A CITIZEN'S STAKE IN SOVEREIGN WEALTH FUNDS:

The Management, Investment And Distribution Of Sovereign Wealth

Angela Cummine, New College

THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN POLITICS IN THE DEPARTMENT OF POLITICS AND INTERNATIONAL RELATIONS AT THE UNIVERSITY OF OXFORD

WORD COUNT: 96,894

OXFORD, UNITED KINGDOM JULY 2013

A Citizen's Stake in Sovereign Wealth Funds:
The Management, Investment and Distribution of Sovereign Wealth

Angela Cummine, New College, D.Phil in Politics, *Trinity Term 2013*

ABSTRACT

Over the past five years, Sovereign Wealth Funds (SWFs) have become a prominent phenomenon in contemporary capitalism. Described as government investment vehicles that invest state wealth in financial markets, the majority of the world's 60-plus funds have been established since the year 2000. Despite extensive treatments of SWFs' geopolitical and international significance, ethical and domestic level analyses are sparse. In response, this thesis interrogates three key normative questions raised by the funds for the domestic citizen-state relationship: (1) How (and by whom) should sovereign funds be *managed*? (2) How should sovereign wealth be *invested*? (3) How should the earnings of sovereign fund investment be *distributed?* In answering these questions, this thesis aims to dispel ambiguity over the ownership status of sovereign funds, evident in popular and academic discourse and within communities that establish these entities. For this task, it draws on recently revived fiduciary theory of the citizen-state relationship to argue that the rightful owner of these funds is the citizenry - not states or governments who enjoy physical and legal possession of SWFs. It goes on to examine the implications of this fiduciary state conception of SWF ownership, asking how citizen-owners should enjoy control over and benefit from the distinct constituent parts of their SWF property: the institution of the fund, the underlying sovereign wealth and the financial returns earned on the investment of its assets. The model of citizen ownership defended demands substantially increased popular control over SWF management and the investment of sovereign wealth, as well as direct benefit rights for citizen-owners to fund income through individualised distribution of investment returns. Examination of existing practice among SWFs demonstrates that this normative ideal is far, although not impossibly distant from current institutional practice.

Acknowledgements

This thesis has benefited from the help and guidance of a large number of people without which it would not have been possible to complete. My greatest debt is to Stuart White, my MPhil and DPhil supervisor who has patiently guided me through the postgraduate experience of political theory with sage advice and timely encouragement. Stuart's clarity of thought and passion for translating philosophical ideas into political and policy practice has proven a constant source of inspiration and dramatically enhanced the focus and objectives of this project. I am very grateful for his mentorship and intellectual influence.

The thesis also owes an important debt to David Miller and Marc Philp for their feedback and advice in the early theoretical stages of the project. On the methods front, I am especially obliged to Liz Frazer for her guidance on the design, collation and analysis of original focus group and interview data, as well as for broader discussions on issues of methodology in the social sciences. For help with the design, logistics and execution of my field research in Alaska, I am very grateful to Professor Scott Goldsmith at the University of Anchorage Alaska, Cliff Groh, Gregg Erickson and the Wetherby family for their generous hospitality and assistance. Cliff and Gregg are owed additional thanks for their feedback on the Alaska chapters.

In terms of general academic development, thanks must go to Iain McLean for some unique professional opportunities that offered exposure to the ways in which political theory can influence the 'real' policy world and public debate. Also in this vein, Karl Widerquist's support of and interest in my research has been much appreciated. I have learnt much from Karl about the publishing process and at critical points, been rejuvenated by his energy and passion for political theory, especially the topics that led us to cross paths.

Outside academia, I am hugely indebted to David Murray, the inaugural Chairman of both the International Forum of Sovereign Wealth Funds (IFSWF) and the Australian Future Fund, who was particularly generous with his time and ideas. While we have not always reached the same conclusions,

our exchanges proved highly influential as I developed my own views on the proper role and regulation of SWFs.

Mr Murray is also owed thanks for facilitating regular and rare access to the IFSWF and the international investment world. This allowed me to establish critical networks and gain interviews with sovereign fund officials that proved crucial for testing out my proposals and gaining the SWF perspective on my research. Particular thanks go to SWF officials from Norway, Alaska, Australia, New Zealand, the UAE, Hong Kong, Singapore, Botswana, Chile, Kuwait and Qatar for their thoughts and who, for confidentiality reasons cannot be individually identified here. I can however individually thank David Gonski, Mark Burgess and Will Hetherton for advice and assistance.

Throughout I have benefited from generous scholarships and financial grants that made my doctoral studies and field research possible including from the Rhodes Trust, the Jenkins Memorial Fund, the Scatcherd European Scholarship, the Society of Applied Philosophy, the Rothermere American Institute, the Department of Politics and International Relations (DPIR) and New College at Oxford University.

For helping bring this project to completion, thanks go to my good friend Nick Zweck for his excellent editorial assistance and to the academic and administrative staff in DPIR and the Social Sciences Division for their help.

On a more personal note, I am deeply grateful to the many Oxford friends whose encouragement and empathy helped me navigate the doctoral experience and whose own work and passion continues to inspire. My family have been supportive in countless ways from afar and tried to maintain the faith as various Christmas' came and went without the anticipated submission having occurred! Thankfully, the day did come and in no small part because of the constant support, encouragement and companionship of my partner and best friend Christian Westerlind Wigstrom, to whom this thesis is dedicated.

July 2013

Table of Contents

List of Tables, Graphs and Figures 8
List of Abbreviations and Acronyms 9

Chapter 1 - Introduction 10
1.1 The Normative Significance of Sovereign Wealth Funds 10
1.2 Distilling the Normative Challenge 14
1.3 Domestic Dilemmas over SWFs 20
1.4 The Key Normative Questions 24
1.5 Limitations of Existing Approaches to Sovereign Funds 27
1.6 The Justness of SWFs 37
1.7 Overview, Methods and Plan 45

PART I: SOVEREIGN FUND OWNERSHIP 51

Chapter 2 - Who Owns a Sovereign Wealth Fund: Government, State or Citizen? 52
2.1 Sovereign Wealth Funds and Definitional Diversity 54
2.2 Imposing Consensus – SWFs as Government-Owned Funds 59
2.3 Conflict and Confusion over Sovereign Fund Ownership 62
2.4 The Fiduciary State and Citizen Owner 77
Conclusion 91

Chapter 3 - A Fiduciary Model of Citizen Ownership: How Citizens Own SWFs 93
3.1 What Citizens' Own: the Principal, the Returns or the Fund? 94
3.2 A Property Rights Approach to SWF Property: Control and Benefit 97
3.3 How Citizens Own SWFs: Collective Ownership Models 101
3.4 A Model for Citizen-Ownership: the EAC Framework 103
3.5 Applying the EAC Model to Control over and Benefit from SWFs 119
Conclusion 120

PART II: OWNERSHIP AS CONTROL 122

Chapter 4 - Popular Control of Sovereign Funds in Theory: Democratising Management 123
4.1 Ownership as Control 124
4.2 Control over Shared Property 126
4.3 Democratic Control over Shared Property 129
4.4 Realizing Popular Institutional Power over SWFs 150
4.5 Desirability Objections to Democratic Control of SWFs 165
Conclusion 173

Chapter 5 - Popular Control of Sovereign Funds in Practice: Democratic Management in Norway and Beyond 175
5.1 Current Control Arrangements Over Sovereign Fund Management 176
5.2 Norway's Sovereign Fund: A Blueprint for Popular Control? 185
5.3 Assessing Norway's GFPG: Sufficient Democratic Control? 196
Conclusion 204

Chapter 6 – Popular Control of Sovereign Wealth: Ethical Investment in Theory and Practice 205
6.1 The Special Status of Ethical Investment Obligations 207
6.2 Ethical Integrity, Coercion and Individual Complicity 216
6.3 Objections to an Ethical Investment Obligation for SWFs 223
6.4 The Lack of SWF Ethical Investment in Practice 236
6.5 Models of Ethical Investment Practice: New Zealand and Norway 238
6.6 Norway or New Zealand –Ideal Ethical Investors for Popular Control? 248
Conclusion 256

PART III: OWNERSHIP AS BENEFIT 258

Chapter 7 – Benefit Rights to Sovereign Wealth Income 259
7.1 Ownership as Benefit 261
7.2 A Benefit Right to Sovereign Fund Income 267
7.3 Benefit from SWF Income: A Conceptual Typology 269
7.4 EAC Ownership and Preferred Realisation of the Income Right 290
Conclusion 301

Chapter 8 - Realising Benefit Rights: Lessons from the Alaskan Approach 303
8.1 Creation of the Permanent Fund and the Dividend 305
8.2 Competing Origins of the Alaskan Dividend: An Ownership Right? 308
8.3 Alaskan Attitudes to the Dividend Today: Owners or Owed? 313
8.4 Implications for an Income Right to SWF Returns 331
8.5 Criticisms of the Alaskan Approach 334
Conclusion 336

Chapter 9 - Desirability Constraints on Direct Distribution of Sovereign Wealth Income 338
9.1 Caveats 339
9.2 Objections to Dividend Distribution 340
Conclusion 353

Chapter 10: Conclusion – From Sovereign Funds to Community Funds: Recommended Reforms 355
10.1 First Steps: Reforming the Santiago Principles 357
10.2 Future Research 367

APPENDICES 372
Appendix 1: The World's Sovereign Wealth Funds (as at March 2013) 373
Appendix 2: Alaska Qualitative Survey (April 2011) 377

