Normative View of Natural Resources—Global Redistribution or Human Rights–Based Approach?

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Abstract

This paper contrasts conceptions of global distributive justice focused on natural resources with human rights–based approach. To emphasize the advantages of the latter, the paper analyzes three areas: (1) the methodology of normative theorizing about natural resources, (2) the category of natural resources, and (3) the view of the system of sovereignty over natural resources. Concerning the first, I argue that global justice conceptions misconstrue the claims made to natural resources and offer conceptions which are practically unfeasible. Concerning the second, I show that contemporary philosophy of justice downplays the plurality of meanings resources have for collectives and argue that conflicts over natural resources can best be accounted for using human rights. Finally, the paper looks at sovereignty over natural resources and argues that rather than dismissing it as unjustifiable on moral grounds, it should be reformed in line with valid principles of international law, most importantly with human rights.

Keywords Natural resources · Global distributive justice · Human rights approach · Sovereignty over natural resources

Introduction

The importance of a normative view concerning what might be fair, sustainable, and equitable uses of natural resources can hardly be denied. Natural resources are crucial for the satisfaction of basic human needs and other morally significant interests. Due to their value, scarcity, and uneven distribution on earth, natural resources have also been subject to conflicting claims by groups or individuals—ownership rights, claims to access and use, attempts at exclusive control, distributive demands.

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For much of modern history, the conflict over natural resources has been linked to colonialism, territorial wars, and imperial expansion and fraught with violence, slavery, political domination, exclusion, and highly unequal distribution of benefits and burdens arising from the resource use. Today, patterns of conflict are different but links between natural resources and injustice persist. Highly valuable minerals continue to play a direct role in the suffering of many people worldwide (Klare 2002; Global Witness 2007). Fossil fuels are used to sustain authoritarian and human rights violating rule and reinforce corruption and ineffective governance (Wenar 2016). Big extractive projects cause significant environmental and social harms and fail to distribute the benefits and burdens arising from the extraction of resources fairly or equitably (Africa Progress Report 2013). Vital resources crucial for human survival (air, water, soil, forest ecosystems) are depleted at a dangerous pace (Klare 2012) and countries fail to stop the destructive overexploitation of global commons, for example to reduce emissions of greenhouse gases or to stop overexploiting oceanic resources (Milun 2011; Bosselmann 2015).

Given the importance of natural resources for human life and the history of conflict and harm, a normative view imagining a better use and distribution of resources is thus warranted. Paradoxically, normative political theory and philosophy of justice started paying attention to natural resources only recently. Having discovered natural resources as prominent distributive goods, quite a few thinkers offered normative accounts of distributive justice, emphasizing global redistribution of natural resources or their values as a prominent solution to what is perceived as the most urgent problem with natural resources—global inequality.

This paper critically overviews these conceptions of global distributive justice concerned with natural resources. It assesses them in light of their ability to address conflicts which characterize resource use in the current world and to offer a plausible normative vision of how resources should be used, how the benefits they provide should be distributed, and how harms might be avoided. Accepting the importance of normative theorizing in general and for the realm of natural resources in particular, as well as the ethical conviction that a prominent task of moral theorizing should be practice-oriented, i.e., to shed light on the practice and formulate a plausible directive that ought to be followed by concerned actors, I ask if contemporary moral discourse on natural resources offers prescriptive arguments which could guide the efforts to solve the most endemic and urgent problems.

In my critical overview of the distributive justice debate, I focus on three specific aspects—the methodology of normative theorizing through which a conception of natural resource justice is developed, the very category of natural resources, and the view of the existing system of sovereign territorial rights to natural resources. Concerning the first, I argue that global distributive approach misconstrues the kinds of claims individuals and societies make to natural resources and offers conceptions which are practically unfeasible. Concerning the second aspect, I argue that the distributive conceptions assume a too narrow view of natural resources as economically beneficial distributive goods. Lastly, I look at the views concerning the system sovereignty over natural resources and I argue that rather than dismissing it as unjustifiable on moral grounds, it should be reinvented and reformed in line with moral principles which underlie its structure. To highlight the shortcomings of the dominant approach of global distributive justice, I contrast it with an emerging human rights–

based approach which has most recently started gaining traction in the debate about natural resources and which promises a much more satisfactory account.

Moral Rights to Resources and Impracticable Redistributive Schemes

A common and general feature of the normative conceptions of distributive justice concerned with natural resources is that they are concerned preeminently with developing and defending universal moral rights individuals or collectives have as an implication of a purely moral principle or a general principle of distributive justice which is to be justified independently of existing institutions, relations, or legal structures. As it is typical for contemporary political theory and philosophy of justice in general, a universal moral principle is defended first, followed by the discussion of its applicability to a “non-ideal” world.

In the debate about natural resources, these methodological terms have been first applied by Charles Beitz. Beitz’s point of departure was the critique of Rawls’s failure to include principles of international distributive justice into a hypothetical social contract. According to Beitz, natural resources are a special distributive good, so important as to breach Rawl’s insistence that principles of distributive justice only apply in intra-state context. The distributive importance of resources follows from their prominent role in national economic development and the satisfaction of the basic human needs. The permissibility of the global redistribution of resources also turns on the fact that natural resources are unevenly distributed on earth, that political borders which determine the collective entitlements to randomly dispersed resources are a result of contingent and sometimes unjust historical forces, and that their arbitrary occurrence creates an undeserved advantage for these collectives. To correct what Beitz called a “morally arbitrary” location of individuals and collectives vis-à-vis natural resources, a global redistribution of resources is required, such that would give each society a fair share of natural resources and a fair chance to develop just political institutions and an economy capable of satisfying its members’ basic needs (Beitz 1979, pp. 138–142).

