose a problem for Locke because he holds an account of collective ownership of the earth, famously claiming that God gave the "Earth, and all that is therein" and "all the Fruits it naturally produces, and Beasts it feeds" (II, 26) to mankind in common.

This idea of collective ownership provides the background to Locke's account of individual appropriation, which is focused on the idea of an individual's "mixing his labor" with certain resources (see II, 27) and constrained in certain ways. One such constraint is a spoilage proviso, which limits individual appropriation to "[a]s much as any one can make us of to any advantage in life before it spoils" (II, 31). A possible other

constraint is the "enough and as good" proviso (see II, 33), according to which appropriation is also limited by the need to leave sufficiently much for others. The connection between the proviso and the starting point of collective ownership is this: collective ownership makes it necessary to explain how it could happen that anything could be privatized, and the account of privatization must be devised such that the collective ownership standpoint is respected.

Precisely what all this entails for those born in the age of scarcity is disputed. Clearly, the idea of collective ownership entitles late-comers to *some* demands, and in addition, Locke also introduces a general duty to preserve humankind to which everybody should contribute to the extent that his own preservation is not endangered (II, 6; see also I, 42). Yet Waldron (1988) argues that the "enough and as good" statement does not actually constrain acquisition, but instead makes a statement of fact about acquisition at the age of abundance. On this view of Locke's account, late-comers are entitled to be employed if able-bodied, or else to be given charity; but they are not entitled to actual territorial appropriation. At the same time, however, Waldron argues that Locke's theory of appropriation itself is unacceptable, at least within a liberal framework, because it could not possibly command the (hypothetical) consent of all those affected by it. After all, the late-comers are disadvantaged on this account.[5] As opposed to that, Sreenivasan (1995) argues that, since Locke does mean for the enough-and-as-good proviso to be a limitation on property acquisition after all, late-comers would actually be entitled to apply their labor to appropriate a share of the collectively owned resources. The enough-and-as-good proviso, on this reading, "limits property in land to

[5] See Waldron (1988), pp 209-218 on the enough-and-as-good phrase, and Chapter 7 on the rejection of Locke's account of appropriation (as well as other account of appropriation that turn on individual actions).

the greatest universalisable share" (p 117), and what that is would have to be reconsidered for each generation of co-owners.[6]

This is not the place to settle questions of Locke interpretation. What we take away from these discussions for our purposes is simply the following: by introducing the idea of collective ownership of the earth, Locke introduces a standpoint from which which the allocation and occupation of territory might be subject to moral evaluation. This standpoint, moreover, does not limit its applicability to the initial moment of territorial acquisition; the rights of all mankind as co-owners of the earth exert some form of continuing moral constraint on the acceptable divisions of land. In this, we follow Sreenivasan, taking the enough-and-as-good condition to be a genuine (and currently applicable) constraint on appropriation. This collective ownership standpoint entails that property allocation will have to be reconsidered for each generation. [7]

Let us return to immigration, by examining the rights of those who arrive after all land has been acquired. Among those later-comers there will be many who do not live on the territory of a given state. Again, such people would not have been much on

[6] Cf. Sreenivasan (1995), pp 113-118, and for his discussion of Waldron pp 37-41.

[7] If, following Waldron, we do not take this condition to be a constraint on appropriation, we find that the whole Lockean theory of appropriation fails because the privileged status of those who come early enough to appropriate will be unjustifiable to those who come later. Either way, the standpoint of collective ownership generates considerable entitlements on the side of the late-comers. We should note, however, that 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 earth originally is common property, appropriation must be constrained by this fact, 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, use of the privatized property will be constrained by the original ownership status.

Locke's horizon because large-scale immigration from one state to another was not among the issues on his agenda. But once we acknowledge the importance of justifying the existence of states not just to those respectively subject to them, but also to those excluded from them, we see that an account that "limits property in land to the greatest universalisable share" (p 117) must mean universalisability across all co-owners currently alive, not merely those who already inhabit a given state. After all, as Locke points out in II, 95, individuals are only allowed to join in political societies where this does not endanger the freedom of the rest, and if that rest were excluded from such consideration their freedom (in the form of their rights as co-owners) would be threatened. So in this way we can see how at the age of scarcity would-be immigrants need to be accommodated. At the same time, no group of people can be expected to allow entry to an arbitrary number of people, but only up to a point where they have taken on a number of immigrants appropriate to the amount of commonly owned resources available on that territory. We are pushed to develop some account of immigration that requires a state to allow for immigration if its territory is under-used, but also permits it to block further demands of entry it is already over-used.

As far as territoriality is concerned, recall that Simmons's account assumes that individuals are property holders already, and that the state's authority over territory derives from their *prior* claims to land. However, the insight we just gained about the age of scarcity undermines the view that certain individuals have an uncontested prior claim to land. At least, this account of territoriality must be reformulated in such a way that it takes into account the fact that individual claims to land have to be reconsidered from generation to generation to accommodate the claims of all co-owners. The territory of a

state is not fixed through appropriation in the age of abundance. Again, if it were, the freedom of those excluded would be endangered, contrary to what they are owed as co-owners and contrary to what Locke claims should constrain the formation of societies (II, 95). Parallel to what we just saw about immigration, we are pushed to an account of territoriality that integrates ideas about over- and under-use into an account of what moral right to territory a state may have.