Bibliography 378

List of Tables, Graphs and Figures

Graph 1.1	Number of SWFs Established by Decade	Page 11
Table 2.1	Sample of Select Early Sovereign Wealth Fund Definitions	Page 56
Table 2.2	The Ownership of the SWFs of Abu Dhabi	Page 74
Table 3.1	Application of Control-Benefit Framework to Sovereign Funds	Page 120
Table 4.1	Application of Control-Benefit Framework to Sovereign Funds	Page 151
Figure 4.1	The Architecture of Popular Control: Condominium and SWF	Page 153
Table 5.1	Results of 2009 Truman Scoreboard	Page 178
Graph 7.1	APF Historical Returns	Page 276
Table 7.1	Models of Benefit Distribution for SWF Returns	Page 291

List of Abbreviations and Acronyms

ADIA	Abu Dhabi Investment Authority
ADIC	Abu Dhabi Investment Council
APF	Alaska Permanent Fund
APFC	Alaska Permanent Fund Corporation
CCA	Citizen's Capital Account
EAC	Egalitarian Autonomous Collective-Hybrid
EI	Ethical Investment
EIA	Emirates Investment Authority
ESG	Environmental, Social and Governance
GAPP	Generally Accepted Practices and Principles
GIC	Government Investment Corporation
GPF	Government Petroleum Fund
GPFG	Government Pension Fund - Global
HDF	Human Development Fund
IFSWF	International Forum of Sovereign Wealth Funds
IMF	International Monetary Fund
IPIC	International Petroleum Investment Company
IWG	International Working Group of Sovereign Wealth Funds
JSP	Just Savings Principle
KIA	Kuwait Investment Authority
KIC	Korea Investment Corporation
LIA	Libyan Investment Authority
MNT	Mongolian Tugrik
NPRF	National Pension Reserve Fund
NSIA	Nigerian Sovereign Investment Authority
NZSF	New Zealand Superannuation Fund
OECD	Organisation for Economic Cooperation and Development
PCC	Police and Crime Commissioner
PFD	Permanent Fund Dividend
PRI	(United Nations) Principles of Responsible Investment
RI	Responsible Investment
RIF	Responsible Investment Framework
SRI	Socially Responsible Investment
SWF	Sovereign Wealth Fund
UAE	United Arab Emirates
UN	United Nations
USD	United States Dollar

Chapter 1 - Introduction

'The Agathotopian State does not possess a National Debt; it possesses instead a National Asset equal in value to some 50 percent of the total productive wealth of the country. The government…simply invests its wealth on the competitive Stock Exchange… Thus the State's wealth is mingled with the savings of the private sector of the economy for investment in productive enterprises….'

- James Meade, 1989[1]

'Imagine that the state owns some proportion of the shares that are traded on the stock market.... Each year the state receives a return on its various shareholdings. The combined returns on these holdings are then merged and used to help finance a range of public projects...'

- Stuart White, 2003[2]

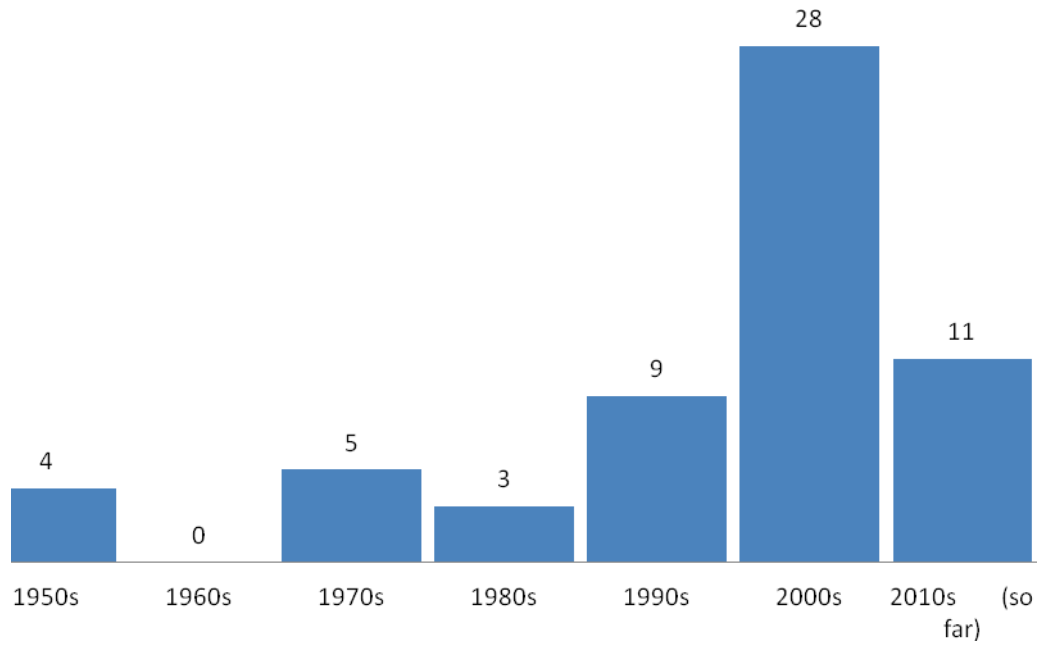
1.1 The Normative Significance of Sovereign Wealth Funds

Over the past five years, Sovereign Wealth Funds ('**SWFs**')[3], have become a prominent phenomenon in contemporary capitalism. SWFs are government owned investment vehicles that invest state wealth from excess reserves or commodity windfalls in financial markets. They now number over 60 worldwide[4], the majority of which have come into existence since the year 2000 (see Table 1).[5] Their rapid increase in number has been matched by explosive growth in the total value of SWF assets under management[6] leading to their characterisation as a new 'power broker' in the global economy[7]. As a

[1] Meade (1989) p.50
[2] White (2003) p.197
[3] Also referred to as 'sovereign funds', or just 'funds' throughout.
[4] The exact number of SWFs in the world is the subject of dispute given the contested definition of 'sovereign wealth fund'. See Chapter 2 of this thesis and and Rozanov (2011) on SWF definitional ambiguity. Appendix 1 provides an author-compiled list of SWFs based on the SWF Institute's 2013 ranking which places the current number at 60. SWF Institute (2013)
[5] Another study finds that '50% of global SWFs are less than seven years old.' Selfin et al (2011)
[6] *TheCityUK* 2013 report estimates global SWF assets at US$5.2 trillion by 2012 year-end. Rau (2013). Some projections forecast growth of up to US$12 trillion in SWF assets by 2015. Preqin Equity (2010)
[7] Farrell et al (2007)

result, governments are now holders of wealth in a way that, for Meade and White (both quoted above) was the preserve of utopian speculation.

Graph 1.1: Number of SWFs Established by Decade 1950-Present



Source: Figures from SWF Institute (London) as at March 2013

Naturally, the rise of the SWFs has attracted popular commentary and academic analysis. For the most part, discussions have focused on the international ramifications of the SWF phenomenon. This is not surprising given the geography of sovereign funds. Most are located in East Asia, the Middle East and Africa,[8] leading to the assessment of the SWF phenomenon as a 'redistribution of wealth and economic and financial power from the United States, Europe, and other mature industrial economies to countries perceived to be less firmly grounded in similar economic, financial, and

[8] See Appendix 1.

political mores'.[9] Recipients of SWF investment in the West have therefore viewed sovereign funds cautiously, anxious about their use as tools for realizing the strategic or political goals of their state sponsors.[10] Consequently, much of the extant research has focused on the investment behaviour[11], and geopolitical implications[12] of sovereign funds in the international economy. Policy deliberations at the international[13] and domestic[14] level have also focused on how to regulate sovereign funds as international investors.

By contrast, the *domestic* dimension of the SWF development has attracted remarkably little policy or scholarly interest.[15] Promisingly, an embryonic scholarship on the economic[16] and political[17] significance of sovereign funds for their state sponsors is now emerging. While shifting the academic gaze from the international significance of SWFs somewhat, these analyses still limit themselves to descriptive policy implications of those

[9] Truman (2010) p.2
[10] For an overview of nervous policy rhetoric around SWFs in western economies, see Saxon (2009) p.699*ff*.
[11] On SWF investment behaviour and motives, see Kotter and Lel (2011); Barbary at al (2010); Bortolotti et al (2009); Avendaño and Santiso (2009); Saxon (2009); Bernstein, Lerner and Schoar (2009); Keller (2009); Miracky (2008); Drezner (2008); and Aizenman and Glick (2008).
[12] On geopolitical implications of SWFs, see Kimmitt (2008); Truman (2010); Jackson (2008); Aizenman (2007); Beck and Fidora (2008).
[13] The two main international policy responses to the rise of SWFs were led by the OECD and the IMF. See OECD (2008a), (2008b) and (2009c). In the same year, the IMF agreed to facilitate and coordinate an International Working Group of SWFs (IWG) tasked with identifying best practices for investors and recipients of SWF capital flows. This resulted in the Santiago Principles, discussed later in Section 1.5. See IWG (2008).
[14] The most high profile regulatory response occurred in the US, where the rise of SWFs led to a Congressional hearing. See US House of Representatives Committee on Foreign Relations (2008).
[15] Indeed, the latest research on SWFs continues to focus on the 'global footprint' of SWFs and how they have altered the international geopolitical landscape. See Clark, Dixon and Monk (2013)
[16] Selfin et al (2011).
[17] See for instance Hatton & Pistor (2011); Fini (2011) and Rose (2011). These articles challenge the international relations-centric analysis of current scholarship: 'Rather than deconstruct sovereign wealth funds' (SWFs') significance for global capital markets', Fini asks 'why do SWFs exist at all?'; Rose seeks to discuss neglected subnational American SWFs whose policy implications fell outside the orthodox focus of sovereign wealth discussions on 'issues of trade policy, international relations, and relative economic and political power' at pp.2-3.

