



Human Development
Research Paper
2009/34
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the Capabilities Approach**

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United Nations Development Programme
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Abstract

Often, immigration debates are conducted under the presumption that immigration policies must be justifiable only to those who already live in the respective country. Alas, reflection on the justifiability of immigration policies to those excluded becomes ever more important in a politically and economically increasingly interconnected world. This study explores two approaches to the normative reflection on immigration at some depth, namely, the idea that restrictive immigration policies are problematic because they are hampering the development of human capabilities, as well as the idea that such policies are problematic because they are at odds with the fact that our planet belongs to humanity collectively. On both of these proposals, less restrictive immigration policies are not merely demanded as one possible way of aiding the poor, but would be required *as such*. Both of these approaches can be treated within the same framework, the grounds-of-justice framework, which allows us to focus on the idea that states must also be justified to those who do not belong to them. Central to the proposal about immigration that can be made within this approach are ideas of over- and under-use of commonly owned resources and spaces.

Keywords: Immigration, justice, capabilities, common ownership of the earth, resources.

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1. Introduction

Often, immigration debates are conducted solely from the standpoint of “what is best for us” – the presumption being that immigration policies must be justifiable only to those who already live in the respective country.¹ “Modern states,” writes Kukathas (2005), “are like clubs that are reluctant to accept new members unless they can be assured that they have more to gain by admitting people than they have by keeping them out” (p 209f). What is “best” for a country (and thus its “gain”) may be hard to assess: it can turn on conflicting cultural, political, or economic considerations, and what is beneficial from any such viewpoint for one segment of the population may not be for others.² Yet this standpoint tends to view immigration as a privilege and neglects to ask about possible duties to would-be immigrants.³ Alas, reflection on the justifiability of immigration policies to those excluded becomes ever more important in a politically and economically increasingly interconnected world. To begin with, immigration can plausibly be regarded as one way of contributing to our duties toward the global poor, duties many political leaders and citizens, as well as most contemporary philosophers, acknowledge in some form. Immigration, permanent or temporary, may serve this function partly because it

¹ Many thanks for Michael Blake for earlier joint research into questions of immigration, and to Francisco Rodriguez for comments on an earlier version of this study.

² As Borjas (2001) puts this point for the US: “The United States will inevitably attract more immigrants than the country is willing to admit. As a result, choices have to be made. Current immigration policy benefits some Americans (the newly arrived immigrants as well as those who employ and use the services the immigrants provide) at the expense of others (those Americans who happen to have skills that compete directly with those immigrants. Before deciding how many and which immigrants to admit, the country must determine which groups of Americans should be the winners and which should be the losers” (p xiv). Borjas counts immigrants among the beneficiaries, but does not count those rejected for immigration among those at whose expense the respective policy goes. (Borjas later refers to questions of fairness to those excluded, p 16, and pp 186-188, but without engaging with them in depth.) Brimelow (1995) calls immigration “a luxury for the US, not (...) a necessity” (p 259), implying that there is no obligation to outsiders on this matter. Beck (1996) expresses outrage at the US government for accepting more immigrants allegedly to keep wages low; no question is raised about entitlements of would-be immigrants.

³ (1) Some countries offer support for immigrants (such as language instruction), but none, for instance, takes extensive redistributive measures to give them much credit for being latecomers. For a survey of how US states aid immigrants, see Hing (2002). For an account of EU efforts, see “Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Report on Migration and Integration,” at http://europa.eu.int/eurlex/en/com/cnc/2004/com2004_0508en01.pdf. (2) Some have argued that borders are an economic oddity since returns to labor depend on one’s country (see Anderson and van Wincoop (2004)). This view was also famously defended by Adam Smith and Milton Friedman. On such a view, immigration is a solution to an impediment of the market, one that should follow naturally now that constraints on the movement of services, goods, and capital are lifted more and more. However, such a view is justified only if little or nothing can be said for the validity of borders and the normative relevance of shared membership in a state.

allows some people access to greener pastures, and partly because of the remittances sent back to the immigrants' country of origin.⁴

Yet once we think of immigration in a global context, we must also ask rather fundamental questions, such as why it would be acceptable in the first place, to those thus excluded, that we draw an imaginary line in the dust and think of it *as a border*. As Rousseau famously remarks at the opening of Part II of his *Second Discourse on Inequality*, “The first person who, having fenced off a lot of ground, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society.” A similar comment may apply to states. Is it only because of such simplicity (or similarly morally problematic reasons) that states are accepted? If pressed far, such thoughts make us wonder about the legitimacy of states *per se*. But even if we do not go this far, we must wonder whether it is as unproblematic as many take it to be that states do not acknowledge moral constraints (to be justified, again, also to those who do not presently live there) when determining who gets to enter, and who does not.

Consider the following two ways of supporting the view that immigration policies are subject to moral evaluation. Crucially, both of them support not merely the view that immigration policies should be considered among several strategies of assisting the global poor; instead, both make clear that we need to explore whether what is actually owed to would-be immigrants specifically is to let them into the country, rather than *some* form of aid. To begin with, immigration barriers severely restrict human freedom. One way of explicating that idea and embedding it into a larger context is in terms of the *capabilities approach*, originally developed by Amartya Sen and Martha Nussbaum, which has long been at the center of the Human Development Report approach. The capabilities view has been presented both as a theory of the “currency” or “distribuendum” of justice – the sort of thing in terms of which we formulate principles of distributive justice – as well as a theory of development. On this view, development is a process of expanding freedoms, and thus of people’s ability to choose one type of life over

⁴ For such a proposal, see Birdsall et al. (2005). Clemens et al. (2008) show that wage gaps caused by barriers to movement across borders are among the largest forms of wage differentiation, which implies that simply allowing more labor mobility can indeed make a substantial contribution to the reduction of poverty. Their findings also suggest that the gains for migrants and their families are considerably larger than the losses for the workers on the markets in their countries of destination.

others. This focus contrasts with narrower views of development, such as its identification with (and so restriction to) growth of GDP or personal income, technological advance, or social modernization. Development thus understood requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic prospects as well as systematic social deprivation, neglect of public services as well as overly intrusive state activity.

On this view, then, there is moral value in expanding the range of people's choices. Nussbaum has offered an actual list of capabilities she considers central for a life lived with dignity. "Being able to move freely from place to place" is one instantiation of "bodily integrity," which appears on Nussbaum's list.⁵ This creates a presumption in favor of permitting mobility as long as it does not illegitimately affect the freedom of others. Yet immigration policies create "winner" and "losers" in the country of destination, especially on labor markets. If, say, an influx of immigrants makes wages for low-skilled workers decline (as, e.g., Borjas (2001) argues for the US), those workers' capabilities arguably will decline. So states have to weigh obligations to their citizens vis-à-vis possible obligations to would-be immigrants (as well as possibly other people abroad affected by immigration policies). The point for now is that the capabilities approach shows why one cannot simply assume that immigration policies are merely a matter of what is "best for us." They do come up for moral evaluation, and are potentially (given the availability of a suitable argument) subject to moral constraints beyond a need for justification to people already in the country.

To introduce the second way of supporting the view that immigration policies are subject to moral constraints, consider a thought experiment. Suppose by some accident the population of the US shrinks to two, but they can exercise control over access to the country through electronic border-surveillance. Nothing changes elsewhere. Presumably these two should allow for immigration because they grossly underuse the territory under their control. So how many people occupy what share of resources and spaces matters for assessing immigration policy. This standpoint is most plausibly accounted for by the stance that humanity as such has a collective ownership claim to the earth.

⁵ For instance, Nussbaum (2006), p 76.

While the idea that humanity collectively owns the earth has played little role in recent political thought, it was central to 17th century political philosophy. In the 17th century, European expansionism came into its own, and theorists confronted questions of global reach they had not previously encountered. The 17th century also saw a decline in religious unity among the politically relevant European parties (this being an age of religious wars), from which, however, basic statements of the Old Testament were excluded. According to the Book of Genesis, God gave the earth to humankind in common. Many questions could be addressed through an interpretation of that gift, such as concerns about the possibility of owning the sea and the conditions under which territory could legitimately be claimed. Philosophers like Hugo Grotius and John Locke saw questions of collective ownership as central to their work.

Like the present age, the 17th century was a period of “globalization.” So it is not too surprising that a standpoint that offered guidance for normative questions then should offer it now. In an age that is increasingly confronted not only with questions of global reach (immigration, human rights), but with questions that have an impact on our planet as such (climate change), we ought to give humanity’s collective claims to this planet a proper place in moral theorizing – and that is so although, as authors such as Ruggie (1998) and Sassen (2008)) have emphasized, the territorial nature of the state has actually lost some of its significance in light of today’s political and economic realities. What is at stake is ownership of things that make human life possible, ownership of “our sole habitation (...) in which we live and move and have our being” (Passmore (1974), p 3). A non-theological revitalization of the standpoint of collective ownership is available, and anyway, this approach is already present in international law, where for about forty years the term “common heritage of mankind” has been applied to the high seas, the ocean floor, Antarctica, and Outer Space.⁶ The point for now is that an account of humanities’ collective claims to the planet we jointly inhabit also makes clear why immigration policies are potentially subject to moral constraints beyond what is required for a justification to those already in the country.

⁶ See Buck (1998) for background to the term “common heritage of humanity;” also Attfield (2003), pp 169-172. For the international law of “common heritage,” see Malanczuk (1997), pp 207f. See also Cooper (1994), chapter 3.

We can explore both of these ways of explicating why moral constraints apply to immigration in a unified framework, the *grounds-of-justice approach*. That approach offers a particular way of thinking about how principles of distributive justice apply. Typically, philosophical accounts think of principles of distributive justice as applying either only to states, or else as applying globally, either to all human beings in virtue of being human, or else to all persons because they are subject to the global political and economic order. By way of contrast, the grounds-of-justice approach offers an intermediate position according to which there are a number of different considerations and conditions (the *grounds* of justice) based on which the distribution of certain goods must be justifiable to a range of people (those in the *scope* of the relevant principles). Principles that apply to these grounds are *respectively* principles of distributive justice. Among these grounds we find shared membership in a state, shared subjection to a global trade system, shared humanity, and collective ownership of the earth.⁷

Political philosophy since Thomas Hobbes has sought to justify the state to those respectively subject to it. Until recently there was little interest in justifying the state to those respectively excluded. The grounds-of-justice standpoint allows us to integrate this task, and to do so explicitly in terms of actual principles of distributive justice, rather than, say, more discretionary duties of charity, that states must abide by to be so justifiable. For instance, involvement with the global trade system creates a range of duties, shared subjection to that system being a ground of justice. Climate change too generates obligations, which can be seen as arising because collective ownership of the earth is a ground of justice.⁸ And we have now already encountered two considerations that demonstrate why we ought to think of immigration as subject to moral assessment. Both of them can indeed be embedded into the grounds-of-justice approach: collective ownership of the earth is itself a ground of justice, and the capabilities approach, as we will see, can be tied to shared humanity as such a ground. Collective ownership gives rise to a particular way of thinking about how much immigration a given state ought to

⁷ I develop this approach systematically in my forthcoming book, *The Grounds of Justice: An Inquiry about the State from a Global Perspective* (under contract with Princeton University Press). For a preliminary presentation of the approach, see Risse (2007b).