4. Let us now leave the world of Locke scholarship for a more general analysis of the concept of ownership of the earth. This concept, as we have seen, shapes Locke's thinking; but the power of the concept is not limited to those who accept Locke's theory. We may therefore examine the concept of "original" ownership more directly.[8] Such ownership, to begin with, is not limited by time. Instead, such ownership is a moral status the earth may have and that would have conceptual and moral priority over individual appropriation. It is appropriate to examine such moral rights over property for two reasons: such resources, first, are necessary for any human activities to unfold; second, they have come into existence without human interference. These reasons must be considered when individual accomplishments are used to justify individual property rights that are possibly solid enough to determine use across generations 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

[8] This collective-ownership based approach to immigration is taken from and developed in much greater detail in Blake and Risse (forthcoming). The discussion of collective ownership was first presented in Risse (2005), where, however, 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)).

resources. Our view entails that 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 their use. One form of justification may draw on the distinction between natural resources and other things; the more my labor is responsible for an object's existence, the more plausible is my right to it. The original right of property over the earth is now best seen in this manner: as a right to have *justified* to us whatever more specific principles of allocation exist, in terms we could not reasonably reject.[9]

The considerations motivating this view speak only to raw materials, not to what human beings have *made* of them. It may be true that individuals born into a society should not be favored in terms of access to its achievements. Yet the argument for that view would differ from the one presented here.[10] The distinction between what "is just there" and what has been shaped by humans is sometimes blurred; human beings have

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

[10] See, for instance, Beitz (1979) for such an argument. Blake and Risse (forthcoming) discuss the grounds on which something has to be considered relevantly like resources to be counted among what is collectively owned.

wrestled land from the sea, and extracted natural gas from garbage. But by and large, we understand well enough the idea of what is just there without human interference.

We will, therefore, assume that what is there without human agency is best understood through Egalitarian Ownership, and then attempt to establish that this original ownership of the earth places moral restrictions on principles governing resource allocation. 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 individuals, each equally entitled to using it within constraints; and *private* ownership.

While the first and last of these conceptions are self-evident, the distinction between the second and third requires some attention. Common Ownership is a right to use something that does not come with the right to exclude other co-owners from also using it. If the Boston Common were held as *common* ownership when it was used for cattle, a constraint on each person's use could be not to bring more than a certain number of cattle, a condition motivated by respect for other co-owners and the concern to avoid the infamous tragedy of the commons. Other than abiding by such constraints, however, co-owners can do as they please. Yet if they held the Common in *joint* ownership, each individual use would be subject to a decision process to be concluded to the satisfaction of each co-owner. Joint ownership ascribes to each co-owner property rights as extensive as rights of private ownership, except that others hold the same rights: each co-owner must be satisfied on each form of use.

We can now see that there are various interpretations of Egalitarian Ownership: resources could be jointly owned, or commonly owned, or each person could have private ownership of an equal share of resources, or, perhaps, its value equivalent. We refer to these interpretations as, respectively, Joint Ownership; Common Ownership; and Equal Division.[11] 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, which proceeds by rejecting the other interpretations of Egalitarian Ownership.

To begin with, Joint Ownership sets an implausibly high standard of justification for each use of the collectively owned assets, and it is hard to see what aspect of the person could support this notion of justification. For instance, Grunebaum (1987), 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 inconsistent with it. 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 appear strong, it is actually too weak to be plausible. For if each person needs *to be asked* about any use of the property, any individual also needs *to ask* about any such use. If so, resources could not be brought under private ownership without everyone's consent. This view does not allow anybody 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 possibly rather idiosyncratic reasons.

[11] 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.

Perhaps only such a weak notion is consistent with each person's having autonomy. However, regardless of assessing the strength or weakness of the notion of autonomy needed here, it will strike many that this use of the notion of autonomy overstates the normative weight of each person's autonomy: it exaggerates the importance of each individual vis-à-vis the rest of the world, a problem not alleviated by pointing out that each individual's importance is overstated in this way. That this is so 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.[12] While these features may not entail much, they do entail that the original symmetry of claims any two individuals have with regard to the earth is not well-captured in terms requiring the justification of *any* use of resources to the satisfaction of *each* person. This is why Joint Ownership is implausible.

Next, then, consider Equal Division, endorsed, for instance, by Steiner (1994). Equal Division gains plausibility from the idea that there is a (figurative) heap of resources to which each human being has an equal claim. But as we saw, materials become resources, and valuable, through activities that require social contexts in which not all human beings participate equally. The same considerations that conflict with Joint

[12] They are "special" only in the sense of deviating from the initial symmetry of rights over natural resources.

