

Resource Rights: Between National Control and Global Equality

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Natural resources can be hugely important to people. Whilst economists have shown that there is no simple connection between the possession of natural resources and economic growth, that does not mean that communities are indifferent about the resources under their control. Some communities have developed symbolic or cultural attachments to particular resources. Some have, perhaps, earned rights over them by virtue of their past improvement, cultivation or protection of particular resources. All of us *need* resources such as air, water and the raw materials required to produce food and other basic goods, and we may have more or less demanding entitlements of justice to such resources. And finally, many of us have interests in the conservation or effective use of particular resources, including some we do not currently control. I may have some kind of interest, let's say, in *not* seeing the whole of the Amazon rainforest burned tomorrow.

So in considering a just distribution of rights over resources we are immediately thrown into complex terrain. The same resources can be subject to competing claims by more than one community, and moreover subject to claims of different *kinds*. An adequate answer to the question: *who should enjoy rights over natural resources?* will acknowledge and respond to claims based on (legitimate) attachment. It will similarly acknowledge and respond to claims based on the (legitimate) improvement of resources. It will respond to often quite widely dispersed interests in conservation, and finally, it will respond to the interests of outsiders – those currently deprived of the ability to access and use specific resources, but whose human rights or other interests might be served better if they could benefit from them.

Up to now, political theorists have not made great progress in providing such a complex account, and it is a very welcome development that issues of rights over natural resources are now receiving greater and more sophisticated attention. One response to questions of natural resources and justice has been to declare the distribution of natural resources arbitrary, and to conclude from this that any advantage a particular party derives from their (unequal) share of resources must be an unjust one. By contrast, we should somehow redistribute either resources themselves, or their value, to ameliorate inequalities in access to resources. That is a powerful position, framed by what is itself a powerful intuition about arbitrariness, but it is not a complete account. Whereas it scores well in

responding to the claims of outsiders, it tends to disregard any special claims based on attachment or improvement (and it also has little to say about conservation). For the fact is, particular communities have engaged with resources – at least sometimes legitimately, we can presume – in such a way as to invest those resources with greater symbolic or material value than they would otherwise have had. We cannot run straight from the idea that the *distribution* of natural resources is morally arbitrary to the claim that the present *value* of particular resources is also wholly arbitrary.

On the other extreme, we have an alternative position – more or less neatly encapsulated for us by the status quo in world politics, and largely endorsed by international law – which reserves more or less exclusive resource rights for the nation-states in which specific resources happen to lie. This rights regime is able to respond to claims based on attachment and improvement, but it does so with the subtlety of a sledgehammer. It grants *all* resource rights – with very few exceptions, largely themselves the result of voluntary treaty-making – to nation-states. It performs poorly by any sane standard of conservation, and simply disregards the interests of outsiders.

There must be some viable middle path here, which takes the claims of global distributive justice seriously, whilst at the same time responding to the legitimate claims which members of particular communities might have to continue to access and use specific resources. I have attempted to provide the beginnings of such an account elsewhere (Armstrong, forthcoming), but it is very welcome that others have also taken up the challenge. Both Margaret Moore and Avery Kolers provide sophisticated responses to the central challenge I have identified, seeking to avoid the excesses of an untrammelled global egalitarianism with regard to resources on the one hand, and a resolutely ‘Westphalian’ system of national control on the other. In what follows I will focus on some reservations I have about their accounts - but the fact that we have two such rich accounts of resource justice to discuss in the first place is to be greatly applauded.

Margaret Moore’s argument begins by rejecting both the ‘statist’ argument that states ought to exercise total control over their resources, and the ‘cosmopolitan’ view which persists in depicting state control as a form of arbitrary and undeserved advantage. Her own account, by contrast, seeks to defend a limited and defeasible version of state control, which holds open the possibility, for instance, that the value derived from resources might be shared globally. It also accepts that some natural resources might be more effectively managed at the transnational level. But despite these valuable concessions, it still

endorses a 'general presumption' that control over natural resources should continue to reside with the state (Moore 2011: 5).