funds.[18] Accordingly the current debate still lacks a normative assessment of the implications of the SWF development for the domestic citizen-state relationship; that is, a domestic normative theory of SWFs.[19]

Like the thinkers quoted at the start of the chapter, philosophers and economists have, for some time, proposed the establishment of state-owned 'community funds', comprised of stocks and other assets, as a novel way to finance worthy public policy[20]. At least in *form*, SWFs make real that proposal. Indeed, '[s]overeign wealth funds exist, at the most basic level, to underwrite and sustainably improve living standards within sponsoring countries.'[21] As more states move towards establishing these funds with forecasts predicting the establishment of a further 20 SWFs in the next five years,[22] it becomes imperative to redirect scholarly energy towards the *normative* implications of SWFs: specifically, what effect these funds do and should have on the citizen-state relationship and how far they can promote more just societies. In their current form, SWFs hold potential to realise *and* subvert certain demands of justice and requirements of political morality. I aim to draw out these

[18] Take for instance Fini (2011) who at p.71 describes SWFs as 'domestic strategies of governance to achieve specific short- and medium-term goals of the administrative state', but does not suggest what those goals should be.

[19] In developing a theory for the domestic realm, I bracket off the equally important task of devising an international normative theory of SWFs for another project.

[20] In addition to White and Meade, quoted at the outset of the chapter, proponents of the community fund idea include: Holtham, who suggests investing privatisation receipts in equities in order to finance public spending; Kuttner who argues that the US government should invest a proportion of its budget surplus in the equities market and place the returns in a fund for grants to all newborn babies; and Kelly and Lissaeur ,who explore a similar idea in the baby bond context. See Holtham (1999); Kuttner (1998); Kelly and Lissaeur (2000). Economist James Meade is often credited with the original community fund vision, although Meade did not use the term himself. Meade's proposal was that governments should build up a public fund by running budget surpluses and use the income from the fund to pay a universal basic income. See Meade (1989).

[21] Dixon and Monk (2011) p.4.

[22] Adamson (2012a). Countries recently announcing the establishment of an SWF or their intention to do so include Kenya, Tanzania, India, Israel, Japan, Bolivia Angola, Peru, Panama, Columbia, Suriname and Papua New Guinea. Countries debating whether to set up new or additional funds include Australia, Thailand and Brazil.

normative implications as well as provide institutional and practical guidance on the ways in which SWFs could better realise the community fund vision.

1.2 Distilling the Normative Challenge

Three features of SWFs at the intra-state level warrant normative examination. First, the very establishment of a sovereign fund has distributive consequences for a domestic population. SWFs are typically set up by states to overcome long-term savings challenges (for example, pension shortfalls, the costs of population ageing, resource depletion) through preservation and appreciation of public capital.[23] They do so by taking temporary state assets (such as natural resource windfalls, annual trade surpluses, excess foreign currency reserves) and converting them into permanent financial assets through market investment. This key function of investing and managing SWF assets is either outsourced to the financial industry or managed in-house by asset management experts employed within a sovereign fund.[24] Even where managed 'in-house,' the injection of large swathes of national savings into capital markets through SWFs exposes public wealth to the vicissitudes of the international financial economy in a new and potentially troubling way from the point off view of the ultimate beneficiaries of SWFs (who, I will argue, must be the citizenry of the political community that establishes the SWF in question).[25] Indeed, SWFs form part of a growing trend whereby the

[23] Other reasons for establishing SWFs are detailed in Chapter 2 in Section 2.2. The dominant motive for creating SWFs is to increase public savings.

[24] At one extreme of the 'in-house' versus 'outsource' approach to asset management of sovereign funds is the Australian Future Fund, which is legislatively obligated to outsource 100% of its assets. At the other extreme is the Canadian fund CPPIB that manages upwards of 87% of its assets in-house to save on management fees. See Monk (2011b).

[25] One basis for assessing the increase in and risk of public wealth exposure to financial markets through SWFs is comparison of sovereign wealth investment with financial management strategies for other government investment vehicles. Clark and Monk

long-term economic prosperity of political communities is increasingly entwined with the financial economy.[26] This greater exposure of public wealth to financial markets means the very existence of an SWF redistributes state capital from public coffers to private markets and to the direct control of 'arms-length' asset managers, raising the question: who should *manage* this wealth, and how?[27]

The second normatively interesting feature of SWFs in the domestic realm is the nature of their *investment*. The 'special status' of government investors in financial markets[28] sparks debate about whether SWFs—more so that private investors—should marry their investment strategies with laudable social goals and constrain their investment universe to socially responsible assets.[29] Implicit in these debates is a sense that unique ethical obligations attach to government investors since, unlike other institutional investors, SWFs make investment decisions on behalf of an entire political community of citizens.[30] Indeed, it has been suggested that additional obligations arise by virtue of the *public* status of invested capital,[31] irrespective of whether the physical investment is undertaken by public or private sector

---

distinguish SWFs from currency reserve funds and other 'close' cousins within government in light of their 'level of sophistication in [SWF] investment and operations typically not found within government'. That is, SWFs typically outsource to technical experts in the private sector whose greater 'sophistication' in investment style typically means riskier investment strategies. Clark and Monk (2012).

[26] Another policy area where the state has dramatically increased its exposure to financial markets is the pension system. See Blackburn (2006) especially Ch. 5 on the worrying 'financialisation' of the public sector, and Blackburn (2002).

[27] Bernstein, Lerner and Schoar (2009) looked at the difference between politicians and external managers controlling a SWF in terms of the impact on investment strategy.

[28] As Truman states, because SWFs are 'government institutions' they are 'therefore by construction…political'. This has several consequences including 'that the boards and managers of SWFs are pressed by the general public and their political authorities to increase their financial returns and to favor certain types of investment, including in the domestic economy.' Truman (2010) p.40

[29] Richardson (2011) p.2; Bolton et al (2012), esp. chapters 4 and 6; Backer (2009); and Murray (2011)

[30] Backer (2009)

[31] Richardson (2011) p.2

managers. As the proliferation of SWFs convert more states into financial market participants, further demands on governments in their *investor capacity* surface.

So far, this 'government investor' debate displays two broad positions. On the one hand, some view the unique public nature of SWFs as a basis for demanding that more stringent ethical standards should apply or certain goals must be pursued through sovereign funds as opposed to other institutional investors.[32] On the other hand, SWFs argue for 'like treatment' with peer investors, rejecting demands that they be subject to higher ethical standards on the grounds this constrains their ability to generate optimal returns.[33] There is a potential justice cost, some argue, to this constrained investment universe in that it deprives domestic communities of potential wealth, 'adversely impacting the living standards of both current and future generations'.[34] In short, governments assume both new responsibilities and enhanced capability for influence through the creation of SWFs. We therefore need to address whether sovereign investors do enjoy a unique normative status in financial markets, and if so, how this should effect their *investment* decision-making.

The third normatively significant aspect of SWFs domestically concerns the *distribution* of their revenue streams. While there are important debates around the 'justness' of intergenerational savings (i.e. whether and to

[32] The term 'Institutional Investor' ordinarily refers to organizations whose purpose is to invest significant pools of money on behalf of other actors. Such organizations include Pension Funds, Mutual Funds, Hedge Funds, Investment Banks, Insurance Companies, Charitable Corporations, Endowments or Investment Trusts. They are differentiated from non-institutional investors by their large pooling of assets, longer investment horizons and market sophistication.
[33] Murray (2011)
[34] Ibid. p.19

what extent there should be intergenerational savings and if so, what is the appropriate balance of distribution of wealth between generations),[35] for the most part I put these to one side and grant that intergenerational savings are just, and that SWFs as savings and wealth transfer vehicles are therefore legitimate in this respect. I remain agnostic as to the preferred principle for regulating just savings, but for pragmatic reasons, later in this chapter, I introduce Rawl's Just Savings Principle (the '**JSP**')) as one defensible approach for regulating this savings duty. The JSP thus forms a background assumption for the rest of my analysis.

These assumptions notwithstanding, knotty questions still persist regarding the potential use of SWF income (i.e. the annual returns generated on fund investments). Assuming a government has arrived at a fair savings rate for its future citizens and allocated seed capital to a sovereign fund in accordance with that calculation, how should that government then use the fund's investment returns? Should it simply reinvest returns into the fund principal or allocate the income to immediate expenditure? For even though these funds are often managed privately, sovereign investment returns ultimately remain at the behest of their state sponsor. If managed successfully, SWFs dramatically increase the overall prosperity of states and enhance the redistributive potential of governments through augmented public income. In this respect, they constitute a new financing tool in the government policy kit.

[35] For an introduction to these debates, see Wolf (2010) and Gaspart and Gosseries (2007).

