Immigration and Original Ownership of the Earth

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

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¹ See ABRAM CHAYES & ANTONIA H. CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENT (1995). See also F.H. HIN- SLEY, SOVEREIGNTY 26 (2d ed. 1986) (giving a classical statement of the view of sovereignty as "absolute" power); Robert O. Keohane, Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty in International Society, in WHOSE WORLD ORDER? UNEVEN GLOBALIZATION AND THE END OF THE COLD WAR (Hans-Henrik Holm & Georg Sorensen eds., 1995) (attempting to characterize sovereignty in a way that accounts for increasing political and economic interconnectedness); CHRISTOPHER W. MORRIS, AN ESSAY ON THE MODERN STATE (1998) (arguing that such a stance not only fails to describe the reality of states, but is also undesirable); Mathias Risse, What We Owe to the Global Poor, 9 J. ETHICS 81 (2005) and Mathias Risse, What to Say About the State, 32 SOC. THEORY & PRAC. 671 (2006) (arguing in support of states). What "in principle"
What must be explored, then, are the limits of normatively plausible sovereignty. How bad does a government have to be for outsiders to be allowed to interfere? What responsibilities does a country incur because of its contribution to global warming? What obligations arise through trading? In this paper, we explore another pertinent question: to what extent is a country allowed to influence who lives on its territory by regulating immigration? The angle from which we approach this question continues to be neglected even now that questions of global justice are receiving much attention. Immigration amounts to a change in political relationship, as immigrants alter their standing within one community and acquire a status elsewhere. Yet, it also amounts to an alteration in physical relationship, since the immigrants acquire a relationship to a territory, making a life for themselves with the resources offered by a part of the earth. We base our exploration of these questions on reflections on the original ownership status of the earth. Since the earth is simply there, with no one deserving credit for it, a plausible view on original ownership is that all humans have some sort of symmetrical claim to it. The philosophically most plausible conception of this collective ownership needs to be clarified. This is not to say that the world’s territory now ought to be redistributed. Instead, we contend that the collective ownership status of the earth may limit acceptable regimes of property, including regimes of immigration. Our views will be compatible with states controlling property within their boundaries. However, this will have to flow from an argument assessing how to understand the view that the earth is originally collectively owned by humanity. (“Original” ownership is not related to time. It is a moral status that the earth may have and one that would have conceptual and moral priority over individual appropriation.) The standpoint of collective ownership has potential to be illuminating for a range of other issues as well as arise in debates about global justice, but here we are merely concerned with immigration. We are not the first

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

3. We use the term “resources” for materials that are present on this planet without human contribution (air, soil, raw materials such as minerals, coal, and water). David Schmidtz objects to the picture of the lucky first-comers who effortlessly appropriate and leave little for others. David Schmidtz, The Institution of Property, in ENVIRONMENTAL ETHICS: WHAT REALLY MATTERS, WHAT REALLY WORKS I (David Schmidtz & Elizabeth Willott eds., 2002). Yet if the earth originally is common property, appropriation must be constrained by this fact, regardless of whether it was a joy or a pain to be first occupiers. Even if there is a duty to cultivate wasteland, as Schmidtz suggests, use of the privatized property will be constrained by the original ownership status.
to assert such ownership or to deduce its implications for the movement of individuals. Kant, for one, thought the communal possession of the earth's surface is one basis of the cosmopolitan right of resort. According to Kant, this right does not entitle one to immigration, but grants mobility and safety in foreign lands. Yet, no reason is given for the relatively restricted nature of this right. More robust rights to immigration emerge from a fuller accounting of such ownership.

Most debates about immigration concern the policies of specific nations. A significant amount of social science literature has emerged around the question of what forms of immigration are best for a particular state. What is "best" for a country may be hard to assess; it can turn

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4. See Immanuel Kant, *I The Metaphysics of Morals: Metaphysical First Principles of the Doctrine of Right §§ 6, 13* (Mary Gregor ed. & trans., Cambridge Univ. Press 1996) (1797); see also Immanuel Kant, *To Perpetual Peace: A Philosophical Sketch* 16 (Ted Humphrey trans., Hackett Publ'g 2003) (1795) [hereinafter Kant, *To Perpetual Peace*]. For a commentary, see A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* 179–96 (2001). The question of the original ownership of the earth greatly exercised political theorists in the seventeenth and eighteenth centuries. Among the urgent intellectual questions of that age were questions of the legitimacy of colonial acquisition and ownership of the seas and questions related to views about the original ownership status of the earth. See Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant* 207–34 (1999). See generally John Kilcullen, *The Origin of Property: Ockham, Grotius, Pufendorf, and Some Others* (2001), http://www.humanities.mq.edu.au/Ockham/wprop.html (providing medieval background of this debate). The ownership perspective is not commonly present in contemporary debates about global justice. However, lest one finds this angle rather peculiar, one should keep in mind the historical dimensions of these issues.


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. Yet, this standpoint tends to view immigration as a privilege and neglects to ask whether it is disregarding duties to would-be immigrants. Hence, this literature would benefit from more normative inquiry. We aspire to fill in this gap by focusing on whether the physical aspect of immigration provides general constraints on immigration policy. One may even talk of a human right to immigration based

7. BORJAS, HEAVEN’S DOOR, supra note 6, at xiv, 16, 186–88:

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 of 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.

Borjas counts immigrants among the beneficiaries, but does not count those rejected for immigration among those at whose expense the respective policy goes. Borjas later refers to questions of fairness to those excluded, but without engaging them in depth. Peter Brimelow calls immigration “a luxury for the United States, not . . . a necessity.” PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER (1995) (implying that there is no obligation to outsiders on this matter). Roy Beck expresses outrage at the United States government for accepting more immigrants allegedly to keep wages low. ROY BECK, THE CASE AGAINST IMMIGRATION: THE MORAL, ECONOMIC, SOCIAL, AND ENVIRONMENTAL REASONS FOR REDUCING U.S. IMMIGRATION BACK TO TRADITIONAL LEVELS (1996). No question is raised about entitlements of would-be immigrants.

8. Some countries offer support for new immigrants, but none take redistributive measures to give immigrants credit for being latecomers. For a survey of how U.S. states aid immigrants, see Bill Ong Hing, Answering Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies, 40 Brandeis L.J. 861 (2001). For an account of the European Union’s efforts, see COMM’N OF THE EUROPEAN COMMUNITIES, FIRST ANNUAL REPORT ON MIGRATION AND INTEGRATION (2004), available at http://ec.europa.eu/employment_social/employment_analysis/imm/com_508_en.pdf. Some have argued that borders are an economic oddity since returns to labor depend on one’s country. See James E. Anderson & Eric van Wincoop, Trade Costs, 42 J. ECON. LITERATURE 691 (2004). This view was also famously defended by Adam Smith and Milton Friedman. Under such a view, immigration is a solution to an impediment of the market, one that should follow naturally now that constraints on the movement of services, goods, and capital are lifted more and more. However, such a view is justified only if little can be said for the validity of borders, which in turn must be assessed through an inquiry into the nature of original ownership.
on original common ownership. While this is a useful way of thinking about these questions, we will not pursue them in these terms, so as to avoid a belaboring introduction of machinery needed to work with such vocabulary.\(^9\)

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

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

\(^9\) We ignore two groups who may demand access. The first is individuals with a morally overwhelming case for entry independent of any right to immigration based on original ownership; the second consists of those with an overwhelming case for rejection. It is unclear how to draw the contours of these groups, but moral questions about immigration per se arise about people who belong to neither, and we assume that third group is non-empty. A reference to David Miller and Christopher H. Wellman is appropriate. Miller rejects standard arguments for open borders, his main point being that the alleged rights grounding such a demand do not correspond to duties of others. David Miller, Immigration: The Case for Limits, in CONTEMPORARY DEBATES IN APPLIED ETHICS 193, 196–98 (Andrew I. Cohen & Christopher H. Wellman eds., 2005); Christopher Heath Wellman, Immigration and Freedom of Association, 119 ETHICS 109 (2008). The common-ownership standpoint, however, shows how such duties can be generated.