What is the main methodological feature of Beitz’s conception? The critical claim that the distribution of natural resources is morally arbitrary and that they create undeserved advantages for those who “happen to have them under their feet” (Beitz 1979, p 141) mirrors a transcendent principle of distributive justice, not existing conflicts over natural resources. There are no countries making any kinds of distributive claims to natural resources located on some other country’s territory.¹ In fact, making claims to resources on foreign territories was typical for the centuries long colonial era during which European powers made property and sovereignty claims to resources on the basis of morally dubious and now invalid international law principles (e.g., the right of conquest, right of discovery and occupation, or natural rights of free navigation and trade). Today, such claims are illegal. Territorial borders of current international system of sovereign states are largely uncontested, accepted, and legitimate ways of determining territorial rights of states (Zacher 2001), including rights to unevenly distributed

¹ There are disputes over transboundary resources or over resources in resource frontiers (e.g., disputes over fossil fuels in the Arctic). But no countries or collectives make property or distributive claims to fossil fuels, minerals, or other earth deposits located in other countries.

resources. No state or group of individuals identify and contest the injustice of being excluded from economic benefits arising from natural resources in some distant parts of the world.

Same approach, namely starting with a normative principle of global distributive justice which is morally superior and ontologically independent from any existing historically contingent institutions or relations, characterizes other available conception focused on natural resources. Thomas Pogge started with a moral critique of global poverty and claimed that both positive and negative moral duties to not uphold global poverty require that developed countries which make more extensive use of our planet's resources should compensate those who, involuntarily, use very little. Global poor, he argued, "own an inalienable stake in all limited natural resources" (Pogge 2001, p 66). In order to reform this unjust status quo, those who consume disproportionately more of our planet's resources should compensate those who use very little via a global redistribution system based on levying a Global Resource Dividend.

Hillel Steiner started with the libertarian moral principle of self-ownership and defended an ensuing right of every person to appropriate external objects such as natural resources which exist independently of our efforts and labor. Since self-ownership belongs equally and universally to each person, each person has according to Steiner an equal share entitlement to the value of all land and natural resources on earth (Steiner 2009a, 2011a). This universal moral right generates global distributive justice duties. To fulfill these duties, Steiner proposes states pay a tax based on the aggregate market value of all content including natural resources within a "territorial site" they occupy into a Global Fund (Steiner 1999, p 183). Each nation then has an equal per capita claim on this fund which is to be equally disbursed among its citizens as an unconditional basic income (Steiner 2009b, 2011b). Mathias Risse, another influential philosopher concerned with natural resources, defended the natural law principle that humanity collectively owns the earth and contended that it requires that all humans as co-owners have an equal opportunity to use earth's natural resources for the satisfaction of their basic needs (Risse 2012). Common ownership of the earth implies that states have to protect the fundamental right of all earth's co-owners to use collectively owned resources, for example, by allowing migrants to enter a territory when it is underused by a state to whom it belongs or by sharing fairly the absorptive capacity of the atmosphere.

Most recently, Chris Armstrong has developed a global egalitarian theory of distributive justice centered on a moral principle of an equal access to well-being (Armstrong 2017). Since natural resources are an important distributive good driving access to well-being, Armstrong suggested reforms concerning global redistribution of resource rents and other benefits or burdens flowing from the use of natural resources to the global worst-off—sovereign wealth funds taxes, taxes on the use of common-pool resources (e.g., fish catches in high seas), and on greenhouse gas emissions and carbon taxes.

What these conceptions of natural resource justice have in common is that they all use a distinct "practice-independent" methodology of moral theorizing.² The

² The term "practice-independence" was coined by Andrea Sangiovanni who defined it as an assumption that first principles of justice, as well as reasons and premises of a conception of justice including its scope and content, cannot be affected by existing institutions or relations (Sangiovanni 2008, p 139).

methodology is based on a widely shared and uncritically accepted assumption of contemporary philosophy that universal moral rights or principles which transcend existing institutions, practices, or legal rights are the only proper object of normative philosophical inquiry. A more detailed critical discussion of this approach is beyond the scope of this paper. What matters in our context is that this methodology leads to two weaknesses when applied to the area of natural resources. First, it does not reflect on and promote a sound empirical analysis of the use and the misuse of natural resources. If problems with natural resources are identified at all, they merely mirror the regulative ideal or a moral principle which is being defended rather than reflecting on the conflicts over natural resources and the ways they are framed by concerned actors. I already mentioned Beitz's view of global inequality in resource holdings as one example. In a similar vein, one can question to what extent individuals claim an equal share of the value of all land and natural resources on earth (Steiner) or whether migrants claim an access to countries which are "underused" (Risse). Secondly, proposed solutions to global inequalities, mostly conceived of in terms of global redistributive and tax schemes, are not only not targeted to most urgent and endemic problems, they are also unfeasible, unmotivated, or clash with other legitimate institutions—e.g., democratic decisions, rights of collective self-determination, state borders and territorial rights, or existing ownership and property rights, or international law. Let me demonstrate these weaknesses by looking more closely at global resource taxes which are preferred solutions proposed by the abovementioned thinkers.