An illustrative example of this potential is the Alaskan Permanent Fund (the '**APF**'), which, having started with an initial investment sum of US$2.7 million[36] in 1977, is in 2013 valued at over US$46 billion,[37] making it larger than any endowment fund, private foundation, or union pension trust in the US.[38] Another high profile example is Norway's SWF, the Government Pension Fund – Global ('the **GPFG'**), which when it received its first net transfer in 1996, was valued at approximately US$697 billion at the end of 2012,[39] and is now estimated to be one of the largest SWFs in the world.[40] Naturally, these impressive new levels of public wealth trigger competing demands over its use. As the assets, number and power of SWFs grow, so too do proposals for their expenditure. Current suggestions include employing SWFs as development funds,[41] anti-poverty tools,[42] mechanisms for addressing human rights injustices[43], and financing sources for egalitarian distributive schemes like Basic Income (an unconditional income payment at regular intervals to all adult citizens) and Basic Capital (a one-off lump sum

[36] This is today's inflation-adjusted value of the initial seed figure of $734,000. While the APF has historically earned over 10%, these figures imply an annual growth of roughly 34%. The discrepancy is explained if we recall that the APF is augmented each year by at least 25% of Alaska's resource royalties in any given year and the unrealised returns on investments (that is, the market value of investments not yet realised). Realised earnings such as stock dividends, bond income, rent etc from investments are used to fund the Permanent Fund Dividend. See APFC (2010b). There were also several special appropriations by the legislature including $1.8 billion in surplus oil revenue in 1981, an additional $1.26 billion in 1986, and several hundred million dollars more in the following years. See Olson (2006) p. 165

[37] APFC (2013a)

[38] APFC (2013b)

[39] Norwegian Ministry of Finance (2013) p.2 (author calculated currency conversion)

[40] SWF Institute (2013)

[41] Santiso (2008); Griffith-Jones and Ocampo (2008)

[42] World Bank President Robert Zoellick has called for SWFs to direct 1% of assets into investment in African private enterprises through a World Bank managed equity fund. Zoellick (2010). This vision was partially realised through the April 2010 creation of the Africa, Latin American and Carribean Fund, a new co-investment vehicle funded mainly from commitments by SWFs and pension funds to help strengthen the private sector in developing countries through direct investment. Ochoa and Keenan (2011). Former British Prime Minister Gordon Brown has also proposed a mechanism be established to help direct SWF investment to developing country infrastructure. Brown (2009). The most recent advocate of SWF-financed development in poor countries is Microsoft founder Bill Gates, who proposed the creation of an infrastructure fund to be seeded with 1% of SWF assets, creating initial capital of $40 billion. See Lamb (2011)

[43] Keenan and Ochoa (2009); Chesterman (2008).

grant of assets to all adult citizens upon maturity).[44] Remarkably, the current debate lacks a basis for adjudicating between these possible applications and recommending the most appropriate use for SWF income streams.

These three aspects of sovereign funds concerning their appropriate control, investment and distribution make them ripe for normative analysis. As the opening quotes to this chapter indicate, the idea of the state improving its public coffers through active market investment has been a utopian aspiration among philosophers and economists for some time. With the emergence of SWFs approximating this vision, we no longer need to '(i)magine the consequences of [the state] having a national patrimony of say, £50 billion invested in equities.'[45] Indeed, it is now possible to systematically identify the consequences of this proposal by analysing SWFs.

This thesis commences that task by recognizing that the imagined community fund does exist, at least in form, if not yet in function. As the community fund literature which first set out these utopian ideas confines itself to hypothetical suggestions for the creation of such funds, and in any event predates the recent proliferation of sovereign funds,[46] it can only offer modest resources for this task. Instead, I turn to the wider terrain of political theory for tools to analyse the cluster of normative issues surrounding the control, investment and distribution of SWFs identified above. I do so with a view to articulating principles for the operation of SWFs as domestic

[44] Widerquist and Howard (eds) (2012a); Widerquist and Howard (eds) (2012b); Cummine (2011a).
[45] Holtham (1999) p.61
[46] Indeed, the term 'Sovereign Wealth Fund' only entered formal parlance in 2005 when first used by analyst Andrew Rozanov. See Rozanov (2005).

community funds; funds that must benefit domestic citizens and promote the welfare of their communities.

1.3 Domestic Dilemmas over SWFs

Such an exercise might just be a theoretical indulgence if it were not for a series of recent controversies involving SWFs within their home states that highlight the need for a domestically-focused normative analysis of sovereign funds. Over the past year alone, conflict over the control, investment and distribution of SWF assets arose in political settings as diverse as Libya, Nigeria, Ireland and Australia, amongst others.[47] While this list may appear arbitrary, I examine the experience of these particular states because they constitute some of the most recent episodes of intra-state conflict over sovereign funds, as well as underscore that such dilemmas plague a variety of political regimes with varying levels of economic prosperity. I infer from this introductory glimpse at SWF disputes that the common factor across cases is the presence of a sovereign fund. Moreover, I suggest that the conflicts triggered by SWFs arise from ambiguities surrounding the nature of the funds, rather than the nature of the governmental regimes in which these conflicts are occurring.

One of the most high profile cases of recent times concerns Libya's SWF, the Libyan Investment Authority ('the **LIA**'). In February 2011, amidst the country's accelerating liberation struggle, international asset freezing

[47] Heated debate on SWF establishment also occurred in Thailand, India, Japan, Peru, Panama, Columbia and PNG.

orders were imposed on the LIA[48] following concerns that the ruling Gaddafi elite had previously commandeered LIA assets for personal use and would do so again to quell the mass uprisings against the state.[49] The possible abuse by the political leadership of a state fund set up to benefit the Libyan people[50] raised questions about how and by whom SWF assets in non-democratic regimes should be controlled to protect the interests of the domestic community governed by such regimes.[51]

Similar control ambiguities also emerged throughout 2011 in the marginally more democratic,[52] albeit still politically volatile context of Nigeria. In June of that year, the operation of Nigeria's freshly established SWF stalled amidst government infighting regarding the ownership status of the fund's assets.[53] Nigeria's new SWF comprises of three separate funds dedicated to wealth accumulation for future generations, infrastructure and currency stabilization, respectively. Despite the initial approval for a national resource fund by all levels of government (federal, state and local) and its explicit mandate to be managed for the benefit of Nigerian citizens,[54] *state*-level governors subsequently threatened legal challenges to the fund's constitutionality on the grounds that the capital in the new SWF belongs to *state* governments and was therefore misappropriated by the *federal* government for its distinct beneficial use. In the past year, the dispute appears

[48] This made the LIA the first SWF to be targeted by international sanctions. Behrendt and Sharp (2011) p.3
[49] BBC (2011); Financial Times (2011).
[50] The LIA describes its mandate as to manage Libya's investments for the benefit of both the Libyan state and the well-being of its citizens. See Chapter 2.
[51] Behrendt and Deen (2011); Peterson Perspectives (2011)
[52] See Appendix 1.
[53] See AllAfrica (2011)
[54] See National Sovereign Investment Authority Bill (2010) at para. 29(2) p.8, stating that 'All ownership interest in the Authority shall be held by the Federal, State, Federal Capital Territory and Local governments of the Federation on behalf of the people of Nigeria.'

to have been resolved and the fund is now actively hiring.[55] However, the fact that government infighting delayed—and almost derailed—the existence of this much-needed SWF after years of corrupt and ineffective management of resource revenues by its predecessor, the Nigerian government's *Excess Crude Account*, suggests the exploitable and detrimental ambiguity surrounding the proper status of sovereign funds assets.

Questions about ownership, control and management of sovereign assets also arise in democratic contexts, a point illustrated by the experiences of Ireland and Australia. In 2010, the Irish government controversially directed its SWF, the National Pension Reserve Fund ('the **NPRF'**), to invest in Ireland's struggling banking industry. This move contravened the spirit and the law of the NPRF, a fund set up in 2001 to offset Ireland's long-term projected pension shortfalls. The NPRF was protected from draw-downs until 2025 and was subject to an investment policy that required the fund to secure the 'optimal total financial return' when investing its assets.[56]

Despite these protections, a 2010 requirement by the Irish Government that the NPRF direct some of its investments to struggling domestic credit institutions effectively amounted to short-term tapping of the savings fund by the Irish government to serve its perceived present-day needs.[57] This measure was particularly controversial given its potential to compromise the fund's ability to generate optimal returns by treating the NPRF as last resort

[55] Wilson (2012)
[56] See NPRF (2013)
[57] The National Pensions Reserve Fund and Miscellaneous Provisions Act (2009) requires the NPRF to invest in certain nominated credit institutions, as directed by the Minister for Finance. The Credit Institutions (Stabilisation) Act (2010) provides for 'Ministerial directions for the Fund to invest in Irish Government securities or for payments to the Exchequer to fund capital expenditure in the financial years 2011, 2012 and 2013.' NPRF (2013)

financing for low-grade domestic investment. Even more contentious was the creation of a 'Directed Investments' portfolio within the NPRF under the personal direction of the Minister of Finance. These measures undid any sense of the fund being quarantined from present day political raiding and prompted public anger on the basis that Ireland's SWF was no longer the property of the Irish people but instead under the direct control of the Irish government for its own opportunistic use[58], with the practical result that the holdings of the fund were decimated: from nearly €25 billion in seed capital down to just €4.2 billion in 2010.[59]