Nevertheless, our overall project is friendly to Miller’s because the (culture and population-size driven) reasons for exclusion he favors can be reproduced from the common-ownership standpoint, except that the culture-based argument must be qualified. Wellman argues for a country’s right to control immigration by appeal to the value of freedom of association. Any person X has the right to associate with any Y, says Wellman, but only if Y consents; since we attach much value to such freedom, a right to regulate immigration follows. From the standpoint developed here, one must ask whether such freedom of association holds regardless of the size of the association, and we respond negatively. But again, our overall attitude towards this approach is friendly, since much of it can be reproduced from our standpoint, except that, again, arguments to restrict immigration must be modified.
forth questions about the extent to which immigration can discharge a
duty to aid. Moreover, it entails that certain responsibilities are a matter
of justice, rather than charity.

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

It is appropriate to examine such property rights for two reasons:
first, such resources are necessary for any human activities to unfold; sec-
ond, those resources have come into existence without human interfer-
ence. These reasons must be considered when individual
accomplishments are used to justify property rights that are strong
enough to determine use across generations. Consider the argument
from first occupancy, according to which land belongs to first takers.
This view is problematic because the sheer fact that one came to a place
first is not of sufficient moral weight to grant ownership that resonates
through the ages given that the resources are needed by all and their
existence is nobody’s accomplishment. Yet precisely this is common
practice. The same difficulties are true for a Lockean labor theory of
acquisition.

Egalitarian Ownership is the view that the earth “originally” belongs
to humankind collectively, in the sense that all humans, no matter
when and where they are born, must have some sort of symmetrical claim

Pub’l’g 1974) (1651).

11. For a discussion of property, see generally Tony Honoré, *Ownership, in Mak-
ing Law Bind: Essays Legal and Philosophical* 161 (Tony Honoré ed., 1987); *see also*
*LAWRENCE C. BECKER, PROPERTY RIGHTS: PHILOSOPHICAL FOUNDATIONS* (1977);
and *ANDREW REEVE, PROPERTY* (Peter Jones & Albert Weale eds., 1986).

12. *See BECKER, supra* note 11, at 33–56 (listing the fundamental aspects of Lock-
ean Property Theory and its application); *see also REEVE, supra* note 11, at 51–57. *But see*
Gopal Sreenivasan, *The Limits of Lockeian Rights in Property* (1995) (enumerat-
ing problems and limitations of Locke’s account and citing the proposition that which
theory of property is followed may have implications for resource use over time such that
a generation may be morally precluded, for example, from depleting resources that might
be beneficial to future generations).

13. *Mathias Risse, How Does the Global Order Harm the Poor?,* 33 *PHIL. & PUB.
AFF.* 349, 359 (2005).
to them. ("Original" ownership, again, does not relate to time but is a
moral status.) We assert that this is the most plausible view of the own-
ership of natural resources, and this is so precisely because of the two
points mentioned above: namely, that the existence of the resources of
the earth is nobody's accomplishment, whereas they are needed for any
human activities to unfold. Egalitarian Ownership must be understood
as detached from the complex set of rights and duties civil law delineates
under the heading of property law. 14 At this level of abstraction from
conventions and codes that themselves have to be assessed in relation to
views on original ownership, all Egalitarian Ownership states is that all
humans have a symmetrical claim to original resources.

The considerations motivating this view speak to raw materials
only, not to what human beings have made of them. Perhaps people
born into a given society should not be favored in terms of access to its
achievements.15 We return to this issue below, but it should be clear
that, say, an egalitarian standpoint of sorts on collective ownership has
simply no implications for how one thinks about redistributive questions
that arise about entities that would not exist without human interference.
The distinction between what "is just there" and what has been shaped
by humans is blurred, for example, for land that human beings have
wrested from the sea, or for natural gas in garbage deposits that can be
harnessed. But by and large, we understand well enough the idea of what
exists without human interference, but that too is a point to which we
return below.

We can now see how original ownership is relevant today. We seek
principles by which we may legitimately understand resources as belong-
ing to groups or individuals. Our view entails that resources, including
land, ought to be seen as shared property unless principles of allocation
are justifiable to all who have a potential interest in their use. One form
of justification may draw on the distinction between natural resources
and other things; the more my labor is responsible for an object's exis-
tence (at any rate for its existence as that object),16 the more plausible is
my right to it. The original right of property over the earth is now best
seen as a right to have justified to us whatever principles of allocation
exist, in terms we could not reasonably reject.17

14. See generally Honoré, supra note 11.
15. Yet an argument for that view would differ from the one presented here. See
16. The point of that qualification is to distinguish the statue from the clay from
which it is made. For that distinction, no creation ex nihilo needs to be assumed.
17. See T.M. SCANLON, WHAT WE OWE TO EACH OTHER 195–97 (1999) (dis-
cussing the notion of reasonable rejection). One might say that, while it does make sense
to ask about the original ownership of resources, originally, resources are unowned, and
their appropriation is not subject to moral considerations. Yet if it is granted that ques-
tions 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
In the next step, we must differentiate among different conceptions of Egalitarian Ownership. Such conceptions differ in terms of how they understand the symmetry of claims individuals have to original resources. There are, roughly, four types of ownership-status an entity may have: no ownership; joint ownership, which we understand as 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.

Joint and common ownership are differentiated by the package of rights they provide owners against one another’s claims. 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, all individuals would have the right to decide how they would make use of the grazing land. Each individual would have the right to feed their cattle on the Boston Common according to his or her own tastes. Joint ownership, in contrast, creates a wider set of rights. If the Common is held 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.18

Thus, 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 package of the world’s

have to ask these questions in terms of original acquisition of what has no property status, rather than in terms of privatization of what is collectively owned. Either way, it will be hard to eliminate the intuition that all of humanity has a symmetrical claim to resources. This point is important because some might hesitate to endorse our starting point that the earth has any sort of positive ownership status. But for our argument it makes no difference if one starts with the assumption that the earth originally has no ownership status.