Global Resource Taxes and the Problem of Relevance and Feasibility

Let us consider Beitz's proposal that natural resources should be redistributed according to a difference principle of global distributive justice which benefits the worst-off and corrects what he refers to as the morally arbitrary standing of societies vis-à-vis unevenly dispersed natural resources. Regardless of the fact that the random distribution of resources on earth has not been perceived as unjust by any relevant concerned actors, neither in the past nor in the present, there is another misconception. Beitz contends that collectives have no *prima facie* claim to the resources lying under their feet and these can therefore be simply taken away and given to other "less lucky" collectives. First of all, natural resources are an inextricable part of the environment in which societies are formed and reproduced and taking away their resources by external actors harms their rightful claims to self-determination, territorial integrity and control, and cultural identity.³ Secondly, as Hayward correctly pointed out, natural resources become instrumental for humans and hence distributable only after they are prospected, assessed, extracted, appropriated, and processed using technology at every step of the human engagement with resources. These activities in virtue of which resources become resources in the meaningful sense of the term generate value which attaches to them. They also give rise to potentially legitimate property claims to resources based on the accepted moral principles of desert or improvement (Hayward 2006, p 352).⁴

³ Many indigenous communities are attached to natural resources because they are part of their culturally specific way of life. The recognition of the moral significance of the attachment of these groups to natural environment has in fact informed the process of recognition and legalization of indigenous rights in international law.

⁴ Many natural resources are subject to contractual rights of corporations and extractive companies. The contracts between investors and states rest on rights of sovereignty and ownership and when made within predefined substantive and procedural dimensions and on the basis of consent, they result in legitimate control over natural resources by private entities (OHCHR 2015; EITI 2016; Cotula 2018).

Beitz's proposal does not reflect on these aspects characterizing societies' relation and use of natural resources and ignores legitimate claims societies make on their territorial resources. Moreover, his proposal for a global distributive principle does not specify what resources ought to be distributed, how and on the basis of what value-determining standard they might be valued, and how to institutionally realize the global redistribution in practice. Even if we could find practical solutions to these hugely challenging issues, the question arises whether we should really seek to redistribute resources themselves. What if, as David Miller has asked, some countries value resources differently and do not want to use them at all for compelling environmental reasons (Miller 1999, p 194). In fact, the countries of Ecuador and Nigeria considered a moratorium on oil extraction because it has only caused huge environmental and social harms and its extraction is in conflict with climate change mitigation efforts. Even if there would be a way to resolve the conflict between these legitimate domestic preferences and demands of global distributive justice, would Beitz's proposal lead to a situation where developing countries with oil, gas, diamonds, gold, and other highly valuable minerals would redistribute their resources to developed countries such as Japan or many EU countries which have none? How exactly would these transfers improve the economic position of the worst off?

Steiner's and Pogge's proposals attempt to avoid these obvious gaps in Beitz's proposal. Steiner's resource egalitarian principle is conceived not in terms of the right to a share of natural resources per se but as the right to an equal portion of their value, more specifically to a share of an aggregate global value of "territorial sites" which current states occupy.⁵ The value of territorial sites is calculated as the difference between the aggregate market value of all its contents and the aggregate market value of those of its contents that constitute improvements made to it by human activity (Steiner 1999, p 175). This approach is supposed to avoid a situation in which poor countries with plentiful resources would transfer resources to resource-poor but developed countries. However, as Hayward remarked, the calculation of the value of territorial sites is entirely insensitive to the necessity of employing different standards of assessment of the value of improvement in different parts of the world on the one hand, and to the natural properties of a site on the other (Hayward 2006, pp. 366–367).

Pogge proposes a global redistribution system based on levying a Global Resource Dividend (GRD) on countries based on the aggregate value of extracted and sold resources, with only 1% of that value to be taxed. GRD is meant to be levied on the value of natural resources if and when they are extracted or harvested and offered for sale on the market. It is a merit of Pogge's proposal that his GRD is intended to also make resource exploitation more expensive and thus serve the ends of the conservation as well as the purpose of the eradication of world poverty. But there is again the problem with regressive redistributive effect, as pointed out by Hayward: if a tax on natural resources is intended to have progressive redistributive effects, there is a case for levying it on those who derive more economic benefit from the exploitation of raw resources rather than on those who, engaged in primary harvest or extraction, will generally yield the least added value from the resource. Otherwise, those countries most

⁵ Steiner proposes states pay a tax at a rate of 100% based on the aggregate market value of all content within a "territorial site" they occupy into a Global Fund (Steiner 1999, p 183). Each nation then has an equal per capita claim on this fund which is to be equally disbursed among its citizens as an unconditional basic income.

dependent on raw material exports are liable to taxes while the industrialized rich countries are much more marginally affected (Hayward 2006, p 367).

