‘A Land without a People’: an Evaluation of Nations’ Efficiency-based Territorial Claims

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This paper considers the role of efficiency arguments in grounding territorial rights from a liberal perspective. The view advanced here is pitted against some recent arguments voiced by Margaret Moore opposing the inclusion of any efficiency criterion in our moral reasoning about territorial entitlement. Though I argue against this view, my own conclusion – favouring the adoption of only a moderated version of such principles – is a relatively mild one. It maintains, on the one hand, that the beneficial use of land is morally relevant to determining its rightful owner, but, on the other hand, it also recognizes the limitations of any such principle of utilization. Ultimately, there are good moral reasons for viewing the way in which a given land has been put to use as a relevant component (though admittedly only one) of our account of territorial entitlement.

In a global arena rife with territorial conflicts we find a multiplicity of arguments which are repeatedly cited by a variety of national groups in defence of their territorial claims. These typically include historical arguments for territorial entitlement such as those based on alleged ‘first occupancy’. These are often accompanied by compensatory claims couched in terms of corrective justice. The most sophisticated historical justifications for territorial domination appeal to identity-related arguments which tie the history of a disputed territory to the culture of a specific group and to the personal identity of its members. Aside from these historical factors, determining the destiny of any particular territory ultimately involves demographic considerations concerning the national affiliation of its present inhabitants and their right to self-determination. From an egalitarian perspective, the allotment of territory also raises issues of distributive justice. It certainly raises questions concerning subsistence rights and basic needs.

A proper examination of each of these potential justifications for the allocation of territory could in itself fill an entire volume, and has in fact been the topic of several illuminating essays.¹ It is not, however, the topic of this one. Instead, this essay concentrates on one distinct type of entitlement argument which has been largely overlooked in modern political philosophy, at least since John Locke’s Second Treatise of Government (Locke, 1952, chapter V).

Among the arguments voiced by groups or their representatives laying claim to a particular territory, one sometimes encounters the embedded contention that a national group possesses a right to the piece of land in question by virtue of its superior utilization thereof. While this essay affirms that grounding any concrete territorial right will often involve more than a single consideration, as well as a
vast array of contingent factors, it concentrates, in the interest of analytical clarity, solely on the elucidation of this utility-based claim, which has been largely neglected in the philosophical literature on nationalism and land rights to date.

In ‘The Territorial Dimension of Self-determination’ Margaret Moore embarks on a worthy quest to establish liberal guidelines for the mediation of territorial claims (Moore, 1998). Much of her article is dedicated specifically to the dismissal of precisely those aforementioned criteria employed by national groups, which they often consider relevant to the arbitration of the territorial conflicts they are engaged in. Thus, she dismisses not only religious beliefs concerning chosen peoples and divine rights to territory, but also a wide array of historical arguments – those stemming from indigenousness or grounded in first-occupancy claims, as well as those based on cultural ties to specific territories (Moore, pp. 141–7). There is much to be said in opposition to this dismissive approach, at least as far as historical ties are concerned, but it is not this argument which I wish to confront here. Nations’ historical claims to territorial sovereignty have already been tackled from a liberal-philosophical perspective in a manner which supplies a more than sufficient rebuttal to their proposed rejection (Gans, 2001). Instead, I wish to confront a limited point concerning the territorial argument intimated at the outset which, to the best of my knowledge, has not yet been dealt with adequately.

In her search for legitimate entitlement arguments Moore briefly considers, and abruptly rejects out of hand, any possibility of grounding land rights on the basis of efficiency arguments. She naturally associates this view, that the efficient use of land has something to do with its rightful ownership, with the Western settlers of North America and, more recently, with the Jewish settlers of Israel – left and right, past and present. Alluding to the old Zionist slogan proclaiming the historical land of Israel prior to its Jewish resettlement as ‘A land without a people for a people without a land’, she states: ‘In the first part of the twentieth century, when early Zionists began to settle in Israel, the efficient use of the land argument was used to justify rights to land. Although some early Zionists claimed that there were few people or no people in Palestine, the evidence is that this wasn’t meant literally ... but rather that there were no people using the land’ (Moore, 1998, p. 148). As testimony to the continued prevalence of this idea, Moore reproachfully quotes former Israeli Prime Minister Shimon Peres’ description of the early period of Zionism: ‘The land to which they came, while indeed the Holy Land, was desolate and uninviting; a land that had been laid waste, thirsty for water, filled with swamps and malaria, lacking in natural resources’ (Moore, 1998, p. 148). She views this statement as lending credence to the erroneous belief that those people who lived on the land prior to Zionist settlement were not attached to it: ‘they had “laid waste” the land, neglected it, and so it seems, they had no rights to it’. (Moore, 1998, p. 148).

