Self-Determination and Sovereignty over Natural Resources

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Abstract This article makes the normative case for a differentiated approach to state’s sovereignty over natural resources. In the first half of the article, drawing on the example of the Yasuni-ITT-Initiative, I will argue that countries commit a moral wrong when they exploit natural resources for their own benefit (and to the detriment of the climate), but that they have the moral right to do so given the current structure of the international system. Then, in the second half of the article, I address the question whether states’ rights over natural resources can be justified. Central to my argument will be the distinction between ‘control rights’ and ‘income rights’. Only the former set of rights, I will argue, can be justified as inherently tied to collective self-determination.

1. Permanent Sovereignty over Natural Resources

In a world of territorial states, it seems natural – even obvious – that states enjoy exclusive rights with respect to the control and use of natural resources within their territories. It is, however, not until the 1950s that this right found its way into international law, becoming – under the label of ‘Permanent sovereignty over natural resources’ (PSNR) – almost immediately one of its key pillars. Despite its wide acceptance as an essential constituent of national self-determination and a prerequisite for economic development, PSNR has not gone unchallenged. Especially among political theorists and philosophers PSNR continues to provoke mixed feelings. Virtually no one supports it without reservation. The general attitude ranges from tepid endorsement to outright hostility. A notable example of the former attitude is political philosopher Brian Barry, who claims that PSNR is “clearly preferable to the earlier set-up, in which countries with the power to do so controlled the natural resources of others. For, although the distribution of natural resources is entirely arbitrary from a moral point of

1 This paper goes back to the workshop “Responsibility and Obligations from Global Justice” (held in Antwerp in October 2013). I thank the organizers and participants of the workshop and particularly Chris Armstrong, whose paper provided the initial inspiration for this article. Though we draw different conclusions, I have benefited from his discussion of the Yasuni-ITT Initiative. I shall also thank Francesca Barp and Hannah Eitel for their help in finalizing this article.
view, it has at any rate the kind of fairness displayed by a lottery. That is presumably better than a situation in which the weak are despoiled of their prizes by force and fraud” (Barry 1991, 198). What Barry draws attention to is the fact that PSNR was undoubtedly a change for the better from the point of view of former colonies. Why? In the 50s and 60s former colonies criticized that due to the contracts entered into by their former colonial rulers they were effectively unable to take advantage of their (newly acquired) freedom to dispose of the natural resources in their territory. Since renegotiation of these contracts proved often difficult, these states claimed for themselves the right to reject contracts signed by colonial powers and to nationalize their natural resources, if a major public interest demanded it. The doctrine of PSNR reflects this fundamental concern. It grants states the right to “freely (...) dispose of their natural wealth and resources in accordance with their national interests” (G.A. Res. 1803).

For most cosmopolitan political philosophers (including Brian Barry) this right, although reasonable and legitimate in the context in which it emerged, goes too far\(^2\). Their main source of concern is property rights thinking\(^3\). For cosmopolitans, the relationship of a state to its resources should not be described in the same language as that of individuals towards their property. The reason, though, is not primarily legal, but moral and political. Let me try to isolate two of the major criticisms that have been leveled against PSNR in the last decades. The first targets the unequal distribution of natural resources among states. Essentially the criticism goes like this. PSNR involves a level of control over the states’ natural resources that is akin to that of property in a capitalist society\(^4\). Like property, state’s control over natural resources carries the potential of generating significant inequalities in individual life prospects. After all, controlling valuable natural resources can be a blessing, as does possessing huge amounts of property. What makes the distribution of natural resources even more objectionable than the distribution of property is that it is entirely arbitrary\(^5\). States have not done anything to deserve the natural resources that happen to lie within their borders. They are akin to “manna from heaven”, to use Robert Nozick’s oft-cited metaphor.

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\(^2\) See for instance Charles Beitz who argues that “while the permanent sovereignty doctrine may be extreme, sovereignty-for-the-time-being might not be” (Beitz 1979, 142).

\(^3\) That property rights thinking influenced the drafting of PSNR is rarely questioned in international law literature (cf. Bosselmann 2008, 154).