To summarize, distributive justice conceptions focus on global inequality of resource holdings and unequal distribution of benefits natural resources provide which they consider a problem mirroring a moral ideal of a more or less egalitarian global distribution. Global tax proposals which are designed to correct the inequality may have unintended negative consequences, most importantly a potentially regressive impact on the wealth distribution in the current world. The emphasis on the redistribution of natural resources to tackle global inequality and poverty might also create a problem of wrong incentives, e.g., to deforest or burn fossil fuels. As policy proposals, global taxes are unfeasible, unmotivated, and unreflective of existing rights and policy proposals.⁶ Even if they would be implemented, a single global redistributive scheme is very unlikely to promote justice in the real world.

Natural Resources—Patterns of Conflict and Human Rights Claims

One of the reasons why the abovementioned conceptions of global distributive justice fail to articulate feasible solutions to resource problems is largely due to the fact that they consider natural resources as abstract, ahistorical, and universally valuable distributive goods with a single beneficial value for all societies. Such a view, however, downplays the complexity of the world of natural resources—their physical occurrence in nature, the variety of their uses by humans, and conflicting meanings resources have for individuals and collectives, currently and historically.

There are many ways how to approach the complex world of natural resources—for example, in terms of their physical occurrence, the different ways they can be utilized, or the degree to which their use is excludable and subtractive (Buck 1998, pp. 4–5). One of the most consequential features of natural resources, however, is that they have different kinds of morally significant values for humans. Natural resources like air, water, or land have a life-supporting value. Most natural resources have an economic value through which humans can achieve a number of morally significant but also morally repugnant ends—they can enhance individual well-being and collective welfare but also fund repressive political rule. In modern history, it has been above all the economic value of natural resources which gave rise to ownership claims and legal entitlements to natural resources and which engendered systems of territorial control and sustained complex social and economic practices in societies. Beyond these instrumental values, natural resources also have symbolic and intrinsic values, i.e., they can be valued on account of their inherent features or features to which humans might be attached on non-economic grounds. Ancestral lands many indigenous tribes value or protected biodiversity spots such as Yasuní national park or Galápagos Marine Reserve in Ecuador are good examples.

⁶ Growing importance of capital for wealth and development renders resource taxes largely irrelevant for the goal of redressing global inequalities. Global taxes on capital have accordingly captured greater attention in recent years. Two taxes which are being discussed among policy-oriented academics and to a lesser extent in policy circles are a tax on currency exchange and a global carbon tax.

These intersecting and over time and space changing social and economic roles of natural resources make it impossible to accept a single redistributive principle as a solution to global inequality problem. The way we think about natural resources from the moral perspective obviously requires a different approach, such that accepts the complexity, historicity, and plurality of human engagement with natural resources. For the purpose of an analysis which is meant to address the most endemic conflicts over resources in today's world and to provide moral guidance for the practice, I propose a twofold strategy: (a) to consider the dominant patterns of conflict and harm pertaining to natural resources and (b) to articulate a normative view which is designed to address these issues and possibly resolve them in accordance with widely accepted moral standards and institutionalized norms such as human rights. A few thinkers have already started following this strategy.

Dominant Patterns of Conflict and Harm

Chris Armstrong has recently attempted to correct the simplistic and reductionist take on natural resources typical for the above discussed theorists and to provide a more nuanced view on the very category of natural resources. An important point he makes is that natural resources have to be seen as sources of both benefits and burdens. Looking at natural resources as sources of benefits requires we recognize that there are different categories of natural resources and also that natural resources facilitate human well-being in complex ways (Armstrong 2017, pp. 64, 71–73). Equally important is to recognize that natural resources can also be sources of burdens—burdens that they in themselves inflict or burdens that may arise in the process of the resource use. For Armstrong, one of the most important burdens occur when an agent refrains from consuming valuable resource and as a consequence loses out on the economic development opportunities (Armstrong 2017, pp. 20–21). With growing environmental awareness, many countries feel compelled to preserve biodiversity, wilderness, rainforests, or other ecosystems which deliver important global public goods. The problem is that there is a considerable distributive unfairness in bearing the opportunity costs of the conservation as many environmentally valuable resources are located in developing countries. Armstrong argues that these costs should be pooled globally (Armstrong 2017, pp. 221–223).

Lost economic opportunity costs related to conservation efforts surely are one category of burdens linked to natural resources. However, natural resources have been burdens in much more severe and consequential ways. Large body of literature on resource curse has been showing that countries with high-value resources like minerals and fossil fuels tend to have less economic growth and worse development outcomes than countries with fewer natural resources (Sachs and Warner 2001; Ross 2012; Acar 2017) and that resource wealth is associated with civil conflict (Wantchekon 2002; Bannon and Collier 2003; Le Billon 2005; Shaxson 2008), wars (Klare 2012), and authoritarian rule (Wenar 2016).

In recent years, the resource harms have also been extensively mapped by NGOs, think-tanks, and intergovernmental and international organizations which extended our understanding of dominant patterns of misuse, conflict, and harm with respect to natural resources. Next to a renewed attention to violent conflicts over natural resources (Global Witness 2007), it has been documented that in many states the resource

extraction has minimal or even adverse distributive effects for the population (Gilbert 2018). Analyses have shown that many extractive projects benefit mainly ruling and economic elites, public authorities, and concerned industries and burden local communities with harmful social and environmental impacts (Vermeulen and Cotula 2010; Cotula 2013).⁷ Additionally, a number of comprehensive reports produced by international teams of scientists for various intergovernmental panels, conferences, and regulatory bodies have recently confirmed the dramatic extent of the breakdown of global resource domains with environmental significance—the overloading of the atmosphere with greenhouse gases (IPCC 2018), unprecedented rate of biodiversity loss (IPBES 2019), fish stocks collapse (FAO 2018), ocean acidification (CBD 2014), sea level rise and iceberg melting (IPCC 2019), and deforestation (WWF 2015).