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 lacks a reason why an ownership relationship should apply *to raw materials* at all. The point of introducing a moral idea of pre-legal ownership is that accidents of time and space should not determine who gets to use what is in principle of value to everybody. So since it makes no sense to introduce such ownership relationships without recourse to value talk, we are back with the earlier consideration showing 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.[13]

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

[13] 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.

that supports it. Common Ownership implies that co-owners who unilaterally use resources do not owe compensation *merely* because others do not, or exploit certain resources others fail to find where they live. Still, Common Ownership is a form of Egalitarian Ownership, and its collective aspect must be meaningful.

5. As we already pointed out above, it is often taken it for granted that individuals live in states, and have a collective right to self-determination. But how is this latter right related to Egalitarian Ownership? We contend that the right to self-determination is consistent with our preferred interpretation of Egalitarian Ownership. There is nothing about the sheer fact that individuals occupy a certain area and live there in a particular way that is inconsistent with Common Ownership. Still, not just any way of doing so is consistent with it. Self-determination and Egalitarian Ownership are more harmonious than it may appear, but the constraints on self-determination remain to be explored. While common ownership is weaker than joint ownership, the sheer fact that the earth is collective property implies that it is wrong to assess the morality of immigration solely with reference to domestic citizens. Instead, it must be discussed in a way that gives voice to those not living on the territory.

So what are the conditions under which individuals can demand entry *in virtue of being co-owners*? 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 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. Such a measure would not just be concerned with square mileage and thus population

density. After all, the purpose of this measure is to evaluate arguments that claim a 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, the other may be deplete of them; one may be adjacent to the sea and include many navigable rivers, the other landlocked. Such a measure would have to include not merely the size of the land, but also resources like minerals and water, and the quality of the location as captured by a range of biophysical factors. In short, this measure would have to evaluate a region's overall usefulness for human activities. It needs to allow for comparisons of different sets of such factors, which is most straightforwardly accomplished by a one-dimensional measure, something like an aggregated world-market dollar value. After all, we want to use this measure to say that one area, plus its resources and biophysical parameters, is taken up to a *larger* or *smaller* extent than others. Thus all-things-considered comparability is essential.

Using a world-market value reflects the demand for sets of commodities in light of supply constraints. Prices reflect the usefulness of entities for human purposes given the state of technology and limitations on availability. This does not mean there could be no other sense in which there is value to the entities being assessed; 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 be for sale – but none of this is true for objects that are usually priced by market value. Using world-market prices also offers a simple way of reflecting technological constraints. Suppose we discover precious minerals far below the

surface, but do not have the technology to extract them. Such resources would enter the overall value of the set of resources to be assessed in a discounted way. The presence of resources we cannot bring into circulation will not create pressure to allow for more immigration. Some of the pricing needed will be novel: biophysical factors shaping the usefulness for human purposes of geographical locations are not normally priced.

In a optimistic mode one might be inclined to think that humanity has so far had no trouble adding more entities to the set of those with a price ticket. However, recent reflections on the desirability to broaden the US National Income and Product Accounts (which are used to measure the scope of economic activities in the US economy) to include activities involving activities and assets that are not captured in those accounts have revealed difficulties in doing so. But these, of course, are difficulties of a sort that we cannot address. *No such measure is in use at this time*. Nor can we turn to the biophysical sciences to find candidates for such a measure whose suitability for our purpose we might ponder. All we can do for now is to explore the conceptual possibility of such a measure, to formulate some desiderata, and to contrast our proposal to use such a measure to assess demands to entry with other proposals. Again, sometimes philosophy has to make a case that something is needed for which the work will have to be done in the sciences.[14]

For any state S our 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 determining the usefulness of this territory for human purposes. To assess the extent to which S's territory is used one would divide V_S by the number P_S of people in

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

S. V_S/P_S is *the per-capita use rate* of the commonly-owned resources on S's territory.[15] V_S/P_S includes resources that are not actually in circulation (not literally used), 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 in no position, or has chosen not, to extract resources feeding into its use rate.[16] We say that the territory of S is *relatively underused* (or, simply, underused) if V_S/P_S is bigger than the average of these values across states (in which case the average person in that area uses a resource bundle with a higher value than the person in the average country), and that it is *relatively overused* (or, simply, overused) if this value is under average (in which case the average person in that area uses a resource bundle with a lower value than the person in the average country).

If V_S/P_S is above average, then, in virtue of the earth's being common property of humankind, co-owners elsewhere have a pro tanto claim to immigration. (The "pro tanto" character of this claim will be taken up below.) Otherwise they do not. 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. Since what we are a talking about here are rights entailed by common ownership of the earth, their satisfaction would actually have to take on the specific shape of allowing for immigration; states could not elect to do something else in lieu of granting them, such as offering more development

[15] For the purposes of this project, we are thinking of P_S merely in terms of counting people. However, it would be possible to extend this assessment to animal life and even the environment if one has independent reasons for wanting to be inclusive in this way. The use of the approach suggested here does not commit one to thinking that only the presence of human life can provide reasons to prevent other humans from entering a territory.