\(^4\) It is therefore not surprising that even official documents, like the new Iraqi constitution, now increasingly speak about natural resources as the “ownership” of “the people”. Article 108 of the Iraqi constitution states: „Oil and gas are the ownership of all the people of Iraq in all the regions and governorates“. See www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html

\(^5\) Charles Beitz makes this point forcefully when he insists that “resource endowments are arbitrary in the sense that they are not deserved” (Beitz 1979, 139).
The second criticism focuses on the environmental impact of PSNR. The concern here is that PSNR may lead to a kind of tragedy of the commons (cf. Gardiner 2011). “If each state pursues its national interests (...) in using its territory and resources as it will, planetary resources are drawn down, and environmental integrity is compromised not simply within the state but across borders” (Elliott 2012, 374). This is not to say that there is an inherent tension between PSNR and environmental protection. States could well exercise their sovereignty in the interest of the environment, and perhaps do so in a way that is even more stringent than required by international standards. The fact remains, however, that national regulations alone provide no guarantee that serious environmental problems such as climate change will be solved. It seems therefore unreasonable to rely on the expectation that others will do their part in reducing greenhouse gas emissions and deforestation.

Both concerns have continuing relevance. Since they are related, I will attempt to address them together. To do so, I shall focus by way of example on the Yasuní-ITT Initiative – a proposal by the government of Ecuador that is built on the idea of leaving oil unexploited in the Ecuadorian Amazon in exchange for financial contributions from wealthier countries. After providing a brief description of the initiative, I will go on to consider two criticisms against it. In the second part of the article I will then broaden the scope of the inquiry to address the more general question whether states should have the right to control and benefit from the use of natural resources located within their territories. Finally, in discussing the justification of this right I will draw attention to the distinction between two sets of rights, which together make up PSNR: control and income rights.

2. The Yasuní-ITT Initiative

Natural resources can be a blessing, but they do not come without responsibilities. Consider the case of rainforests. There is no doubt that rainforests are extremely important. They play an important role in regulating the world’s climate and contain the highest diversity of plants and animals on earth. But rainforests are also politically contested resources. One source of disagreement concerns the costs of their preservation. What do these costs entail? Who is expected to bear them? If we start by asking, ‘Should anyone face higher costs of preservation than any other?’6, then the intuitive response seems to be: ‘No’. Since everyone benefits from the preservation of rainforests, everyone should bear the costs in equal measure. However, even if we accept this first step of the argument, there remains the issue of how to determine

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6 This question is adapted from Singer (2002, 35).
the costs of rainforest preservation. Immediate costs of preservation are relatively low and often already distributed between national institutions and international donors. Far more contested is the question whether the costs of preservation include the opportunity costs lost or forfeited as a result of not using the rainforest in a more profitable way. This question found a decidedly affirmative response in the positions of the governments of Indonesia and (more recently) Ecuador. Both governments have claimed compensation in exchange for the preservation of their rainforests as part of efforts to stabilize greenhouse gases. Ecuador, in particular, has sought from developed countries $3.6 billion in exchange for forgoing the exploitation of oil fields in the Yasuní National Park’s rainforest. Eventually the plan of Ecuador’s government failed, and in July 2013 President Correa announced that the Yasuní National Park was going to be exploited. The legitimacy of the plan, however, is still under dispute. Let me therefore consider two major criticisms of the so-called Yasuní-ITT Initiative of the Ecuadorian government.

First, perhaps the most obvious criticism is that the initiative demands compensation for the opportunity costs lost by not doing something that is considered to be morally wrong (namely degrading or even destroying a tropical rainforest). The assumption here is that no one should be compensated for refraining from committing a moral wrong. Furthermore, the Yasuní-ITT Initiative sets a precedent that creates perverse incentives for other developing countries to exploit scarce resources safe in the knowledge that the world’s wealthier countries would be willing to compensate them for not doing so.

The second criticism is more fundamental. The Yasuní-ITT Initiative was developed under the assumption that states like Ecuador have the right to cut down ‘their’ rainforests. But perhaps states do not have this right. Perhaps PSNR should not include the right to cut down essential natural resources like rainforests, and not even the right to benefit from exploiting oil.