Reflecting on this research and global reporting, I'd like to propose that there are three main categories of problems concerning natural resources which raise important moral questions not merely of distributive fairness but also of political, social, and environmental justice and legality and legitimacy. The first category concerns the misuse of natural resources by illegitimate or corrupt governments, the embezzlement of resource rents and revenues, and the abuse of resources for the perpetration of political repression, human rights violating rule, and state-sponsored violence. I suggest we call it the *resource-based domination*. The other category of problems is related to equity and fairness in the distribution of benefits and burdens arising from resource extraction and revenue allocation among various stakeholders—citizens, investors, state, local populations, indigenous peoples. In many countries, valuable resources are subject to large extractive projects which generate profits for limited number of stakeholders while at the same time creating significant costs and burdens for the people and local communities—environmental damage, deforestation, loss of biodiversity, water and soil pollution, threats to food sovereignty, displacement, loss of the way of life, and social conflict arising from all of these harms. I propose we refer to this problem as the *inequitable benefit and burden sharing*. The third category of issues arises from states' depleting global commons or failing to reach an agreement on the sustainable international management of environmentally significant resource domains such as the atmosphere, climate system, or the oceans. Invoking Hardin's term,⁸ this problem can be called the *tragedy of global commons*.⁹

⁷ Most lately, these kinds of harms have also been categorized by the extractive industries and corporations themselves. In the absence of legal channels to address citizens' and local communities' grievances about extractive companies' adverse social and environmental impacts in many developing countries, some mining and fossil fuel companies have established their own formal mechanisms to reduce conflict, resistance, sabotage, settle disputes, and to negotiate benefit sharing with local populations. They have thus contributed to categorization of burdens often brought about by their own activities—pollution, water scarcity, threats to livelihoods and food insecurity, lack of communication and local participation, labor disputes, and inadequate benefit sharing and financial mismanagement. See Wilson and Blackmore (2013).

⁸ What Hardin described as "the tragedy of commons" refers to a situation where commonly shared resource is depleted because individual users pursue their self-interest and use it without limits and without paying heed to collective good (Hardin 1968).

⁹ This last problem has been addressed in what is now a vast field of work on climate change justice. This debate mainly focuses on the question of who has what responsibilities to address climate change and how to distribute the costs of climate change justly. For the most part, the thinkers follow the methodological approach of global distributive justice and tend to neglect domestic contexts and international legal structures and their significance for feasible policy changes. For a critical overview see Caney (2020).

It is mainly the first problem of the resource-based domination which elicited a critique and reform proposals based on a different methodological approach than the one I have been critically discussing so far. Developed by Leif Wenar (2008, 2016), this approach represents an alternative to practice-independent moral theorizing and can be said to pioneer what I call a human rights–based approach to natural resources. Wenar started with the observation that in the current world, there are many resource-rich (especially oil-rich) states whose governments are unconstitutional, systematically violate human rights, and use resources for the private benefit of the ruling elite or for the perpetration of injustice. In these states, the people are not only excluded from the benefits of possessing natural resources within their territories, in most cases they are also “cursed” by authoritarianism, violence, civil strife, and corrupt governance based on patronage and embezzlement. Oil, one of the most valuable natural resources in current world, is more often than not usurped as a resource for the maintenance of a corrupt and authoritarian rule (Wenar 2016, pp. 3–64).

Wenar identified the key mechanism which reinforces the connection between authoritarianism and natural resources—the defective rules of the international trading system which allow illegal or illegitimate actors who simply have enough power to control the resources to sell them to buyers who treat them as legitimately purchased goods. This odious “might makes right” rule (Wenar 2016, p 77) which underlies the international trade with resources must be invalidated if justice in using natural resources is to be served. How? According to Wenar, to disable this defective rule requires to recognize the principle of “popular resource sovereignty” which lies at the very core of the system of sovereign states and follows from the collective right to self-determination and human rights—two fundamental moral norms of the current international legal order. Popular sovereignty over natural resources essentially means that all of a territory’s natural resources are a property originally vested in the country’s people. Following from this collective ownership is the principle of authorization which expresses the right to popular authorization of property laws and other decisions over resources made by a government of a respective state.

Wenar proposes to translate the principles of ownership and authorization into four political conditions for the legitimacy of sovereignty over resources as exercised by a government. The conditions involve information (access to information about the use of resources), independence (the autonomy of the people and their freedom from manipulation and propaganda), deliberation (the possibility for free discussion of policies), and dissent (the possibility of expressing opinion in ways that have an impact on state policies). In yet more concrete political terms, these conditions require that citizens must have basic civil liberties and political rights guaranteed. Their violation means no authorization is given by the people and hence resource sovereignty is exercised illegally by a state (Wenar 2016, pp. 220–238).