Moore is, of course, correct in assuming that the Zionist conception of early twentieth-century Palestine as vacant cannot (and was probably never meant to) be accepted altogether literally, at least not as a claim that there were no prior inhabitants whatsoever of mandatory Palestine. At most, it stakes a lesser claim concerning the density of the population, i.e. the fact that the territory in question was, according to all accounts, at that time very sparsely populated. More likely, if
intended as an empirical statement at all, it denies that ‘a people’, that is a free-standing full-fledged nation, inhabited Palestine as such prior to its renewed Jewish settlement.

Quite plausibly, then, Moore opts for a non-literal interpretation of such propositions. She argues, by no means unconvincingly, for what one might call a ‘Lockean interpretation’ thereof, whereby the efficient use of land is considered a prerequisite for its rightful acquisition and holding. This ‘philosophy’, which European settlers carried with them throughout the so-called ‘new world’, holds that ‘efficiency’ is measured by Western standards, and consequently those territories whose local inhabitants fail, as it were, to live up to these standards are judged to be a wilderness free for the taking. On the basis of this worldview, Locke referred to the America of his time as a wasteland, while clearly being well aware of its native population (Locke, 1952, chapter V, p. 23). It is this theoretical approach, and the illiberal measures taken in its name by the forebears of what are today Western democratic states, which ultimately leads Moore to reject any consideration of efficiency in her pursuit of neutral liberal guidelines for the mediation of conflicting territorial demands. And it is precisely with this wholehearted dismissal of such claims, and with that alone, that I wish to take issue with in the present essay.

The Efficiency Argument

Should arguments concerning the utilization of land be excluded from our parameters for the evaluation of competing territorial claims from the viewpoint of liberal morality? Jeremy Waldron suggests that they should not. In an article titled ‘Superseding historic injustice’, he comments with regard to North America that:

Apart from anything else, the changes that have taken place over the past two hundred years mean that the cost of respecting primeval entitlements are much greater now than they were in 1800. Two hundred years ago, a small aboriginal group could have exclusive domination of a ‘large and fruitful Territory’ without much prejudice to the needs and interests of many other human beings. Today, such exclusive rights would mean many people going hungry who might otherwise be fed and many people living in poverty who might otherwise have an opportunity to make a decent life (Waldron, 1992, p. 26).

The content of this paragraph, along with its reference to Locke, hints at the same controversial Lockean argument mentioned above, which ties dominion over territory to the efficacy of its use.

Ross Poole clearly applies such a utilitarian consideration to the aboriginal land-rights case. He says of the aboriginal peoples of Australia: ‘Where between 300,000 and 350,000 indigenous people were able to subsist before white settlement, neither dependent on nor contributing to the rest of the world, modern agriculture and industry now enable the Australian continent to support and contribute to the support of countless millions more’ (Poole, 1998, p. 431, 1999, pp. 133–4). He qualifies this observation by stating that ‘these considerations do not justify, excuse, or even rationalize the brutality, oppression, exploitation, and misery which were the direct and indirect consequences of white settlement in Australia’
However, Poole does categorize these considerations as moral ones, and adds that ‘one does not have to be utilitarian to think that the interests and needs of the many must figure in any argument as to the rights of the few’ (Poole, 1998, p. 431, 1999, pp. 133–4).

The theoretical roots of the argument tying entitlement to land to the efficiency of its exploitation are, as Moore observes, to be found in Locke’s chapter on property in his aforementioned Second Treatise. In Moore’s words:

Locke argued that the right to property was based on the person’s right to his body; that the person can appropriate things in the external world through labour and that these became his goods as long as he leaves as much and as good for others. ... Locke justifies a certain form of (private) property-holding, for he goes on to argue that enclosure is more efficient than holding the land in common, and that, while it might seem to be taking land away from others (because others can’t use it), it is possible to produce more efficiently on private property and so, effectively, ‘leave as much and as good for others’ (Moore, 1998, p. 148).

The upshot of Locke’s reflection here is clearly that the criterion for legitimate acquisition of land is its enclosure and development. For Locke, land that had not been acquired in the way he described was still in the common ‘wasteland’, as Locke himself put it, or, in other words, for all practical purposes empty. And Locke and his followers notoriously carried the rationale behind these private property arguments over into the international sphere, applying it to territorial acquisition.3

Now none of the modern-day theorists dealing with territorial claims goes so far as to argue that legitimate acquisition should be determined by the efficient exploitation of the territorial resource. Still, it is sometimes implied, as demonstrated in the above passages from Waldron and Poole, that such considerations should figure into our reasoning on territorial entitlement. Contrary to Moore, I do not think this is an unreasonable position. While, for a variety of reasons, we would reject Locke’s theory as the comprehensive and exclusive account of the justification for territorial acquisition and entitlement (along with his total denial of aboriginal land rights), we might still hold that it reflects a basic moral intuition that should be incorporated into our ethical reasoning about land rights. In other words, while Locke’s principle of efficiency cannot be the whole story on establishing legitimate land titles, it might remain an important part of that story.