One reason for rejecting the Common Ownership perspective is that it seems to capture an obsession with ownership peculiar to particular cultures. In addition to the point just made, one could respond to that by insisting that the global order within which questions of ownership must be assessed is shaped by considerations of ownership; it is by thinking through this ownership perspective that one arrives at the idea of common ownership of the earth. Another objection is that in certain cases of unowned property, we have different intuitions: the twenty-dollar bill on the ground belongs to whoever finds it. Yet this is so because such cases are infrequent and deal with relatively minor values. This stance fails for sacks of hundred-dollar bills, and we would want a better story even about twenties if they appeared on trees only grown on some people’s property.

18. Risse, supra note 13, at 360. The only constraint against other owners permissible here might be a constraint on destruction of the land as useful resource; each person could be required to bring no more than a certain number of cattle, if this condition is justified by respect for other co-owners and the concern to avoid the infamous Tragedy of the Commons.
resources. On any of these interpretations, the ownership rights thereby established would be pre-institutional, and in that sense, natural rights. These conceptions, that is, all carve out a space of natural rights that constrain any more specific form of property regime that might be developed. How are we to decide which of these conceptions (each of which, once further detail is added, could be developed in different versions) is the preferred interpretation of Egalitarian Ownership?

Political philosophers in the seventeenth century, such as Grotius, Pufendorf, Selden, Filmer, and Locke, were involved in complex debates about how best to interpret God's gift of the earth to humankind, and a similar debate needs to be had now with regard to these different conceptions. Since this theological route is no longer open to us, we must instead base our decision on two factors. The first is the independent plausibility of the conceptions themselves—that is, whether they represent conceptions that are coherent with other strongly held moral convictions. The second is the extent to which the conceptions can claim to be good interpretations of the two intuitions motivating Egalitarian Ownership—that is, the intuition that natural resources are valuable and needed for human activities, and the intuition that their existence is no individual person's accomplishment.

We submit that, on these criteria, Common Ownership is the most plausible conception. We cannot offer a complete argument for this proposal here. What we can offer, however, is elaboration on what common ownership means, what it entails, and why it should be preferred to the other conceptions as an interpretation of Egalitarian Ownership. After the seventeenth century, when this topic was central to political thought, too little has been written on collective ownership of the earth for us to be able to resort to a well-established literature. The main point of this study, however, is to establish a connection between immigration and the standpoint of common ownership rights. If this standpoint is accepted generally, such acceptance would then also create space for debate about the details of the components of this account.

The core idea of common ownership that we endorse is that all co-owners ought to have an equal opportunity to satisfy their needs to the

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19. See Tuck, supra note 4, at 78–165 (enumerating various arguments regarding how man comes to own property and its implications in the conduct of war); see generally Stephen Buckle, Natural Law and the Theory of Property: Grotius to Hume (1991) (enumerating more arguments on how man comes to own property).

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

21. See Risse, supra note 13, at 360–64 (offering supportive arguments for Common Ownership as the preferred conception of Egalitarian Ownership, by showing why the other possible conceptions are independently problematic).
extent that this turns on obtaining collectively owned resources. This formulation turns on three elements. First, it emphasizes an equality of status—all individuals, on this account, are co-owners. Second, it points out that this equality of status concerns opportunities to use these resources as means to the satisfaction of needs. There is, on this account, no sense in which each co-owner would be entitled to control a specific chunk of what is collectively owned, let alone to the support of others in getting such a share. Finally, this formulation addresses only those needs which can be satisfied with resources that are collectively owned. Nothing at all is said here about anything to which the original intuitions motivating Egalitarian Ownership do not apply, including entities whose existence is not independent of human activities.

To put all this in terms of the Hohfeldian rights terminology, common ownership rights must minimally include "liberty-rights" accompanied by what H.L.A. Hart calls a "protective perimeter" of "claim-rights." To have a liberty-right is to be free of any duty to the contrary, and obviously, common ownership rights must include at least rights of that sort; that is, no co-owner is under any duty to refrain from using any of the resources of the earth. Were the co-ownership status reducible to such rights, we would end up with the sort of owner-ship rights that apply in a Hobbesian state of nature. That is, while no individual is under any duty to refrain from using resources in any way, no individual is under any duty not to interfere with such use either, and so nobody would be in any position to create claim-rights against others (no matter how minimal) by privatizing commonly owned resources at the exclusion of others.

But the symmetry of claims postulated by Egalitarian Ownership demands more than mere liberty rights. After all, the intuitions supporting the latter are that external resources are simultaneously nobody's accomplishment and needed by all humans. In light of these two points, to count as an interpretation of Egalitarian Ownership, Common Ownership must guarantee some minimal access to resources, that is, impose duties on others to refrain from interference with certain forms of use an individual might apply to collectively owned resources. Otherwise some individuals might legitimately be completely deprived of access to resources.

We must therefore add that protective perimeter of claim-rights to the liberty-rights, perimeters of a sort that for instance Grotius and Locke...
acknowledge: Grotius argued that an individual may take from nature what she needs for survival, and that others are not allowed to interfere with this process, whereas Locke grants much further-reaching pre-conventional property rights that arise through "mixing" one's labor with what is originally collectively owned. We submit that enough mileage can be obtained from the original intuitions supporting Egalitarian Ownership to require that common ownership rights (for Common Ownership to serve as an interpretation of Egalitarian Ownership) be conceived of as giving rise to moral rights to use enough resources to satisfy some minimal set of human needs. On this analysis, no co-owner may justly interfere with the actions of another to the extent that they serve to satisfy basic needs—a position roughly similar to that taken by Grotius. We do not think these intuitions ought to be pressed beyond that. Equal Division and Joint Ownership, in particular, both press these intuitions further, and thus too far: no requirements of actual equality in one's share in originally collectively owned resources, or participation in a collective decision-making process emerge from these intuitions. Again, to the extent that common ownership does capture an equality of status, it is merely an equality of opportunity to satisfy one's basic needs to the extent that those turn on collectively owned stuff.

One more right must be added to the bundle of rights captured by Common Ownership. Within a pre-institutional state of nature, where the level of technology and organization is minimal, liberty rights to external resources plus a protective perimeter of claim rights would plausibly guarantee individuals an equal opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources. However, we must also make sure that individuals' co-owner status still can be maintained once individuals have left behind this state of nature and started to live under more complex institutional arrangements, including complex property conventions. The development of such arrangements—in particular, of course, the state system—makes it a difficult task to say just what common ownership amounts to. After all, living in such arrangements means living in sophisticated economies in which nothing much could be done without external resources, but in

25. See Buckle, supra note 19, at 35-36 (people may take what they need for survival but to take from someone is unjust).

26. Id. at 151. There is no need to elaborate on these historical figures since they only serve illustrative purposes here.

27. See Buckle, supra note 19, at 1-52. Locke, again, grants much further-reaching natural rights to property than acquisition for the purposes of satisfying needs. See generally Sreenivasan, supra note 12 (for the proposition that there are well-known problems with Locke's expansive view of natural rights as encompassing more than just need-based property acquisition). Locke's proposal also gets little support from the intuitions behind Egalitarian Ownership (since it argues for natural rights that go much further than these intuitions could support). We mention Locke here merely for illustrative purposes.
which most of what has economic value comes attached with special entitlements in a manner in which external resources do not. After all, at this stage of human history, it is implausible to think of natural resources as if they were mostly unclaimed. Resources are enmeshed in a web of legal and moral patterns of property rights, at both the national and international levels. The moral status bestowed by Common Ownership, then, must be able to survive this transition to more specific forms of property regime.