Wenar’s approach differs significantly from the above discussed global distributive approaches which see global inequality as the most urgent problem with natural resources and hence put emphasis on global distribution and redistribution of natural resources or their values. In quite a different methodological manner, Wenar starts with a reflexive identification of the patterns of natural resource injustice occurring in the practice. His critique of these misuses of natural resources then relies on moral criteria obtained from an interpretation of the international system of sovereign states and from the basic moral norms of international law—the right to self-determination and human

rights. On this practice-dependent moral basis, that is, the basis which can be said to be underlying existing institutional structure and the international system of states, Wenar then attempts to develop a conception of a legitimate use of natural resources by states and proposes institutional reforms promoting more accountable use of natural resources. I will return to his policy proposal below. Let me now turn to human rights and their central role for a normative view of the use of natural resources.

Conflicting Claims to Natural Resources and Human Rights

From the perspective of the normative theorizing about natural resources, invoking human rights and putting them in the center of a conception of the legitimate exercise of resource rights held by states can be considered the most important achievement of Wenar's work. The emphasis on human rights results from Wenar's practice-based methodology which consists in accepting the basic institutional structure of the international system, especially the principle of sovereignty as a way of distributing collective rights, while at the same time assuming that there are fundamental moral norms and principles of justice inherent in the international legal system which limit sovereignty. Wenar rightly suggests that human rights are the most important and consequential among these norms which redefine and circumscribe the permissible scope of sovereign authority in its domestic and international sphere (Gümplová 2018).

There is yet another reason why human rights ought to assume the central role in any moral view of natural resource use designed to address existing conflicts, inequalities, and abuses. Apart from limiting sovereign rights of states to natural resources, human rights also appear to be uniquely suitable to reflect on the variety and plurality of human interests in natural resources. As I have already pointed out, natural resources fulfill a range of quintessential human interests—the needs of survival, material and economic well-being, freedom, agency and autonomy (both individual and collective), cultural identity, and spiritual needs. Human interests in natural resources are pluralistic in the sense that there is no one dominant substantive value of natural resources and not one single, universally applicable and transhistoric way natural resources benefit all humans.

Human rights are designed with a similar purpose, namely to protect a relatively broad range of morally significant human interests. A look at various categories of human rights—security rights, due process rights, liberty and political rights, equality rights, social welfare rights, environmental rights—suggests there are several fundamental interests humans have which have been deemed worthy of international legal protection—life, security, equality, freedom, non-discrimination, active membership, welfare, and social justice. Insofar as we accept that these most morally significant human interests can be expressed in a universal language of human rights, we can categorize the various needs natural resources fulfill as human rights. As claims to natural resources can be expressed as human rights claims, so can natural resources be seen not only as instrumental for the fulfillment of human rights but also as potential threats to human rights. As the range of human rights suggests, the claims humans make to natural resources and the harms and inequalities there are related to natural resources are not merely of a distributive nature. They also involve other kinds of claims, for example, to political legitimacy of decision-making, non-discrimination, recognition, or environmental sustainability. Given their comprehensive scope, human

rights thus enable to develop a normative view of natural resources which is more complex and in fact more robustly egalitarian and welfarist than the most conceptions discussed above.

In the practice, human rights have already been invoked by many actors making claims to access, control, or a fair share of natural resources, as well as to participation, legitimate decision-making, and fairer distribution of benefits and harms—individuals, collectives, minorities but also states, international organizations and corporations.¹⁰ As a result, quite a few rights to natural resources have been legalized in explicit connection with human rights. There is a human right to water declared by the UN in 2010 as the right of the access to clean water and sanitation. There are indigenous people's rights which have been framed and legalized as human rights to property and cultural identity (Gilbert 2016). The right to life has been interpreted as implying the right to access to natural resources to ensure food, livelihood, and means of subsistence and invoked to resolve conflicts between indigenous people and states and corporations (Gilbert 2018, pp. 93–100; ACHPR 2002). The right to free, prior, and informed consent (FPIC) which implies the right of indigenous people to be consulted and give consent in the process of decision-making about extractive projects has become the cornerstone of human rights-based approach to development and the key contribution to the governance of natural resources (Ward 2011). Most recently, environmental and youth groups started suing governments for failing to fulfill commitments to reduce emissions invoking violations human rights (Boom and Richards 2016).

The institutionalization of these rights in the practice reveals yet another reason why human rights are suitable for the articulation of claims connected to natural resources. Human rights are legalized and institutionalized individual and collective entitlements which create enforceable legal obligations for those who are defined as duty bearers with obligations to uphold these rights. Human rights are guaranteed by various international treaties and covenants and are firmly established and a binding part of international law and global, regional, and domestic politics and domestic legal orders (Simmons 2009; Teitel 2011; Sikkink 2011). Today, human rights are deeply embedded in the very structure of international and domestic institutions, organizations, and policies. The practice of human rights involves vast and multi-level legal, political, and institutional system.¹¹ This complex institutionalization of human rights then enable concerned actors to articulate claims to natural resources in the enforceable language of

¹⁰ Extractive companies have always faced complex and sometimes serious human rights challenges. With a quickly evolving landscape of human rights law and the increased expectations concerning respect for human rights, many extractive companies now acknowledge their responsibilities toward human rights which go beyond abiding by local laws. The UN Guiding Principles on Business and Human Rights prescribe companies duty of respect for internationally recognized human rights in all their impacts and activities. Since their inception in 2011, major players including the OECD and the EU have incorporated the UN Guiding Principles into frameworks and guidance and companies have taken them up as a reference point. By implementing human rights considerations into business practices, corporations have thus become important players in promoting human rights-based approach (Weber and Watson 2015).