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

aid than they otherwise would. Such compensation is acceptable only if those who would otherwise have a right to migration consent to it.

6. Many questions arise about this proposal. The guiding idea here is simple: if the earth is originally collectively owned, this fact must affect how political communities can regulate access to the part of the earth they occupy. Still, this thought is surprisingly hard to spell out, but we have done so elsewhere as well as we could, so let us move on.[17] At this point, we broaden our focus to include considerations of culture and self-determination more explicitly. Again, we believe that nothing we say should be in conflict with the principle of self-determination. Some advocates of restricted immigration, however, may disagree. In particular, it might be charged that the rights of a self-determining community to preserve its own distinctive form of existence trump the

[17] See Blake and Risse (forthcoming). Different proposals for how to think about immigration in the context of territory are made by Michael Dummett and Eric Cavallero (see Dummett (2001), chapter 4, and Dummett (2004), as well as Cavallero (2006)). Dummett focuses on absolute rather than relative use of territory, whereas Cavallero aims to accommodate hypothetical preferences of would-be immigrants. Our aforementioned paper explains why we do not endorse either of these approaches. Also discussed there is a possible worry that one may have here, namely that it seems now that we are constructing a measure that is meaningful only if everybody is supposed to own an equal share with regard to it, whereas a rejection of such a measure was part of our argument against Equal Division. Yet note that defenders of Equal Division would construct a measure with the goal of saying that everybody should have the same share in terms of it. Now we are constructing a measure to compare the relative intensity with which resources are being used. There is no sense in which everybody should have the same share of such assets relative to that measure; that intuition plays no role here. We are merely evaluating whether a set of commonly owned assets is used more or less than other such sets, and do so with the intention of assessing the implications of Common Ownership. As opposed to Equal Division, Common Ownership entails relatively indeterminate property claims. Just what it means for all co-owners to be treated as such will have to be spelled out in light of specific circumstances. In this case, the relevant circumstances are that what is commonly owned is equally divided into states, and the question is under what conditions somebody located in one such state can demand entry to another. Under these circumstances we are led to using the proposed measure of over- and under-use to assess what it means to treat people as co-owners. But again, this does not entail that, on this view, one would want to say that each of n persons owns 1/n-th of the collectively owned resources, even though it so happens that defenders of Equal Division would use just this measure to think about just how much each person owns. Risse (2005) argues than when it comes to assessing one specific way in which the global order might harm the poor (proposed by Pogge (2002)), Equal Division and Common Ownership have very different implications.

property rights discussed above. Therefore, the advocates may say, those who believe these property rights constrain the rights of a community to exclude outsiders are forced to acknowledge that our principles deny the full rights of cultural self-determination.

There are two ways in which a discussion of culture might be included in our discussion. The first is as a means of questioning the validity of our world-price index notion of resource use. An advocate of cultural partiality, for existence, might insist that a given culture needs more resources than our metric allows in order to thrive. Cultural respect, on this argument, requires us to vary our concepts of over- and under-use so as to acknowledge needs of cultural preservation. The second means of integrating culture accepts that some nations do not have the right to exclude prospective immigrants entirely; still, we might think nations have the right to pick and choose amongst prospective immigrants based upon cultural identity and affinity. These two discussions may help us better understand the contours and limits of the approach to immigration defended here. The subsequent discussion primarily addresses the first issue. Only in the concluding section will we discuss the extent to which states have discretion in admitting potential immigrants.

To begin with the first point, cultures might claim that the preservation of their distinctiveness requires alteration in what share of resources our perspective allows them to exploit. This phenomenon is common to both developing and developed communities. We might think, in the latter context, of a common American response to the Kyoto Protocol, which is to insist that the distinctive American lifestyle is more important than the equitable distribution of resources (Ballentine (2001)). For the former context, we might examine the Australian Aboriginal view of the Outback as a sanctified place

(Whittaker (1994)). Both cases, despite obvious differences, have a common theme: an otherwise excessive quantity of resources, whether understood in terms of land or energy consumption, is justified by appeal to the preservation of a distinctive way of life.[18]

Indeed, cultural preservation and survival are frequently held to have moral importance. If our approach is unable to account for this value, then perhaps it is untenable. Yet there are several responses available to avert this negative conclusion. We discuss two of them in what follows. First, cultural alteration is not the same as destruction. Cultures using more than their share of resources may legitimately be asked to alter their practices where this is compatible with their continued existence as culturally distinct entities. Second, cultures are rarely found in territorial isolation. Any state desiring to justify its resource use with reference to a particular cultural group must face up to the implications of the presence of cultural minorities. This process, we suggest, may frequently make the justification of increased resource use impossible.