Despite the expected difficulties in spelling out what this will amount to, we think this transition is possible. Indeed, the notion of Common Ownership will be able to provide some critical analysis of what form of property regimes may be possible. We may say—in addition to what has come before—that property conventions must, on this conception, be adopted such that the rights of co-owners are preserved in the transition from pre-legal to legal society. In particular, we argue, the transition must be made in such a way that co-owners do indeed maintain an *equal* opportunity to satisfy their needs to the extent, of course, that this turns on obtaining collectively owned resources.

To put this into Hohfeldian terminology, co-owners have *immunity* from being placed under living arrangements that create highly differential opportunities of that sort. This immunity amounts to a standing demand that individuals’ moral status as equal co-owners be protected regardless of what particular property arrangements are adopted across the globe. Common Ownership is a relatively weak notion of collective ownership. It 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. It does not imply that individuals receive an equal share of resources, and that others have a duty to help provide this share, nor does it imply that a collective decision making process is required to do anything with resources. Still, Common Ownership is a conception of Egalitarian Ownership, and its collective aspect must be meaningful. It does require that use of collectively owned resources abide by constraints that ensure each co-owner’s status is respected.

For the remainder of this study, we assume that Common Ownership is the preferred interpretation of Egalitarian Ownership. While we have not discussed Equal Division and Joint Ownership in any depth, we hope that at least a prima facie case for this view has been made. It should be noted that Joint Ownership is already a tremendously strong view (and would, as far as immigration is concerned, have much more demanding consequences than Common Ownership), whereas Equal Division actually leads to the same proposal as far as immigration is concerned (as we will point out again at the relevant moment below).

Once we acknowledge that the earth is collectively owned, it follows that immigration policies must be assessed with this ownership status in
mind. How specifically to do this depends on what conception of Egali-
tarian Ownership is the preferred one. Common Ownership does not
grant entry to a country under just any circumstances. Still, certain
forms of use are obviously inconsistent with it. Suppose the population
of the United States shrank to two, other countries remaining unaffected.
Suppose those two can control its borders by means of sophisticated elec-
tronics. Clearly others can demand entry (as this is an obvious case in
which their immunity from being placed into arrangements in which
their opportunities to satisfy their needs by accessing collectively owned
resources are equal is violated), and the perspective of original ownership
helps us understand why. In a manner parallel to the Lockean proviso,\textsuperscript{28}
Common Ownership gives individuals a claim to have exclusion justified
to them.

A special feature of the situation under which individuals can claim
to have exclusion justified to them is that the commonly owned area (the
earth, or anyway most of its land mass) is entirely divided up by states.
Co-owners born into one state may be denied entrance to the others (a
fact that like no other, statistically speaking, shapes life prospects),\textsuperscript{29}
without having other areas to retreat to. It is under such conditions that
we must explore co-owners' claims to consideration. The establishment
of states and other political structures in which particular property con-
ventions are accepted is not per se inconsistent with the liberty rights or
even the protective perimeter of claim rights that are part of the bundle
of common ownership rights introduced above; we must make sure,
however, that states do indeed abide by the immunity granted to individ-
uals from living under arrangements in which their equal status of as co-
owners is undermined. We must ask then, for this immunity to be
respected, what are the conditions under which individuals can demand
permission to immigrate in virtue of being co-owners? To reverse the
perspective: under what conditions do people not need to share their
territory?

Yet before we pursue this question further we must address one issue
that may render this inquiry moot. Some have argued that it lies in the
nature of a just political relationship that there can be no barriers to
immigration. If so, there is no need to explore under what conditions
the sheer fact that somebody is a co-owner would give her a claim to
immigrate. Conversely, if there is nothing in the nature of a just political
community that excludes immigration constraints, our inquiry becomes
important. We assume a just political community is just in the liberal

\textsuperscript{28} See John Locke, Second Treatise on Government § 27 (C.B. Macpher-
son ed., Hackett Publ'g 1980) (1690) (explaining that exclusion from the common right
is proper only where there is "enough, and as good" for others).

\textsuperscript{29} See Branco Milanovic, Worlds Apart: Measuring International and
Global Inequality (2005) (supporting the proposition that inequality among countries
is much larger than inequality within states).
sense. While other views require different ways of assessing the question of whether features of justice exclude immigration restrictions, we choose to engage with the liberal view not simply because we are sympathetic to it, but also because its compatibility with immigration restrictions has recently mustered considerable discussion. Liberalism is committed to moral equality of all persons; it is this commitment that has been used to argue that immigration restrictions are at odds with liberal justice. If such an argument is accurate, then it appears our present paper is simply unnecessary; we have no need to inquire about specific rights to immigration based on considerations of original ownership if a general and universal version of this right exists.

The best-developed version of this argument is presented by Joseph Carens.\textsuperscript{30} Liberalism, Carens notes, condemns the use of morally arbitrary facts about persons to justify inequalities; examples of these facts are race, sex, and ethnicity.\textsuperscript{31} A political community that treated people differently on the basis of such features would be illiberal and unjust. Yet citizenship seems as arbitrary as any of those factors. None of us chose our place of birth, and we deserve neither advantages nor disadvantages for it. Carens compares the existence of states to medieval feudalism. Restricting immigration, on this view, is as offensive as other, perhaps more obvious cases of injustice because it differentiates rights based upon one's origins.\textsuperscript{32} To complement this argument, Carens offers a cosmopolitan reading of Rawls, according to whom, the Original Position used to derive principles of justice is extended globally.\textsuperscript{33} 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.\textsuperscript{34}


\textsuperscript{31} Carens, \textit{Aliens and Citizens}, supra note 30, at 252.

\textsuperscript{32} \textit{Id.}; see also Carens, \textit{Migration and Morality}, supra note 30, at 26–27 (elaborating on the feudal metaphor).

\textsuperscript{33} Carens, \textit{Aliens and Citizens}, supra note 30, at 261–62; see also Beitz, supra note 15; and Thomas W. Pogge, \textit{Realizing Rawls} (1989).

\textsuperscript{34} Carens, \textit{Aliens and Citizens}, supra note 30, at 262.
We may respond to this argument, briefly, by noting that we disagree with Carens’s interpretation of Rawls. Some readers of Rawls, including Carens, view him as developing a form of moral argument intended to apply to all forms of human interaction in which benefits and burdens are created. On this analysis, Rawls’s original position is a device whose moral relevance is not limited to the context of the nation-state; if something is demanded by the original position domestically, it must similarly be morally demanded by the original position elsewhere, including, notably, the realm of international politics. This interpretation, we think, ignores the specifically political character of Rawls’s arguments regarding the original position. We read Rawls’s arguments here as giving a justification for political coercion, rather than a blanket approach to moral and political evaluation.

We can be brief with our discussion of Rawls’ scholarship, since we have discussed these issues elsewhere in greater depth. We should note, however, that the intuitive appeal of Carens’s position persists even if Rawlsian thought is ignored. Carens’s argument, at heart, is one from moral arbitrariness. What is arbitrary, on this account, should not be permitted to ground a difference in life chances. This argument has considerable force. It does not, however, seem to us sufficient to ground a general right to immigration.