¹¹ The system consists of UN human rights system (UN treaty system, agencies, courts, monitoring and reporting bodies), regional human rights systems (regional conventions and treaties, monitoring bodies and courts), the International Criminal Court, and NGOs. The practice involves norm-making (drafting and ratification of treaties and declarations on global, regional, and state level, creating, amending, harmonizing domestic constitutions with human rights norms), monitoring of the compliance with treaties, responding to international scrutiny and criticism, decisions of international and regional courts, and advocacy work of NGOs and individual actors (Buchanan 2013).

law and seek effective remedies for various kinds of harms connected to natural resources—an exclusion, inequality, discrimination, dispossession, or political oppression. As legal rights, human rights thus have much greater practical impact than moral rights insofar as they offer effective means of claim making and remedy seeking.

For reasons related to their pluralistic, comprehensive, and enforceable nature, human rights are better suited to become the key set of principles underpinning our view of morality of the use of natural resources in the current world. Paradoxically, despite the fact that human rights appear to be uniquely fit for a moral view of natural resource governance and that a human rights-based conception offers several compelling advantages over existing conceptions of global distributive justice, they have not yet figured prominently in any available normative conception of natural resource justice. To establish a link between human rights and natural resources is the main task for all theorists concerned with natural resources and justice in our world.

Sovereignty over Natural Resources—Critique and Reform

Regrettably, normative accounts of global distributive justice often stay clear of existing institutions and resource rights, neither offering a robust critical analysis of them, nor suggesting their feasible reform. This is not only the case of human rights. The system of sovereign rights to natural resources which dominates and determines the practice of using and misusing all natural resources on earth is also rejected. In the philosophy of justice, the current international legal system of allocation of rights to natural resources is either dismissed as unworthy of moral justification or judged critically in light of practice-independent principles of justice. Alternatively, after a conception of justice is developed, the applications to the non-ideal world of sovereign states are explored. The latter is the route taken by Steiner, Pogge, and Risse who propose how states should accommodate the principles of distributive justice proposed by them. Beitz and Armstrong go a step further and actually reject sovereignty over natural resources as an unjustifiable system of the distribution of rights to natural resources.

Beitz does recognize there is some morality involved in the system of sovereign states. It is, after all, the states which provide just domestic institutions, protect people against intervention and outside domination, and ensure the demands of domestic distributive justice are met. Concerning natural resources, however, Beitz does not see any justification for states' exclusive territorial rights to natural resources. For Beitz, as we have seen, natural resources occur within territorial borders arbitrarily and with no morally significant prior connections with given collectives. Moreover, the appropriation of natural resources leaves others comparatively disadvantaged. For these reasons, the exclusive sovereign claims to resources have no moral foundation (Beitz 1979, p 141). Given no justification for the control of states over their territorial resources, global redistribution of resources is permissible.

It is Armstrong who engages in the most systematic denial of rights of states to natural resources. Two main strategies are employed to show that sovereignty over natural resources simply cannot be seen as the default position from the moral point of view. On the one hand, Armstrong shows that territorial sovereignty over natural resources and its exclusive rights to resources within a territory cannot be justified on

the grounds of what he considers as morally justifiable claims of collectives to natural resources—the claims based on the improvement of resources or the attachment to them. Neither can rights of states be justified in terms of the moral relationship of “custodianship”—i.e., by invoking that states, due to their legal powers, can best ensure the protection and the most effective use of resources. According to Armstrong, this argument is ill-considered both in light of the globally shared nature of some important resources and in light of common global challenges concerning the exploitation or conservation of some natural resources. States do have political power to make and enforce binding agreements (environmental law for example) but they exercise this power very ineffectively. Equally problematic are the self-determination claims upon which the current international system actually rests, and which assume an unwarranted connection between states’ ability to protect their citizens’ basic needs and full and exclusive rights over natural resources within their territories (Armstrong 2017, pp. 123–145).

Secondly—and more plausibly in my view given the question why should we expect the international system of states to embody or to be justifiable by these practice-independent moral rights at all—Armstrong points out that the principle of sovereignty over natural resources grants states a set of rights the content and the scope of which is indefensible and fundamentally ill-placed to respond to demands of effectively managing the world’s natural resources. One has to fully agree that sovereignty over natural resources is being practiced and exercised by states in problematic ways. The problems of domination, distributive fairness, and overuse of global commons are indeed linked to states’ abusing their sovereignty privilege. The challenge, however, is not to dismiss sovereignty over natural resources as both morally unjustifiable and fundamentally and structurally defective but to show how it ought to be changed or reformed, possibly according to the principles of justice underlying the international legal order of sovereign states itself.

As already suggested, Wenar’s work pioneered this approach which accepts the international legal system of sovereignty over natural resources as given and reinterprets it using the fundamental moral norms which are inherent in its legal structure. Human rights, especially civil liberties and political rights, are used to determine the permissible scope of sovereign rights in relation to the management of natural resources by governments and to determine the conditions of the legitimacy of its exercise. Wenar rightly argues that countries can be assessed in terms of the permissibility of the exercise of their resource rights based on the extent to which they are human rights respecting. Accepted global standards concerning the legitimacy of political authority can be used for this assessment—World Bank/Brookings Institution Worldwide Governance Indicators, the Resource Governance Index, the Transparency International Corruption Perception Index, or the Freedom House index. In combination, these indexes provide a reliable and robust metrics assessing the legitimacy of governance (Wenar 2016, p 285).