Tensions between government and citizenry are also evident in Australia. Here, the challenges concern the ethical investment expectations of the Australian public regarding its sovereign fund, the Future Fund. In early 2011, a furore erupted over the revelation that the Future Fund held AUD$147.7 million in tobacco shares at a time when the Australian Government had just introduced some of the world's toughest anti-smoking laws[60] (in the previous year, the Federal Government had raised tobacco taxes by 25 per cent and announced it would become the first nation in the world to ban brand names on cigarette packaging). The perceived contradiction in government policy suggested by the Future Fund tobacco holdings led to calls for the fund to adopt an ethical investment mandate.[61]

[58] Reeves (2010); Slattery (2010)
[59] Slattery (2010)
[60] Bloomberg News (2011a)
[61] Bloomberg News (2011b). Greens Senator Richard Di Natale argues that it is 'completely inconsistent for the government to fight big tobacco with 'courageous' plain packaging laws, and 'then on the other hand to be investing $147 million in large multinationals who make the stuff'. Yeates (2012)

In 2012, the Greens party introduced legislation requiring that an ethical investment obligation be imposed on the Future Fund to 'forc[e] the Fund to divest its "unethical" holdings' in tobacco and nuclear investments.[62] The Government provided submissions to a Senate Enquiry into the proposed Ethical Investment Amendment Bill, rejecting the need for such amendments. But as of February 2013, following public pressure that forced an internal review of tobacco holdings, the Future Fund's senior management announced the fund would divest itself of all tobacco holdings.[63] Prior to the resolution of this controversy, a gap clearly existed between public expectations of acceptable investment strategies and management's perceived obligations to generate maximum returns on behalf of the public. Episodes like these – one of several discussed throughout - suggest the need to investigate whether SWFs should be subject to ethical investment obligations and on what basis.

This brief 'teaser' of SWF controversies reinforces the need to investigate the normative status of sovereign funds domestically. These recent dilemmas as well as the larger corpus of domestic contestations explored in the coming chapters lend support to my claim that the current academic preoccupation with the international ramifications of SWFs is unbalanced given the substantial intra-state conflict occurring over these funds.

1.4 The Key Normative Questions

In light of the above real-world dilemmas and the theoretical issues outlined in Section 1, the normative puzzle surrounding the domestic implications of SWFs can be distilled as follows: SWFs turn governments into managers,

[62] Yeates (2012)
[63] Future Fund (2013)

investors and distributors of wealth in a manner that causes both anxiety and optimism regarding the domestic citizen-state relationship. Accordingly, our normative investigation will focus on issues raised by the management, investment and distribution of sovereign wealth to produce principles for regulating their impact on the citizen-state relationship.

Consider first control over the *management* of SWFs. As suggested by the controversies above, a central theme is whether government's manage funds in that government's interests *or* the interests of the domestic citizenry that it governs. While the observation that government interest does not always align with that of society at large is hardly a new claim, it assumes particular importance in the case of SWFs since these funds are often set up explicitly to benefit the citizenry of the community in which they are established. Given there are clear instances of governments failing to manage SWFs in their citizens interests, we are prompted to ask whether control of management should properly rest with governments or citizens? This issue is exacerbated by the mixed public and private character of SWFs in which the specific task of investment management is often shifted into private hands, prompting further questions about the appropriate locus of fund control. My first key question then, is *'how (and by whom) should SWFs be managed?'*

As *investors*, governments, acting through their SWFs, potentially effect citizens by their investment decisions. For example, SWFs may depart from the mores or wishes of the relevant domestic community by engaging in investments which those communities perceive to be contrary to their economic interests or ethical values. At the same time, SWFs offer new

potential to promote a domestic community's perceived economic or ethical preferences through responsible investment. Moreover, there is division over the extent to which SWF investment strategy must cohere with government policy more widely or if independent ethical standards are appropriate for these funds. Accordingly, my second key question is *'how should sovereign wealth be invested?'*

Finally, as *distributors*, the ability of governments to finance worthy policy is substantially improved by SWFs' augmentation of public revenues, yet much of this appreciated capital is locked up as savings. The Irish case above showed the inherent 'spend versus save' tension that plagues sovereign funds and the use of investment returns forms a crucial part of that debate. As SWFs' prolific growth is matched by growing and varied claims on their assets, both within and between generations, it stands to reason that we must have guidance on how to adjudicate between demands at least in regards to the liquid returns of SWF investment. My final key question is therefore *'how should the earnings of sovereign fund investment be distributed?'*

In summary, the normative questions that this thesis will address are:

(1) How (and by whom) should sovereign funds be **managed**?

(2) How should sovereign wealth be **invested**?

(3) How should the earnings of sovereign fund investment be **distributed**?

While all three are related, in particular questions (1) and (2), they are nevertheless sufficiently distinct to warrant separate consideration. Underlying questions (1) and (2) is the issue of in whose interests the funds

should be *controlled*, while underpinning question (3) is the issue of who should *benefit* from the funds. This control/benefit distinction provides an overarching structure for this thesis, a distinction which I discuss in more detail later in the Introduction. In Part II on control of SWFs, I address questions (1) and (2), and in Part III on benefit from SWFs, I address question (3). Together, this treatment aims to produce principles for turning SWFs into genuine domestic community funds.

1.5 Limitations of Existing Approaches to Sovereign Funds

My desire to address these three questions from a normative perspective is partly motivated by the failure of existing academic and policy analyses, discussed momentarily, to properly consider the citizen-state relationship when evaluating the SWF phenomenon. As a discipline that places the citizen-state relationship centre-stage, Political Theory has much to contribute to this project. Consider that most scholarly analysis of sovereign funds emanates from the disciplines of economics, law, international relations, economic geography, political science and finance where the underlying concern of such inquiries is fundamentally different to the sorts of normative dilemmas identified above.

The same can be said of international policy frameworks for regulating SWFs. There have been multiple attempts to develop principles and benchmarks for guiding SWF behaviour given their rapid ascent and prominence, yet none, in my view, comprehensively address the questions set out here. This is evident through an appraisal of the most influential policy

framework, known as the General Accepted Principles and Practices (the **'GAPP'**), or informally as the 'Santiago Principles' governing SWF behaviour.[64] The GAPP's authoritativeness derives from its authorship and adoption by sovereign funds.[65] Currently, the 23 member countries of the International Forum of Sovereign Wealth Funds (the 'IFSWF')[66] are signatories to the GAPP,[67] with these funds representing the lion's share of sovereign wealth assets globally.[68] Containing 30 non-binding principles and sub-principles, the self-declared aim of the GAPP is to: 'identify a framework of generally accepted principles and practices that properly reflect appropriate governance and accountability arrangements as well as the conduct of investment practices by SWFs on a prudent and sound basis.'[69] As with the academic literature, the GAPP neglects those issues identified as priority concerns in this thesis. Despite the GAPP's acknowledgement that SWFs are 'institutions of central importance'…'*in their home countries*',[70] its 30 principles contain virtually no discussion of SWF obligations to the relevant domestic community.[71]

---

[64] The most high profile alternative is the Truman SWF Scoreboard. See Truman (2007) and (2008). Although containing more principles than the GAPP, the Truman Scoreboard lacks guidance on the specific issues regarding management, investment and distribution that this thesis aims to redress. I examine how in Chapter 5. Other frameworks focus narrowly on particular aspects of SWF behaviour. For instance, the SWF Institute's Linaburg-Maduell Transparency Index, as its name implies, scores funds based on their transparency according to 10 principles. See Linaburg and Maduell (2010). For a critique of alternative frameworks, see Truman (2010) pp.94-96

[65] The GAPP was drafted by a working group of 23 countries in 2008. See IWG (2008)

[66] The IFSWF was established in December 2009 by the IWG as a voluntary group of SWFs whose purpose is 'to meet, exchange views on issues of common interest and facilitate an understanding of the Santiago Principles and SWF activities.' IFSWF (2010).

[67] The IWG included 26 SWFs from 23 member countries, which subsequently formed the IFSWF. The countries were Australia, Azerbaijan, Bahrain, Botswana, Canada, Chile, China, Equatorial Guinea, Iran, Ireland, South Korea, Kuwait, Libya, Mexico, New Zealand, Norway, Qatar, Russia, Singapore, Timor-Leste, Trinidad and Tobago and the UAE and the US.

[68] The individual SWFs associated with the IFSWF represent approximately 70% of total SWF assets under management. Truman (2010) pp.124-125.

[69] IWG (2008) p.4

[70] Ibid. p.3

[71] The desire to allay international anxiety over SWFs that drove the drafting of the GAPP potentially crowded out the capacity for domestically-focused principles. Truman (2010)

In the rest of this section, I briefly outline how our three key questions on management, investment and distribution differ in focus from that of existing scholarly treatments of SWFs and the Santiago Principles. In terms of the latter, I focus on the GAPP since weaknesses in this high profile framework assume greater practical significance than deficiencies in less utilised frameworks. While participation in the GAPP framework is far from universal in terms of the total number of SWFs, no other extant framework is relied upon or referred to as extensively by IFSWF and non-IFSWF funds alike to guide and evaluate behaviour. The IFSWF voluntarily released a detailed report on member compliance with the Santiago Principles[72] and several funds conduct self-evaluations of their compliance with the GAPP.[73] Furthermore, most external critiques of SWFs use the GAPP as the basis for judging sovereign fund behaviour.[74] It is therefore a natural focus for evaluation of existing principles.