⁸ For fairness in trade, see Risse (2007a) and Kurjanska and Risse (2008). The discussion there is not developed in terms of grounds of justice, but could be readily adjusted. For an extension of this approach to climate change, see Risse (forthcoming/a).

permit, and the grounds-of-justice approach as a whole can then be understood as articulating the legitimate restrictions on human freedom generally and the ability to move freely from place to place specifically. It is in this way, then, that we can develop both of the considerations that show why moral constraints apply to immigration in a unified framework, namely the grounds-of-justice approach.

We proceed as follows. Section 2 begins with the basic question of what is owed to persons in virtue of being human. We are interested in that question here because we will treat common humanity as one ground of justice and develop the capabilities approach in relation to that ground. After section 2 explores in some breadth the idea of something's being owed to individuals in virtue of being human (and thus the idea that common humanity is a ground of justice), section 3 focuses on the capabilities approach as one sensible and prominent way of spelling out what is owed to individuals in virtue of being human and captures how this approach raises moral questions about immigration. Section 4 explores the ownership standpoint. Section 5 introduces the grounds-of-justice approach systematically and shows how shared humanity and collective ownership of the earth constitute such grounds.

Section 6 explains how shared membership in a state too is such a ground and thereby shows how special obligations hold among members of a state that must be considered as well in any moral assessment of immigration policies. Section 7 offers a proposal for a moral assessment of immigration policy in terms of *over-* and *under-use* of collectively owned resources and spaces. Section 8 discusses some objections to this proposal. Section 9 concludes by offering an overview of other moral approaches to immigration. That overview is written in such a way that a reader could also go there immediately to get a sense of this area before engaging with the substantive approach spelled out in this study. We will see that there are three major approaches to making immigration policies subject to moral evaluation: approaches based (in one way or another) on territorial occupation, approaches based (in one way or another) on ideas of freedom, and finally approaches that question the legitimacy of borders. General considerations of international distributive justice also play a role, but they are normally not specifically taken to

demand changes in immigration policies, but think of such changes as one in several substitutable ways of meeting obligations to the global poor.⁹

2. Obligations in Virtue of Common Humanity

The idea that certain things are owed to human beings “in virtue of being human” is ancient, and has recently found an influential expression in the human rights movement. But what, if anything, is owed to persons in virtue of being human? We will have to look into this question for a bit because one approach to immigration that we will explore is that immigration comes up for moral evaluation because it interferes with human freedom, as captured by the capabilities approach. But the importance and urgency of this approach stands and falls with the idea of the realization of such freedom being owed to human beings “in virtue of being human.” Moreover, we will also later integrate common humanity as one ground of justice into the grounds-of-justice approach; for that reason too it is crucial to explore what individuals owe to each other in virtue of being human and thus in virtue of their common humanity.

Any answer to this question must have two (closely related) dimensions: First, we must determine precisely what should be owed to persons in virtue of being human and thus the content of obligations that arise on this basis; and second, we must assess why shared humanity should be a basis of obligations in the first place, that is, why we would owe *anything* to each other in virtue of being human. In a first step, I will now introduce different answers in terms of their response to this second question and adopt a particular such answer for our purposes. I will then return to the first question and introduce different ways of explicating the contents of obligations that arise in virtue of being human. One of them is the capabilities approach, I explore in detail in the next section.

We can distinguish among at least three approaches: first, a tradition in which the thought of Immanuel Kant plays an important role according to which somebody who does not accord a

⁹ So this study explores two approaches to the normative reflection on immigration at some depth while touching on a number of others as well. Readers without much background will find some of the discussions rather slow-going because it takes a while before we can bring them to bear on immigration. At the same time, readers accustomed to philosophical approaches might find that even the discussions that we do pursue in depth bear on more questions than we can discuss with sufficient care. I ask both types of readers for their patience.

certain status to other human beings in his actions is inconsistent or in some other way falls into a contraction with himself; second, a set of views that proceed by arguing for the enormous normative significance of certain aspects of our shared humanity by way of comparison to other goods, and insists on the unreasonableness of disregarding these aspects -- without, however, insisting that somebody who fails to do so actually falls into an inconsistency or some other contraction with himself; and third, views that deny that rational inquiry into foundations of morality of either sort is possible, and insist instead that cultivation of moral emotions is all that matters.

A central Kantian idea is that the rational mind ends up in a contradiction with itself if it does not treat all rational agents with a certain respect.¹⁰ To assess what morality demands agents ought to follow the Categorical Imperative, which in one its formulation says the following: “Act so that you use humanity in your person, as well as in the person of every other, always at the same time as end, never merely as a means.” One can agree that the Categorical Imperative captures the essence of morality without also endorsing the project of showing that agents are making a mistake in their own terms if they fail to act in accordance with it. This is not the occasion to discuss this in detail, but it is fair to say that many philosophers have become doubtful of the enterprise of rationally deriving a substantial set of moral prescriptions from a notion of reason in such a way that this derivation not only applies to all human beings, but applies to them in such a way that their own reasoning becomes contradictory if it deviates from what this derivation implies. While this way of conceptualizing what is owed to human beings in virtue of being human continues to have its advocates, we will set it aside.

We also set aside the third approach that denies the point of rational inquiry into the foundations of morality. Recently, this approach has been prominently expressed by Richard Rorty (see e.g., Rorty (1993), (1990), (1985)). Standing in the tradition of philosophical pragmatism, Rorty insists we have little to gain by such inquiry: no account of what is owed to human beings can help explain a change of attitudes that, for instance, in recent decades has made the human-rights movement into a broadly-shared endeavor; and no such inquiry can help

¹⁰ The classical expression of this approach is Kant’s *Groundwork for the Metaphysics of Morals*. For a recent expression, see the work of Alan Gewirth (e.g., Gewirth (1978), (1984)).

make such changes more entrenched. Instead, we had better concentrate our energies on sentimental education. Such education seeks to acquaint people with one another so that they are less tempted to think of those different from themselves as only quasi-human. So the goal of sentimental education is to expand the reference of the terms “our kind of people” and “people like us.” Suffice it to say that this approach abandons too readily the project of offering reasoned support to the idea that certain things are owed to human beings as such and thus to add to a more secure intellectual standing of that idea.

This leaves us with the second approach to the idea of things being owed to persons in virtue of being human. Again, the point here is to argue for the enormous normative significance of certain aspects of our shared humanity by way of comparison to other goods and to insist on the unreasonableness of disregarding these aspects. Given that I have introduced this approach as lying “in between” the two rather extreme competing views, this approach may take on rather different shapes. Recall at this point the two questions with which we started this section: the question of what the content of obligations to human beings would be, and the question of why anything would be owed to human beings in the first place. At this point, our exploration of the question of why anything would be owed to human beings in virtue of their common humanity, or in virtue of being human, connects to the question about the contents of these obligations.

As I pointed out before, this move will eventually lead us to the capabilities approach, but there are other ways as well in which philosophers have spelled out the content of these obligations. One rather influential approach in contemporary moral thinking is a revitalized *natural law tradition*, most prominently developed perhaps by John Finnis (Finnis (1980)). A commitment to natural law involves the following views: first, there are objective and universally binding standards for right action whose bindingness does not depend on social conventions or individual attitudes; second, these objective standards can be understood through reasonable reflection on the nature of human beings and their environment; and third, there is an objective theory of a good life that typically includes basic goods such as health, knowledge, or friendship. The content of the obligations that we have in virtue of being human would then be provided by these objective standards that we all ought to strive to realize in our own and each other’s lives.

However, both the commitment to a theory of the good life and the insistence on the universal bindingness of actions required for its pursuit (on behalf of others as well as on one's own) render natural law thinking very controversial as a view of what persons are owed in virtue of being human. A different way of thinking about the contents of obligations owed to persons in virtue of being human is to make *needs* central. As Brock (1998b) explains,

the needs that matter morally are bounded by the idea of the necessary, the essential, the indispensable, or the inescapable. Furthermore, if the needs are not met, we are unable to do anything much at all and certainly are unable to lead a recognizably human life. (p 15)

Philosophers emphasizing the importance of needs tend to identify needs not merely by reference to a biological minimum, but also by reference to shared social norms; they often also allow for a certain degree of variation across societies. To use an example common in this literature, the laborer in Adam Smith's day did not need a linen shirt as much as he needed food and shelter, but he still *needed* it. Common strategies for arguing that others are obligated to help put persons in a position to meet basic needs proceed by showing their centrality to autonomy, agency, or human functioning, and by then arguing that communities should protect any individual's ability to meet basic needs. David Wiggins, for instance, argues that needs must be met for us to be able to maintain any social morality (Wiggins (1987)). Onora O'Neill argues that the needy are unusually prone to being coerced and that is a matter of respect for their autonomy not to permit a state of affairs where people find themselves in such a situation (O'Neill (1985)). Similarly, Goodin (1985) argues that we are obligated to protect those who are vulnerable to us *because* they are vulnerable – a view he supports by arguing that in many familiar cases the best explanation for the presence of a moral obligation is such vulnerability --, which includes in all consistency then both the needy at home and abroad.

If we are pressing the question of why the needs-based approach would provide the content of what is owed in virtue of common humanity, we find that it is more straightforward to argue that basic human needs create obligations for governments with regard to their own citizens, than to argue that such obligations arise merely in virtue of our being human. For instance, one can argue, as Wiggins (1987) does, that individuals cannot sensibly be expected to be social cooperators if they cannot meet their basic needs. But this argument applies only within

a shared context of cooperation. To argue that needs ground obligations simply in virtue of being human, one would have to insist on the moral significance of needs (at least partly also because of their relevance to other moral values). Bernard Williams, for instance, has argued that arranging health care provision in ways other than by health care *needs* would be *irrational* (Williams (2005)). To illustrate, providing health care in proportion to how well people can pay matches an elementary human concern with a criterion that is utterly extraneous to it. One can generalize this point by arguing that arranging political and economic affairs in such a way that basic needs of people anywhere remain unmet is irrational by prioritizing goods that are of less moral importance than needs and those moral values to which they are intimately tied.¹¹

In the next section, we will introduce the capabilities approach as one other account of what people are owed in virtue of being human, and adopt that approach for the purposes of this study. After introducing that view, we can formulate a particular question about immigration in its terms. For now, let me make a general statement about a *duty of aid* that is tied to the idea of owing something to people in virtue of being human (and provides contents to obligations of that sort), rather than to any account in particular. This duty comes with a notorious boundary problem: it is one thing to establish a basic obligation in light of shared humanity, another to show how far it goes and what it requires. (Barry (1982) makes this point nicely.) Yet a plausible way of filling this duty of aid with contents is a duty of assistance in building institutions. Good institutions are essential to economic growth, but they are also indispensable to make sure elementary human goods and freedoms are protected reliably and enduringly. So since there are basic obligations in virtue of common humanity, an instrumental argument delivers a *duty of assistance in building institutions*. In a world with little political alternative to living in states, this is assistance in building state institutions.¹²

In support of such a duty, we can also offer a consistency argument, one in which we use as a starting point that individuals who share a state have strong obligations of justice to each

¹¹ For discussions of needs and their role in moral philosophy, see also Braybrooke (1987), Thomson (1987), Reader (2007), Doyal and Gough (1991), Miller (2007, chapter 7, Miller (1999), chapter 10, and the contributions in Brock (1998a) and Reader (2006b). For a biological model of needs, see Daniels (1985), chapter 2.

