

Chapter 5

Land Rights of Aboriginal Peoples

The Problem

Justice requires us to acknowledge that all persons have equal rights to natural opportunities. This raises a potentially troubling question: If aboriginal peoples are living at low population densities, might the application of such a principle squeeze them onto such small territories that they would be compelled to abandon their traditional ways of life? And if this is so, does it not expose a fundamental inadequacy of the principle that all have equal rights to natural opportunities? Alternatively, if aboriginal peoples are accorded special land rights, does this not make them privileged in a way that is unfair to the rest of humanity?

I shall argue that the proper application of the principle that all persons have equal rights to natural opportunities will almost certainly permit aboriginal peoples to continue their traditional ways for as long as they choose, while giving them no special privileges if they choose to join us in our way of life.

Justice in a Society that Grows and Innovates

To understand the requirements of justice with respect to the division of natural opportunities between an advanced society and an aboriginal one, imagine an advanced society developing alongside a nomadic aboriginal society, with the members of the aboriginal society choosing to be uninfluenced by developments in the advancing society. In the first year, both societies have stable populations with same number of members, both have the same amount of territory and the same technology, and both have only trivial amounts of capital.

One society decides to take up agriculture, which permits it to increase its population without lowering its standard of living. A generation later, a child from that society questions the decision made by her parents' generation: "Why was it just," she asks, "for you to increase the population, when you know that this would mean that my generation would have less land per person to use than your generation. Doesn't my generation have just as much right to the use of natural opportunities as your generation?"

If the older generation is just and has planned adequately, they will have an acceptable answer. "It is true," they will say, "that your generation has the same rights to natural opportunities as our generation. But these rights need not be

granted in kind. In the same way that all persons are accorded equal rights to land when the land is possessed by those who can use it best and the rent of land is divided equally, so too do different generations have equal rights to land if a generation with less land per capita is compensated with other things of value. To compensate your generation for its reduced access to land, our generation helps each member of your generation build a house and make farming implements. Furthermore, the land to which you have access has had stones removed from it, and you also have the benefit of the technological knowledge that comes from our experience with agriculture. Thus your generation has opportunities that are just as valuable as the opportunities that our generation had.”

There is an element of risk in such a plan. In making the change to a new way of life with a greater population, the older generation cannot be sure that the younger generation will not desire a nomadic life like their neighbors. With their numbers increased, it will not be possible for all of them to revert to nomadic ways with the former amount of land per capita. If only a few persons seek the nomadic life, they can be accommodated with larger shares of land. The older generation would have an obligation to provide such a larger share to any member of the younger generation that sought a nomadic life. But if a person who requested this option were to benefit from trade with the agricultural society, the benefit from such trade could properly be subtracted from the value of the land rights that were accorded to that person.

Justice between a Nomadic Society and a Developed One

Suppose that the argumentative youngster settles for farming and then goes to a member of the nomadic society and asks, “Why is it just that the members of your society have more land per person than the members of my society?”

The nomad could properly answer, “Yes it is true that the members of my society have more land per person than you and the other members of your generation, but there is no unfairness in this. When your forebears decided to expand their numbers and go into farming, they planned compensation for the reduced amount of land that you would get. Unlike me, you started your adult life with a house and farming tools, and with land that had had stones removed. You also benefit from the technology developed by your parents. The combination of these things gives you a starting position in life that is as valuable as mine. There is no unfairness in my society having a greater value of land per capita than yours has.”

Now consider the case of a nomadic aboriginal people today, a people who happen to have not yet been deprived of access to their traditional territory, and imagine a conversation between their representative and a person from the developed world who wishes to argue that the nomads have an obligation to share their traditional territory equally with all humanity.

DEVELOPED: “Why is it just that your society has greater land value per capita than my society?”

The response of the nomad is somewhat more complex than in the earlier case, because of the possibility that the facts of the earlier case do not apply. While some parents in developed societies provide their children with significant assets with which to start life, this practice is by no means universal. Still, there are arguments available to the nomad. The nomad might begin by asking whether the questioner’s society was doing all that it should to achieve justice with respect to land: “While differences in average access to natural opportunities across societies may be an indication of injustice, the fundamental right of equal access to natural opportunities is a right of individuals, not a right of societies. So we should ask: ‘Is your society doing what it can to provide equal access to natural opportunities, by sharing the rent of land equally?’ If not, do that first, and then we can talk about equality across societies.”

Suppose that we are living in a time when the equal rights of all to natural opportunities are recognized, so that Developed can answer, “My society collects all of the rent of land from the possessors of land. The part of the rent of land that is generated by public services is used to finance those services. The rest is divided equally among the citizenry. Thus we give expression within our society to the principle that all persons have equal rights to natural opportunities.”

What is Nomad’s next move? Nomad can say, “I understand that in your society every child is given at least 12 years of education for which the child does not pay. You must add the value of this education to the per capita land rent that you receive. Furthermore, your forebears have developed technologies that add greatly to the value of the life that you are able to lead, while providing no value to my nomadic life. Include the value of these technologies in the calculation, and see whether I still have opportunities with greater value than yours.”

The resulting calculation could go either way. Developed might be able to argue that Nomad was receiving some value from the technologies of the advanced societies. So suppose that the calculation is made as carefully as is feasible, and it reveals that the value of the natural opportunities to which the nomad has access is greater than the value of the land rent, education and technology that the citizen of the developed society receives. What is Nomad’s next move?

NOMAD: “While it would be inappropriate to hold any generation responsible for the sins of its ancestors, there may be living members of your society who ought to be held accountable for your predicament. If your society is so unbearably crowded that you need to as us to squeeze onto less land, have you stopped the population increase in your society? Have you held accountable all the living persons in your society who contributed to population increase by having more than two children? Have you identified the wealth that was accumulated in the past in your society by unjust appropriations of land and used it to compensate for the small shares of land that are now available to the

members of your society? You should take these steps within your own society before you ask my society to squeeze into a smaller territory.”

These arguments show how it is possible to embrace a global principle of equal access to natural opportunities without suggesting that aboriginal peoples should be accorded no more land value per capita than anyone else. The proper standard is equality in the combined value of the things with which people enter life: land or its rent, wealth, education and technology. A just society will ensure that the total value of these things does not fall from one generation to the next. It will also ensure that if there are some persons who benefit so little from education and technology that the total value of what they receive is in danger of falling below the intergenerational standard, they are compensated with land or wealth so that they do not fall below the standard.

Because of the great value of the education that people in advanced societies receive, and the value to them of the technologies that are available to them, it is unlikely that they can offer sound reasons why nomadic societies should be obliged to squeeze into smaller territories. But it is not impossible. If a nomadic society is living at a very low density on land that has great value to a developed society, it is possible that the advanced society could make a reasonable claim for a share of the valuable land. Such a claim would only be respectable if the advanced society was doing what it could reasonably do on its own to promote justice and if it took account of the total value of the things that were provided to newly mature citizens, including education and the value of technology.