Although Carens is correct that moral equality cannot stop at the border, this does not mean shared citizenship is a morally irrelevant factor such as race or ethnicity. While shared citizenship has arisen in a manner for which individuals deserve neither credit nor blame and is in that sense arbitrary, this does not mean it is morally irrelevant. A border marks something of moral importance, an area of shared liability to a community. The state can do powerful things to those living within its borders that it cannot do to others, and the special demands on the justifiability of its institutions and measures vis-à-vis those subject to its authority create a morally relevant relationship among its subjects. To use an example, it is one thing for the United States to prevent a Torontonian from moving to Boston and quite another for the United States to prevent a Buffalonian from moving to Boston. The latter form of restriction requires more justification, simply in virtue of the fact that the Buffalonian is already part of the community of persons living under United States legal coercion. This conclusion persists, moreover, even if citizenship in Canada or the United States is regarded as utterly arbitrary. Moral equality does not require equal political rights, and so does not require political equality. What moral equality means depends on the political structures shared by individuals. So shared citizenship is not like

shared status under feudalism. The right to mobility is not an implication of moral equality. Liberal principles of justice are not inconsistent with immigration constraints.  

We hope this is sufficient to rebut Carens's argument for a general and universal right to immigration. We would emphasize, however, that we take no specific position here on the proper interpretation of global justice more generally. Our argument is intended to be compatible with a wide variety of positions—including some that might find independent rights and restrictions on immigration from other factors, including consideration of global distributive justice. We do not think of our argument, that is, as the only valid pattern of argumentation regarding international justice and immigration. Our argument at present is intended to ask only what forms of immigration restrictions might emerge from consideration of original ownership of the earth. It is to this task that we now return.  

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

What is behind such assertions is an idea that is presumably often misused but that, under the view developed here, has a valid core. As we saw above, when a system of states is erected in collectively owned space, the co-owners’ equal status must be preserved, as far as their equal opportunities for access to collectively owned resources is concerned. Of course, economies at this stage of history operate in such ways that only few people make a living directly by appropriating or handling resources taken from the common pool. This implies that, within societies, individual claims to collectively owned resources might well be satisfied in ways other than by granting them an equal opportunity of access to external resources. (Common ownership claims in this way might support a basic welfare system.) But the erection of a state system must also be justifiable to all co-owners in the sense that their opportunities of access to external resources, at least to the extent needed to satisfy their basic needs, must remain equal regardless of which state they live in. Let

37. Cf. Blake, supra note 6. The existence of states must also be justifiable to those who do not belong to a given state. But here the point is to insist that special demands of justifiability arise with regard to citizens, not that all features of the state and their existence must only be justified to members of the state.
us see, then, whether we can make sense of an idea of overuse and underuse that helps us capture the equality of status as co-owners that must be preserved by the erection of a state system.

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

World-market values would reflect demand for commodity sets in light of supply constraints. Prices reflect the usefulness of entities for human purposes given the state of technology and limitations on availability. This does not mean there could be no other sense in which the entities being assessed have value; nor that may those who possess resources do with them entirely as they please; nor that all of them would be for sale. Yet none of this is true for objects that are usually priced by market value. Using world-market prices also offers a simple way of reflecting technological constraints. Suppose we discover minerals far below the surface, but do not have the technology to extract them. Such resources would enter the overall value of the set of resources to be assessed in a discounted way. The presence of resources we cannot bring into circulation will not, and should not, create much pressure to allow for more immigration; on our account, however, the presence of resources that happen not to be in flow but are part of the stock to which a country has a ready access will and should.
Some of this pricing will be novel: biophysical factors shaping the usefulness for human purposes of geographical locations are not normally priced. In an optimistic mode, one might think that humanity has so far had no trouble adding more entities to the set of those with a price ticket. However, recent reflections on the desirability to broaden the U.S. National Income and Product Accounts (which measure economic activities in the U.S. economy) to include activities and assets not immediately tied to market transactions and thus not presently captured in those accounts have revealed difficulties in doing so, difficulties of a sort we cannot address here. At any rate, no such measure is in use at this time. Neither can we turn to economists for well-established methods of extending pricing in this manner, nor can we turn to the biophysical sciences for candidates of such a measure whose suitability for our purpose we might ponder. All we can do for now is explore the conceptual possibility of such a measure, formulate some desiderata, and contrast our proposal to use such a measure to assess demands to entry with other proposals. Again, sometimes the task of philosophy is to argue that something is needed for which the work must be done in the sciences.\(^{38}\)

One might worry, though, that the proposal to use market values to gauge whether or not a state is using more or less than an appropriate share of the earth's resources faces the problem that market valuations themselves emerge from some initial set of entitlements which we do not know are or were fair. In the first instance, we are thinking about our proposal as applying the world roughly as it is—that is, with roughly the current state structure in place and with roughly the sorts of supply and demand pressures in place. It is to states as they are that we would like to say that they should add this perspective to their manner of thinking about immigration policy. At the same time, it is quite conceivable, even likely, that additional considerations would have to be introduced to rectify past injustice that has shaped how the value for human purposes of external resources comes about through the valuation process adopted. But without actually having a valuation process at hand with regard to which this could be analyzed in detail, we can only note that some rectifying factor might well have to be added to that process.

For any state \(S\), our measure would deliver an index \(V_S\), measuring the value of the collectively owned resources on \(S\)'s territory, including the biophysical conditions determining the usefulness of this territory for human purposes. To assess the extent to which \(S\)'s territory is used, one would divide \(V_S\) by the number \(P_S\) of people in \(S\). \(V_S/P_S\) is the per-capita

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use rate of commonly-owned resources on S's territory.\textsuperscript{39} \(V_s/P_s\) includes resources that are not actually in circulation (not literally used), such as unmined minerals and unextracted oil (possibly suitably discounted). Yet the point is to have a measure of what is at a society's disposal, broadly speaking, that is, actual as well as potential use, and we will address below how to handle situations in which a society is in no position, or has chosen not, to extract resources feeding into its use rate.\textsuperscript{40} The point is to have a measure of a stock of resources that takes into account how straightforwardly that stock could be transformed into a flow of resources if desired, rather than a measure of only the current flow.

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 of higher value than the average person in the average country), and that it is relatively overused (or simply overused) if this value is under average. If \(V_s/P_s\) is above average, co-owners elsewhere have a pro tanto claim to immigration. (The "pro tanto" character of this claim will be discussed below.) Otherwise they do not. This, we submit, is what is required by Common Ownership to preserve all individuals' status as co-owners in the presence of a system of states.\textsuperscript{41} While thinking about immigration is not commonly guided by such ideas, one can envisage a philosophically astute U.N. Secretary General commissioning a committee to devise such a measure to assess the scope of transnational obligations, including immigration.