Overcoming some Basic Objections

Moore’s fierce criticism of the view that Locke’s principle of efficiency should be incorporated, at least in part, into our moral reasoning about territorial entitlement begins by formulating his basic idea as stating that ‘land should be allocated to those who use it most efficiently’, and goes on to raise two problems with this idea which she regards as basic (Moore, 1998, p. 149).

Moore’s first problem with the Lockean idea in question is what she calls its ‘lack of generalizability’. This deficiency stems from the fact that ‘what counts
as efficient use depends on the values of the people and their vision of desirable
land use. It is impossible to assess one culture’s “efficiency” against another if they
value different things, if one culture values low density and open spaces, for
example, while another values a more intensive, transformative pattern of land
use’ (Moore, 1998, p. 149).

Admittedly, Moore points at a deficiency in Locke’s thesis that does seem quite
unacceptable to contemporary liberal thinkers (e.g. Tully, 1993, pp. 137–76, 1994,
pp. 165–96; Bishop, 1997, pp. 311–37). Locke did premise the right to territory on
a very particular conception of land use to the exclusion of all other forms of uti-
lization. It has been noted by others as well, in connection with aboriginal land
rights, that the territorial entitlements of groups ought not to be judged solely on
the basis of our cultural tradition as regards the use of land (Poole, 1998, pp. 427–9,
1999, pp. 130–5). However, recognizing a certain cultural bias in Locke’s theory,
and rejecting it, does not amount to the refutation of the entire idea that efficiency
might form part of the basis for a right to territory. This would be true only if our
choices were limited so that we could either adopt Locke’s theory on land acqui-
sition and title lock, stock and barrel, or do away with it altogether. Moore seems
to view these as our only alternatives and consequently opts for the latter.

For those who might not be so eager to discard Locke’s theory entirely, there is
another option. We can retain the general framework of Locke’s train of thought
while expanding the content of his efficiency criterion so that it is able to incor-
porate other forms of land use as well (cf. Bishop, 1997, pp. 312, 335–7; Tully,
1993, pp. 175–6). This would still leave the basic distinction between the utiliza-
tion of land – which would form part of the criterion for establishing legitimate
title to it – and no use, or virtually no use, of land, which would bring entitlement
into question.

It might be argued here that even such a wider criterion would remain culturally
biased. Both the emphasis on utility and the criteria which would presumably be
necessary in order to determine what counts as utilization of land and what would
be considered virtually no use would draw on our cultural values. Thus, the
problem Moore points at would still obtain, though perhaps to a lesser degree.

The answer to this argument pertains to Moore’s original objection as well. While
we would be wrong to subject groups to our particular conception of efficient land
use, we need not adopt a totally subjectivist approach with regard to the value of
various forms of territorial utilization. There is a gross exaggeration involved in
arguing that it ‘is impossible to assess one culture’s “efficiency” against another if
they value different things’ (Moore, 1998, p. 149). There are certain things con-
nected to the exploitation of land that members of all cultures can be assumed to
value. To borrow a phrase from Rawls’s discussion of primary goods, there are
things ‘that every rational man is presumed to want’ (Rawls, 1994, p. 62). In the
case of land and its exploitation, I think we can safely assume that certain things
must be of value to any rational person, regardless of whatever else he or his
culture values. These ‘are things which it is supposed a rational man wants what-
ever else he wants ... it is assumed that there are various things which he would
prefer more of rather than less’ (Rawls, 1994, p. 92). In connection with land, these
can be assumed to be goods such as food, water, natural resources, shelter and
various other means of subsistence. Cultures, and the individuals adhering to them, cannot be neutral as to these goods, or to their attainment which is dependent on the sufficiently efficient use of land.

The second difficulty which Moore raises in connection with the aforementioned ‘basic idea’ that she attributed to Locke is that ‘the consequences of implementing the rule would be disastrous’ (Moore, 1998, p. 149). Later she explains that if such a principle of efficiency ‘was adopted as a general principle or rule, it would not provide a secure basis for control over territory, but would lead to an unstable and counter-productive situation where borders are constantly being re-drawn’. This is because:

[i]f applied generally, this rule would seem to dictate that land rights should be conferred according to who is most effective in exploiting the resources. Because this would change over time, the rights to particular pieces of land would also shift. Changing technology, changing land-use patterns and demographic shifts would lead to a situation in which one area of land, previously best exploited by one group, now might be used more efficiently by another group; thus one group would lose their rights to the land and another would gain rights. Because efficiency (or expected efficiency) is the foundation for rights, it would follow that the actual amount allotted to different groups would constantly change (Moore, 1998, p. 149).