As to the first criticism, it is important to note that there is nothing inherently incoherent about compensating people for doing things that they are morally obligated to do. Consider the case in which an armed humanitarian intervention is morally required to fulfill the responsibility to protect human lives in times of war. Imagine further that only one state can afford to fulfill this responsibility due to its military strength. In such a situation, it seems perfectly plausible to argue that other (economically strong but militarily weak) states should

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7 Immediate costs of preservation include the costs of managing natural resources and enforcing restrictions on their use. See Balmford and Whitten (2003).
8 These and other criticisms are discussed in Armstrong (2013b).
9 I am leaving aside the question whether Ecuador is asking for compensation for what it is legally obligated to do.
compensate the intervening state for its efforts to protect human lives. In such a situation, the principle of fairness tells us that it is unfair to enjoy the benefits (including the benefits of having someone else fulfilling our shared responsibilities) without shouldering our share of the burdens.\(^{10}\) What is more difficult, however, is to think of cases in which people (or states) can legitimately claim compensation for not doing what is morally wrong. There seems, in other words, to be a difference in moral terms between claiming compensation for performing a moral duty and for refraining from committing a moral wrong.

Perhaps, this distinction can be challenged. One could argue, for example, that refraining from committing a moral wrong may sometimes be excessively burdensome. Stealing to keep oneself from starving may be considered a moral wrong, but perhaps an excusable and maybe even a justifiable one. The assumption here is that if strict compliance with a moral rule is demanded, then the rule in question should not be too difficult to comply with. Moral duties should not require people to act in ways only ‘heroes’ or ‘saints’ would.\(^{11}\) Applying the same reasoning to our case, one could argue that it is unfair to expect a developing country like Ecuador not to exploit oil discovered under the Yasuni National Park and by so doing to sacrifice economic growth in the interest of the climate. But the analogy seems a little far-fetched. Is Ecuador really facing the kind of tragic decision that has to be made in desperate situations? There are good reasons to doubt it. It certainly requires less for a developing country like Ecuador to comply with the duty not to cause environmental harm than for starving people to let themselves deteriorate or even die in order not to violate property rights. Or to put the point another way: It would be a massive exaggeration to say that Ecuador performs a heroic act if it renounces to drill for oil in the Yasuni National Park.

Perhaps this way of arguing is historically myopic. It does not ask how the current situation came about. Specifically, it does not take into account historical responsibilities related to past emissions, the majority of which were emitted by wealthier countries. Seen in this light, it is but fair that the Yasuni-ITT Initiative forces wealthier countries to bear a large share of the costs of climate protection and thereby to repair a situation for which they carry historical responsibility. Note, however, that this argument about past emissions, if sound, is likely to apply to any kind of distributive issue associated to the protection of the climate. That is to say, the argument does not explain why compensating Ecuador for not exploiting its fossil oil in the Yasuni National Park is the best way for wealthier countries to repay their historical debt. Moreover, the argument about historical responsibility, while not without some force,

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\(^{10}\) On the ‘principle of fairness’ see Arneson (1982).

\(^{11}\) See Shue’s “saints-and-heroes principle” according to which “the duties of ordinary people must be less demanding than the performance of saints and heroes” (Shue 1980, 125).
can be challenged by appeal to fact that the greenhouse effect of CO2 emissions was not known with certainty until the 90s\textsuperscript{12}. This fact may not relieve wealthier countries from their responsibility altogether, but it does alleviate the degree of moral culpability.

If the discussion so far is correct, then states like Ecuador do wrong when they claim compensation for the opportunity costs lost by not degrading their rainforests. But this does not necessarily mean that they have no moral right to do so. One can blame a state for committing a moral wrong, but nevertheless claim that it is a wrong that the state in question has a right to do. This has to do with the fact that we value the right of states (especially democratic ones) to determine their own economic and environmental policies independent of external influences. In this sense, Ecuador’s decision to degrade its rainforests to drill for oil can be seen as a sovereign prerogative – even though it is a wrong decision. But is that right?

In the next section I will turn to the second criticism mentioned above, namely that states should not have the right to cut down their rainforests for economic reasons, and distinguish between an ideal and non-ideal level of analysis. As I will show, the criticism holds only at the non-ideal level.

3. Moral Rights over Natural Resources in a Non-Ideal World

As mentioned in the first section, there is almost universal consensus among political theorists nowadays that PSNR and particularly the right of states to benefit from the use and selling of natural resources is difficult to justify on moral grounds. It is therefore tempting to conclude that developing countries like Ecuador not only commit a moral wrong when they exploit their natural resources for their own benefit (and to the detriment of the climate), but also that they should have no moral right to do so. Specifically, states should not have the right to deplete climate sensitive natural resources like rainforests. But a nagging doubt persists. Perhaps the widespread criticism of PSNR rests on an implausibly idealistic vision of a just world order. Is it not unrealistic, not to say unreasonable, to demand compliance to moral rules, while ignoring the fundamental injustice of the current system to which developing countries are subjected?\textsuperscript{13} In order to cope with this problem, it seems more appropriate to argue, as Charles Beitz did, that while the permanent sovereignty doctrine may be extreme

\textsuperscript{12} For example, Jamieson argues that emissions before 1990 are not as morally blameworthy as those caused afterwards because emitters were ignorant of the consequences (Jamieson 2001, 301). See also Singer (2002, 34).