Since we are talking about rights entailed by common ownership of the earth, their satisfaction would have to assume the specific shape of allowing for immigration. The object of ownership is the earth itself, and what is at stake is how this physical location can be divided up given that it is held in common. Conceivably the world’s population would agree that people who underuse their territory make payments (say, development aid) to others; but what cannot be reconciled with this ownership status is that they could pay off others, although those would prefer to exercise their right to immigrate. They have that right in virtue of being co-owners, and while they may decide to waive it for such pay-

\textsuperscript{39} We think of \(P_s\) only in terms of counting people. It would be possible to extend this assessment to animal life or the environment if one has independent reasons for wanting to be inclusive in this way.

\textsuperscript{40} But see THOMAS W. POGGE, WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS 196–97(2002) (according to Pogge's "Global Resources Dividend" concept, a society sitting on its resources would not be taxed). Such resources would be included in our measure.

\textsuperscript{41} One should note here that Equal Division would also lead to this view. We have argued above that Common Ownership is preferable to Equal Division as a conception of Egalitarian Ownership. See also Risse, supra note 13, at 349–76 (arguing that there are internal problems with Equal Division). But for present purposes, it is useful to know that this conception would support the same view on immigration.
ments, it remains their prerogative to do so. This point also allows for a link between collective ownership and claims to political membership. Under-users have two ways of responding to would-be immigrants: they can relinquish territory, allowing for the founding of other political entities, or they can admit them to their territory. The latter will generally be the more straightforward and desirable course of action, as far as the states themselves are concerned. In that case, prudential and moral reasons will speak against keeping immigrants systematically outside of the political community.

Let us compare relative overuse and underuse as a device for assessing demands to entry to two other such measures. First, there is an absolute notion of over-population, discussed by Michael Dummett. Such a measure decides on requests for entry by asking whether a territory can support more people. More needs to be said about what counts as "supporting." Is it enough if more people could survive there? Is the assessment made simply through reference to the current population's standard of living? Or is there yet another account? No matter how

42. See supra pp. 148-49 (saying that, internal to states, it is not the case that individual claims to actual access to originally commonly owned resources are acknowledged, and granting that their co-ownership status could be acknowledged in different ways, which, we suggested, delivers an argument for basic welfare services within states). So in that case, then, presumably certain co-owners' preferences for actual access to resources would be defeated. Why then could one not defeat the claims of outsiders to entry by paying them off? Obviously, it will not in general be true that all citizens of a state have actually chosen this arrangement, so what then is the difference between internal defection and external demands for entry that would allow paying off those interested in the former, but not those interested in the latter? The difference is that, in the internal case, a lot more is at stake for the state as such. Acting on such preferences (which would, at any rate, be rather hard short of granting actual secession) would easily undermine the functionality of the state. This would arguably give the state a much stronger reason not to do so than what it could muster to deny requests for immigration (even though, of course, at least some requests for secession might well be legitimate and might have to be granted).

Granting requests to immigration would have no such severe consequences, particularly if the state, as we argue below, can exercise a certain degree of discretion in deciding whom to admit. Deeper issues about state legitimacy and secession lurk, but there is no need to pursue them here. See generally PERSPECTIVES ON PROPERTY LAW (Robert C. Ellickson et al. eds., 3d ed. 2002) (for the relevant aspects of property involved). In this regard, ownership of the earth is much like ownership of objects in a legal system. A might sell B her car, but B could not take it and leave its market value without A's consent. A owns the car, not a monetary equivalent. There are exceptions to this: if B can only survive by breaking into A's cabin and has no way of contacting A, B would be allowed to do so and would then have to fix the damage. Thinking about this easily gets complicated, but all we need is that a claim to a specific thing (the physical location "earth") is the essence of the (commonly held) property claim at stake here.

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

these questions are answered, absolute measures are irrelevant to the common ownership standpoint. My status as co-owner is not violated if entry is denied to areas that are relatively overused already. However, if all parts of the earth are crowded to an extent an absolute measure would classify as higher than what those regions can support, Common Ownership may entitle people to entry in areas that are less overcrowded than where they came from. Such areas are thus relatively underused although absolutely overused. I can demand of others that they admit me, even if they are in dire straits, if my situation is worse. Common Ownership, or at any rate, the immunity that is relevant for our current purposes, is concerned with the relative standing of co-owners when a system of states has been erected in commonly owned space. Comparisons have to be made in terms of proportionate usage of areas (considering their value for human purposes) relative to other areas.

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

According to Cavallero, the normative significance of immigration pressure is that it indicates inequality of opportunity. A legal system should not create bars to equal opportunity on the basis of arbitrary traits like nation of birth. International law constitutes a legal system that confers on states the right to restrict immigration. Unless those restrictions are balanced by improving opportunities in worse-off countries, international law creates bars to equal opportunity on the basis of nation of

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46. The expression "want to immigrate" refers to hypothetical preferences. Cavallero assesses immigration pressure assuming that visa applications are possible and means for relocation are provided. See id. at 107-08 (explaining underlying assumptions for Cavallero's immigration pressure calculus).

47. Id.

48. See generally id.
In the background is the "Cosmopolitan Premise," that "ongoing institutions of international law should not systematically disadvantage anyone on the basis of involuntary national citizenship or national origin." Since everybody is at least indirectly subject to international law, it must not discriminate on morally arbitrary grounds such as nation of birth.

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

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

Let us discuss some worries about our proposal. To begin with, one may question the sheer possibility of measuring relative overuse or underuse in a meaningful way. Again, no such measure is in use. The

49. Id. at 100.
50. Id. at 98.
51. See generally id.
52. See id. at 98.
53. See id. at 107–08 (detailing the mechanism of the allowable anti-immigration payment scheme).
54. The discussion in the following paragraphs draws on correspondence with Bill Clark (Harvard University), Guenther Fischer (International Institute for Applied Sys-
closest approximation that has been brought to our attention is a method
developed by the U.N. Food and Agriculture Organization and the Inter-
national Institute for Applied Systems Analysis, which offers an inventory
of land resources and an evaluation of its biophysical potential, the so-
called *Agro-Ecological-Zones methodology.* While any measure that
meets our purposes would have to play the role of a general “habitability
index,” it is doubtful that biophysical factors can be assessed without
accounting for (“normalizing out”) human activities (technology, culture
organization, etc.). To illustrate, consider the Netherlands. That area
became prime land by the innovation of the polder and a national unity
that created and controlled the polder-dikes. 

Previously, the Netherlands was a wasteland by any indicator assessing the value of resources independently of human input. For any suitable measure, the Netherlands would have scored low at one time (prior to the construction of polders and dikes), and high at another (afterwards), with no change in its biophysical conditions. Such an effect would occur whenever the value of a set of resources increases through intervention. To mention another case, eradicating diseases like malaria decisively changes the value for human purposes of whole regions.

As the illustration indicates, there is an ambiguity in this worry. The worry may be that it is conceptually impossible to separate biophysical conditions from human contributions, or that if we applied such a measure now we would evaluate bundles of resources that have already been affected by human input. The former version fails: as the polder and malaria cases suggest, it will generally be clear enough what the human contributions have been. The more urgent concern is how they should factor into evaluations. To make more precise the question we are asking, recall that the intuition behind Egalitarian Ownership is that resources came into existence unattached to any human entitlements. But all we can derive from that intuition is that *resources* should be considered collectively owned; what ingenuity has added is not covered. Unless we add another argument, whether, say, the Dutch overuse or underuse their territory must be assessed relative to the value of resources with human inventiveness entirely factored out, a task to be left to the


56. A polder is land below the sea level in a location from which the sea has been drained away.
biophysical sciences and the ingenuity of econometricians. The Netherlands with its high population density would presumably emerge as a highly overused area. Can a case be made that, perhaps in time, products of human ingenuity should be added to the common stock? Are there conditions under which such products are *sufficiently like* resources for all of humanity to have a symmetrical claim to them?