Moore’s concern here for radical instability is, if not totally unfounded, at least extremely exaggerated. Her worry stems from an invalid move implicit in her original formulation of the so-called ‘basic idea’, and now explicitly articulated in this second objection. She assumes that if we allow use, or efficiency, to form a part of the foundation for territorial entitlement, then, taken to its logical conclusion, this would entail that land be allotted, and re-allotted, according to who was expected to use it most efficiently. This conclusion is in keeping with what Moore understands to be the underlying idea here, i.e. that ‘land should be allocated to those who use it most efficiently’ (Moore, 1998, p. 149, emphasis added), but it is not undeniably in keeping with Locke’s theory, nor is it necessarily entailed by any theory which takes efficient land use to be part of the justification for a right to it.

Locke’s theory of entitlement as regards land is, indeed, based on efficient use thereof. However, nowhere does he indicate that, once a territorial acquisition has taken place, others can claim the land in question on the basis of more efficient use. On the contrary, Locke’s theory places great importance on first occupancy (as he understood it) as part of the justification for land acquisition. Legitimate territorial holdings are acquired primarily by staking claims to land which is not already claimed by others. Investing one’s labour in the land that one is the first to occupy is a further, though necessary, condition for gaining title to it.

In a recent article on ‘Locke’s theory of original appropriation’, Bishop makes this very point explicitly. When discussing Locke’s references to the efficient use of land, Bishop notes that ‘Locke nowhere argues that efficiency overrides private property once ownership is established; his theory is obviously not a utilitarian theory in
which land must always be reassigned to the most efficient use. Thus efficiency is only relevant at the time of original appropriation’ (Bishop, 1997, p. 316). Later, this understanding is reiterated when Bishop explains at greater length that:

Locke’s theory was not a utilitarian theory in which property rights are always assigned and re-assigned to the most productive use; utilitarianism was neither the basis of original appropriation nor of the continuing private ownership of land ... this obviously is not consistent with Locke’s theory of property, which is a rights, not a utilitarian, theory. For Locke, the issue of productivity only arises at the time of original appropriation, and even then the issue is not which use is the most productive, but rather who is the first to improve a piece of land (Bishop, 1997, p. 327).

Admittedly, Locke’s failure to acknowledge the potentially unstabilizing principle which Moore points to, whereby land would be constantly reallocated on the basis of optimal efficiency, could simply be attributed to an inconsistency in his theory. Locke does make remarks which leave his thesis open to the interpretation whereby his criterion for land acquisition is *optimal* use, and consequently open to the sort of objection from instability which Moore raises. Thus, for example, he states right at the outset of his discussion on property that: ‘God, who has given the world to men in common, has also given them reason to make use of it to the best advantage of life and convenience’ (Locke, 1952, p. 17 [II, para. 27], emphasis added).

However, contrary to Moore’s concern, the principle of instability she points at is not necessarily dictated by any rule which regards the exploitation of land as a prerequisite for its legitimate acquisition. At most she has succeeded in pointing out a deficiency in Locke’s particular theory of efficiency which depends on a specific reading of his argument. But, in general, taking utilization to be a partial basis for land rights does not entail that the criterion for such acquisition and subsequent holding need necessarily be the *most* efficient use. The latter does not necessarily follow the former. From the fact that use is a condition of entitlement, it does not necessarily follow logically that continued entitlement is contingent on optimal use. Consider, for instance, the institution of marriage. It is widely accepted in many legal systems, as well as in various religious codes, that a marriage is not valid until it has been consummated. It does not, however, follow from this that the ongoing validity of marriage depends on the frequency (or quality) of intimacy. It certainly does not follow that if, at some later point, one is intimate with someone other than one’s legal spouse more frequently than with that spouse, the former thereby acquires marital status while the latter loses it. This is at least partly because consummation is only an additional (though necessary) condition for the validity of a marriage.

In general terms, regarding A as a necessary condition for B does not in any way entail the conclusion that if A is not maximized to its highest degree, then B does not obtain. Nor does it entail, as my example illustrates, that A is a sufficient condition for B. Likewise, as I have already stated, according to Locke the utilization of land is an essential, but not an exclusive, condition for entitlement to it. His principle does not necessarily dictate a rule whereby land should be continuously reallocated on the basis of optimal use.
This reading of the utilization requirement, as opposed to Moore’s, stands to gain even greater plausibility when one considers not only Locke’s theory of property but Hume’s as well. For Hume, stability itself is regarded as the most beneficial feature of a system of property, and the concern for it is at the very heart of his utilitarian account of property rights (Hume, 1985, pp. 536–55, [Book III, Part II, Sections II & III]). On this account, the principles of utility and stability, far from being at odds with one another as Moore presents them, are in fact closely linked in an inseparable manner. Stability is taken to be the primary component of what makes a system of property useful for individuals. If we keep Hume’s utilitarian comments on stability in mind, it then seems plausible to maintain that utility is a significant factor in allocating property rights (or territorial rights, as the case may be), but that for the very same reason (i.e. the maximization of utility), once those rights have been acquired, it is equally useful to protect their stability from then on. If stability is understood to actually form a part of what utility or efficiency are all about, then this view, which I attributed to Locke, is totally coherent.