\textsuperscript{13} For example, it is a fact that the benefits derived from the use of natural resources are not equally subdivided, with developed countries consuming disproportionate share of them. See on this Pogge, who criticizes that developing countries and their companies buy natural resources from any government regardless of how it came to power (Pogge 2002, 162-166).
under ideal circumstances, “sovereignty-for-the-time-being might not be” (Beitz 1979, 142)\textsuperscript{14}. The underlying idea, here, is that, under present (non-ideal) circumstances, one would misconstrue the situation of developing countries by isolating one legal arrangement (i.e. PSNR) from the larger background of pervasive structural inequality within which it was established. On this view, the right of states to dispose economically of their resources has to be seen more pragmatically as the lesser evil, at least from the point of view of developing countries. It is legitimate to the extent that it protects these countries from becoming even more susceptible to domination by powerful actors, including industrialized countries and multinational companies.

Let us pause a moment and consider what all this tells us about the Yasuni-ITT Initiative. If the reasoning above is correct, then it follows that Ecuador commits a moral wrong by exploiting its natural resources (and in so doing degrading its rainforests), but that it has the moral right to do so. Why? Because as long as there is no assurance that that others will do their share to bring about a world, in which the benefits of natural resources are more equally distributed, it is morally justifiable, not to say advisable, that every state remains judge in its own cause – at least with respect to the use of natural resources. To better appreciate the plausibility of this reasoning, it is helpful to think of the case is which Ecuador had been criticized not only for degrading its rainforests, but also for availing itself of the right to decide to do so. An immediate reaction to this, I suspect, would be to ask who else should decide if not the Ecuadorian people and its government. After all, to date there is no international organ competent to ascertain and authoritatively to decide how natural resources like rainforests should be used in a fair and sustainable manner. In the absence of such an organ, one could safely assume that if the right to decide over the use of Ecuador’s resources would lie elsewhere than in the hands of the (democratically elected) Ecuadorian government, the Ecuadorian people would feel treated as if they were incompetent to take the right decision on the use of natural resources – and this would be incompatible with their status as democratic agents. But what about non-democracies\textsuperscript{15}? Do they have the moral right to exploit natural resources? A perhaps more elucidating way to pose these questions is to reformulate the above question: who else should decide how to use natural resources if not the de facto dictator, who arrogates to himself power by force and/or without democratic support\textsuperscript{16}? I suspect few would answer that no one else is more justified in exercising the right

\textsuperscript{14} See also Thomas Pogge accepts, but only provisionally and under certain egalitarian conditions, state control over natural resources (cf. Pogge 2002, 196ff.).

\textsuperscript{15} Needles to say that several natural resource-rich countries in Africa and in the Middle East are not democratically governed.

\textsuperscript{16} This issue is at the center of Pogge’s criticism of the ‘resource privilege’ (Pogge 2002, 113-4).
to use natural resources than the dictator himself. This has to do with the presumption (which I will discuss more fully below) that the citizens and their democratically elected representatives should hold this right. Totalitarian or dictatorial regimes, by contrast, are seen as usurpers of this right\textsuperscript{17}.

From the above, it follows that the second criticism does not pose a decisive objection to the right of states to exploit their natural resources (and in so doing damaging their rainforests). Note, however, that my thoughts in this section were confined to the level of non-ideal theory\textsuperscript{18}. Typically, non-ideal theories ask questions like: do states have to comply with moral rules if other states are less than fully compliant? And, indeed, if the background against which one judges Ecuador’s right to exploit its natural resources is defined in terms of non-compliance, then the requirement to waive this right may seem unfair. The presumption of unfairness, however, does not necessarily touch the fundamental issue whether states in general should have the right to exploit ‘their’ natural resources\textsuperscript{19}. It is this fundamental issue that I want to examine more closely in the sections to come.