Moore's arguments here are much more sophisticated than the mere assertion that control over resources is a necessary part of self-determination. That assertion is vulnerable to questions about just *why* it is a necessary part of self-determination, or more precisely, why we ought to accept a conception of self-determination which includes resource control, rather than some other conception. Moore's account achieves real progress here. It suggests that the ability to set the ground-rules for how resources are to be used ought to be reserved for particular communities to whose way of life they are key (2011: 7). With the use of cogent examples, Moore shows the ways in which, without such control, such communities may be unable to sustain their ways of life. However, even if we accept that this is true, it is not clear that Moore's arguments can support the 'general presumption' of *state* control noted above. After all, many of the communities which do, in fact, enjoy especially close relationships with particular resources, and where that continued relationship is especially key to their self-identity, are not organised at the state level at all. The key examples Moore herself calls to mind – the Lakota Sioux, or the Maori in New Zealand – are not. Other key cases – the Sami of Scandinavia, or the many indigenous communities of the Amazon basin – involve communities struggling to wrest control over resources *away* from the state.

So even if we find the attachment-based argument for control over resources generally persuasive – which may depend upon the precise content of the rights Moore believes it justifies vesting with communities - it is not clear why we should believe that sympathy towards attachment-based claims speaks even generally in favour of state control of resources (and Kolers, I think, does not make this assumption in the first place). A whole variety of communities united by kinship, ethnicity, geography, or religion enjoy special attachments to specific resources and a world where nation-states exclusively police access to those resources responds to that variety rather poorly. Thus whilst Moore is undoubtedly right that luck egalitarian arguments in particular often fail to 'take into account the ways in which specific people are attached to natural resources' (2011: 12) the general presumption in favour of state control is itself a rather blunt instrument. My suspicion is that if we take the variety and complexity of attachment seriously, we derive one more reason to expect to see resource rights delegated both upwards and downwards away from the nation-state. Given the other reasons we have for suspicion about state control (including claims of

distributive justice, and the conservation of resources), I think that we need to weaken the 'general presumption' considerably, and perhaps abandon it.

The other main issue which I would like to probe further is the way in which Moore negotiates the competing claims of global justice and self-determination. Moore's account argues for an important modification to the status quo, insofar as it allows that the exercise of self-government is standardly compatible with taxing resources so as to meet everyone's basic needs. Indeed she suggests, more strongly, that 'collective self-determination is legitimate only if it is consistent with the basic subsistence rights of everyone' (2011: 21) As such she holds no quarrel with proposals such as Pogge's Global Resources Dividend (though she also argues that, in practice, subsistence rights can be secured by other means, without interfering with control over resources).

But there are areas where the implications are less clear. For instance, although Moore does say (A) that self-determination is only *legitimate* where it is compatible with everyone's subsistence, she *also* says (B) that it is not clear that subsistence rights 'should automatically trump the right to collective self-determination' (2011: 23). Now, Moore provides cogent examples in which we apparently both should, and should not, allow the claims of outsiders to trump communal control over resources. But if both kinds of example is available, it is not clear that she can hold firm to claim (A). Claim (B), by contrast, remains rather open-ended. To make progress Moore could provide a detailed explanation of just when and *why* subsistence rights trump self-determination, and when they do not. If she can do so, she will have helped the debate forwards a great deal.

There is also more to be said on the rejection of global egalitarianism. Moore's paper runs two arguments. First and most importantly, she is officially concerned to reject luck egalitarianism as applied to resources globally. She therefore makes it clear that her quarrel is not with global egalitarianism per se (2011: 18). At the same time, she makes clear that she *is* suspicious about global egalitarianism, and in particular she advances a 'metric' objection which suggests that we could hardly know whether it had been satisfied (as she has done elsewhere; e.g. Moore 2007). But there are responses which the global egalitarian could make to both arguments. The global luck egalitarian could respond to the first by suggesting that we should be pluralist (which luck egalitarians often are not, admittedly!), and acknowledge that whereas claims about the arbitrariness of resource distribution are part of the picture, claims about attachment are another part, and they need to be integrated to provide a satisfactory account of resource justice. As such, global luck equality

should not be so much rejected, as augmented. If they can be persuaded to deliver such an account, Moore's argument will have been a valuable spur.