Whatever inconsistency may be involved in some of Locke’s comments on the matter, then, his basic idea seems to entail only that one make some reasonable (rather than optimal) use of the land in question in order to gain title to it. And I have already suggested that such a Lockean-based principle can be expanded in a way that will enable it to encompass various cultures’ interpretations of what counts as making good use of land. There is certainly good reason not to confine ourselves to a particular, narrow conception of appropriate land use which is unjustifiably culturally biased.

Now, I can foresee an objection which, while admitting to the logical possibility of what I am suggesting here, might argue that in my attempt to avoid the undesirable unstabilizing consequences entailed by adopting optimal use as a criterion for territorial entitlement, as well as the unacceptable cultural bias involved in adopting any particular conception of appropriate and efficient land use, I will have, in reality, weakened the efficiency criterion to an extent which renders it practically void. In other words, in order to avoid the moral and practical hazards that Moore points to as natural consequences of adopting a Lockean criterion of efficiency, we would have to modify the efficiency criterion to an extreme degree. If we weaken this principle too far, so the argument goes, then almost any group will turn out to have a claim based on it. So, while the objectionable consequences Moore points to may not be necessary logical derivatives of any efficiency criterion whatsoever, they are after all natural consequences of adopting any significantly strong principle of efficiency.

Such an objection is not unfounded. I am indeed suggesting the incorporation of a relatively weak principle of efficiency within some wider set of criteria for the legitimate acquisition and holding of territory. In fact, I would not even refer to it as an efficiency principle, but rather as a principle of utilization. And, admittedly, most groups permanently inhabiting a territory will be able to enlist the fact that they are making good use of it as a point in their favour. But this does not render this criterion void of all content. It still leaves us, as I have already suggested, with the basic distinction between utilization of land in various forms – which I argue
should have something to do with establishing title to it – and virtually no use of land, which might bring entitlement into question. I have also suggested that some common idea of what amounts to good use can be derived from the basic needs of all human beings, regardless of their cultural affiliation. So while we would be right to reject Locke’s narrow and culturally biased approach towards the proper exploitation of land, we need not, after all, adopt a totally subjectivist approach to the issue of appropriate utilization of land, as Moore seems to suggest.

I believe there is much to be said in favour of retaining this basic idea that entitlement to land is tied in some way or another to its usage. One reason for wishing to do so which has already been mentioned is the fact that the efficient use of land results in produce which is of value to everyone. Thus, it supplies us with a universal criterion that crosses all cultural borders.

Another compelling reason for retaining this basic Lockean intuition is that it is compatible with some other widespread beliefs about which we are more confident. Our normal everyday tendency is to associate use with interest (and lack of use with lack of interest). When an individual neglects to use a resource that is at his disposal, we would normally conclude, quite confidently, that he lacks any significant interest in it. Admittedly, if the said resource is the property of that individual, its neglect would not automatically justify his dispossession. It does, however, cast doubt on the strength of the owner’s interest in that property. If his continued possession of the unused item placed heavy burdens on others – burdens arising from their obligation to refrain from using his resource – then it might put his entitlement into question.

Assume now that the resource in question is scarce, and that its ownership is in dispute. Others who lack it would, if they were granted possession of it, use it for their livelihood. Surely, in such a case, the current possessor’s failure to make use of the resource would figure into our considerations as to its rightful ownership. I, therefore, doubt that such considerations should be excluded in the case of territorial entitlement.

It might be argued here that the case of land is necessarily different because land is of interest to its possessors for simple residence, if nothing else, so that, even if it is hardly utilized, those who reside on it still have a vital interest in not being removed. Granted, an interest in residence, i.e. an interest in territorial space, might very well exist even where neglect indicates no further interest. However, this is not an interest in any specific land. It is simply an interest in some territorial sphere on which a group can reside freely. This is certainly an interest worthy of respect, but, in view of the severe scarcity of land and the frequent disputes over it, this limited interest will often need to contest with the interests of others which might be more substantial, as well as more connected to a particular place.