¹² As for instance also argued by Rawls (1999a). See Risse (2005a) for discussion and a connection to the empirical literature on institutions and economic growth; see that piece also for literature references.

other. (In section 6, we will see why there are such strong obligations.) A state is a political and economic structure that is both coercive and cooperative in particular ways. Individuals subject to such an arrangement, and expected to comply with it, can expect for these structures to abide by certain principles of justice. At the bottom of such demands, presumably, we will find a certain view of morally relevant features of persons, such as those identified by accounts of common humanity. If respect for the relevant features is strong enough to push for strong obligations *among those who share the political and economic structures of a state*, this will be so because it is strong enough to impose a duty to help *anybody* with those features in the creation of an environment in which they are protected and respected in the first place. Impartiality in the respect for persons with these features demands as much, but it does then demand different measures depending on what (if any) coercive and cooperative structures one actually shares with others. So consistency in the impartial application of the respect in which these features are held entails a duty to assistance in the absence of shared structures.¹³

3. The Capabilities Approach

Given its significance for the Human Development Program, I now introduce the capabilities approach in some more detail than strictly required for discussing immigration and in passing also record some of the philosophical debates surrounding them. Since the late 1970s, Amartya Sen has argued that the appropriate reference space for many evaluative purposes is not that of utilities, resources, or other goods capturing a person's achievements within social arrangements, but that of substantive freedoms, or *capabilities*, to choose a life one has reason to value. The resources a person has, her state of happiness, or her social status may be problematic indicators of the freedom she enjoys to do certain things or become a certain person, matters that, morally speaking, we ought to care about. It is because of such deficiencies in other approaches that the

¹³ Some philosophers have of course for much further-reaching obligations. Consequentialists like Singer (1972) think we are morally obligated to bring as much good into the world as possible and that membership in political structures impose no obligations that would interfere with this duty. Consequentialism is not the perspective taken in this study, but there is no space to argue against consequentialism here. (See Miller (2007), pp 233-38 for a recent engagement.) Pogge (2002) argues that the global order actually harms the poor and that the rich owe them rectification; see Risse (2005b) and (2005c) for a critical discussion. Beitz (1999) derives claims of justice from the view that the world as a whole is a political and economic system. Caney (2005) argues that the same principles of justice ought to apply to all people in virtue of being human. The grounds-of-justice view is opposed to both of these standpoints, but again, there is not enough space here to argue for this in any detail. At any rate, for now, my concern only is to argue for a basic duty in virtue of shared humanity that by itself is widely supported.

notion of capability becomes central to an understanding of what both principles of justice and ideas of development should be concerned with, respectively.¹⁴

Even though these are the debates within which the capabilities approach was introduced, the particular angle under which I am introducing it, following the previous section, is as one way of spelling out what is owed to persons *qua human beings*. The other debates on which I just reported, of course, stand in an obvious relationship to this matter. The stance that capabilities can be used to offer such an account can in principle be supported in the same way in which the corresponding stance for needs could be supported. One does then also have to sort out which of these two approaches should be preferred. As a working political idea, the basic needs approach had its heyday in the 1970s and 80s.¹⁵ One reason why the basic needs approach to development fell out of favor was difficulties in implementation: difficult judgments were required of what was “needed” as opposed to “what was not really needed” (cf. Reader (2006a) and Alkire (2002), chapter 5). Yet as compared to the capabilities approach, the basic needs approach to the content of our obligations in virtue of common humanity draws on the tight connection between “unmet human needs” and moral demandingness.

The capabilities approach, on the other hand, can formulate ideas about *basic* capabilities and thus adopt a major insight of the basic needs approach, namely, singling out certain human concerns as being particularly morally demanding. At the same time, the capabilities language allows for the articulation of wider ideas about a good life, in particular by making room for ideas of choice and participation (an endeavor that the basic needs approach seems to be able to solve only in an ad-hoc and piecemeal fashion). In the end, I believe the basic-needs approach and the capabilities approach, properly understood, are more complementary than they stand in opposition to each other. But for the reason just stated – and again, in light of its (related)

¹⁴ Sen (1980) discusses capabilities as a response to a question about egalitarian principles of justice, namely, what the currency or distribuendum of these principles ought to be, and thereby set off the “equality -of-what” debate among theorists of justice. Over the years, his focus has become more and more the formulation of a particular approach to development, one centered on the idea of freedom. For major presentations, see Sen (1985), (1987), (1992), and (1999). For a discussion of the capabilities approach, see also Alkire (2002). For state of the art assessments, see Comim et al. (2008).

¹⁵ Major theoretical presentations included Streeten (1981) and Stewart (1985); see Haq (1995) for general reflections on development, focused on the launching of the Human Development Report and the Human Development Index.

relevance to the United Nations Development Program – I will, for the purposes of this study, adopt the capabilities approach as the philosophically preferred way of spelling out what we owe to each other in virtue of our common humanity.¹⁶

Emphasizing capability means focusing on what goods respectively do for people (which varies depending on the person and depending on the circumstances), rather than on the goods themselves, while not quite focusing on what utility this gives the person (which would already reflect previous expectation people formed about how their lives would unfold – people might cultivate expensive tastes and thus be difficult to please, but also adjust to a life of low expectations, and simply have a sunny disposition, and thus be overly easily pleased). Emphasizing capability in this ways also involves a rejection of the perspective that there might be a trade-off between development and freedom. Instead, a plausible notion of development is defined in terms of an increase in freedom.

Well-being, on this view, is a matter of attained states and activities, and freedom to achieve well-being is matter of the combinations of states and activities within a person's reach. Well-being is conceptualized in terms of interrelated "functionings," which in turn might be, as Sen says, "beings" and "doings." A person's achievement is a (long) vector of his functionings. Functionings vary from such elementary things as being adequately nourished, being in good health, avoiding escapable morbidity and premature mortality, etc. to more complex achievements such as being happy, having self-respect, taking part in the life of the community, etc. A person's *capability* to function represents the various combinations of functionings she can achieve. "Capability" is thus a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another. Value judgments are required to determine which functionings and thus which freedoms matter for a particular purpose. Capability is indeed meant to be a kind of freedom, and Sen's tendency to identify "capability" and "freedom" showed in the book title *Development as Freedom*. (Alkire (2002) argues that the two concepts are indeed synonymous in

¹⁶ Reader (2006a) insists that many criticisms of the basic needs approach are misguided. Sen (1997), chapter 20, contains Sen's most extensive discussion of the basic needs approach. Along lines suggested there, Alkire (2002), chapter 5, argues for a "reconciliation" of the basic needs approach and the capabilities approach. (Alkire also integrates the natural law approach into her reflections, following Finnis (1980).) She grants that in its most plausible formulation (i.e., in Wiggins (1998)), the basic needs approach allows for an appropriate formulation of relativity and can thus meet a major objection. Alkire also argues that both approaches are operationally very similar. See also Alkire (2006).

Sen's usage.) Freedom matters for development both intrinsically and instrumentally. It matters intrinsically because the possibility to choose a life one has reason to value is essential to human flourishing. It matters instrumentally because empowering people is also crucial to an improvement of the social arrangements around them.¹⁷

The capabilities approach does not downplay the importance of income deprivation, access to resources, or subjective well-being. Nor does this approach deny the existence of strong correlations between capability deprivation and deprivation along these dimensions. But these correlations are imperfect, and often divergences matter more from a policy standpoint than concurrences. For instance, unemployment entails deprivations that are insufficiently reflected in income distribution. Similarly, women's liberation is not just about improving their material status, but also about empowerment (education, employment opportunities, attitudes in family and society). To take an extreme case, hunger relates not only to a material incapacity to buy food, nor does the occurrence of famines correlate much with an absence of societal wealth or problems in food production. Instead, it is the overall operation of political and social arrangements that influences people's ability to acquire food. And as Sen's work on famines shows (Sen (1983)), famines occur without any decline in food production or availability.

Sen has persistently refrained from offering a general list of functionings or capabilities. The closest approximation is a distinction among different types of freedom in Sen (1999):

¹⁷ Equality of advantage, on this view, is then conceptualized being equal with regard to capability sets. This leads to considerable problems about the selection, weighting, and comparison of functionings and capabilities. Many capability sets will be incommensurable (which also entails that one way of having a non-inferior capability set to that of somebody else means to have one that is non-comparable to that person's). Sen has tended to accept these problems as an inevitable consequence of human diversity to which he thought the capabilities approach can do more justice than, say, a resource-based or utility-based approach. Much philosophical criticism has been directed at Sen for his treatment of freedom. Cohen (1993) objects that Sen (1980) brings together two different concerns about justice that he has difficulty treating within the same framework, namely, a complaint about the insufficiency of resources and utility, respectively, to be the currency of distributive justice, and a complaint about the insufficient attention paid to the importance of freedom for questions of distributive justice. Cohen (1993) also argues that Sen overestimates the importance of freedom for concerns of specifically egalitarian justice. (Sen (1993) includes a response to Cohen.) Okin (2003) argues that Sen overextends the term "freedom" to such an extent that an increase of most anything of value to human beings is registered as an increase in freedom. Cohen (1995), too, objects that Sen overextends the use of the term freedom. Cohen (1995) also points out that considerations of incommensurability, limited information, responsibility and the need for a notion of severity will push us towards making Rawlsian primary goods comparisons in many of the cases in which capability comparisons are most controversial; therefore, capabilities do not really possess a decisive advantage over one of those other competitors for being the currency of distributive justice that Sen (1980) originally criticized.

political freedoms (civil and political rights); economic facilities (opportunities regarding consumption, production, exchange); social opportunities (e.g., education and health care); transparency guarantees (disclosure and lucidity in social arrangements); and protective security (social safety net from reduction to abject misery; Sen (1999), p 10).¹⁸ A major difference in their respective developments of the capability approach between Sen and Martha Nussbaum is that Nussbaum does provide such a list.

Originally inspired by Aristotle, Nussbaum's earlier approach to capabilities (Nussbaum (1988), (1992)) saw capabilities as capturing the real essence of humanity and thus as a timeless ideal of well-being (showing strong affinities with the natural law approach introduced above). Her recent work (Nussbaum (2000), (2006)) argues that capabilities capture a basic intuition of human dignity, an ideal of a good life not meant to be timeless, but that offers an ideal for the modern world that nevertheless is supposed to have abroad cross-cultural resonance (as captured by an overlapping consensus among people with otherwise different conceptions of the good life). Her list of capabilities includes the following: To live a life of normal length; bodily health (which includes being adequately sheltered and nourished; bodily integrity (including – importantly, for our purposes -- the *freedom to move freely from place to place*, as well as freedom from assault); the use of senses, imagination, and thought; being able to have emotional attachments to things outside of oneself; to exercise practical reason (for instance, to reflect on one's life); to be able to associate with others in a way that involves the showing of concern for other and having the social basis of self-respect and non-humiliation; being able to live with concern for other species; being able to play; having some control over one's political and material environment.¹⁹

¹⁸ Sen (2004), (2005) has argued that a list with a claim to universal validity would undermine local public discourse about development and would also stand in conflict with the intended flexibility of his approach. However, while such a response might be adequate as far as the applicability to development is concerned, Sen's claim that capabilities also are the currency of justice does require such a list. After all, we must then be able to determine what counts as a social minimum. (See Nelson (2008)).