4. The Value of Deciding over the Use of Natural Resources…

What I have been arguing up to this point is that the right to exploit natural resources can be provisionally justified, given the current structure of the global system. This apparently implies that states should not have this right under ideal conditions. But this implication rests on the mistaken premise that the sole purpose of PSNR is to counterbalance the economic dominance of Western countries. Recall, however, that the driving force behind the demand for PSNR was the conviction that control over natural resources is “a basic constituent of the right of self-determination” (G.A. Res. 1803). Citizens – no matter whether in developing or in industrialized countries – would lack an important dimension of their decision-making autonomy, if they were not able to exercise at least some control over their territory and the resources therein. The key question to ask is therefore whether territorial states – as legitimate representatives of the will of their citizens – should be able to enjoy spatial barriers of non-interference within which they maintain a primary say over what is to be done with things that are within their territory.

\textsuperscript{17} I leave open the question whether “decent nonliberal peoples” (Rawls 1999, 59-60) fall into this category.
\textsuperscript{18} On the distinction between ideal and nonideal theories see Rawls (1971, 245-246; 1999, 89-90).
\textsuperscript{19} Of course, sceptics may object to this and argue that any strategy that involves a more equitable (or at least less arbitrary) redistribution of the revenues gained from the use and selling of natural resources has little chance, if any, to gain the support of industrialized countries. Such skeptics, I suspect, will not be convinced by the arguments developed in this article.
At first sight this question seems easy to answer. Citizens have a comparatively stronger interest in controlling the use of things that are located in their territory. This has to do with the potentially deleterious effects deriving from the use and misuse of natural resources. Think of the Yasuni-ITT Initiative. Clearly, the consequences of drilling for oil in the Yasuni National Park have the most direct impact on the population of Ecuador. It should therefore be up to them to decide what to do with their resources. But this line of reasoning encounters two important objections. The first is that the deleterious effects of natural resource rarefaction most often are worldwide. Here again the Yasuni-ITT Initiative offers a good example. For evidently the damages caused to the climate by clearing the rainforest of the Yasuni National Park are not limited to the Ecuadorian territory. The second objection has to do with the implicit assumption that people living in proximity of valuable natural resources are in the best position to know how to use natural resources in ways that promote their own wellbeing. In fact, this need not be the case. Their decisions can be subject to cognitive biases (including ‘loss aversion’ and ‘status quo bias’) that prevent them from pursuing their own interests effectively²⁰.

These considerations highlight the risks of overestimating the instrumental value of collective self-determination. There are other features not captured by a consequentialist account, which are based on the constitutive ethical importance of having the choice between distinct valuable options. The idea is that citizens should have adequate options available to choose from and that their decision must be independent in the sense of being free from external coercion and manipulation. Put bluntly, what matters most is that citizens are given a choice, not whether the choice made is the morally and practically correct one. Looked at in this way, if the right to decide over the use of resources in a particular territory would lie elsewhere than in the hands of the people living in that territory, they would certainly lack one feature of their autonomy as citizens – no matter how this right is exercised.

Some may find this implication exaggerated. There are, after all, many issues on which citizens have no right to demand that they be taken into account, and this does not always involve a loss in autonomy. The questions to which I turn in the next section is therefore: why should the right to decide over the use of natural resources be accorded so much importance? And why does it make a difference in moral analysis that resources are located within territories?

²⁰ See on this for example Sunstein (2013).
5. ... as Part of a Territory

Strong identification or emotional attachment to specific places is unlikely to provide us with an argument for controlling natural resources as part of a state territory. The reasons are manifold, but let me mention just one here: attachment to places lacks a statist dimension. People become attached to places because these places are connected to their particular experiences as individuals or as members of minorities (including indigenous communities). When we shift our focus to states, however, it is difficult to think of comparable examples where citizens identify or feel deeply emotionally attached to the territory in its entirety (Armstrong, 2013a). To illustrate this idea, suppose that I feel particularly attached to the typical landscape of my country. This might provide some support for the claim that I should not be excluded from control over the planning and development of the landscape. What it fails to explain, however, is why my claim should extend to the whole territory, hence including areas that are not particularly distinctive.

How then can we make sense of the claim that citizens lack one important feature of their autonomy as citizens if they have no right to control the territory in which they live? Is there a sense in which citizens are attached to their territory? One way to approach these questions is to point out that territories are important, both in a cognitive and moral sense. By circumscribing things in space, territories serve as a tool for creating meaning and enabling social understanding. Territories provide a mental framework into which people are socialized and through which people impose intersubjectively shared meanings upon a complex world. People’s views of natural resources are no exception in this respect. The reason why it very much matters ‘where’ natural resources lie is because people expect territoriality to determine control. Specifically, the expectation is that natural resources are tied to the (political) choices of those citizens, in whose territory they lie. Citizens think of themselves as having a say on whether and how to use natural resources that lie within their territory.