As in the case of private ownership, I am not arguing that lack of use automatically amounts to a lack of title or that cultivation on its own automatically gives rise to rights over territory. However, I am arguing most definitely that use be regarded as a relevant consideration in the attribution of land rights, and against the view that any such semi-Lockean considerations be excluded from the discus-
sion. Such exclusion ignores our common intuitions that associate use with interest and neglect with lack thereof. Furthermore, it ignores the unarguable fact that the produce of well-utilized land is of universal value.

Finally, I might be criticized for implying that the utilization of land by a particular group is in some way ultimately beneficial to all. I have argued that the use of land results in produce which is of value to everyone, and that the produce of well-utilized land is of universal value. In fact, as should have been clear, all that was intended by such comments was a response to Moore’s first objection to Locke’s principle of efficiency, that is, her objection from ‘lack of generalizability’, according to which it is impossible to assess one culture’s ‘efficiency’ against another’s because different cultures value different things (Moore, 1998, p. 149). Here I argued that certain things, certain products of land use, can be assumed to be of value to all, cross-culturally, thus enabling us to make some assessments of relative efficiency. All that I have been arguing for is the existence of some common denominator, which Moore denies, for the assessment of efficiency.

As for the stronger claim that might be attributed to me – that the efficient use of land is of benefit to all – I doubt whether this is necessary for my argument here. I will nevertheless attempt to defend at least one possible version of this stronger claim. I shall suggest that the use of land, as opposed to its neglect, is morally valuable. Defending this stronger claim entails showing that the utilization of any given territory by an individual or by one set of people (e.g. those occupying it) is in some sense universally desirable above and beyond the direct benefit to the individual or individuals occupying the said territory.

In *The Second Treatise of Government*, Locke attempts to formulate an argument of this sort. According to Locke:

> he who appropriates land to himself by his labor does not lessen but increase the common stock of mankind; for the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are – to speak much within compass – ten times more than those which are yielded by an acre of land of an equal richness lying in common. And therefore he that encloses land and has a greater plenty of the conveniences of life from ten acres than he could have from a hundred left to nature; may truly be said to give ninety acres to mankind’ (Locke, 1952, pp. 22–3, para. 37).

Beyond these statements, however, Locke remains very vague as to how in practice any personal appropriation and cultivation of land actually benefits anyone other than the appropriator himself. It is quite clear that the latter now enjoys ‘a greater plenty of the conveniences of life’ (Locke, 1952, pp. 22–3, para. 37). It is far less obvious that he has in fact, by his act of enclosure, increased the stock of all mankind, or of anyone, for that matter, other than himself.

Jeremy Waldron understands this passage from Locke as expressing the view that:

> When a man encloses and cultivates ten acres of hitherto common land, the rest of mankind is benefited, according to Locke, by the greater reduced pressure on the remaining common land. To produce the same
goods that he is producing by cultivation, a hunter and gatherer would need to roam over a hundred acres of common land. So by withdrawing from the common into his ten acre patch the encloser leaves the remaining ninety acre that much freer for everyone else (Waldron, 1979, p. 323).

According to Waldron: ‘It is not, however, Locke’s argument that mankind benefits from the product of the ten cultivated acres: the only person who benefits from that is the cultivator’ (Waldron, 1979, p. 323).

Nevertheless, another seemingly possible way of defending such claims, whereby utilization is generally beneficial (at least in the context of nations’ utilization of territory), is by pointing to the interrelations between various parts of the globe. One land’s prosperity, it might be argued, eventually ‘trickles down’ to the populations of less affluent places by way of export, international aid, etc. According to this argument, the efficient use of land would at least eventually and indirectly benefit all mankind, for example by making goods more readily available world-wide.

Such assumptions, however, are somewhat questionable as well as unnecessary in showing the general desirability of making good use of land. It is questionable because one can easily envisage instances of territorial exploitation (by way of cultivation or otherwise) which benefit no one, directly or indirectly, other than the occupants of the utilized territory themselves. It is unnecessary because the general moral desirability of territorial utilization need not depend on its benefiting all mankind. From a utilitarian point of view, the mere fact that some sentient beings are enjoying greater pleasure than they would be were it not for the utilization of the land in question (without lessening the enjoyment of others as a result) suffices to render the use in question morally desirable. Whatever version of utilitarianism one might adhere to, this conclusion is difficult to deny. The use of land to the benefit of individuals (the forms of what counts as beneficial use admittedly varying from one culture to another) raises both the aggregate utility and the average utility of all mankind.