¹⁹ Jaggar (2006) argues that Nussbaum fails to offer a convincing justification for her list and bases it to too large an extent on her own moral authority. Nelson (2008) wonders whether Nussbaum's list really is a felicitous list of *capabilities* or *functionings* at all. (Shelter, e.g., is most aptly understood as a good, not as a state or an activity or a freedom to obtain either; this problem is not solved by changing the formulation to, say, "having access to shelter.") Nelson also wonders whether the items on Nussbaum's list all have the same status and, most importantly, complains that this list (understood as a list of entitlements against the state) fails the self-declared test of neutrality

One item on Nussbaum's list, then, is bodily integrity, and one of its aspects is freedom of movement. It is this particular capability that makes for a connection between the capabilities approach and a moral assessment of immigration policies. Such policies obviously restrict freedom of movement. This does not render them categorically unacceptable; after all, as we already saw, unlimited immigration would also affect people's capabilities. But we do get a moral challenge for restrictive immigration policies: to explain why this particular capability can be limited as is done by immigration policies in particular in wealthy countries into which many people would seek to immigrate.

This challenge is no artifact of Nussbaum's version of the capabilities approach. To be sure, other ways of spelling out what is owed to human beings as such do not generate such a challenge to immigration policies in particular. For instance, the needs-based approach generates obligations to put people in a position to meet their needs, but immigration merely registers as *one* possible way of doing so. However, the capabilities approach *per se*, as an account of what is owed to persons in virtue of being human, emphasizes values such as *freedom, empowerment, and choice*. In an increasingly politically and economically interconnected world, immigration policies register as major obstacles to the realization of these values for many people. So challenging restrictive immigration policies lies in the very nature of the capabilities approach under our current political and economic circumstances.

4. Common Ownership of the Earth

Before we can pursue that challenge further, we must develop the second line of moral inquiry about immigration, the idea that the earth belongs to humanity collectively, and must do that too in some detail. Just as above we had to develop the idea of obligations in virtue of common

among different forms of the good life. Still, Nelson argues, Nussbaum is right in providing such a list and Sen is not entitled to his stance to refrain from providing one. He argues that the capabilities approach originally arose from an internal critique of Rawls's theory of justice and continues to reflect a considerable weakness of Rawls's approach, namely, that it seeks to see individuals as autonomous choosers (which leads to the need for a neutrality requirement) while also holding that nobody ever deserves any of their abilities and achievements (which leads to a list of items in terms of which redistribution should occur, which in turn unfailingly violates the neutrality requirement). Dowding (2006) argues that Sen avoids problems of other approaches – which have motivated his approach in the first place – only as long as he keeps his language very general and avoids particular commitments with regard to capabilities of a sort that other approaches make; once he spells it out in more detail, it would fall prey to problems of other approaches in one way or another.

humanity and the capabilities approach first at some length to see the force of questions about immigration that arise from this angle, so now we have to explain first what is actually meant by collective ownership of the earth. To begin with, let me quickly address a typical *reductio* through which libertarians often seek to ridicule the very idea of collective ownership of the earth. Can somebody seriously claim, asks for instance Murray Rothbard, that a newborn Pakistani baby has a claim to a plot in Iowa that Smith transformed into a field?²⁰ As soon as one considers such implications of collective ownership, says he, one realizes its implausibility. Smith has claims on the strength of his plight, but the baby has none. Yet collective ownership of the sort I defend does not grant each and every individual claims to each and every object. Not any nugget of gold found on the ocean floor has to be shared out among all human beings, nor does each drop of oil extracted on the Arab peninsula. That our baby has claims to resources on a par with Smith's is consistent with its not having claims on Smith to vacate *that* land. A detailed view of what collective ownership amounts to has yet to be established, but collective ownership is not so easily shown to be absurd.

In the 17th century, philosophers like Grotius and Locke took the biblical standpoint of the earth as a divine gift, but especially those two also held that this view should be acceptable even if humankind had never received that revelation. And indeed, the view that the earth originally belongs to humankind collectively is plausible without religious input. Two points are obvious enough: first, the resources of the earth are valuable and necessary for any human activities to unfold; and second, those resources have come into existence without human interference. These points must be considered when individual accomplishments are used to justify property rights strong enough to determine use across generations.²¹

Egalitarian Ownership is the view that the earth originally belongs to humankind collectively: all humans, no matter when and where they are born, must have *some* sort of symmetrical claim to it.²² ("Original" ownership does not connote with time but is a moral

²⁰ Rothbard (1996), p 35; Hospers (1971), p 65, makes a similar point.

²¹ Much has been written on foundations of property; see Becker (1977), Reeve (1986), or Ryan (1987). For a discussion of the collective ownership approach and its role in moral theorizing, see Risse (forthcoming/b).

²² Notice that such a symmetry of claims among human beings is consistent with giving credit to environmental values beyond what is instrumentally useful for human beings, as well as to moral consideration of animals.

status.) This is the most plausible view of original ownership, because of the two points above: that the existence of resources is nobody's accomplishment, whereas they are needed for any human activities to unfold. Egalitarian Ownership is detached from the complex set of rights and duties civil law delineates under the heading of property law (Honore (1961)). 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.

One may say that the term "ownership" is misleading here, but I use it since there is this connection to the familiar, thicker notions of ownership in civil law; and we are, after all, concerned with what sorts of claims individuals have to resources. To be sure, the considerations motivating Egalitarian Ownership speak to raw materials only, not to what human beings have *made* of them. The distinction between what "is just there" and what has been shaped by humans is blurred, say, for land human beings have wrested from the sea, or for natural gas harnessed from garbage deposits. But by and large, we understand well enough the idea of what exists without human interference.²³

We must now assess different *conceptions* of Egalitarian Ownership. Such conceptions differ in 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 -- 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. Common ownership is a right to use something that does not exclude others from also using it. If the Boston Common were held as *common* ownership when it was used for cattle, a constraint on each person's use could be to bring no more than a certain number of cattle, a condition motivated by respect for co-owners and the concern to avoid the Tragedy of

²³ Egalitarian Ownership formulates a standing demand on all groups that occupy parts of the earth to inhabit the earth in a manner that respects this symmetrical status of individuals with regard to resources. That Egalitarian Ownership operates in this way should be intelligible and acceptable even within cultures where individuals are not seen as property owners. Nothing about Egalitarian Ownership precludes such cultures from being acceptable to their members even if they do not treat individuals themselves as property holders. Yet even cultures that do not see individuals themselves as property holders must indeed be acceptable to those who live in them especially because all individuals have symmetrical claims to original resources.

the Commons. Yet if they held the Common in *joint* ownership, each individual use would be subject to a decision process to be concluded to the satisfaction of each co-owner. Joint ownership ascribes to each co-owner property rights as extensive as rights of private ownership, except that others hold the same rights: each co-owner must be satisfied on each form of use.

So there are various interpretations of Egalitarian Ownership: resources could be jointly owned, commonly owned, or each person could have private ownership of an equal share of resources (or a value equivalent). These conceptions carve out a pre-institutional space of natural rights that constrain property conventions which in turn regulate what natural rights leave open. I submit that Common Ownership is the most plausible conception.²⁴ While I cannot offer a complete argument for this proposal here, I offer 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.²⁵

The core idea of common ownership is that all co-owners ought to have an equal opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources. This formulation, first, emphasizes an equality of status; second, it points out that this equality of status concerns opportunities to satisfy needs (whereas there is no sense in which each co-owner would be entitled to an equal share of what is collectively owned, let alone to the support of others in getting such a share, any more than any co-owners of the Boston Common had a claim to such a share or to the support of others to obtain it); and third, it does so insofar as these needs can be satisfied with resources that are collectively owned (that is, nothing at all is said about anything to which the original intuitions motivating Egalitarian Ownership do not apply).

²⁴ 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. I continue to say that humanity “collectively” owns the earth if the precise form of ownership does not matter.

²⁵ For extensive treatment, see Risse (forthcoming/b). Risse (2005b) offers supportive arguments, showing why other conceptions are problematic. I develop all of this at length in my forthcoming book on *The Grounds of Justice*. See also Risse (2009).

To put this in the common Hohfeldian rights terminology that is in use in political philosophy, common ownership rights must minimally include liberty rights accompanied by what Hart (1982) calls a “protective perimeter” of claim rights (p 171).²⁶ To have a liberty right is to be free of any duty to the contrary. Common ownership rights must include at least rights of that sort; that is, co-owners are under no duty to refrain from using any resources. But the symmetry of claims postulated by Egalitarian Ownership demands more than liberty rights. In light of the intuitions supporting Egalitarian Ownership, to count as an interpretation of it, Common Ownership must guarantee minimal access to resources, that is, impose duties to refrain from interference with certain forms of use of resources. Therefore we must add that protective perimeter of claim rights to the liberty rights. We obtain enough mileage from the original intuitions to require that common ownership rights (for Common Ownership to serve as an interpretation of Egalitarian Ownership) be conceived of in sufficientarian terms, in the sense that no co-owner should interfere with actions of others if they serve to satisfy basic needs. These intuitions cannot be pressed beyond that. Equal Division and Joint Ownership both press them too far.

Yet we do have to add one more right. We must also make sure individuals can maintain their co-ownership status under more complex arrangements. A necessary condition for the acceptability of such arrangements is that the core purpose of the original rights can still be met. That core purpose is to make sure co-owners have the opportunity to meet their basic needs. In Hohfeldian terminology, co-owners have an *immunity* from living under political and economic arrangements that interfere with the ability of those subject to them having such opportunities.

The establishment of states and other political structures in which particular property conventions are accepted is consistent with the rather minimal set of original ownership rights that define the moral relationship among individuals with regard to the original resources of the earth. Indeed, according to the set of rights we have stipulated, individuals would not be doing anything wrong if they claimed considerable shares of resources (and would found states that do so) while others have to get by at subsistence level, as long as, in fact, these others indeed can so

²⁶ For the standard Hohfeld rights terminology, see Jones (1994), chapter 1; Edmundson (2004), chapter 5; Wenar (2005).

get by. Such actions, after all, would not violate any of the rights we have argued spell out the idea of Common Ownership. At the same time, these others who are so excluded would do no wrong if they tried to undermine the viability of the richer states, tried to join them even against their immigration regulations, or otherwise tried to foster their own self-interest in a manner that goes against the policies of such states (e.g., by engaging in illegal immigration). All this is a consequence of the fact that we have adopted a rather minimal set of rights to develop the standpoint of collective ownership.

However, we can ask what this state system would have to be like so that each co-owner could *reasonably be expected* to accept it and comply with it. Once the earth is divided up into separate units, what do these units have to be like, and what must they do for each other, as far as the ownership standpoint is concerned, for individuals to have no reasonable complaint about being excluded from states to which they do not belong, and for individuals to be reasonably expected *not actually to exercise their liberty rights* as far as such states are concerned? Recall our initial example, in which the population of the US shrank to two. Clearly others then cannot be expected to refrain from trying to enter even against the policies of these two, and the perspective of original ownership helps understand why. In fact, this standpoint gives rise to a particular way of thinking about immigration that we can articulate within a framework we are about to introduce, the *grounds-of-justice approach*.

5. The Grounds-of-Justice Approach

To assess just what the capabilities approach and the collective-ownership approach entail for immigration, we need additional machinery. Immigration policies create winners and losers in the countries of destination, so we need a framework in which to articulate how to think about the duties that apply here. This presumably involves some weighing of duties that arise from legitimate demands to immigration against obligations to those already in the country. After all, people also live in political structures within which special obligations arguably apply. The normative relevance of these structures must be articulated simultaneously with ideas that exert pressure to permit immigration.