Let us begin with our distinction between alteration and destruction. Whatever the force of cultural preservation – and we here take no position on whether it counts as a moral good in itself – not any particular alteration in the rituals, norms and language associated with a culture counts as destruction of that culture. Taking the opposing view would not only be implausible, but contrary to the dialogic process of development found within many cultural groups. While some forms of alteration may be

[18] Michael Walzer uses the Australian Outback to establish his own theory of land rights; on his analysis, Australia would have no right to exclude prospective immigrants from the underused spaces of the Outback. Australia might have excluded non-white immigrants – as it did – but only at the cost of abandoning any claim to the underused spaces of the Outback (Walzer (1983)). Our analysis accepts part of Walzer's picture – namely, that land occupancy and use is subject to moral constraints – but begins with a distinct picture of common ownership of the earth. Our theory, moreover, disagrees with one of Walzer's implicit assumptions, namely, that the project of "White Australia" was a legitimate one for a representative government to undertake.

justly understood as cultural destruction, it is far more common that a culture survives even in the face of change. We may then speak more naturally of cultural alteration, and make our question the following: may the territorial rights of outsiders legitimately demand the alteration of a culture's content? If so, the mere fact that the culture in question needs greater resources for its current way of life is inconclusive. The moral rights of outsiders place limits on what sorts of cultural norms and practices are legitimately maintained. .[19]

To answer the question we have asked, we begin by examining how the territorial rights of outsiders constrain cultural rights. Consider first a rather extreme case, where perhaps the reader would naturally agree that the Common Ownership standpoint constrains cultural rights, namely a culture of raiding discussed by Alasdair MacIntyre:

> The second type of conflict-engendering circumstances arises from differences between communities about the right way for each to live. Not only competition for scarce natural resources, but incompatibilities arising from such conflict-engendering beliefs may lead to situations in which once again the liberal moral standpoint and the patriotic standpoint are radically at odds. . . . [P]eoples – Scottish Gaels, Iroquois Indians, Bedouin – have regarded raiding the territory of their traditional enemies living within the confines of such large empires as an essential constituent of the good life; whereas the settled urban or agricultural communities, which provided the target for their depredations, have regarded the subjugation of such peoples and their reeducation into peaceful pursuits as one of their central responsibilities. (MacIntyre (1995), pp 213f)

MacIntyre intends for this example to demonstrate how the morality of patriotism challenges the liberal morality of equal concern and respect. In this regard the example is instructive although perhaps not in the manner he intends.[20] Our own take on this issue is

[19] We ignore, here, those few examples in which the alteration of a particular cultural practice would indeed constitute the destruction of the culture. While this case is theoretically interesting, and a full account of immigration must deal with it, we are confident that very few such cases will actually be found.

[20] MacIntyre intends for the lesson of such examples to be that the liberal theory of morality is unable to justify the forms of cultural partiality demanded for thriving communities and individuals. We ignore the full arguments he gives for this position, and focus instead on this example in isolation.

that this case demonstrates how the territorial rights of outsiders can be legitimately placed over the cultural practices of insiders in terms of moral importance, in a manner that does not merely amount to a confrontation of different cultural traditions. That is, the rejection of the raiding practices is not merely motivated by the view that we believe that equal concern and respect should trump the pleasures of those who indulge in raiding. It is, instead, the territorial rights of communities subject to raiding that stand as moral restrictions on the forms of cultural practices developed in any given community. Put simply, the outsiders' rights to their territory can be used to demand that the insiders cease their practices of raiding, and those insiders, at any rate in ideal theory, can be expected to accept the standpoint from which this demand is raised even though it runs contrary to the demands of their own culture. In this, the territorial perspective can show us how legitimately to demand some alterations in cultural practices.

Note that we want this example only to establish the following claim: that the rights of outsiders to own and enjoy property can legitimately be used to rebut the claims of insiders to the exercise of their cultural traditions. Even though this particular example is of an extreme nature (involving, as it does, rather aggressive customs) what this means is that property rights in general do not stand as weaker or less important than cultural rights. We take ourselves to have established that outsiders have a continuing property right – along with all of humanity – in the resources of the earth. Therefore, the arguments of cultural partialists – that what we do "around here" must trump property rights of outsiders, including their rights to immigration – are implausible. If what we say here is true, rights of outsiders to shared ownership of the earth cannot be rejected in the name of cultural self-determination. In this case we have developed this example with

regard to an example where, again, the reader will be naturally inclined to agree that the raiders' practices should be constrained. But the standpoint developed here implies that such cultural rights will not outweigh territorial rights *even* when the cultural practices at issues are of a "friendlier" sort.