The (non-luck egalitarian) global egalitarian could respond to the second argument by pointing out that the 'metric' objection is not fatal to their cause. It may be that global equality *interpreted as some variant of equality of resources* is formidably difficult to specify convincingly. But other varieties are available. Someone committed to global welfare or capabilities equality, for instance, would favour just whatever distribution of resources would produce equal welfare or capabilities. That distribution would be more egalitarian than the present distribution, but it probably would not be perfectly egalitarian. More importantly, the global welfare egalitarian, for instance, will fail to see why the difficulty of spelling out her theory's implications for resources counts as a fundamental objection to it as an account of global justice. So Moore is right to say that luck equality cannot provide us with the whole story, but needs to say more to justify immediately resorting to a sufficiency standard instead. There is a lot of ground that could be explored, *between* global luck equality and such a basic standard.

Like Moore's account, Kolers's intervention is premised on the idea that there is an unhelpful division between 'self-determinist' (or as Moore would put it, 'statist') and 'cosmopolitan' views on natural resources, which we need to defuse in order to produce a more satisfactory account. Kolers provides a particularly impressive analysis of the shortcomings of cosmopolitan approaches. For Kolers, many approaches to global justice are unable or unwilling to accommodate the *particularity* of some resources, and the very specific role they play within the lives of certain communities. But like Moore, Kolers suspects that once we take the particular value which resources can have seriously, we have to be sceptical about the potential for developing some kind of global metric according to which we could definitively say that resource holdings were equal. In the search for such a metric, Kolers has shown here and elsewhere (see Kolers 2009), all too often we either neglect the particular value of resources, or treat the attachment concerned as some kind of expensive taste which the community in question ought to bear the cost of.

So Kolers convincingly shows that in order to produce a more adequate account of justice and resources, we need to take seriously ways in which resources can be valuable beyond the simply economic-instrumental. As noted at the outset of this piece, the same resource can be valued in many different ways by different agents, suggesting different and possibly incommensurable criteria of value. These valuations generate competing *prima facie* claims to be granted resource rights of some kind. But just how do we weigh together,

or adjudicate between, these competing claims? Significantly, Kolers wants to say that some ways of living with one's 'own' resources are weighty enough to override other claims to control them, so that those resources can be rightly controlled entirely (it seems) by the particular communities which enjoy that relationship with them.

But his position seems too strong, insofar as it appears to say that once we recognise the right kind of relationship between a community and (certain kinds of) resource, we can immediately remove questions about the just distribution of those resources or their value from the table – no matter whether there are strong countervailing interests at stake. Moreover, Kolers believes that in accepting these over-riding claims, we are deciding that those communities are entitled to say that they are *not resources*. He suggests that it is because they are not resources in the first place that they ought not even to figure in the global justice advocate's calculation of a just distribution of resources (Kolers 2011: 22-3). And they are not resources, for Kolers, where the community does not treat the goods in question – oil, say, or coal – as mere substitutable economic goods to be traded for money. But this also seems to me to be a false step. We can accept that resources can be valued in all kinds of different ways, and hence subject to competing claims, without having to say that they thereby cease to *be* resources once we have decided which claim is stronger (or, indeed, once we have simply identified the existence of one particular kind of claim, based on a certain kind of usage or relationship). To illustrate why I believe Kolers's account goes astray, consider the following example, based on access to water:

Imagine two neighbouring countries. One is densely populated and poor, with very limited water availability. The other is rich and sparsely populated, and has a very large freshwater lake which provides far, far more water than it could ever use. It does use that water, but non-intensively (it fishes from that water, or sails on it, or drinks from it in moderation). Now it *could* divert some of the water from the lake to its water-scarce neighbour, but it chooses not to. Kolers's account tells us, at least if I understand it rightly, that it has no duty to. I think his account goes wrong, here, in three distinct ways.

First, it seems as though Kolers's account will simply stipulate that water is not a resource in the first place, and hence there can be no question of redistributing it. It is not a resource - if I am reading him correctly - because it is not *type-fungible*. As a type of resource, there is no replacement for it (2011: 23). That's true: as humans we all need water, and exactly water, if we are to survive. But this seems to me to be the wrong conclusion to draw from the fact of non-type-fungibility. It is *because* we all need it, uniquely and non-substitutably, that there are such important questions to be asked about how to distribute

access to water. It may be that there are good reasons for granting rights over particular stretches of water on the basis that they are not *token*-fungible, but it is not easy to see why the fact that water is not *type*-fungible means that we ought to stop discussing its just distribution.