A framework in which we can articulate all these matters is the *grounds-of-justice* approach. One way of thinking about this approach is in terms of the applicability of principles of distributive justice. A theory of distributive justice is a theory that explains why certain people have particularly stringent claims to certain relative or absolute shares, quantities, or amounts of something whose distribution over the relevant people has to be justifiable to them. *Principles of justice* state who has what claims.²⁷ One hallmark of our understanding of justice and its role in our moral discourse indeed is the stringency of the claims that apply among all those who stand in the “justice-relationship” with each other. This is not to say concerns of justice can never be set aside, but it takes especially good reasons to do so. There might be other obligations as well, but those would be less stringent and more discretionary, such as duties of charity. Under what conditions do individuals stand in the justice-relationship? Philosophers have given different responses, and the grounds-of-justice approach articulates one such response.

One kind of response is *relationism*, the position that only those individuals stand in a justice-relationship with each other who share relevant practices with each other. The two primary versions of this view are *internationalism* (also known as *statism*), and *globalism*. According to the former, only those individuals stand in a justice-relationship who respectively share the particularly dense coercive and cooperative structures of a state. According to the latter, at this stage in human history, all human beings stand in a justice-relationship because there exists a global political and economic order whose existence is decisive for the applicability of principles of justice. Relationists might acknowledge that other obligations apply among those who do not share the justice-relationship, but those would not be obligations of justice. Opposed to relationism in all its brands is non-relationism according to which principles of justice apply indiscriminately to all human beings *in virtue of being human*. So non-relationists, like globalists, think of principles of justice as having a global scope, but do so for different reasons. The disagreement between relationists and non-relationists is about the *grounds* of

²⁷ Rawls' (1999b) two principles of justice as a well-known example of principles of justice designed to apply within a state: 1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. 2. Social and economic inequalities are to be arranged so that they are both (a) attached to offices and positions open to all under conditions of fair equality of opportunity, and (b) to the greatest benefit of the least advantaged.

justice, the norm-generating conditions or considerations that must be present for demands of justice to apply among individuals who share these conditions.²⁸

All of these views have problems, and we can only barely scratch the surface of this discussion. Relationists are motivated by the idea that human beings share political and economic structures within which certain goods are generated whose distribution must be regulated, and doing so is the task of distributive justice. “Distributive justice,” says Freeman (2007) by way of expounding this approach, “in the first instance poses the general problem of fairly designing the system of basic legal institutions and social norms that make production, exchange, distribution, and consumption possible among free and equal persons” (p 305f). Those outside of the relevant system do not partake of the justice-relationship. Relationists disagree about what the relevant system is,²⁹ but they all neglect grounds of justice that cannot straightforwardly be understood in terms of practices, or in terms of a system of norms, as Freeman has it, among them common humanity and common ownership of the earth.³⁰ Relationists apply ideas of impartiality only within the practices or within the system they consider relevant, at the expense of acknowledging other ways in which ideas of impartiality should also matter.

²⁸ Using the term “internationalism” as we do here has disadvantages. “Internationalism” is often used to refer to political movements that advocates greater economic and political cooperation among nations, which is not what is meant here. But there are only so many terms to go around here, and no confusion should arise if the reader keeps in mind what internationalism means in this context. Nagel (2005) captures internationalism. Beitz (1999) offers an expression of globalism. For discussion see also Cohen and Sabel (2006) and Sangiovanni (2007). Caney (2005) is a non-relationist.

²⁹ Most distinctly, such a dispute has occurred within the Rawlsian camp. Rawls (1999b) original theory of justice limits the applicability of principles of distributive justice to the state, and offers a picture of global justice that does acknowledge obligations outside of the state, which, however, are not principles of distributive justice (see Rawls (1999a) and Freeman (2007) for discussion). Beitz (1999) and Pogge (1989) argue for a global applicability of Rawls’ principles of distributive justice.

³⁰ To be sure, humanitarian obligations have often been acknowledged in some way, and readily can be so acknowledged even in an internationalist framework such as Nagel’s (2005) or Rawls’s (1999a)/(1999b). But they would normally not be acknowledged as obligations of distributive justice in relationist approaches. Beitz (1999) offers some discussion about obligations of justice as they apply to resources, but sets aside such obligations in favor of principles of distributive justice as they apply in an interconnected world that, as he sees them, are not immediately concerned with resources and space. The only recent exception to the neglect of the idea of collective ownership of the earth is the literature on left-libertarianism, which, however, is not concerned with the systematic development of a theory of global justice; see Vallentyne and Steiner (2000a) and (2000b).

Non-relationists object that, by making principles of justice focused on political or economic systems, relationists are tying the applicability of these principles to properties of individuals that are leaving out too much of moral importance (if we are talking about systems in which individuals have not *chosen* to participate), or else are making too much of only certain aspects of individuals lives that are morally important, at the expense of others (if we are talking about systems in which individuals have chosen to participate). Non-relationists think justice is inconsistent with anybody's having advantages or disadvantages that are morally arbitrary. Where relationists insist on the moral relevance of shared structures, non-relationists insist on the arbitrariness of anybody's belonging to such structures. Yet non-relationists are too dismissive of normatively relevant structures. They might be able to maintain such a dismissive attitude as long as the opponent is focused on one particular structure, but not if a pluralist alternative is available, of the sort I am about to sketch.

Relationists and non-relationists alike endorse a particular, and traditional, view of how principles of justice apply. All these positions assume that there is a single and unique justice-relationship, that is, that there is a *fixed* set of principles of justice, and that those are associated with particular grounds on which they apply, as well as with a set of individuals in their scope. Alternatively, one might deny that there is a single and unique justice relationship. One may then use "principles of justice" as a collective term that stands for different principles that *respectively* have grounds and scope. This is what the grounds-of-justice approach does. It takes on board valid insights from the different camps in this debate. Internationalists and globalists have rightly insisted on the importance for purposes of justice of the respective structure they champion, but have tended to overemphasize the importance of their respective structure vis-à-vis other available ones. Shared membership in a state and shared subjection to the global trade system are grounds of justice. Non-relationists have rightly insisted on the importance of shared humanity as a ground of justice but have been too dismissive of the importance of political and economic structures. Common humanity and collective ownership of the earth too are grounds of justice. (So the grounds-of-justice view transcends the distinction between relationism and non-relationism.) To think about the state on this approach (see next section), one would have to specify precisely what makes for particular obligations of justice among those who shared a state. At the same time, we would have to articulate what obligations of justice the state has

towards those who do not belong to it in virtue of other grounds of justice, such as shared subjection to a trade system, common humanity, or collectively ownership of the earth.

The grounds-of-justice approach is not driven by a need to find a compromise where careful thought might provide us with the right way of thinking about the matter. While modern political philosophy has been concerned with justifying the state to those respectively subject to it, what matters now is to think about the justifiability of states in an interconnected world, and so to those respectively excluded from them. The grounds-of-justice approach seeks to offer a sensible way of doing so. Its philosophical credibility stands and falls with how it can be developed, not with its having some kind of compromise character.³¹

6. The Normative Peculiarity of the State

Given the grounds-of-justice approach, we must now briefly address shared membership in a state as one such ground. It is because such shared membership indeed is a ground of justice that individuals within a given state have special obligations with regard to each other that must be pondered against claims to immigration. My own version of spelling out the grounds-of-justice approach is a view I have called *pluralist internationalism*, which captures the centrality I continue to grant to shared membership in a state.³²

What is normatively peculiar about states is both a particular intense form of social cooperation as well as a particular form of coerciveness – features that, in our world, will obviously apply differentially and in degrees. The importance of reciprocity (that particularly

³¹ Rawls (1999a) actually comes closest in the literature to offering something like a grounds-of-justice approach, in the sense that he thinks of this principles of distributive justice as applying within states only, but also acknowledges principles of justice (alas not *distributive* justice) that apply globally. One obvious worry about the grounds-of-justice is the proliferation problem: would there not be too many such grounds? Yet first of all, for each possible ground of justice a case would have to be made for its “distributive relevance,” that is, we need an argument that a justification of the distribution of a certain good is owed to those who share that ground. And second, the possible grounds that matter in practical political discourse and that are discussed in the philosophical literature have such prominence because political or philosophical concerns render specifically these grounds salient before the background of our political realities and philosophical sensitivities. Just like the term “social choice” is used to demarcate the particular relevance of shared membership in a state as a ground of justice (see next section), so the term “global” justice could be used to single out the importance not of one but of several other grounds each of which has a particular political or economic relevance.

³² See Risse (2006) and Risse (forthcoming/b).

intense form of social cooperation characteristic of states) has played a major role in the work of John Rawls (see especially Rawls (1993)) and is nicely characterized by Sangiovanni (2007):

When well-functioning, these basic state capacities [the basic extractive, regulative, and distributive capacities central to any modern state], backed by a system of courts, administration, and military, free us from the need to protect ourselves continuously from physical attack, guarantee access to a legally regulated market, and establish and stabilize a system of property rights and entitlements. Consider further that state capacity in each of these areas is not manna from heaven. It requires a financial and sociological basis to function effectively, indeed event to exist. (...) [C]itizens and residents, in all but the most extreme cases, provide the financial and sociological support required to sustain the state. It is they who constitute and maintain the state through taxation, through participation, in various forms of political activity, and through simple compliance, which includes the full range of our everyday, legally regulated activity. Without their contributions to the de facto authority of the state – contributions paid in the coin of compliance, trust, resources, and participation – we would lack the individual capabilities to function as citizens, producers, and biological beings. (p 20f)

Characteristic of the state's particular form of coerciveness are the notions of *political* and *legal immediacy*. The legal aspect of the immediacy of the relationship between a state and its citizens consists in the *directness* and *pervasiveness* of its law enforcement. Bureaucracies, courts, police, and other agencies may seize, retain, incarcerate, fine or otherwise penalize individuals where appropriate. What characterizes such agencies is that they have direct access to individuals' assets and bodies. Its political aspect consists in the crucial importance of the environment provided by the state for the realization of basic moral rights (thus capturing the *profundity* of that relationship).

Why would these features matter for purposes of distributive justice? Crucially, all these features are ways of articulating how individuals are significantly invested into or involved with a state, and are so invested or involved in relevantly equal ways (at least in ideal cases – again, these features will apply in degree to actually existing states). Every member of a state is subject to the state's coerciveness in its legal and political immediacy, and is either expected to

participate in its reciprocity-based systems or else is sanctioned for failing to do so. Other political structures have cooperative and coercive features as well, but none with (pervasive, profound, intense) features quite like these. And it is precisely these features that, within states, exert equalizing pressures not merely as far as the distribution of the goods arising from social cooperation is concerned, but also as far as the realization of individual capabilities is concerned.

For these reasons, particular duties of distributive justice apply among those who jointly participate in such a political and economic system, and it is the responsibility of the state to carry out these obligations. Inevitably, while discharging this obligation, the state will create a particular social system on which immigration has an impact. Immigration policies inevitably create winners and losers in the countries of destination, and measures must be taken to make sure nobody is affected by immigration in such a way that their claims qua citizens are undermined. This creates a considerable responsibility for the state. But at the same time, we saw that states also owe a justification for their immigration policies to would-be immigrants because of the infringement of human capabilities that such policies inevitably enact, as well as because of considerations of collective ownership. Our question then is: how should we think about how much immigration a state has to permit?³³

7. Demanding Entry: Over-Use and Under-Use

We are now in a position to pull the different strands of our discussion together and address immigration directly.³⁴ We have seen on what account a state has particular obligations towards its members, obligations that the state executes within a particular social system that is in turn affected by its immigration policy. We have also seen that the state's immigration policy is subject to moral evaluation vis-à-vis outsiders both in terms of the capabilities approach (which we have taken to be a conceptualization of what is owed to people in virtue of common humanity) and in terms of the standpoint of collective ownership.