To this last point, though, cultural partialists may respond by granting foreign individuals *some* rights over property – so long as that property is that foreign land occupied by those outsiders themselves. Our cultural practices, the insiders might say, may well not interfere with your quiet enjoyment of your land; but our right to enjoy our own way of life within our own borders, they might assert, should survive this challenge. If indeed we have developed a way of life requiring greater resources than our own, then surely our right to use these resources at home cannot be challenged by your purported territorial rights as motivated from the Common Ownership standpoint! (We may imagine, in this context, an Aboriginal Australian seeking the right to exclude immigrants by citing the cultural importance of a largely empty outback.) We, so such an objector could go on, can accept that a culture which chooses to raid the land of others has no right to continue its raiding, and that the reason for this is that such raids violate the territorial rights of outsiders. Surely, however, that does not commit us to thinking that the property rights held by outsiders in the common resources of the earth must always take precedence over the rights of cultures to self-determination. So what this objector questions is that our discussion of the raider case shows that *generally* cultural claims cannot outweigh claims based on Common Ownership, but merely that cultural claims cannot outweigh property base claims *in certain cases*.

The problem is that the rights we have examined are not limited to current residents. If, indeed, the earth is held in Common Ownership, then the rights of all individuals – including those individuals who are abroad, and make claims based upon shared rights to resources – must be considered in the allocation of resources. Once we have admitted that the territorial rights of others constrain the claims of cultural specificity, in other words, we are committed to examine all such rights, including the rights of foreign citizens. If we condemn the raiding culture for its lack of respect for territorial rights – as, we think, is appropriate – we must similarly condemn all those who fail to account for the territorial rights of outsiders through their cultural practices. The fact that that violation in question takes place on land not yet occupied by the violated party does not negate this fact; indeed, it is the fact that the violated party has a claim to the land in question that grounds that party's complaint. We are compelled to treat this case in a manner equivalent to the raiding case above. Our conclusion must be that the nature of the ownership of the earth prevents both sort of cultural claim to exemption from immigration.

7. Our second response to the claim of cultural immunity (i.e., the claim that considerations of culture outweigh the claims of common ownership) relies upon the fact that states may include more than one cultural group. To examine the moral force of a given political community insisting upon the right to more than its proportionate share of resources, we must imagine that on behalf of such a political community a clear statement can be made of what particular culture is supposed to be defended. The problem, however, is that few states contain only one cultural or national group within

their borders (Kymlicka (1995)). This makes the assertion of a cultural exception from principles of resource allocation difficult.

The reason why the assertion is difficult, however, might be understood in at least two distinct ways. In what follows, we will discuss a strong version and a weak version of a principle of cultural equity, which we understand as the moral principle standing in a tension with the assertion of cultural exceptionalism. The strong version, most at home in liberal democratic societies, insists that the political rights of minority group members are violated when assertions of cultural immunity are made. On this analysis, the state making a claim of cultural exception is prohibited from doing so because this would illegitimately marginalize residents who are not members of the dominant group. The weak version, in contrast, looks only to the territorial rights (rather than citizenship rights specific to liberal states, or possibly other particular political associations) of such minority group members, and argues that, under the particular condition that the defended culture could not exist but for their presence, the claim of exception must include the cultures of all territorial residents – especially the members of the territorially necessary subordinate group.

The strong version relies not upon the territorial rights of the group members in question, then, but upon their political status as citizens of the state in question. For a state to assert that it has a right to more than its fair share of resources as a means to defending a particular culture, that culture itself must be morally permissible. That, however, might not be the case if the culture contains elements of disrespect to members of the minority community (Blake (2002)). Take the project of White Australia, in which the Australian government sought to defend the cultural norms and interests of white

Australians, aiming their policies on immigration towards this end. This was a morally impermissible project, not merely because of its racist nature, but because it sent an objectionable message of disrespect to non-white Australians. These citizens – including, but not limited to, Aboriginals – were implicitly told they were not part of that set of persons whose interests defined the purposes of government action. It does not take much political philosophy to understand why this message is not one that a legitimate liberal government may send to its citizens, whose lives are being made within the territorial confines of the state.

This strong version of a principle of cultural equity relies upon the notion of political equality, and argues that the demand for cultural exception from resource limits may be illegitimate if made within a multicultural society. A state seeking to use more than its fair share of the world's resources, that is, and justifying this with reference to the cultural needs of its citizens, may be precluded from doing so when this justification would contradict the political rights of other citizens. In this, however, the strong version requires us to accept a liberal position on political rights.

A weaker version of the thesis of cultural equity, however, may apply in a broader range of cases (that is, is not limited to the context of liberal states or perhaps other forms of political association in which the considerations just presented apply), in that it does not require us to accept any particular view of what political institutions owe their citizens. Here, we do not make any statement that legitimate states must treat all citizens as moral equals in their policies or practices. We seek only to identify one set of cases that will register as problematic if states claim more resources than they should use while

at the same time the territorial presence of those disfavored group members is needed for the survival and flourishing of the dominant cultural group.

We may imagine the contours of such cases as follows: take a society in which more than one culture is present. Imagine, further, that the dominant society whose interests are the basis of the extended resource claim could not maintain their present culture without the presence of some alien or subordinate class. If this is the case, we suggest, the dominant culture would not be able to defend its current existence, let alone ask for more territory than would regularly be allotted to it, without acknowledging the territorial rights of those subordinates. The point is that if a way of life requires two groups to be present on the same territory anyway, one group cannot cite its own distinctive way of life as a means of keeping outsiders out, or as a reason for demanding more territory than they should have. Since their own way of life requires the presence of outsiders; they are preempted from pleading immunity from outside infection (or, to use a legal term, estopped from doing so).