1.5.1 Control of Fund Management

The SWF control issue has arisen in geopolitical analyses where the primary concern is whether SWFs are instruments of their sponsoring states for political or non-financial investment purposes.[75] As the early phase of the SWF debate was dominated by recipient country anxiety as to whether 'governments would use their SWFs to buy control of large "national

[72] IFSWF (2011)
[73] Singapore's GIC released a detailed self-assessment of its compliance with the GAPP in August 2011. GIC (2011). The Abu Dhabi Investment Authority (ADIA) and New Zealand's Superannuation Fund (NZSF) both feature web documents analyzing their compliance with the Santiago Principles. These documents have been criticized for insufficient detail as they do not offer a principle-by-principle evaluation. Truman (2010) p.133
[74] See for instance Park and Estrada (2011); Behrendt (2011); Tsani, Ahmadov and Aslanli (2011)
[75] In addition to the literature cited in footnotes 11 and 12, see also Truman (2010) pp.40-44; Backer (2010); Reed (2009); Feng (2009).

champion" firms in key sectors',[76] the question of SWF control focused on: *what* sovereign funds gain control over through their investments;[77] whether they exert influence over these acquired assets;[78] if so, whether this is for particular strategic ends[79]; and what arms-length governance procedures would quarantine sovereign funds from political interference.[80] In short, the SWF control agenda has been dominated by what sovereign funds control, not who should control SWFs and how.

By contrast, I seek to ask who should ultimately *control the management of SWFs*, whether citizen or state, private or public sector, and which governance model best gives effect to the preferred control arrangements. The Santiago Principles offer little in the way of guidance on *this* type of fund control issue. While the GAPP defines SWFs as 'government owned and controlled vehicles'[81], there is little discussion on what 'government control' should consist of and how this should be exercised. Certain principles refer indirectly to the concept of control,[82] but there is no clear description of which

[76] Truman (2010) p.2; Nystuen, Follesdal and Mestad (2011) p.5
[77] See for instance Bortolotti et al (2009) and Miracky et al (2008), both of which assemble longitudinal datasets of SWF investments over the past twenty years to determine whether SWFs take controlling or majority controlling stakes.
[78] As Rose observes 'Anxious to avoid a political backlash, SWFs have attempted to assure recipient nations that their motives are purely commercial. Thus, the funds intentionally structure their transactions so that they do not acquire a controlling interest in the portfolio firm. Such structures are also designed to avoid adverse regulatory consequences… [Yet] [w]hile SWFs may not acquire control under the various applicable statutes, they could nonetheless exercise considerable power in the murkier realm of shareholder influence.' Rose (2008) pp.105-106.
[79] For attempts to determine SWF investment motives, see Avendaño and Santiso (2009); Blanchard (2011); Raphaeli and Gersten (2008); Reed (2009); Saxon (2009); Gilson and Milhaupt (2008); Kimmitt (2008)
[80] See OECD (2009a) p.8 and OECD (2009b)
[81] IWG (2008) p.4
[82] These are Principle 2 and Subprinciple 22.1. Principle 2 requires that the policy purpose of an SWF should be 'clearly defined and publicly disclosed' and explains that excess reserve management is a possible policy purpose. Such assets, it explains, are 'readily available to and controlled by' monetary authorities. Apart from this, the issue of who controls SWF assets is not addressed. IWG (2008) p.13. Subprinciple 22.1 discusses the need for appropriate control mechanisms as part of risk management. This addresses standard best practice institutional design, but fails to address who *should* control SWFs. See IWG (2008) p.15

stakeholder should actually exercise control over these funds and in what manner.

At times, there is an implicit idea in the GAPP that the principles seek to enhance control of domestic publics over their sovereign funds (since the framework's stated intention is to improve the understanding of home countries about their SWFs).[83] However, this should not be overstated, as there is no direct reference to the role of citizens as owners, or even stakeholders, nor any reference to control rights in relation to these funds. Indeed, SWFs are simply described as 'government owned and controlled' without discussion of what this implies for domestic communities.

Even if there is an implicit or latent intention in the GAPP to enhance citizen control, the mechanisms put in place to encourage this seem inadequate. In terms of transparency requirements, the GAPP principles are widely regarded as weak compared to global norms.[84] Rozanov has observed that 'the term "transparency" does not appear once in the actual text of the [GAPP]',[85] although 17 principles explicitly invoke a requirement for 'public disclosure.'[86] These principles typically relate to the fund's organization, objectives, legal arrangements and institutional structure. Principles concerning more substantive issues such as the fund's investment portfolio (including size, composition, allocation, risk indicators and returns) are not subject to public disclosure requirements. They are simply subject to internal

[83] The GAPP defines its purpose as increasing the understanding of SWFs in 'home and recipient countries and the international financial markets.' IWG (2008) p.4. This is occasionally linked to the need for greater accountability within a home state, for instance, in GAPP Sub-Principle1.1. IWG (2008) pp.11-12.
[84] See Truman (2010) pp.124-136; Rozanov (2011) p.261
[85] Rozanov (2011) p.261
[86] Truman (2010) p.125

accountability mechanisms such as timely, accurate and regular reporting to their sovereign owner (typically the relevant national government), leading Truman to dismiss these principles as 'essentially meaningless in terms of public disclosure and accountability.'[87]

1.5.2 Investment Management

Discussion of SWF investment strategies emanates predominantly from finance and economics. The priority issue is how SWFs should manage their portfolios as long-term investors seeking to generate optimal risk-adjusted returns. The discussion is by nature technical, focusing on the characteristics of state-sponsored funds and how this affects their asset allocation (should funds hold more equity, debt, cash or alternative assets?) and risk-management.

This financially-oriented analysis of investment strategy is now being complemented by a different set of questions about the possibility of ethical SWF investment. Inspired in particular by Norway's adoption of an ethical investment mandate for its SWF, an embryonic literature has emerged, agitating for other sovereign funds to follow suit.[88] It is largely descriptive, reciting the design of the Norwegian model, how the ethical investment mandate works and lauding Norway's commitment to global justice through investing.[89] However, the literature has failed to ask why this obligation is incumbent on *government* investors in particular, leaving it vulnerable to a

[87] Ibid.
[88] See for instance Chesterman (2008) and Velculescu (2008).
[89] An exception is Clark and Monk (2010a) who argue that Norway's ethical investment mandate 'transgresses' investment best practice, but still acts as a source of political legitimacy. See also Clark and Monk (2010b). That said, neither article addresses the unique status of *government* investors triggering specific ethical duties.

major objection to ethical investment by SWFs: namely, that ethical investment places SWFs at a disadvantage relative to other market participants in generating maximum returns for their ultimate beneficiaries, the domestic population of the SWF's home state.[90] Whether there is a normatively significant difference between government and other investors is, in my view, fundamental to the resolution of the ethical investment debate.

It should then come as no surprise that the Santiago Principles remain guarded about the possibility of an ethical investment mandate. Since the drafters were at pains to quell the anxieties of recipient countries regarding the absence of non-financial motives for SWF investment, the text of the document is careful to emphasise that SWF investments should be motivated by, and managed solely on, financial and economic grounds. Principle 19 states that:

> 'The SWF's investment decisions should aim to maximise risk-adjusted financial returns in a manner consistent with its investment policy, and based on economic and financial grounds.'[91]

Subprinciple 19.1 does allow some flexibility on this point stating that if:

> 'decisions are subject to *other than* economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed.'[92]

The explanation and commentary on this Subprinciple makes clear that this exception was specifically entertaining the possibility of an ethical

[90] Consider Beck and Fidora who examined 28 divestments by the Norwegian GPFG in compliance with its ethical investment policy and found no impact on the divested company's stock price (although this is just one outcome sought by ethical investment). Beck and Fidora (2008).
[91] IWG (2008) p.8
[92] Ibid.

investment mandate by sovereign funds:

> 'Some SWFs may exclude certain investments for various reasons, including legally binding international sanctions and social, ethical, or religious reasons (e.g., Kuwait, New Zealand, and Norway). More broadly, some SWFs may address social, environmental, or other factors in their investment policy. If so, these reasons and factors should be publicly disclosed.'[93]

The Santiago Principles therefore countenance the possibility of an ethical investment mandate. They stop short, however, of stipulating whether government investors like SWFs *should* manage their investment strategies ethically, and, if so, how they should go about this. The scope allowed for ethical investment in Subprinciple 19.1 is also contradicted by official policy statements by the IFSWF which insist that subjecting SWFs to extra-financial obligations when investing (for example, ethical considerations) compromises their ability to meet their overarching objective of generating returns for the long-term prosperity of their home state.[94] In this thesis, I address these neglected aspects of the SWF investment debate by asking whether government investors do have a unique status in the investor community that entails particular obligations when managing and generating returns in private markets, and if so, what sort of obligation that implies for SWF investing.[95] I propose a clearer, principled approach to this issue.