Clearly, this line of argument begs the question about whether these expectations are especially worthy of protection as compared with other moral interests. Perhaps – it could be objected – I am overstating my case by considering expectations separately from other values and interests worthy of protection. In reality, expectations are likely to be outweighed by contravening moral interests. In addressing this objection, it is important to keep in mind that

21 For an account of ‘place attachment’ see Anna Stilz’s ‘plan-based interests in occupancy’ (Stilz 2013).
22 For other reasons see my forthcoming book (Angeli forthcoming).
my claim is that there is at least a *pro tanto* reason to respect expectations insofar as people attach great importance to accessing options to which they are already committed. When citizens think of themselves as ruling collectively over a particular territory, it is natural for them to expect that others will offer them adequate reasons for why their rule should be constrained and to feel disrespected when they are not offered such reasons. In this sense, the argument identifies a *prima facie* case for respecting expectations with regard to the allocation of rights over natural resources, but in determining all-things-considered judgments about the scope of these rights, it will be necessary to consider competing moral interests.

But another objection lurks: perhaps not all expectations deserve protection, only legitimate expectations do. As Stephen Munzer points out, the legitimacy of an expectation “depends on whether the expectation is supported, first, by the underlying justifications of the laws inducing it, and second, by the fundamental principles embedded in the legal system itself” (1982, 432). For instance, an expectation can be rational but illegitimate “where a person shrewdly calculates that he can take advantage of some provision of the law” (ibid), although doing this runs against the spirit of the legal system. But does the expectation to rule over natural resources run against the spirit of contemporary legal systems? In fact, quite the opposite is the case. Democratic legal systems create and nourish the expectation that people should exercise a wide range of political rights, leading them to associate their status as citizens with the exercise of these rights. Disappointing this expectation is therefore likely to disrespect them as citizens. But are rights over natural resources among those political rights that are central to people’s self-understanding as citizens? One could challenge this assumption and argue that people’s self-understanding as citizens is called into question when dealing with controversial political issues, like civil liberties, governmental redistributive and military interventions. Environmental issues, by contrast, are unlikely to provoke the same degree of political controversy. However, I doubt that this is generally the case. Recent work on environmental citizenship has extensively drawn on political agency in democratic states as a process within which citizens recognize that they are, to a greater or lesser extent, responsible for their territory and the resources therein (cf. Dobson 2003). Within this context, political rights are a way of transforming mere residents into environmental ‘stewards’, who are invested with responsibility for, and democratic input into, managing the territory and its resources. To be sure, the point about environmental agency is not merely instrumental. Democratic decision-making need not bring about a more effective protection of

24 I leave aside the question whether even illegitimate or irrational expectations can be worthy of protection.

25 See Rawls who argues that people should “take responsibility for their territory and its environmental integrity” (1999, 39).
the environment. Instead, I conceive of the protection of the environment and the use of natural resources as a matter about which there is disagreement. In a democracy, reasonable citizens have an interest in being accorded a right to debate over the proper use of natural resources, seek to persuade others to endorse environmental measures, and vote in support of these measures informed by their own conception of the value of natural resources (Bell, 2005, 185).

In order to illustrate the implications of these assumptions, let us turn to the example of the Yasuni-ITT Initiative. People living in Ecuador rely on the expectation that resources located within their territory are tied to their choices as citizens in a way in which things outside their territory are not. Of course, they are also acquainted with the idea that their rule over the territory of Ecuador and its resources is not absolute, but subject to limitations imposed by international law. Still, there is a sense in which their individual autonomy as citizens living in Ecuador is violated by precluding them to avail themselves of a right (i.e. the right to control natural resources) to which exercise they feel committed. Doing this is tantamount to depriving them of one important feature of their right to act as citizens of their territorial state. The very fact that they relied on the exercise of rights to control natural resources invests them with a moral significance that they otherwise lack. This expectation ‘upgrades’ their claim to continue controlling the use of natural resources, which may not itself implicate their autonomy as citizens, into one that does (cf. Dan-Cohen, 1986, 143).