³³ We have developed this brief account of shared membership in a state without appeal to nationalism. Nationality is helpful in determining what groups of people ought to be permitted to have their own state. But if we are asking what matters about shared citizenship when it comes to the applicability of principles of distributive justice, it is not shared nationality, but the features discussed above.

³⁴ This section and the next follow Blake and Risse (forthcoming) and Blake and Risse (2007); see also Risse (2008a).

The proposal I will now make is built around ideas of *over-* and *under-*use of collectively owned resources that help us capture the equality of status as co-owners that must be preserved for the erection of a state system on this collectively owned planet to be acceptable to those subject to it. In short, the idea is that a state must be sure not to under-use its share of collectively owned resources and spaces, and must permit immigration if it does. If a state does under-use its resources and spaces, it does not only violate other people's status as equal co-owners; it also illegitimately restricts their capabilities. If it does not under-use these resources and spaces, it cannot be charged with either of these failings. While the state will then still be restricting other people's capabilities, it will not do so illegitimately. The state ought not to restrict immigration if it is under-using resources and spaces even if more immigration threatens its current system of discharging its obligations towards its citizens. The proper response in such a case is to adjust domestic policies. On the grounds-of-justice approach, we cannot maintain any presumption that immigration policies must necessarily be compatible with already existing domestic social policies. As we saw, states also have a duty of assistance in building institutions, and this duty too could be discharged by way of permitting (temporary or permanent) immigration. But in this area, the state has more discretion: it may also discharge this obligation in other ways.

To make sense of the idea that co-owners are overusing commonly owned resources (and so would not need to admit more people) or under-using them (so 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, and in this way in particular the 17th century version of the idea of collective ownership must be updated. Areas with equal population density may differ dramatically otherwise: one may consist of arable land (with an evenly spread population), another mostly of desert (with the population crowded in a small fertile area); one may come with lots of minerals, another be deplete of them; one may be adjacent to the sea and include many navigable rivers, another landlocked.

So such a measure would have to include not merely the size of the land, but also resources like minerals and water, and the quality of the location as captured by a range of biophysical factors. In short, this measure would have to *evaluate a region's overall usefulness for human activities*. It needs to allow for comparisons of sets of such factors, which is most

straightforwardly accomplished by a one-dimensional measure, something like an aggregated world-market value. But 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 would reflect the usefulness of entities for human purposes given the state of technology and limitations on availability. This does not mean there could be no other sense in which the entities being assessed have value; nor that those who possess resources may do with them entirely as they please; nor that all of them would be for sale. 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 this account, however, the presence of resources that happen not to be in flow but are part of the stock to which a country has ready access will and should create such pressure.

Some of this pricing will be novel: biophysical factors shaping the usefulness for human purposes of geographical locations are not normally priced. In an optimistic mode, one might think that humanity has so far had no trouble adding more entities to the set of those with a price ticket. However, recent reflections on the desirability to broaden the US National Income and Product Accounts (which measure economic activities in the US economy) to include activities and assets not immediately tied to market transactions and thus not presently captured in those accounts have revealed difficulties in doing so, difficulties of a sort we cannot address here.³⁵ At any rate, *no such measure is in use at this time*, and we can currently only formulate desiderata. All we can do for now is to explore the conceptual possibility of such a measure and to formulate

³⁵ For efforts to broaden national economic accounting beyond market activities, see Nordhaus and Kokkelenberg (1999), as well as Abraham and Mackie (2005).

some desiderata. Sometimes the task of philosophy is to argue that something is needed for which the work must be done in the sciences.

Yet one might also worry 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 questionably fair entitlements. In the first instance, this proposal should apply to 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 states, as they are, that should add this perspective to their manner of thinking about immigration policy. At the same time, it is conceivable, even likely, that additional considerations would have to be introduced to rectify past injustice that has shaped how the value of external resources for human purposes comes about through the adopted valuation process. But without having a valuation process at hand with which we could analyze this in detail, we can only note that some rectificatory factor might have to be added to that process.

For any state S the needed measure would deliver an index V_S , measuring the value of the collectively owned resources on S 's territory, including the biophysical conditions determining the usefulness of this territory for human purposes. To assess the extent to which S 's territory is used one would divide V_S by the number P_S of people in S . V_S/P_S is *the per-capita use rate* of commonly-owned resources on S 's territory. Again, 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.³⁶ That is, 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 only of 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

³⁶ It is important to keep this in mind in light of Pogge's (2002) Global Resource Dividend. Pogge would not tax a society that just sits on its resources. But such resources would be included in our measure.

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 is what is required by Common Ownership to preserve all individuals’ status as co-owners in the presence of a system of states.³⁷

We finished up the previous section by asking to what amount of immigration countries must adjust, in particular in terms of maintaining their obligations to those who are already in the country. This account now provides an answer, one that, I submit, simultaneously responds to the question “to what extent is the state allowed to restrict the bodily integrity/freedom to move around freely of those who do not (yet) belong to it by imposing immigration barriers” and the question “under what conditions can a state expect outsiders to respects its immigration restrictions given that this is a state that exists in commonly owned space.” A major lacuna is that no such measure of over- and under-use is currently available, and to that extent my discussion here is tentative. 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 entity 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 the underusers could pay off others, although those others would *prefer* to exercise their right to immigrate. Those people have that right in virtue of being co-owners, and while co-owners may decide to waive it for such payments, it remains their prerogative to do so. It is in this regard in particular that the proposal of this study differs from many other normative approaches to immigration (see section 9).

8. Over-Use, Under-Use, and Immigration: Questions and Objections

³⁷ 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. But for present purposes, it is useful to know that this conception would support the same view on immigration.

Let us discuss some worries about this proposal. To begin with, one may question the sheer possibility of measuring relative over- or under-use in a meaningful way. 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.³⁸ 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.

The worry here 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 case suggests, it will generally be clear enough what the human contributions have been. The more urgent concern is how they should factor into evaluations. Unless we add another argument, whether, say, the Dutch over- or under-use their territory must be assessed relative to the value of resources with human inventiveness entirely factored out. 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 block such a claim, the Dutch could offer 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

³⁸ A polder is land of below the sea level in a location from which the sea has been drained away.

cases where there has been sufficient cultural and political continuity over the last few centuries in which most of those improvements have been made). Moreover, it is plausible that their predecessors would have wanted for them to be the beneficiaries of their achievements.

Yet consider the opposing argument. The fact that others *could* have added the increased value, and in due course *would* have, may not undermine the claims of those who actually did so. But this fact does weaken the claims of their *offspring* to the endurance of those entitlements. The point is similar to the objection to the first-occupancy theory of acquisition: perhaps on a sensible understanding of “occupancy,” first-comers can legitimately claim land. Their accomplishments also prevent others from accomplishing the same, but that does not undermine desert-based claims they have because of these accomplishments. But such occupation, regardless of circumstances, cannot ground claims on account of their offspring at the exclusion of others.

A sensible resolution here is to say 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 (in due course would) have been provided by others. At the same time, artifacts, ideas, legal, economic, political, and social practices and other entities for which such external resources have in an intuitive sense have been mere enablers should not be counted among the common property. So, say, the value of the Dutch economy beyond the value of improved common resources should not be counted common property. Some arbitrariness in drawing the line is inevitable, but this problem is common.

Other questions also arise. How much discretion does a country have in designing its immigration policy? In response, the ownership approach implies that immigration must be permitted by under-using countries, and priority must be given to individuals from over-using ones. Additional criteria, however, ought to be considered as well. (Recall that above I spoke of a “pro tanto” claim to immigration that would-be immigrants have vis-à-vis countries that under-use their resources and spaces – these additional criteria explain what was meant there.)

Applicants from rich over-using countries should have lower priority than applicants from poor over-using countries. Domestic policy priorities of the host country should also enter. After all, one other ground of justice is shared membership in a state, and this ground requires responsible social policy. A country with demographic difficulties could give priority to the young or those likely to have many children. A country in which particular labor markets are already oversupplied with workers might decide to give higher priority to people with a different occupation, to decrease the burden they would have to should to honor their obligations to those whose capabilities become smaller because of immigration. The Canadian point system, suitably modified to integrate the global obligations built into this proposal, might provide guidance here.³⁹

One might also worry about possible perverse incentives of this proposal. Would a country not have an incentive now to use up all its resources in order not to be liable for claims to immigration later? Or would it not adopt a policy of aggressive population expansion? But, for one thing, both possibilities seem unlikely because they also would create difficult domestic problems. At the same time, an immigration proposal of the sort discussed here would presuppose an agreement at the global level anyway, and such an agreement could be indexed to a particular year to prevent such policy choices. Independent obligations towards future generations would apply at any rate – and could be formulated from the standpoint of collective ownership as well (which implies that earlier generations hold the earth in trusteeship for future generations).

Another worry is that increased immigration into developed countries will lead to increased environmental burdens. Consumption and production patterns in countries, so this argument goes, are unsustainable as they are, and by no means should they be required to permit considerably higher levels of immigration than they currently do. After all, one implication of

³⁹ One might say that there is a tension between my claim that it would be okay if a country satisfied its obligation to accept immigrants by admitting those who are highly skilled, and the idea that it is, among other things, the moral importance of expanding capabilities that creates pressure to allow for more immigration. For accepting a skilled immigrant may do little to raise capabilities because such an immigrant is likely to be already relatively well off in his home country. In response, note two things. First, there indeed is an increase in capabilities here after all because the person in question is now also permitted to go elsewhere. But the more important thing to say is that the proposal of this study seeks to give proper consideration to a range of factors that bear on immigration policy. One of them is a responsible social policy that a government owes to its citizens. For that reason alone, we cannot always choose immigration policies so as to maximize the overall increase of capabilities thereby produced.

this will be that these economies will put the global environment even more in peril than they already do. But the response to this worry is that the transformation of rich-country economies into more environmentally friendly operations would have to occur simultaneously with a suitable reform of their immigration policy (if the proposal defended here will imply such reform). Both are independently required. According to the view defended here, rich countries could not dodge obligations towards would-be immigrants by insisting that immigration reform would be a problem for environmental reform or vice versa. Both are owed independently to the rest of the world. Just as there is no presumption here that a state could turn down demands to immigration simply based on the fact that more immigration would require changes in domestic social policies, there is also no presumption that environmental obligations that the state has would provide it with a legitimate reason to neglect its obligations with regard to immigration.