Second, I worry that Kolers's account makes the 'cut' between good and bad resource claims in the wrong place. It tells us that the rich country ought to control the water *because it does not use it intensively* – that is, it does not substantially exploit it economically, or treat it as a mere *type*-fungible good to be traded for money. But morally, this does not appear to be the only – or perhaps even the most – salient fact. The lack of intensive use, after all, might signal a complete lack of interest. Presumably in Kolers's account it is meant to stand in for the existence of some kind of special relationship. But if so, using the intensity of use as a proxy for such relationships is a very blunt theoretical instrument – because it is not clear why we should expect intensity of use to reliably track attachment. Of course Kolers himself has elsewhere unpacked a much more sophisticated 'attachment'-based account focussing on what he calls 'resilience' and 'plentitude' as criteria for granting territorial rights (Kolers 2009). So it may well be that that account and the one under discussion can be squared – but there is work to do in showing just how they fit together.

Third, his account delivers the wrong *type* of conclusion. It tells us that where there is a good claim based on non-intensive use, we declare a good a non-resource and remove from the table any questions about how to share access to it. That good becomes, in Kolers's words, 'immune to distributive justice considerations' (2011: 27). But this is so strong – especially in the face of possibly urgent claims from outsiders, whose basic human rights might be threatened, for instance – that I wonder if it can be what Kolers intends. The claim is certainly much stronger than Moore's; she adopts a more nuanced position according to which urgent external claims will *sometimes* defeat self-determination. And there are good reasons for preferring a more nuanced account: imagine a chemical substance which is found to be present in a particular tree bark, which a particular community uses non-intensively but which turns out to have the potential to immunise effectively against malaria. Is it not implausibly strong to say that the existence of other interests in using this good simply becomes irrelevant once we have identified that it is being used non-intensively at present? (or would Kolers perhaps admit such basic and urgent claims, but stipulate that they were not considerations of distributive justice?) A more plausible account, in my view, would *weigh* the different claims over resources, and grant rights only where there is a

sufficiently weighty interest in retaining control over particular goods, and not simply where we identify the mere *existence* of a certain kind of claim which immediately trumps other claims. Deciding on such cases will still be very difficult. But we can be helped here, I believe, if we are prepared to explore more complex ways of sharing rights over resources (which could see access and use, for instance, being shared whilst respecting any significant symbolic attachments). If we shift the question from: who should control resources? to: how should we allocate the various kinds of rights over resources? then more complex accommodations are possible which can pay due heed to the many interests at stake in their use.

So in sum Kolers is right, I think, that indigenous communities often see their way of conceiving of and valuing resources 'outbid' by dominant majority populations, and he has done invaluable work in showing the ways in which some accounts of global justice threaten to endorse that fact. But it is not clear that the correct response to this is to erect a division between resources and non-resources, and to refuse to apply standards of justice to the latter. It should be possible to take various forms of attachment to resources seriously without removing them from the terrain of justice.

Moore and Kolers each find their own way, then, of limiting the scope of global egalitarian principles – Moore does so by rejecting them in favour of a more sufficientarian principle of global justice, which could be satisfied whilst still leaving states with substantial control over 'their' resources, whereas Kolers is happier to accept global egalitarianism but wants to carve out a set of resources (or non-resources) to which its dictates do not apply. I am not sure, in the end, that either is the right way to mediate the claims of global egalitarianism with complex claims based on attachment, improvement and conservation. But we should be clear that both accounts would represent substantial improvements over the status quo in global politics and international law, and allow redistribution to alleviate pressing global injustices. They also represent important theoretical advancements, in beginning to unpick the unprofitable division between an untrammelled Westphalian approach to resources and forms of egalitarianism that threaten, at times, not to take some resource claims seriously. It is to be hoped that they can provide a spur to continuing conversations about natural resources and global justice.

References

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