6. Control and Income Rights

In an abbreviated form, the argument thus far goes like this:

(1) Collective self-determination is morally valuable.
(2) Collective self-determination is violated by disabling decision-making on issues to which people are committed as part of their self-understanding as citizens of democratic states (‘status-related issues’).
(3) Control over natural resources is a status-related issue.
(4) Therefore, decision-making on control over natural resources ought to be protected.
(5) Therefore, citizens of territorial states should have rights to control natural resources.

The argument is still incomplete. It tells us the reasons why the citizens of territorial states should be awarded the right to control natural resources, which lie within the boundaries of their respective state. What it does not address, however, is the moral scope of these rights.
How far should control over natural resources extend? Note that so far I have used the term ‘control’ in a rather loose sense, roughly congruent with the legal meaning of PSNR. Thus, controlling natural resources meant many things, for instance being able to make decisions concerning their use, exploitation and transfer. But are these distinct incidents of rights equally justified by the interest in individual self-determination? For the sake of argument I assumed so. But now I want to cast doubt on this assumption by suggesting that not all rights over natural resources are equally related to the ideal of collective self-determination in democratic states. Some rights are not control rights in the strict sense that their relation to self-determination is less evident and must therefore be argued for and justified. I shall call this latter set of rights ‘income rights’. In making this distinction between control and income rights I draw on John Christman’s analogue distinction (cf. Christman, 1994).

Control rights include, for instance, the rights to use, manage, and exclude others from accessing a natural resource. Income rights, by contrast, amount to rights to gain income or benefits from the use or transfer of natural resources. According to Christman, both categories of rights are supportive of individual autonomy. Income rights, however, are less crucial in this respect than they are conventionally thought to be. For Christman, it is control over resources that matters most when it comes to asserting individual autonomy. To understand why this is the case, it is important to bear in mind that autonomy obtains when individuals possess an adequate range of valuable options to choose from. Control rights protect this ideal of autonomy. They protect the ability on the part of individuals to be those who decide what is to be done with natural resources. Income rights, by contrast, cannot be said to be a direct manifestation of individual autonomy.

“An agent’s ability to gain income or economic benefit through trade or agreement is contingent upon the preferences of others, while the ability of an agent to possess, use, modify, alienate, or destroy her property is not contingent upon the preferences or will of others” (Christman, 1994, 135).

To see the importance of this distinction, recall the Yasuni-ITT Initiative. As mentioned, people living in Ecuador have an interest as citizens to maintain primary say over what is to be done with the resources that are located within their territory. This interest is based on the expectation that it is up to them – and not to others – to decide on the use of their natural resources. The crucial point, in other words, is that they are accorded the ability to make the

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26 Sovereignty over natural resources, as it is postulated in the 1962 Resolution on Permanent Sovereignty over Natural Resources refers to holding both control and income rights.
right decision on issues over which there is disagreement. Perhaps the most salient example in this respect is the question whether to drill for oil in the Yasuni National Park. Respecting autonomy involves deciding this question on the basis of a democratic process in which everyone has a voice. The same reasoning, however, does not apply in quite the same measure to the right to the income obtained from selling oil. For the object of this right is not the direct outcome of an inclusive process in which everyone is involved. Rather it is contingent on a wider set of legal, social and economic circumstances. Put bluntly, people can decide whether or not to alienate their resources, but (extreme forms of exploitation aside) they cannot set the selling price autonomously. Income is essentially beyond autonomous control.

There are many issues that an argument like this must face. Let me address three possible objections. The first objection relates to the fact that the income obtained from selling natural resources may serve the interest in collective self-determination even more than control rights. Consider the case of a poor, though natural resources-rich country. The citizens of this country can be heavily dependent upon getting a fair reward for their natural resources in order to make a meaningful use of their capacity to participate in democratic institutions. For self-determination requires that the citizens of these countries be provided not with the specific means to meet specific goals, but rather with the basic goods that are necessary for the pursuit of any good at all. The second objection challenges the distinction between control and income rights from an analytical point of view. It stresses that control rights are not as intimately tied to the ideal of autonomy as I maintain them to be. The right to alienate, for instance, is beyond autonomous control since it involves that someone else agrees in acquiring what is sold. Third, my argument seems to beg the question of negative externalities. Exercising control rights can have a harmful impact on outsiders, possibly even more harmful than that of income rights. The exploitation of natural resources is a prominent example in this respect. While it may benefit (economically) exploiters and sellers, it can generate adverse environmental consequences for others. In view of these consequences, it seems unreasonable to put so much weigh on the distinction between control and income rights.