One might also wonder about the impact of the so-called *resource curse* on the proposal developed here. For many less developed countries, natural resources have become an obstacle to prosperity. The resource curse afflicts many countries that derive a large portion of their income from the export of extractive resources such as oil, natural gas, or diamonds. Some of these are prone to authoritarian governments in ways that is arguably connected to their dependence on extractive resources: authoritarian regimes can readily increase their power by exploiting such resources. Such countries are also at a higher risk of civil conflict. Rebel groups can sustain armies by occupying certain regions and exploiting their resources. Third, such countries often exhibit lower rates of growth, partly because they are vulnerable to the first two problems, but also because resource-dependent economies are very vulnerable to growth-retarding economic effects.⁴⁰

Social scientists are still debating the nature of the resources curse – are assessing, that is, to what extent natural resources are “curse or destiny,” to use part of the title of Lederman and Maloney (2006) --, but let us assume that there is such a problem, in some form or another: how would this affect the proposal of this study? I do not think the basic idea behind this immigration proposal is much affected by this phenomenon. First of all, to the extent that the resource curse is

⁴⁰ For recent writings on these subjects, see Ross (2001), Ross (2003), Collier and Hoeffler (1998), Collier and Hoeffler (2005), Le Billon (2001), Sachs and Warner (2001), Rodriguez and Sachs (1999), Rosser (2006), and the collections in Auty (2001), Lederman and Maloney (2006), and Humphreys et al. (2007).

brought upon poor countries because of the manner in which international economic interactions sets incentives, or at any rate, to the extent that changes in international economic interactions could change the effect of the resource curse, making such changes is a straightforward application for the duty of aid discussed above. That is, international economic interactions, as argued for instance by Wenar (2008), should then be modified in a way that makes sure the curse no longer strikes. And second, recall that the measure needed for assessing relative over- and under-use is one of the overall value for human purposes of portions of three-dimensional spaces, rather than one specifically pertaining to resources. However -- and how to spell this out will have to turn on our best understanding of this phenomenon -, the resource curse might indeed systematically lower the value for human purpose of certain regions. Thereby, then, the presence of the resource curse would generate pressure on other countries to accept more immigrants from countries affected by the curse.

It should be clear that the standpoint of common ownership does not track immigrants' actual preferences, which at this stage generally have little to do with a desire to gain access to resources or spaces. But our concern here is not to *track preferences*, but to explore ways in which we can argue that countries are *obligated* to accept immigrants. There is no reason to think that these two matters should be related in any particular way. The point of doing this in terms of the standpoint of collective ownership was that this standpoint can be based on very plausible starting points, developing the idea that any two individuals have symmetrical claims to the independently existing resources of the earth. But to the extent that wealth has arisen on bases other than such common owned resources -- most cross-country work shows that institutions rather than, say, resources are the basic reason why some countries are richer than others -- this approach does not generate entitlements to entry to share such wealth. The symmetry of claims among all human beings pertains to natural resources and spaces, but not to things that have been created by humans. What specifically this approach implies for the actual immigration policies of countries can only be fully ascertained once we have a sensible measure of over- and under-use. Recall that there is a general duty of assistance in building institutions, and immigration policy, again, can be used as a way of fostering this. In addition, other obligations also register on the grounds-of-justice approach, such as obligations of fairness in trade and obligations towards the realization of human rights. The full picture of these obligations will have to remain

underdeveloped in this particular study, but it should indeed be clear that the sheer fact that there is a wealth differential does not *by itself* create legitimate demands for entry.

9. Immigration: Other Approaches

In this last section, I will look at some other philosophical approaches to immigration. As I mentioned at the beginning, this section can also be read for an initial survey. However, as appropriate, I will also discuss here how alternative approaches to immigration relate to the approach developed in this study or explain why I have not adopted these alternative approaches. A reader who comes here without having read the remainder of this study might just want to skim those discussions at a first read. There is a strikingly thin philosophical literature on immigration. The work that has been done is primarily concerned with territorial occupation, or with ideas of freedom, or else subjects the very legitimacy of closed borders to searching scrutiny. General considerations of international distributive justice also play a role, but they are normally not specifically taken to demand changes in immigration policies, but think of such changes as one in several mutually substitutable ways of meeting obligations to the global poor.

Some other authors have indeed also discussed immigration in a way that integrates reflection on collective ownership of the earth. Steiner (1992) is a defender of the Equal Division conception of Egalitarian Ownership and argues that this approach generates demands to immigration. However, he also holds that countries can elect to exclude people from immigration if they prefer to pay compensation to them. Above I have argued that, since humanity as a whole has the relevant ownership status, countries could not unilaterally impose such a policy. Walzer (1983), chapter 2, concedes that not just any number of people can occupy any amount of space. For instance, he (famously) insists that “White Australia could survive only as Little Australia” (p 47), meaning that the earlier Australian immigration policy that was focused on keeping out no-whites (whatever else might have been wrong with it) could not be legitimately maintained unless Australia relinquished parts of its territory.

However, Walzer is reluctant to press this idea further the way we have done in terms of over- and under-use. Doing so, he believes, would illegitimately undermine claims communities as such might have to territories. Instead, Walzer recognized moral constraints on immigration

policy only to the extent that they can be derived from obligations to mutual aid (mostly directly at refugees) and from what he calls the “meaning of membership” in the respective community. For instance, one might argue that a community that derives its identity from being an immigrant nation eager to attract immigrants with talents would also have to bear the “costs” of such policies and admit the immigrants’ kin. Similarly, a country that defines its identity in terms of ethnicity would have to permit immigrants from those who share their ethnicity, especially if those are in dire straits where they currently live. Walzer champions concerns of *self-determination* (based on ideas of a *shared public culture*) considerably more than the perspective developed in this study does.

Dummett (2001), chapter 4, and (2004) employs an *absolute* rather than a *relative* notion of over-use. He proposes to decide on requests for entry by asking whether a territory can support more people. Yet absolute measures are irrelevant to the common-ownership standpoint. My status as co-owner is not violated if entry is denied to areas that are relatively over-used already. 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.

Cavallero (2006) 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 make it more appealing for people to stay put.⁴¹

⁴¹ 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.

According to Cavallero, the normative significance of immigration pressure is that it indicates *inequality of opportunity*. In the background is the “Cosmopolitan Premise,” that “Ongoing institutions of international law should not systematically disadvantage anyone on the basis of involuntary national citizenship or national origin” (p 98). Since everybody is at least indirectly subject to international law, it must not discriminate on morally arbitrary grounds such as nation of birth. Yet in accordance with the approach defended here, the starting point should be a modified premise: “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.” Once this addition has been made, we are led to the common-ownership standpoint and from there to the view proposed in this study. This discussion makes clear again that the account defended here might not track preferences for immigration, not even hypothetical preferences people may have if practical obstacles to immigration are resolved. To the extent that immigration pressure is generated by income differences, measures of relative over- and under-use cannot track such pressure if the strength of the economy is insignificantly correlated with resource-richness.

Joseph Carnes has presented a challenge to any kind of immigration restriction from the standpoint of liberal justice.⁴² Liberalism, Carnes notes, condemns the use of morally arbitrary facts about persons to justify inequalities. Examples are race, sex, and ethnicity. A political community that treated people differently on the basis of such features would be illiberal and unjust. Yet citizenship seems as arbitrary as any of those factors. None of us chose our place of birth, and we deserve neither advantages nor disadvantages for it. Carnes (1987) compares the existence of states to medieval feudalism. Restricting immigration, on this view, is as offensive as other, perhaps more obvious cases of injustice because it differentiates rights based upon one’s origins. Blake (2001a) and (2001b) responds by drawing a distinction between moral arbitrariness and moral irrelevance. Membership in a state (if one is born into it) is as morally arbitrary as race, sex, or ethnicity: nobody has done anything to deserve these features. But whatever else might be true of race, sex, or ethnicity, membership in a state is not therefore

⁴² See, for instance, Carnes (2003) and Carnes (1992); for related views, see Ackerman (1980); Dummett (2001); Tushnet (1995); Hayter (2000); and Nett (1971).

morally irrelevant, any more than family membership is morally irrelevant although it is arbitrary. The moral relevance of shared membership in a state has been developed above. It is because such shared membership is morally relevant that it generates special obligations that hold among the members and that must be weighed against demands of entry.

In a spirit similar to Carens', Kukathas (2005) presents two reasons for favoring open borders: a principle of freedom, and a principle of humanity. From a standpoint of freedom, restrictive immigration policies are problematic for several reasons: People lose the freedom to leave their country, which among other things implies that oppressive governments have fewer incentives to create bearable living conditions. People also lose the freedom to sell their labor, and are deprived of their freedom of association. The principle of humanity appeals to the fact that moving is often the best way out of poverty. Kukathas does not think economic concerns override these reasons, nor do considerations of nationality or concerns about the preservation of a certain culture. Kukathas also finds such worries overstated: change brought about by immigration is not necessarily bad. Security concerns strike Kukathas as overstated as well. They cannot be successfully met anyway with the means many states find justified, and even those measures that are justified entail costs of their own.

Reasoning of the sort pushed by Carens and Kukathas is opposed by David Miller, whose focus on self-determination shares much with Walzer's approach. Miller (2005) rejects three reasons for open borders: first, an appeal to a right to free movement; second, the claim that a presumed right to exit requires a right to enter somewhere else; and third, considerations of international distributive justice. As for the first, Miller grants that in many cases there will be a remedial right to go somewhere else (persecution, starvation), but short of that, the freedom of movement granted within countries is sufficient to meet the basic interest behind freedom of movement. A demand going beyond such free movement within the country does not reflect a sufficiently basic interest to create a basis for a right. Second, Miller denies that having a right to exit means that there must be an unlimited right to enter anywhere else. For one thing, a right to exit at most requires having one other country willing to allow entry. What is more, there are many rights that require the finding of a suitable partner for their exercise, such as the right to marriage, and, as Miller sees it, the right to immigrate.

Finally, to the extent that a concern about international distributive justice is about equality of opportunity, Miller denies that there is a shared context of valuing goods at the global level to render talk about equality of opportunity applicable. But granting a basic minimum standard, Miller thinks the preferred solution is to help improve conditions where people already live. Finally, Miller also presents two reasons for limiting immigration. First, like Walzer (1983), he insists on the importance of a shared public culture that in part constitutes the political identity of people in a given society, something that people have an interest in controlling even as it changes. And, Miller thinks that the population in a given country is rightly concerned with its size, partly because concerns about the quality of life relate to population density, and partly because concerns about the preservation of the natural environment do.

Miller (2007), chapter 8, explicitly takes up an alleged right to freedom of association. An appeal to such a right, Miller reports, has been enlisted on different sides in the debate about open borders. Those who defend restrictive immigration policies have appealed to freedom of association by way of arguing that such a right also implies a right *not* to associate with particular people and thus serves to anchor a right to exclusion. Those who oppose restrictive immigration policies have argued that appeals to the value of freedom of association work in their favor because restrictive immigration policies hamper this sort of freedom for those who wish to enter a country. Miller argues against both moves. His point is that both uses apply too broad an understanding of what freedom of association can plausibly mean. He thinks such a right serves a basic human interest only if we understand it as entailing the possibility of associating with a *sufficiently large* number of (presumably like-minded) people. But neither does this entail a right to exclude people one does not want to associate with from entering a large territorial state, nor does this generate entitlements to entering a particular country.

As far as this dispute between Kukathas and Miller is concerned, the approach defended in this study disagrees with both. As against Kukathas, Miller is right in rebutting a demand for open borders. At the same time, Miller does not take seriously enough the need to justify immigration policies to would-be immigrants. Miller explicitly rejects the standpoint of collective ownership of the earth, but does so because he finds problems with its Equal Division conception. Therefore, his objections do not affect the approach taken in this study. (See Risse (forthcoming/b).) At the same time, I agree again with Miller's assessment that freedom of

association cannot do decisive work in this debate either way. As I pointed out before, I believe the grounds-of-justice framework offers a plausible articulation of the scope and limits of legitimate demands of freedom. That is, appeals to a human capability of “bodily integrity,” to use Nussbaum’s term again, do some work here, but what work they do is captured by the framework we have offered. Pushing them further means pushing them too far.⁴³

Let us briefly return to Miller’s discussion of the right to exit. The background to this discussion is that Article 13 of the Universal Declaration of Human Rights does indeed only grant the right to leave a country, but not the right to enter a particular country, or even the right to enter *somewhere*. Article 13 (1) states that “Everyone has the right to freedom of movement and residence within the borders of each state,” thereby granting freedom of movement within countries and ruling out ghettos and other areas of internment or confinement. Article 13 (2) states that “Everyone has the right to leave any country, including his own, and to return to his country.” While Article 14 grants a right to seek and enjoy asylum, the Universal Declaration does indeed not state a right to enter elsewhere other than to seek asylum in cases of persecution.