1.5.3 Distribution

The question of how to use sovereign fund capital (*contra* returns) has received significant attention, but mainly from the perspective of

[93] Ibid., p. 22
[94] Murray (2011)
[95] Research by Backer lays a useful foundation by examining how the pursuit of ethical investment by the GPFG challenges the boundaries between public and private responsibility for social and environmental standards, but Backer does not address whether SWFs *should* act in a unique way by virtue of their novel hybrid status in financial markets. See Backer (2009).

macroeconomics. Here, the dominant focus is what policy purpose a sovereign fund serves within the wider fiscal architecture of a state.[96] Significant attention has been placed on the use of sovereign funds as mechanisms for managing commodity wealth in resource-rich nations.[97] Commodity management has been the dominant reason for establishing such funds, with most SWFs located in the Middle East and other resource rich states.[98] Today, however, the ascendancy of commodity funds is being challenged with non-commodity funds accounting for around 40% of total assets under management.[99] Moreover, recent research has explored how a state does not have to be 'resource-rich' to establish a sovereign fund. The taxable asset base for a state extends far beyond natural resources, covering a whole array of public assets owned by or for the benefit of the domestic community that offer potential revenue for states to establish community funds.[100]

In my view, the growth of non-commodity funds should prompt a broader conception of SWFs. Beyond their narrow characterisation as resource management mechanisms, they are increasingly considered essential tools in a state's economic apparatus.[101] As such, the time is ripe to explore the potential for re-casting SWFs as community funds to finance eligible public policy. However, my focus is not on how *the fund itself* can best

[96] Das et al (2009); Das et al (2010)
[97] See for instance Dixon and Monk (2011); Gould (2010); Frankel (2010); Davis et al. (2003)
[98] Hammer et al (2008)
[99] Selfin et al (2011) p. 3
[100] See for instance Flomenhoft (2012)
[101] Several recent articles have also pointed to the political (contra policy) purposes SWFs serve in their homes-states. Hatton and Pistor have argued that sovereign funds are 'autonomy-maximizing institutions' in which ruling elite[s] utilize SWFs to secure their domestic political dominance against both internal and external threats.' Hatton and Pistor (2011). Monk has argued that 'SWFs exist to preserve local autonomy and state sovereignty by harnessing the power of finance…a SWF is 'theorized' by the sponsor as a buffer against the risks to autonomy and sovereignty in a global economy." and Monk (2010).

assist in the management of a state's public finances (for example, through accumulating savings, currency stabilization or reserve management), a subject better left to economists and governments. Rather, I focus on how the income generated by any type of sovereign fund should be used within a SWF's domestic community from a normative perspective.

On this distribution question, the Santiago Principles are so broad as to be effectively meaningless. This is no doubt influenced by a desire to respect sovereignty. Indeed, in order to reach agreement on the Santiago Principles, the IFSWF had to ensure its wording did not violate their members' preference to be free to use their funds as they please.[102] The Principles only require (at Principal 4) that that there 'should be clear and publicly disclosed policies, rules, procedures or arrangements in relation to the SWF's general approach to funding, withdrawal, and spending operations'. The explanation of the principles acknowledges that '(f)unding and withdrawal rules are specific to the type of SWF,'[103] while the commentary goes on to observe that '(s)ome SWFs keep their capital and returns while others pay out targeted annual dividends.'[104] Subprinciple 4.2 elaborates slightly on withdrawals and expenditure of SWF capital, stipulating that spending should only occur on the fund's operating expenses.[105] However, no direction is given as to whether:

(a) there should be distributions in the form of dividends to the present generation;

(b) whether there should be distributions to the national budget for other

[102] Author Interview with SWF Officials (2010)
[103] IWG (2008) p.14
[104] Ibid.
[105] Ibid.

government expenditure that may benefit present citizens; or

(c) what the balance between these competing uses should be.

It is my contention that for sovereign funds to be normatively satisfactory institutions at the domestic level, more guidance is needed on the appropriate distribution of SWF returns.

1.6 The Justness of SWFs

The framing of the questions in the previous section leaves two further concerns regarding the justness of SWFs unaddressed. The first relates to the justness of SWFs as *domestic* community funds; the second relates to the justness of SWFs as funds for the *current* citizens of domestic communities. Our central normative questions ask how a *domestic* community should manage, invest and distribute their sovereign wealth to reflect *their* interests and promote *their* welfare. Implicit in these questions is an assumption that the *current* members of *domestic* communities have the right to control, manage and use these sovereign assets over and above other groups of citizens across time and outside state borders. Put differently, analyzing the potential of SWFs as *domestic* community funds involves an arbitrary assumption about the nature and scope of justice.

Such a premise invites objections from those who take seriously the demands of global and intergenerational justice. Both of these justice concerns might lead us to query whether the demands of justice should be restricted nationally or temporally. For instance, cosmopolitan theories of global

justice[106] question the moral relevance of national boundaries in determining the duties we owe one another,[107] while nationalist,[108] statist[109] and other partialist[110] theories defend the significant role of national, state and cultural boundaries in limiting the scope of our duties. Within and between these theories exists a range of positions on the type and scope of the duties we owe one another. Cosmopolitans in particular, and perhaps others that assume intermediary positions are likely to take issue with the restriction of the community fund proposal to the domestic realm.

Similarly, intergenerational justice theorists principally investigate the obligations owed by present generations to future generations.[111] One dimension of this question is whether present generations should amass capital 'savings' for transfer to future generations. Intergenerational justice skeptics might challenge SWFs on the basis that we owe nothing to future citizens.[112] On the other hand, proponents of intergenerational justice might argue that we have a duty to save for the future and that this duty to accumulate severely curtails the possibility of present day expenditure from sovereign funds. On that basis, a requirement to distribute investment returns today rather than return them to the fund principal might fall foul of such a duty. So too might any obligation to invest ethically if it was established

[106] There are numerous varieties of cosmopolitanism resting on distinct moral foundations, but all share in common the belief that 'moral standards of equal treatment apply in principle to our relations to all other persons, not just to our fellow citizens.' Nagel (2005) fn3.
[107] For a classic account, see Pogge (2002). For a recent, exhaustive account on the reach of cosmopolitanism as a theory of justice, see Caney (2006). See also Tan (2004)
[108] Miller elaborates the claim that national borders are morally relevant in determining our duties of justice in Miller (1995); (2000) and (2007). For an earlier articulation of the role of national membership in justifying a restricted scope of moral obligations, see Tamir (1993)
[109] Nagel (2005)
[110] Walzer (1983); Scheffler (2007)
[111] For an overview of this debate, see Meyer (2010).
[112] Known as the 'non-identity problem', the fundamental objection to the very possibility of obligations to future citizens emphasises the contingency of future people's existence on the decisions of current citizens. On the non-identity problem, see Parfit (1984) pp. 351-79;

empirically that such investment diminishes optimal return-generating potential.

While a full treatment of these theories in relation to SWFs is beyond the scope of this thesis, it would be remiss of me to entirely overlook their concerns. Accordingly, I provide some preliminary comments below as to why global and intergenerational justice objections are not fatal to the domestic community fund conception of SWFs advanced in this thesis.

1.6.1 SWFs and Global Justice

I deal first and concisely with the question of SWFs and global justice. The reason for brevity is that global justice objections to a domestically-focused analysis of sovereign funds will likely target the *site*, rather than the content of identified normative principles. Put another way, there is reason to suspect that even cosmopolitans could derive similar substantive principles in relation to sovereign funds as those produced by the non-cosmopolitan outlook adopted in this project and instead diverge on the site of application – the global versus domestic community of citizens. If so, the extension of domestic principles to the global sphere might not prove so difficult and this tentative analysis could act as a blueprint upon which to build a global justice theory of SWFs.

Consider how we could adapt principles in our three areas of normative investigation: management, investment and distribution. Domestic level principles for enhancing local popular control over sovereign fund management would surely be similar in nature for endowing world citizens

or states with sufficient control over a global SWF. They will involve mechanisms and procedures for enhancing citizens' ability, whether citizens globally or in a particular domestic community, to monitor, influence, direct and interact with their institution of concern. Equally, extending the accumulation and distribution obligations of sovereign fund returns to the global community could occur by maintaining national SWFs and extracting rents from these to invest into a global SWF for world redistribution or just establishing one global fund along the lines of Thomas Pogge's anti-poverty fund.[113] Finally, if domestic justice demands the imposition of ethical investment obligations on sovereign funds, then given the international nature of SWF investment, the adherence to such an obligation would automatically have a cross-border reach. Put another way, strengthening the ethical orientation of domestic level investment mandates should have immediate ramifications for the justness of international capital flows given the growing presence of SWFs in financial markets.[114]

If fair, the global justice critique may prove only superficially in tension with the findings of this project, and if ultimately persuasive, might be addressed by altering the reach of mechanisms used to make SWFs just at the domestic level to encompass the global community. That said, even if a global justice outlook does produce substantively different principles, this should not prevent us from seeking first to establish which principles apply to make SWFs, as they currently exist, more normatively satisfying institutions.

[113] Pogge proposes the establishment of a global fund financed by a Global Resources Dividend (GRD), a 1% payment on nation's consumption of resources accumulated in a global fund for the relief of poverty suffered among the world's worst off. Pogge (2002)
[114] Although the valuations of SWF assets of around US$3-5 trillion are still dwarfed by the holdings of public and private pension funds, even today's lower SWF estimates still eclipse the US$2.1 trillion in global hedge funds and match those of private equity. Adamson (2012a).

This is logical for a first attempt to theorise the relationship between domestic communities and sovereign wealth given these funds are already influencing the lives and distributive landscape of the communities in which they reside. This is not to say that our intuitions of ultimate justice should be constrained by the current state of the world.[115] But rather, through clarifying what principles of justice apply to extant institutions domestically, we perhaps move closer to a more just world globally. As Nagel speculates:

> '[T]he global scope of justice will expand only through developments that first increase the injustice of the world by introducing effective but illegitimate institutions to which the standards of justice apply, standards by which we may hope they will eventually be transformed.'[116]

If, with time, the claims of global justice theorists prove persuasive, then the restriction of normative principles to the domestic realm may be relaxed and the design of SWFs revisited entirely.