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

So the reason why the legacy of their predecessors (including the complex social, legal, economic, and political world the Dutch have developed over generations) should remain their collective property is not that contemporary Dutchmen have a substantive desert-based claim to that effect. It is, rather, the following two-stage argument: First, if commonly owned resources could be improved and other entities invented only because of the specific culture in which their predecessors participated, then *others* who have not participated in that culture have not acquired a claim to the value thereby added to the common stock. They have not been relevantly connected to this process. Second, contemporary Dutchmen are relevantly connected to that process. To begin with, they are the contemporary participants in the culture that made the earlier achievements possible and continues to maintain them (at least in cases where there has been sufficient cultural and political continuity over the last few centuries in which most of those improvements have been made). Moreover, it is plausible that their predecessors would have wanted them to be the beneficiaries of their achievements. Considerations about what is owed to the dead have recently been applied by Ridge to reparations for past injustice. Similar considerations hold for inheri-

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

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

59. *See* Michael Ridge, *Giving the Dead Their Due*, 114 *Ethics* 38, 42–45 (2003) (suggesting that those who wronged a particular person or group owe a debt to the dead which can be paid back through reparations to the descendents).
stance. It is thus up to the current generation of Dutchmen to regulate this legacy, and others have no claim to immigration based on it.60

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

A second sort of doubt is more relevant. Regardless of how deserving of the added value the Dutch predecessors were on the basis of having added it, their acts cannot ground claims that resonate through the ages to the exclusive benefit of relatively few heirs. The fact that others could have added the increased value, and in due course would have, may not undermine the claims of those who actually did so. But this fact does weaken the claims of their offspring to the endurance of those entitlements. The point is similar to the objection to the first-occupancy theory of acquisition: perhaps on a sensible understanding of "occupation," first-comers can legitimately claim land. Their accomplishments also prevent others from accomplishing the same, but that does not undermine desert-based claims they have because of these accomplishments. But such occupation, regardless of circumstances, cannot ground claims on account of their offspring at the exclusion of others. Employing a term of Waldron's,61 the original claims are superseded in time. What supersedes them is that with each generation there are more people who have actually been barred from improving the external resources at stake because others had already done so, a fact that evermore undermines the claims of heirs of the original improvers. Like the original

60. This argument does not bear on the question of how inheritance should be regulated within a given country. On the contrary: the more one emphasizes the relevance of the background culture for the value added by the predecessors, the more there will be pressure to discount the claims of outsiders, but the more there will also be pressure to let the current participants in the national culture as a whole be allowed to benefit from the inheritance. See D.W. Haslett, Is Inheritance Justified?, 15 PHIL. & PUB. AFF. 122 (1986).

value improvers, those heirs bar others from making those same accomplishments. Yet unlike them, they themselves are tied to the accomplishments (think of the polders) only by being offspring of those who had originally made them.

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

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

We hold that commonly owned resources that have been improved by technology should be counted among the common property when that technology has become readily available. So the polder-dikes should be considered common property. The value of commonly owned resources should be measured in a manner that incorporates the impact of commonly available technology and other human factors that could (and in due course would) have been provided by others. At the same time, artifacts, ideas, legal, economic, political, and social practices, and other entities for which such external resources have been, in an intuitive sense, mere enablers should not be counted among the common prop-

62. See generally David P. Billington & David P. Billington Jr., Power, Speed, and Form: Engineers and the Making of the Twentieth Century (2006) (showing the various individuals contributing to engineering breakthroughs, with emphasis on pairs and groups working on concurrent discoveries).
erty. So, say, the value of the Dutch economy beyond the value of improved common resources should not be counted common property. Some arbitrariness in drawing the line is inevitable. Nevertheless, there is nothing incoherent about drawing it, and again, disagreement about where to draw it would be internal to our standpoint. (Anybody who endorses a distinction between choices and circumstances encounters a similar problem.) At a more practical level, implementing our proposal will require a certain degree of global coordination, and just what is considered common property might have to be left to a political process that could be embedded into such coordination.

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

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

One can criticize such arguments on internal and external grounds. Criticizing them on internal grounds means to suggest that X itself stands in tension with immigration constraints devised to protect X. Criticizing them on external grounds is to suggest that preserving X is not worth the costs involved by imposing constraints. More could be said since arguments from preservation are contentious; but what matters is that, far
from capturing this standpoint, such arguments generally do not give proper weight to the common ownership standpoint. On the contrary, concerns about the reach of arguments from preservation motivate inquiries into implications of this standpoint in the first place. A culture shared only by two people occupying a vast territory might be worth preserving, but such occupancy would not count as appropriate use from the common ownership standpoint. Preservation arguments do not capture the common ownership standpoint; rather, that standpoint constrains their use. One may grant that what resources are used for must enter the discussion—alas in a supplementary, not a conclusive, manner. The burden of proof is on those who wish to overrule implications of the common-ownership standpoint by granting certain cultures more resources than numerically they ought to have. After all, the common ownership standpoint does provide people outside of an underused territory with a claim to entry, and it takes more than appeals to self-interest to defeat it.

Since the main source of the demand for entry is the common ownership status, receiving countries have some discretion to choose the applicants who suit them. A country with a strong social system that is underusing its territory would be within its rights to choose people with professional credentials; a country with demographic problems to choose young applicants or those deemed likely to have several children; and a culturally homogenous country to give preference to applicants who share crucial elements of its culture, or are willing to adjust to it. Yet the common ownership standpoint also puts constraints on such discretion. First of all, other things being equal, applicants from countries that are overusing their resources have priority. These are the ones who are not getting their share of commonly owned resources. Second, immigration policy should also take into account a duty of aid that applies to rich countries with full ability to exploit resources to countries lacking that ability. Just how immigration policy should do so is a difficult empirical question we cannot address; sometimes immigration supports development because it decreases population pressure or generates remittances; but there is also a "brain-drain" problem if those who leave are the most valuable for development. We would merely like to assert that a country does not have unlimited discretion in admitting immigrants. It matters where those immigrants come from. At any rate, if not enough applicants meet the criteria of the admitting country, that country, as long as it is underusing its resources, would have to choose from among the others.63

63. There may be reasons why certain immigration preferences are unacceptable on other grounds. Certain minorities might deserve protection of a form that would entail that some people have to be admitted. Considerations of this sort can be understood as preservation arguments of a particular sort as well, and if they are present, the
As a case study for how preservation arguments might be weighed against considerations drawing on Common Ownership, consider the “White Australia” policy. A term for the Australian immigration policy in place throughout the first half of the twentieth century (to some extent longer). Its goal was to exclude non-whites. Notice that normally land within a society is not uniformly densely populated; there often are relatively under-populated areas (American Great Plains, Canadian Northlands, Australian Outback). Arguments from preservation minimally require a showing that the society as a whole is too densely packed to allow the continuation of the project in question. This is rarely so; immigration into under-populated areas is frequently compatible with maintaining the national project. The common ownership standpoint generates pressure to permit such immigration. We agree with Michael Walzer, who stated that “White Australia” claimed more territory than was acceptable. While perhaps the urbanized east coast of Australia could legitimately seek to develop the project of “whiteness,” the largely uninhabited Outback could not. (On the “perhaps,” see the second point below.) “White Australia,” Walzer stated, “could survive only as Little Australia.”