But perhaps one need not be a utilitarian in order to accept my basic contention whereby some form of utilization of land is morally preferable to its neglect. We might ask ourselves what the appropriate Kantian attitude would be towards the issue in hand. Kant’s categorical imperative requires the moral agent to act only upon such maxims of action as can be willed as universal laws applying to every moral agent (Kant, 1964, chapter 2, p. 88). One of the corollaries of this categorical imperative, its second composition as ‘The Formula of the Law of Nature’, stipulates that one ought to ‘Act as if the maxim of your action were to become through your will a universal law of nature’ (Kant, 1964, chapter 2, p. 88). So we might ask ourselves in this connection whether the neglect, or totally inefficient use, of land could be willed by those neglecting it, or using it totally inefficiently, as a universal law or a universal law of nature. In light of those fruits of the land which I suggested to be basic human needs (i.e. food, shelter, etc.), I strongly suspect the answer to this question must be in the negative.

Kant’s subsequent illustration of these first two formulations of his categorical imperative consists of four examples intended to demonstrate the appropriate
implementation of his imperative (Kant, 1964, chapter 2, pp. 89–91). The third of these four examples might possibly shed some further light on the question in hand. In this example, Kant condemningly describes a man who chooses to dedicate his life solely to the pursuit of pleasure and enjoyment, thus neglecting the development of his natural aptitudes. Kant asks whether such a tendency towards idleness and neglect could be compatible with what is called duty. Pointing to the South Sea islanders as an example of such a life of idleness – and thus admitting that such a system of nature could indeed subsist under such a universal law – Kant nevertheless concludes that a man living such a life ‘cannot possibly will that this should become a universal law of nature’ (Kant, 1964, chapter 2, p. 90).

A similar conclusion might be appropriate as regards individuals who neglect a piece of land which is at their disposal. While such individuals or a group might very well be able to exist under such a system, reason does not allow for them to will this way of life as a universal law. For if everyone were to treat land in this manner, the very basic needs which every person requires for her very subsistence, or at least for any minimal degree of comfort, would be denied to all.

Concluding Remarks

I have argued, following Locke, that we consider utilization to be a relevant factor in determining the destiny of disputed territory. I maintained that this reflects certain basic, widely held, moral intuitions, which can be further backed up by argument. At the same time, I suggested that we interpret ‘use’ or ‘utilization’ in a much broader way than Locke did so as to incorporate in it various cultural understandings of the appropriate handling of land. I thereby rejected Locke’s narrow and culturally biased reading of ‘use’ solely as enclosure and cultivation. On the other hand, I argued against the view advanced by Moore according to which the concept of efficient land use must be regarded as totally relativistic. I also rejected the interpretation of any utilization test as necessarily requiring maximum efficiency. Finally, I argued that the utilization of land, as opposed to its neglect, is of moral value.

The upshot of these brief comments on efficiency is relatively straightforward. They indicate that there are good reasons for viewing the way in which a given land has been put to use as a relevant, though admittedly minor, component of any overall account of territorial entitlement. In those cases in which the occupancy of land is conjoined with its utilization, this use of the land serves to strengthen the occupant nation’s claim to it. To this extent, efficiency-based considerations in fact figure quite frequently, at least implicitly, in our thinking on territorial entitlement. Correspondingly (though less obviously) it follows that the neglect of a land by its inhabitants must in some way put their title to it into question, though it does not automatically negate any territorial claim. In the first case, the modified efficiency argument advanced in this essay lends further moral support to territorial claims. It explicates a small, but nonetheless important, part of the reason for our common intuition whereby current inhabitants of a territory are the most likely candidates to be morally entitled to it. But it also serves to restrict these intuitions, so as to exclude negligent occupants. Thus, in the second instance (that of neglect, or non-use) the principle of utility suggests a weakening of the moral case for entitlement.
In most real-world cases the role of guidelines based on utility would usually be limited to strengthening territorial claims which are already legitimized by other criteria, as in: we are well settled here; and have been from time immemorial; and we make good use of our land to everyone’s benefit. This last point is non-negligible, though it is admittedly a supplementary one. However, since it is reasonable to presume that any adequate overall approach to the evaluation of territorial entitlement will ultimately be multi-criterial, auxiliary arguments will have a significant role to play within it.

One important prototype of territorial cases to which an efficiency criterion would be most relevant was clearly suggested at the outset. Following Waldron and Poole, I indicated that considerations of efficiency and utility apply quite directly to territorial conflicts involving ‘settler societies’, most notably to struggles for land on the American and Australian continents. As both Waldron and Poole imply, efficiency considerations strengthen the claims of the present occupants of those continents, i.e. the innocent descendants of the European dispossessors of native lands (Waldron, 1992, p. 26; Poole, 1998, p. 431, 1999, pp. 133–4). (Though unlike Locke, they clearly do not suggest that such considerations justify the original expropriation thereof.) I have also alluded to the implicit efficiency arguments embedded in early Zionist rhetoric. However, notwithstanding the definite support that considerations of utility lend to the territorial claims of later generations of Western-style settlers, I complicated matters by suggesting that, when such arguments are interpreted generously enough to avoid cultural bias, they might end up supporting some of the demands made by aboriginal groups as well.