Consider an example. The United Arab Emirates is comprised of approximately 20% citizens whose culture and ethnicity are Arabic and 80% foreign laborers, whose cultural and ethnic backgrounds are mixed. Imagine, in this context, that the government of the Emirates made a claim against the resource principles we here identify, arguing that the maintenance of their distinctive Arabic form of life required a greater per capita resource share than V_S/P_S would allow. We believe they have no such claim, for one reason: the form of life enjoyed by the 20% of citizens is causally dependent upon the presence of the 80% non-citizen residents (Sengupta (2006)). The form of life enjoyed by the 20% would be impossible were it not for the continued residence in the Emirates

of the 80% of non-citizens. In such a case, the culture of the 20% of citizens cannot be considered in isolation, and used to ground an immunity from resource-based challenges, let alone as a basis for more territory. The only form of claim which might be considered is one which reflects the interests and needs of all those who employ that land as a place within which their lives are developed.

So the Emirates could claim a cultural exception from resource pressure only if (that is, *at most* if) the way of life they defend includes *all* those whose labor is required for the maintenance of society. This line of thought does not require a notion of full membership in the liberal sense. If a given way of life requires the presence on the land of a certain group of individuals, that is, then the interests of those individuals must be taken into account in the defense of that way of life. To do otherwise would be to ignore the persisting territorial rights of the necessary but non-citizen laborers in such cases.[21] We must remember, after all, that those who claim the right to restrict immigration in the name of culture do so on behalf of a territorial state; therefore the claim of culture must encompass all those who make their homes and lives within that state's territorial limits.

8. The claims of culture, then, do not overrule territorial claims. Instead of arguing for that view by insisting on the greater weight of territorial rights based on Common Ownership, we have argued for it by taking on the claims of culture directly. In a first step we have argued that claims of cultural destruction are often overstated; instead, what

[21] We do not, here, claim that all cases of guest worker status or partial citizenship are morally illegitimate. Our claim is simply that, when a given way of life requires the presence of such workers, these workers must be included when that way of life is introduced as an attempt to block the moral rights of outsiders. In this, we suggest, the government making such an attempt may lose the right to exclude such individuals from citizenship. Nothing we say here, however, precludes the possibility that some forms of guest worker program are nonetheless morally permissible.

is at stake is cultural alteration, which is less objectionable anyway and more easily overruled by claims deriving from Common Ownership. Second, we have identified different scenarios (drawing on two distinct versions of a thesis of cultural equity) in which cultural claims to more territory than the Common Ownership standpoint allows a population to occupy are problematic on *internal* grounds. Cultural rights, then, are not generally sufficient to block the legitimate territorial claims of outsiders.

There are, however, several possible responses a state keen to avoid unwanted immigration might introduce by means of response. We consider one such possible response, recently given by Christopher Heath Wellman. This response looks towards freedom of association, and the fact that a right to immigration seems to violate a norm against coerced association. If successful, this response would resuscitate the claim that considerations of cultural affinity, understood in terms of freedom of association, suffice to rebut the demands of territorial rights. We may therefore consider this response as our last attempt to introduce cultural claims as a potential counter to our notion of shared ownership of the earth.

Individuals, we tend to think, have a powerful claim to freedom of association; liberal governments, in particular, tend to assume individuals have a right to be free from unwanted association with others. This right, moreover, is not held solely by individuals; those organizations and groups individuals create acquire similar rights in much the same manner. So we might think that insisting upon the moral right to immigration violates the rights of individuals to freely associate with others as they see fit (Wellman (2006)). The rights of private organizations are violated if they are forced to accept unwanted and unwelcome members; why should we think the political state should be any exception?

This argument, if successful, would undermine our contention that the status of outsiders as co-owners of the earth may ground claims to status as immigrants. We do not think, however, that the argument is successful. There are two reasons for this view. The first is that there is not always a right to be free from unwanted association. Look, for instance, at the marketplace, understood as a physical place. While I may prefer to shop in pristine isolation, untroubled by people I would rather not encounter, I have no right to do so. The marketplace, like the forum, has a certain character as accessible to the public. I do not have the freedom to take advantage of the marketplace without associating with other shoppers; the moral claims of these others have a certain status that precludes the effort. This is not to say that the importance of freedom of association disappears in face of such examples; it is only to say that the contours of others' rights may circumscribe my right to freely associate with others. If others have the right to access the marketplace, I have no right to shop without subjecting myself to their presence. Similarly, if we are right that some people have a right to immigration, I have no right to exclude them from membership and presence in my political society.