In response to the first objection, let me reiterate that I am not suggesting that income rights have no impact on individual autonomy. The fundamental idea being defended here is that in the bundle of rights making up rights over natural resources, control rights are more intimately tied to the self-understanding of people as autonomous beings than income rights. To put the idea more plainly, when it comes to controlling natural resources, it will often make sense for citizens to claim ‘I need to control natural resources to exercise my decision-
making autonomy as a citizen living in this state’, while it requires more argument to make sense of the claim that ‘I need to earn the income from selling natural resources to exercise my decision-making autonomy as a citizen living in this state’\textsuperscript{27}. In this sense, I assume that the cost of the loss incurred in the forced transfer of some income would not necessarily translate into an outright violation of people’s decision-making autonomy.

Let me turn to the second objection, which concerns the fact that control rights, in practice, do not exist in a social vacuum. Like income rights, these rights require a correlative obligation on the part of others. More concretely, this means that for the right to alienate to exist and be implemented, it is necessary that others are interested in participating in the transaction. Now, while I am willing to grant that control rights involve at least the possibility of a duty-bearer, the objection is pushed too far, when it assumes that control and income rights are equally dependent on the participation of others. Consider the right to alienate. My decision to alienate an object can still be seen as a manifestation of my will, even though no one is currently interested in acquiring that object. The same, however, cannot be said for the income obtained from selling natural resources. The income is heavily dependent upon circumstances beyond my control. Market prices for natural resources, for instance, are undeniably beyond my control.

The third objection points to an important limitation of rights in general. Rights are often limited to avoid negative externalities. However, there is nothing in my argument to suggest that control rights are absolute. Instead, the argument revolves around the claim that citizens have a general interest in controlling natural resources, which is subject to being overridden in particular cases due to contravening moral considerations. Indeed, showing that people living in a territorial have an interest in controlling natural resources is merely a first step in an argument that they have the right to control these resources. But while they have an interest in exercising this right, this does not per se mean that it cannot be outweighed. To provide an all things considered defense of control rights, one has to balance the interest defended by these rights against countervailing considerations – and this involves being sensitive to the consequences of exercising these rights both for outsiders and future generations. This involves, for instance, taking possible environmental impacts into consideration.

To conclude, let me be clear about the upshot of the distinction between control and income rights. Clearly, the major purpose was to show that some, but not all rights conventionally associated with PSNR defend the interest that individuals as citizens have in exercising collective self-determination. One might rejoin that the charge of arbitrariness leveled by

\textsuperscript{27} This argument is adapted from Christman (2012, 46).
global egalitarians against PSNR still bites in the case of income rights. I believe this is correct. However, let me add a general note of caution here. My argument is modest in at least one sense: it remains agnostic on whether income rights can be justified on other grounds.

7. Concluding Remarks

The destruction of rainforests is an important contributor to climate change – one of the most significant environmental problems facing humanity. This fact alone provides a prima facie case against initiatives that – like the Yasuni-ITT Initiative – make conservation efforts conditional on adequate compensation being provided by the international community. Of course, evidence can be produced to rebut this presumption. For example, it can be argued that developing countries face sometimes situations in which they see no alternatives but to cut down their rainforests to cultivate the land or drill for oil. But most countries threatening or actually doing so are not in this situation. Their decision to destroy large parts of a rainforest for economic purposes is therefore difficult to justify on moral grounds. This, however, does not mean that they have no (moral) right to do so. Their decision is wrong, but as long as there is no international institution guaranteeing a fairer and sustainable use of natural resources, it is hard to make the case that states should have no right to decide what to do with natural resources in their territory.
The importance of having the right to decide over the use of natural resources extends beyond the level of non-ideal theory. As I argued in the second half of the article, this right has a value that is constitutive to the status of citizens as democratic agents, who are capable of exercising self-determination in their political choices and carrying responsibility for their territory. What the article challenged, however, is that the appeal to self-determination gives citizens a carte blanche right over their natural resources. Central to my account of autonomy-based rights over natural resources is the assumption that only ‘control rights’ can be justified as inherently tied to collective self-determination. ‘Income rights’ can be limited without necessarily infringing on self-determination.

8. Bibliography


General Assembly resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources”.