Note two instructive points. First, under-populated areas of nations appear to have fewer grounds to exclude immigrants than urbanized areas. This is often the opposite of what potential immigrants desire. Immigrants have a tendency to regard their port of entry as the default location to settle down. These are often cities where recent arrivals can more easily obtain services and establish communities. Some nations have programs of advanced immigration status for those willing to settle in uninhabited areas. (Canada seeks to place immigrants in rural areas.) Our analysis suggests that this is legitimate. While the common ownership standpoint does create pressure on countries that

overall weighing would involve common-ownership considerations and different forms of preservation arguments.

65. Id. at 46.
66. Id.
67. Id. at 47.
68. See id. (noting the idea that white Australia’s claim to all uninhabited land is not legitimate in the absence of use. Their options are to surrender their claim to all the land to preserve “whiteness” or surrender their “whiteness” to maintain a claim on the land.).
69. Id. at 47.
70. See generally THEORIES OF MIGRATION (Robin Cohen ed., 1996) (answering the question of why immigrants settle in urban areas).
71. See James McCarten, Rural Areas Suffer Lack of Diversity: Immigration to Cities Leaves Countryside Starved for Skilled Labour, Census Figures Show, VANCOUVER SUN, Jan. 22, 2003, at B5 (explaining that more than 94% of Canadian immigrants settled in urban areas in the 1990s; in response, the Canadian government created “nominee pro-
underuse resources to allow for more immigration, such countries are *ipso facto* within their rights to channel immigration to less-populated areas (provided this does not involve independently objectionable measures).

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

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

To illustrate the first concern, recall our discussion of “White Australia” and set aside any problems that may arise for Aboriginals. What if there had been sufficiently many whites for a territory much larger than the Eastern seaboard, although that is where they lived? There are many reasons why populations want to concentrate in one corner of their territory: they may want to preserve resources for future use; leave buffers between themselves and their neighbors; or hang on to additional terri-

grams” to offer expedited residency to skilled immigrants willing to settle in underpopulated areas).
tory that has been theirs historically. If they are not underusing resources, their decision to use them in such ways is acceptable from a common ownership standpoint. This holds so long as one accepts states as in principle legitimate, as we do. If so, the fact that resources are used in ways seen as peculiar by others does not undermine the legitimacy of their use.

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

What about the role of luck? Distinguish two cases. First, suppose all countries abide by a global immigration regime regulated according to our proposal. In that case, all is done to preserve the sort of symmetrical claim individuals have with regard to collectively owned resources. Common ownership forbids people from using an undue share of what is collectively owned under circumstances in which much (most of the land mass) of what is so owned is divided up among states. But there is no implication that the use of any particular area must be to each person’s satisfaction, which is what seems to motivate the concerns behind this question. These concerns arise under Joint Ownership, not under Common Ownership. The second case is that some countries do not respect an immigration scheme guided by these ideas. There is again no need for compliant countries to subject their populations to a lottery, but one needs to ask whether they could prevent immigration above the threshold of overuse. Yet this leads to questions about compliance when others are disregarding given standards that are not in any way particular to the common ownership standpoint.72

As for the fourth question, it may seem that our proposal sets incentives for countries contrary to what is required for implementing globally

adequate environmental and population policies. From a global standpoint, a sustainable population size is needed—a goal that is inconsistent with unconstrained population growth in countries, which in turn, however, is in a country’s interest if it wants to stop immigration. Similarly, from a global standpoint, environmental policies need to be adopted that do not worsen global warming and pollution. Yet it seems to be in a country’s interest to consume its resources, thus depleting global resource reservoirs, if it wants to stop immigration—a practice that inevitably contributes to these problems. Like in a Prisoners’ Dilemma, individual and collective preferences do not seem to cohere.

However, note here first that, as far as actual waste is concerned, states would not be permitted to engage in such actions. Common Ownership does grant individuals a liberty right to use resources, but that does not amount to authorizing waste of a sort that cannot actually be counted as “use” in any meaningful sense. Therefore, states would not be allowed to engage in such wasteful actions either. Instead, Common Ownership is plausibly understood as entailing trustee-like duties for all the “earth” it contains. Deliberate wastage of the earth, as opposed to actual use, violates these duties, calling for compensation to the rest of the world and possibly for some kind of sanction on top of this. Also, it seems that incentives of individual countries and global incentives are not so poorly lined up. To begin with, much of what factors into an assessment of underuse or overuse cannot straightforwardly be depleted (think of climate). Moreover, countries that waste depletable resources will ipso facto find themselves with a problem, namely, depleted resources. Similarly, countries that set incentives for population growth will have the problem of having to design a social system that can absorb these increases. It seems, therefore, unlikely that countries would adopt such policies to block demands to entry.

As far as population policy is concerned, one should also recall the problems of population decrease facing countries like Germany and Italy. These countries have trouble adopting policies leading to an increase in population size although this is in the current generation’s own best interest. It seems hard to imagine that at least liberal democracies would even be able to adopt straightforward policy tools that will motivate couples to have more children than they otherwise would as a means to increase the population and prevent future immigration. It seems that individuals would perceive immigration as a much less immediate threat than such a decrease in their old-age benefits. To the extent that worries about perverse incentives are indeed credible, one could consider contractual arrangements at the global level. Implementing our proposal requires such arrangements anyway (if only to assess how many immigrants each country should take) and could include provisions (denials of benefits) to undermine such incentives. What is true, on our proposal, is that a country’s obligation to accept immigrants is not entirely a matter
of its own conditions. What matters is overuse and underuse relative to average use across countries. But this seems unproblematic to us.

As we also mentioned briefly at the very beginning, a revival of this collective ownership standpoint could prove fertile to a range of questions that arise in debates about global justice. Rather obvious examples of what could be explored are whether this standpoint supports any duties to provide aide to people under certain circumstances, and what the implications of this standpoint are for the question of how we should relate to future generations (who might then have to be regarded as future owners). But here, at any rate, we have only been concerned with immigration. To sum up: the use of common ownership as an analytic method suggests that although there is nothing objectionable to the existence of states that exercise control over immigration, we may have greater duties to foreigners than we conventionally believe. Such duties are especially greater than what is commonly believed to be the case by those who, like us, think that there is nothing objectionable about states in principle. We conclude noting that we have not tried to provide a complete theory of immigration. We have not tried to articulate all moral constraints and permissions incumbent upon policy-makers dealing with immigration. We are satisfied if we have identified one area of inquiry relevant to the task at hand.