The governance indicators can then be used as standards of qualification for resource trade and the basis for the development of clean trade policy proposals. Wenar advocates the view that clean trade policies ought to be adopted toward resource-rich exporting countries which persistently violate human rights. An exemplary *Clean Trade Act* Wenar proposes prohibits commercial trade with vendors in countries which do not meet the minimal accountability criteria and where citizens have no civil

liberties and basic political rights. Clean Trade Act can for example make it illegal to purchase resource from disqualified countries or prohibit denying financial, commercial and judicial facilities to vendors of a disqualified country's resources. Clean trade legislations can be complemented by anti-corruption and transparency measures, resource validation schemes, embargoes and sanctions, or revenue distribution schemes many of which are currently debated in international and domestic policy circles (Wenar 2016, pp. 281–334).¹²

Wenar's work provides a response mainly to the problem of resource-based domination, arguing that unconstitutional and undemocratic governments cannot be considered to make legitimate decisions about natural resources and proposing international clean trade reforms aimed at preventing illegitimate governments from selling their country's natural resources and use the revenues to sustain oppression and corrupt rule. The same human rights-based approach can also be used for the second broad category of problems I identified above—the problem of equity and fairness in the distribution of benefits and burdens arising from resource extraction and revenue allocation among relevant actors within the state. As I argued, a different set of problems are at stake here and they concern whether the use of natural resources relies on a system of distribution of benefits and burdens in which some groups are unfairly excluded, marginalized, affected or preferred. A situation where the economic benefits of valuable mineral extraction benefits government officials and investors while social and environmental harms or costs are shouldered by already marginalized groups (indigenous peoples, rural women, subsistence farmers etc.) living in the vicinity of the project is a typical example. For this category of problems, human rights are directly and explicitly instrumental and can be made the center of a conception emphasizing that states distribute benefits and burdens flowing from natural resources fairly. Equally fruitful can the human rights approach be for the problem of global environmental degradation.¹³

Most recently, the human rights-based approach to natural resource governance in the broad sense of the term has been systematized by Jérémie Gilbert in his book *Natural Resources and Human Rights* (2018). Gilbert identifies several key categories of human rights which complement civil liberties and political rights and which are also important for a normative human rights-based notion of natural resource governance which addresses broad set of problems of social and environmental justice—violence, exclusion, discrimination, marginalization, inequitable benefit sharing. These fundamental rights include livelihood rights (right to life, food, water, health, personal integrity), property rights, participatory rights (right to development, right to consultation and consent, right to fair and equitable benefit sharing, access to remedies), cultural rights (right to maintain traditional culture, biocultural rights), and environmental rights (freedom from pollution). All these rights together provide a solid legal foundation for a moral view of how to manage, use, and protect natural resources mainly by states but

¹² Brazil's clean trade bill which makes it illegal to buy oil from authoritarian governments or armed groups can be considered the latest example.

¹³ Recent mushrooming of rights to a healthy environment, environmental-related procedural rights, and other substantive political and socio-economic rights bearing on environmental interests is a testimony to the attempt to rely on human rights and to the belief they are adaptable to new environmental struggles to preserve global environmental domains. Particularly important seems to be the recent wave of climate change litigation invoking human rights and their violations by not acting on climate change risks (Boom and Richards 2016).

also by international institutions, corporations, financial institutions, or other private entities. Gilbert proposes how they might be utilized to design and initiate a range of reforms—the redistribution of land rights, creating community property systems (e.g., for fishing and forest management), the introduction of participatory and benefit-sharing schemes into development projects, and the reform of fiscal, taxation, and investment policies. Many of these reforms have already occurred on jurisprudential and policy levels and they have improved the standing of groups of people for whom access, control, and management of natural resources is central for the overall enjoyment of their human rights—indigenous people, rural women, subsistence farmers, fishers, pastoralists, or local communities affected by extractive projects.

Conclusion

Human rights lend themselves uniquely to developing a comprehensive, coherent, and workable framework for an approach to natural resources and their just and non-harmful use by humans. Human rights protect plurality of human interests which correspond to ways in which humans are engaged with natural resources. They are universally accepted and institutionalized domestically and internationally, thus enabling actors to make legitimate claims to resources and seek remedies for harms, inequalities, and injustices related to natural resources. Because of these features, human rights are much better positioned to become a moral basis of a view of natural resource governance. Global distributive justice approaches which have so far dominated in the debate about natural resources in normative political thought suffer with several deficiencies. They construe transcendent moral principles of distributive justice independent of existing institutions and conflicts and propose solutions which are not targeted to the most urgent and endemic problems and which are unfeasible and unmotivated. They also assume a too narrow, ahistorical view of natural resources as economically beneficial distributive goods and misrepresent the patterns of conflict and the heterogeneity of claims and the plurality of values resources have for humans. Finally, I demonstrated the weakness of distributive justice approach by pointing out that it does not offer feasible reform proposals concerning the most consequential institution determining the patterns of resource governance—sovereignty over natural resources. Here, too, human rights prove to be more effective for a range of reforms aimed at more inclusive, participatory, and sustainable uses of natural resources.

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