Furthermore, claims of superior efficiency do not operate in a vacuum, nor have I argued that they occupy a paramount place within a variety of normative considerations favouring one group’s claim to territorial sovereignty over another’s. In any concrete territorial case, arguments from utility will ultimately have to contend with other, often more weighty, interests in territorial domination such as those stemming from an historical connection to a given territory or those related to de facto (or prior) occupancy, or physical need. Admittedly, no magical formulas or instant recipes for solving the complex problems of territorial allocation have been supplied here. ‘How much history equals how much efficiency’ or ‘what degree of utility is necessary in order to meet counterclaims’ must remain somewhat open questions with no definitive theoretical answers. Notwithstanding these limitations, I hope to have succeeded in highlighting and emphasizing the normative significance of a single aspect of territorial entitlement claims which, I argued, should not be underestimated.

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Notes


2 Note that this quasi-Lockean interpretation, which Moore attributes to the Zionist description of the Holy Land as ‘a land without a people’, is by no means the only possible non-literal interpretation of this claim. The task of interpreting national texts may at times be as complex as the interpretation of legal statutes and works of art. Such, I believe, is the case with this Zionist description of ‘Eretz Yisrael’ (i.e. the entire historic Land of Israel, and not, as Moore repeatedly defines it, merely pre-1967 Israel and the West Bank). From a Zionist-nationalist point of view, that is, from the insider’s perspective from which it sprouted, this statement need not be understood as an empirical assertion in any ordinary sense. In fact, I believe it should not be understood as such at all. Instead, it alludes to a particular type and strength of connection between a people and its historic territories, a tie so intense that one without the other is by definition impoverished, regardless of any exterior geo-demographic information. Under this, albeit poetic, interpretation, then, far from staking any objectionable statement of fact, this old Zionist motto expresses no more than a romantic’s yearning for his eternal love.

3 The distinction between the individual rights to private property argued for by Locke and collective rights to territorial sovereignty claimed by national groups should not be overlooked. It has been pointed to more than once, particularly with reference to Locke, e.g. in Gilbert (1998, pp. 102–4) and Brilmayer (1989, pp. 14–15). Nevertheless, Locke did make the transition from the one to the other and, as is apparent in the text above, his writing has been taken to refer to both. The Lockean-type argument I am addressing here is clearly an efficiency-based argument for territorial sovereignty rather than for private property.

4 For Rawls, the primary social goods are chiefly ‘rights and liberties, powers and opportunities, income and wealth’, to which he later adds self-respect. All I am borrowing from him is the basic idea that there are certain fundamental goods that every rational person can be assumed to value, whatever else he values. Admittedly Rawls himself has been widely criticized for this argument; nevertheless, I take it to be a convincing claim.

5 This, in fact, seems to me to be a far less culturally biased assumption than assuming that every rational man necessarily values income and wealth, which Rawls regards as a primary good for every rational individual, whatever his rational plans of life are in detail (Rawls, 1994, pp. 62, 92).

6 It is true that cultures can vary in the degree of value which they attach to these material fundamental goods, which is precisely why I suggested we expand the Lockean view of use so that it may encompass various forms of land use. But still, there is, contrary to what Moore argues, a lowest common denominator which enables comparison. Inefficient use of land is, at the very least, a very expensive taste indeed.

7 Steiner (1998, p. 65) and Locke (1952, p. 17 [II, para. 27]), where Locke explains his theory of original acquisition and emphasizes that once the original appropriator’s labour has been mixed with the object in question ‘no man but he can have a right to what that (the labor) is once joined to’ (II, para. 27); Locke (1952, p. 20 [para. 32]), where Locke speaks of the legitimate annexation through labour of land ‘which another had no title to’; Locke (1952, p. 27 [II, para. 45]), where he speaks of the acquisition of land which was previously common; Locke (1952, p. 28 [II, para. 46]) where he speaks in terms of acquiring land by removing it from the state of nature. There are ample examples of this throughout the chapter. Nowhere does Locke suggest that land that has already been removed from the common, or the state of nature, and is being used (at least in the sense in which he comprehended the use of land) should be reallocated to someone else if it could be shown that he or she would use it more efficiently.

8 In suggesting this understanding of Locke, I am also drawing somewhat on Waldron’s interpretation of Locke’s enclosure requirement. In The Right to Private Property Waldron adopts Olivecrona’s suggestion whereby enclosure is a necessary, though not a sufficient, condition for appropriation (Waldron, 1988, p. 174).

9 This last point does not work against recognizing utilization as a factor morally relevant to entitlement. We accept the fact of inhabiting a territory as relevant to the question of entitlement to it, even though this factor also applies to most groups demanding territory.

References
EFFICIENCY-BASED TERRITORIAL CLAIMS