Miller is right (and makes plausible by way of reference to the right to marry) that having a right to exit does not per se mean there must be an unlimited right to enter anywhere else, or even a specific right to enter somewhere else. However, according to the ownership approach, the right to exit does correspond to a moral claim as far as permissions to enter are concerned, namely, a right to a global migration regime in which entry to countries is arranged in accordance with criteria of over- and under-use. This of course is far from a right to enter everywhere or a right to enter countries one would most like to enter; at the same time, however, it also makes clear that it is not entirely within the discretion of states to permit or deny immigration as they see fit, and that in fact individuals do have certain moral claims in this regard.

Wellman (2008) argues in support of a state’s right to restrict immigration specifically in terms of freedom of association, to such an extent that even refugees can be turned away on this basis. People care deeply about their country, so they also care deeply about the policies that

⁴³ White (1997) offers a detailed analysis of the idea of legitimacy exclusion. To my mind, this analysis too shows why ideas of freedom of association can do work on *both* sides of the debate about open borders.

shape how their countries will evolve. Wellman thinks of freedom of association as an integral part of self-determination of peoples. Even though Walzer and Miller too are champions of self-determination, they make their case for limiting immigration dependent on the existence of a distinct public culture. Therefore, implies Wellman, their respective cases for limiting immigration on behalf of self-determination could be defeated if there is no such shared public culture. At any rate, they take on an extra-burden of proof by appealing to such a culture. Wellman appeals to self-determination and freedom of association directly, without an intermediate appeal to a shared public culture.

Wellman acknowledges the arbitrariness that lies in where one happens to be born, but denies that this point leads to obligations of justice strong enough to outweigh concerns of self-determination. Moreover, to the extent that there are obligations to those with whom we do not share a nation, says Wellman, they can be discharged in ways other than by allowing for more immigration. Wellman argues this much even for the case of asylum seekers. Governments that create situations that force their citizens to seek asylum elsewhere are illegitimate, and thus are subject to intervention. Help for asylum seekers can either take the form of sheltering them, or else of intervening abroad to create a safe place where they came from. (From the perspective taken in this study, Wellman overstates the importance of self-determination and freedom of association; as far as this matter is concerned, I agree with Miller.)

Abizadeh (2008) argues that unilateral border-control is inconsistent with a democratic theory of popular sovereignty. This is because the demos (the people) of democratic theory is *unbounded*, and so democratic justification is owed to everybody. The democratic theory of popular sovereignty that Abizadeh supports requires actual justification to its demos (not merely hypothetical justification), to people individually seen as free and equal. This in turn requires that appropriate institutions be created within which such justification could be given. Justification is owed to all those subject to state coercion, which includes people who are forcibly kept from entering a particular country. Presumably, the global demos would not agree on unilateral border control as practiced now, but at any rate, we currently do not have the required cosmopolitan democratic institutions within which such justification could (and would have to) occur.

Why does Abizadeh think the demos of democratic theory is unbounded? His argument is that drawing a boundary is impossible by democratic means. After all, using such democratic means already presupposes that we know who should participate in this process. The idea of a *bounded* demos of *democratic* theory is therefore incoherent. If for instance Michael Walzer talks about a “community of character” and a collective self, an application of this argument is that we must ask what this self is in the first place, and that question cannot be answered democratically.

Abizadeh then turns to five arguments in support of unilateral border control. First, there is the pluralist/diversity argument, according to which there is a need for different political regimes to ensure a diversity of ways of life. Abizadeh finds this argument self-defeating because unilateral border control is inconsistent with an endorsement of the value of diversity. Second, there is the dispersion-of-power argument, whose point, however, Abizadeh thinks is met only if borders are open because only then could individuals benefit from the dispersion of power. Third, there is the boundary preferences argument according to which people have views on whom they want to live with that ought to be respected. But this argument cuts both ways because some people also seek to enter a given country and thus have preferences that might conflict with those of people who wish keep them away. So this argument at most supports *some* control over decidedly porous borders. Fourth, there is the subsidiarity argument. In order to make sure people have some control over their environment, political units cannot be too large. But this argument too can at most support *some* control over porous borders. Finally, there is the minority-protection argument. But this argument Abizadeh thinks is justified only if there is a serious threat of one group getting swamped by immigration.

Abizadeh, again, pleads for cosmopolitan democratic institutions that regulate border control, and within which then for instance these five arguments could be pondered. The main disagreement between the approach defended here and Abizadeh’s is with regard to the need to legitimize a given bounded demos. Above we have developed an account of why shared membership in a state is normatively relevant and implies particular obligations among those who share a state that must be pondered against obligations to those who do not (yet) belong to a

given state. The fact that the relevant bounded demos cannot itself be justified by democratic means does not seem to undermine any of that reasoning.⁴⁴

There is also some discussion about discretionary immigration in the literature. Discretionary immigration is immigration of people who are not *entitled* to immigrate. For our purposes, then, discretionary immigration is immigration that states might consider beyond what they are morally required to do by the grounds-of-justice approach. To the extent that immigration is morally required and thus non-discretionary, to be sure, this would have to be immigration with the goal of naturalizing people. But what is the state free to offer additional immigrants, again, as part of discretionary immigration programs? (I assume discretionary immigration also includes immigration that is adopted by way of discharging an obligation that can be discharged in different ways, such as a duty of assistance in building institutions.)

Blake (2002) wonders in particular whether the state can offer them arrangements of partial citizenship, like guest work programs, or use “suspect categories” such as race and ethnicity to determine who gets to enter. The concern about partial-citizenship arrangements is that they might well be exploitative if people do not have viable alternatives, and also that they are, in one way or another, contributing to an unjust global order by taking advantage of people’s economic difficulties that themselves are unjust. If these concerns do not apply, Blake does not find partial-citizenship arrangements problematic, but concedes that it will be hard to assess whether in fact they are. This view conflicts with Carens (1989), who argues that anybody allowed to reside and work in a country should be granted the right to become a citizen following a moderate passage of time and some reasonable formalities. Carens is concerned that, otherwise, such residents would be too vulnerable, and that a division of long-term residents into citizens and non-citizens would conflict with liberal values.

However, Blake seems to have the better of this argument since Carens’ position entails that nobody would ever be allowed to enter a contractual arrangement for partial-citizenship status, even in cases where we can plausibly assume that no exploitation takes place. People’s

⁴⁴ As in the case of other pieces that I can only discuss very much in passing here, there is much more to say. In particular, the line of response I have sketched so far leaves open the question of why there ought to be state in the first place. I address this question in Risse (2008b).

life circumstances and plans may certainly change after they have taken up arrangements of partial citizenship. But this is no different in any other contractual arrangements that we would not normally consider void for such reasons. Plausible additions to Blake's proposal would be to stipulate that marriage to a permanent resident of the country in question or having a child for which one is willing to be a care-giver should be taken as sufficient reasons to apply for citizenship in spite of earlier arrangements to the contrary. Perhaps room could be made for other such exceptions as well, to avoid undue human hardship, but there does not seem to be sufficient reason to exclude partial citizenship arrangements *ex ante*.

As far as "suspect categories" are concerned, Blake argues that they should be used only under rather unusual historical or demographic circumstances. (Hampton (1995) thinks that racial and ethnic criteria are entirely inconsistent with liberal democratic principles, and cultural principles only occasionally.) Generally, one crucial problem in applying such categories is that the populations of most countries are not homogenous, so that the use of such categories inevitably offends some people who are already in the country.⁴⁵

Blake (2001) too points out that cultural neutrality is generally required given that most countries contain substantial minorities, and Wellman (2008) concurs. Miller (2007), chapter 8, too agrees generally with this standpoint, but looks at it more from the standpoint of the would-be immigrants themselves, and finds that those are being treated unfairly if their applications are assessed in terms of race or ethnicity. Miller submits that cultural background should matter only if the immigrants' cultural background will have a significant impact on the identity of the receiving community. (Walzer (1983) is okay with race-based admissions in homogenous countries, assuming the territory they claim is small enough.) To mention one less foundational discussion: Specifically writing about the US, Huntington (2004) insists that the US should preserve its distinct Anglo-Saxon identity. He fears that there are not just too many immigrants, but too many Hispanic immigrants unwilling to adjust to Anglo-Saxon culture.

A final topic to mention is how to treat illegal immigrants, a topic on which there is very little systematic philosophical reflection. Carens (2008) looks at the question of what legal rights

⁴⁵ See also the other contributions to Brubaker (1989) for discussions of partial citizenship arrangements in the European and North-American context.

should be held by those residing in a democratic state without legal authorization, given the background assumption that the state is morally entitled to exclude people from immigration. (That is, for the sake of this debate Carens sets aside his worries about the justice of that assumption.) Carens argues that irregular migrants are morally entitled to a range of legal rights, including human and civil rights, but also rights to wages, workplace protections, and even rights to education for their children. According to him, states ought to create a firewall between those charged with enforcing these rights and those charged with enforcing immigration laws. Boswell (2008) argues that this proposal would create serious problems of coherence and feasibility for the legal and political systems of host countries. She sees a basic contradiction between guaranteeing access to rights while denying a right to be present to access such rights.

As Risse (2008a) argues, the grounds-of-justice approach implies that illegal immigrants are not actually doing anything morally wrong if they seek to, or do, enter a country that is under-using its share of collectively owned resources and spaces. The proper response to such illegal immigration is to reform the immigration system to put a global immigration regime in place that operates in accordance with ideas of over- and underuse (and to contribute to that endeavor by installing such a regime in a given country), rather than to criminalize or socially exclude illegal immigrants. However, once there is a morally acceptable immigration regime in place, illegal immigration per se can no longer be defended as morally acceptable, in the sense that, then, would-be immigrants can be reasonably expected to abide by the immigration policies of a given country. (“Per se:” that is, independent of matters of asylum or perhaps cases of particular urgency that would always have to be considered as potential exceptions to general rules.)

Under those conditions it might still be politically or legally prudent to grant illegal immigrants certain rights (such as the right to acquire a driver’s license to make sure they are not simply driving without permit or instruction), and it might then also be prudent to rid the administration of certain social services of inquiries into the applicant’s or client’s immigration status. Moreover, under those circumstances there might also be strong moral reasons to grant immigrants certain protections at the work place, say, if otherwise exploitation and other forms of abuse would be widespread. But in particular cases, such arguments would in fact have to be made successfully, taking into account local parameters. If such arguments are unavailable, there

would be nothing morally problematic about criminalizing illegal immigrants. The grounds-of-justice approach would, under those circumstances, not grant them any particular moral claims beyond decent treatment in the law enforcement process, moral claims the grounds-of-justice approach would indeed grant to them as long as the given immigration regime falls short of what is morally required.

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