Our second reason for rejecting this argument goes to the notion of freedom of association as a concept. While we recognize the value of freedom of association for individuals, and for voluntary associations, we are not convinced that a similar value holds for political institutions. The purpose of the state is the political process of providing just governance to those subject to its jurisdiction. The territorial reach of the state is justified through its ability to provide such political goods to those within its jurisdictional limits. Therefore the state may face moral limits and requirements not found in other forms of social institution. In particular, the state is only able to acquire

the right to freedom of association for itself by demonstrating that such a right is compatible with a political society whose coercive reach is justifiable to all. This demonstration, we think, will be difficult at best. If what we have said is correct, legitimate use of land for political purposes requires some respect for the territorial rights of outsiders. So a state cannot view itself as free to associate with only those individuals approved of by its current membership. Even if individuals may do this in their private lives, the state they have made faces other requirements. These requirements may be even more pressing in a world characterized by widespread dispossession and poverty; whatever force freedom of association has, we argue, it has little applicability in such situations. There is no freedom of association, after all, in a lifeboat.[22]

9. We hope we have established that Common Ownership stands as an independent constraint on legitimate immigration policy. We believe we have given some reason to think cultural considerations cannot defeat the moral importance of common ownership of the earth's surface. We conclude by extending our analysis, asking about the discretion a state has in admitting immigrants. Specifically, if a state accepts its burden of immigration as we understand it, may it use cultural criteria in deciding which immigrants to admit? What principles of immigration are legitimate, once the limits we have identified are respected?

[22] Wellman introduces a powerful argument in favor of the state right to freedom of association when he argues that without such a right, we would have no reason to condemn an American takeover of Canada if such a takeover would produce a just North American society. Our contention is that this example calls upon a history of colonization and injustice; all such actual takeovers have been accompanied by violence and injustice. Were we to face an actual example of such a peaceful and effective takeover, we acknowledge, our position would give us few resources to condemn it.

This – the second of our two topics introduced in section six, above - is a large topic, and we cannot do it justice here. We conclude with three notes that emerge from what we have said. The first echoes what has been discussed above in connection with culturally diverse communities. A homogeneous society using cultural criteria for admission is a different phenomenon from a diverse society employing such measures. Even if Japan may use cultural criteria in admission, it is not clear that England or the US is entitled to do so. The second thing to note is that the common ownership of the earth may place some limits upon the ability of any state to pick and choose among immigrants based upon cultural identity – even once the state has accepted its full burden of immigration as our perspective has identified it. This fact emerges once we reflect that the most vulnerable individuals of all are those who have few cultural kin to provide them with aid. The use of cultural criteria in admission may cause us to overlook the needs and interests of cultural "strangers;" while we have avoided speaking of refugee and asylum law in the present context, it seems clear that some such individuals will have a claim to protection through immigration status – even when no community of cultural affinity may be identified to give these individuals sanctuary. While we have not emphasized this fact at present, our belief is that the territorial approach to immigration can ground some aspects of refugee status; this fact, in turn, means that our attention must be drawn not simply towards those immigrants we find culturally attractive, but all those who have a legitimate demand for immigrant status.[23]

[23] We do not mean, of course, that any one state must admit all such immigrants; our perspective would identify such refugees as a global problem whose costs must be borne by all territorial states. Blake and Risse (forthcoming) also discuss the question of how much discretion states are allowed to exercise in their immigration policies. What is emphasized there is that criteria of relative over- and under-use must play a large role in assessing priorities in immigration policies, but also that once those priorities are satisfied, countries have a certain degree of discretion in admitting immigrants. The reflections offered above are

The final point we note is that nothing in what we have argued makes it illegitimate for a state to demand a certain amount of cultural assimilation from its immigrant population. The territorial perspective implies that individuals have certain rights in virtue of their status as co-owner of the earth; these rights do not, however, include the right to be free from any and all forms of assimilation – especially those designed to ensure the smooth functioning of state institutions. This fact, we think, might make the demand for cultural affinity among prospective immigrants less pressing. If it is possible to transform strangers into cultural neighbors, perhaps the need to identify cultural neighbors prior to immigration is less pressing. This is not to say that all programs of assimilation are morally permissible. Yet here is nothing in what we have said which prevents the general project of transforming of immigrants into citizens through programs of assimilation.

If these assertions are true, the demand for cultural affinity amongst potential immigrants may be seen now to be less pressing – and less morally central - than it might have at first appeared. This conclusion, however, exists in the world of ideal theory, in which both aliens and citizens may be reliably expected to accept one another in a spirit of mutual respect. In our world there may be citizens who refuse to engage in representative politics with recent immigrants; there may also be immigrants who refuse to adopt the political morality of liberal democracy. Against these facts, our approach – as ideal theory – can give no purchase. We have sought only to provide an ideal framework for the evaluation of immigration policy, one respecting the Lockean insight

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consistent with those views and help illustrate the complexities involving in translating the Common Ownership standpoint into immigration policy.

that territorial rights are persisting and vital constraints on political governance. We hope to have given some reasons to think this territorial perspective a valuable addition to the growing literature on immigration. If our perspective cannot answer all questions, this is evidence that much work remains to be done.

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