1.6.2 SWFs and Intergenerational Justice

Intergenerational justice considerations raise potentially more fundamental concerns about SWFs. Since the majority of sovereign funds are set up as savings vehicles[117], their very establishment suggests an endorsement of the claim that current citizens owe something to future generations. This assumption is reinforced by the policy discourse surrounding SWFs, which often links the savings rationale of sovereign funds to the need for a fairer

[115] On the dangers in letting our ideals become constrained by the contingencies of time and place, see Stears (2006). Also Pogge: 'Our task as philosophers requires that we try to imagine new, better political structures and different, better moral sentiments. We must be realistic, but not to the point of presenting… the essentials of the status quo as unalterable facts.' Pogge (1994)

[116] Nagel (2005) p.147

[117] See Appendix 1 which suggests that the rationale for the majority of funds was to save resource wealth given their commodity-based source of most funds. Even funds established for different purposes, such as stabilization or social development, often morph into savings vehicles when they reach a sufficient size. Bortolotti et al (2009).

distribution of national capital intergenerationally.[118] This argument is particularly potent in the case of commodity-based SWFs as the idea of making permanent the otherwise temporary windfalls from commonly-owned, finite natural resources is used to justify establishing sovereign funds.[119]

A common riposte to this view is that there are more pressing present day needs for this national capital that caution against its quarantining in a savings vehicle. In this respect, sovereign funds pose a 'save versus spend' dilemma for political communities. A related line of response exhibits distrust of politicians in the long-term to eternally save these windfalls despite the rationale for these funds as 'permanent' savings. It holds that saving in a SWF is just deferred spending and that one day, future governments will draw down on the funds — either because the fund is mandated to allow this or because future politicians will raid it — resulting in a privileging of tomorrow's citizens' consumption over that of today's. In other words, opponents question whether SWF 'savings' are really permanent prosperity for a community or if they are simply deferred consumption privileging one particular cohort of citizens who ultimately consume the assets. Since many advocates who hold this view also believe that tomorrow's citizens will always be richer than those of today, they perceive that SWFs necessarily cause deep inequity towards present citizens.

[118] Consider the official view of the head of the OECD, Angel Guirra on the national benefit of establishing an SWF: "By creating a sovereign wealth fund, a country is able to preserve its national capital in the form of net financial assets for future generations to enjoy." Uren (2011a). Consider also the position of the IMF commenting on the Australian SWF debate: 'Some of the boost to government revenues could be saved in order to ensure a more equal distribution of its benefits across generations and reduce long-term fiscal vulnerabilities from an ageing population and rising healthcare costs.' Uren (2011b).

[119] For comments by high profile business leaders in the Australian SWF debate that reflect the belief that natural resources are the property of all citizens, see Hutchens (2011a) 'and Hutchens (2011b)

The academic SWF debate fails to provide guidance on this issue. It typically proceeds on the assumption that wealth transfers from present to future generations are inherently desirable.[120] There has been scant consideration of the justificatory basis upon which rights of future generations to sovereign wealth should trump pressing demands of current citizens, leaving the issue of the appropriate ultimate beneficiary of SWFs (current or future generations or both) without thorough scrutiny. This is at odds with public debate over whether a given community should set up a sovereign fund which inevitably centres on this issue.[121]

Accordingly, a philosophical response is needed to these questions of intergenerational justice surrounding SWFs. I regret that a full analysis cannot be undertaken here and consequently I do not express a concluded view in relation to these issues. But I do, at least, acknowledge their relevance and offer a basis for proceeding in light of their importance. Assume for the sake of present argument, that present generations have obligations or duties *vis-à-vis* future generations[122] and that one of these duties, as already highlighted, is an intergenerational savings obligation.[123] For practical purposes, I select one particular conception of just savings as a background assumption upon which the rest of the normative analysis can proceed. Since the Santiago

[120] Consider Clark and Knight (2011) in which the authors ask 'to what extent a government may use a SWF to exercise its responsibility towards future generations.' (p. 322). This is a relevant question, but it rests on an assumption that SWFs should be vehicles for realising a conception of intergenerational equity that focuses solely on what is owed to future citizens, without asking what claims present generations might also have on sovereign fund assets.
[121] Consider commentary by a former state Treasurer in Australia arguing that investment in infrastructure is a more pressing need than savings in an SWF. See Brumby (2011). Selfin et al (2011) also point to both the material cost to saving in such funds, including higher taxes and lower government spending today.
[122] See Meyer (2010). On the non-identity problem, see Parfit (1984) pp.351-79;
[123] On the justness of generational savings and dissavings, see Gaspart and Gosseries (2007).

Principles are silent on the appropriate rate of savings for SWFs, I turn to the extant, albeit sparse,[124] academic treatment of SWF's intergenerational obligations. As just mentioned, what does exist of these approaches tends to assume that the act of saving is intrinsically good while negatively characterizing present day claims on sovereign wealth. For instance, Clark and Knight describe present claimants as 'organised domestic interests' that threaten the long-term conservation of wealth through SWFs.[125] Sovereign funds must guard against such interests, the authors argue, through effective governance that holds 'at bay the claims of these organised groups'.[126] To do otherwise would be to give in to short-term political opportunism at the expense of future generations.[127]

The essential flaw in these arguments is the failure to countenance any legitimate claims on this wealth by *present* generations. In response, I assert here a general view on just savings derived from a conception of intergenerational justice that seeks to balance the interests of future and present generations and use this as a working assumption that can frame discussion of our three key questions on control, investment and distribution. One such conception is that of Axel Grosseries who argues that in the case of just savings, 'we should equally worry about not leaving [future generations] too much, and that this is a matter of justice'.[128] I suggest here that we follow Grosseries' reformulation of Rawls' Just Savings Principle (the '**JSP**') to reflect a notion of intergenerational equity that is both forward and backwards-

[124] Some exceptions are Clark and Knight (2011); Rose (2011) and Bolton et al (2012).
[125] Clark and Knight (2011) p.329
[126] Ibid. p.346
[127] Ibid. pp.329-331
[128] Grosseries (2001) p.324

looking.[129] My working assumption reformulates Rawls' JSP to comply with a conception of intergenerational justice that better balances rights between generations of citizens as follows:[130]

Assumption: *'SWFs constitute an institutional realisation of the Rawlsian 'Just Savings' Principle where present generations have 'put aside... a suitable amount of real capital'[131] to create 'the conditions needed to establish and preserve a just basic structure over time.'[132] However, SWFs are under no requirement to amass positive savings once these initial demands of the Just Savings Principle are satisfied.*

Importantly, this assumption of an obligation to future generations for practical purposes only places a constraint on how to manage, invest and distribute sovereign wealth, not necessarily a full determinant of these issues. Consequently, this investigation proceeds on the basis that sovereign funds should come into existence in accordance with what I suggest above is a defensible version of a JSP, grounded in a conception of intergenerational justice that seeks to balance rights between generations. Against this background assumption employed for expediency, I am able to focus instead on the equally important issue of how these extant institutions may be made more just in design and operation.

1.7 Overview, Methods and Plan

Having introduced the normative puzzle in this chapter, the thesis proceeds as follows. It is divided into three parts. Part I clarifies the ownership status of SWFs while Parts II and III examine the implications of my proposed ownership conception for SWF management, investment and distribution.

[129] Ibid.
[130] Rawl's original statement of the Just Savings Principle did seek to achieve some balance. In his first formulation, Rawls cautioned against the JSP becoming an extreme burden on the current generation, stating that "an excessive rate of saving must on balance mitigate the burden of those bearing this hardship." Rawls (1999a) p.276
[131] Ibid. p.285
[132] Rawls (2001) p.159

Throughout, the thesis elaborates both a theoretical ideal for the control over and benefit from sovereign funds in these areas and then considers the feasibility or desirability of those demands by examining current practice in the SWF community.

In this respect, this project is sympathetic to the worry that some aspects of contemporary political philosophy have become 'woefully detached from the realities and the contingencies of the social and political world in which real citizens live'.[133] To avoid contributing to that problem, this project deliberately commences its analysis with an extant public institution and identifies a cluster of ethical issues that this entity raises for the current citizen-state relationship. It undertakes that analysis with the aide of both political theory - for normative argument and conceptual analysis - and insights from the empirical social sciences more generally – for guidance on how our ideals might be accommodated or pursued within sovereign funds. In that sense, it heeds the recent call for a more '*political* political theory',[134] a type of academic enterprise that demands the *institutions* of collective life, both political and economic, assume a more prominent place within the study of contemporary political philosophy. Part of this effort first involves expanding the subject matter of the discipline beyond the ideals and ends of political life such as justice, equality, liberty and so on, to political institutions that 'orchestrate what is done about whatever aims we can settle on', of which sovereign funds are a recent and important addition to the state's policy apparatus.[135] But it also involves 'tak[ing] much more notice of

[133] Stears (2006) p.357
[134] Waldron (2012) p.8
[135] Ibid

and dovetail[ing]' one's work with the findings of political science.[136] This thesis aims to fulfill both those goals here - through its institutional focus *and* its integration of both political theory and empirical political science in offering answers to ethical dilemmas posed by that institution.

To this end, Part I commences with the preliminary issue of sovereign fund ownership. Since determining *how* SWFs should be managed, invested and distributed demands knowing in *whose interests* these tasks should be undertaken, Part I addresses the proper ownership status, morally-speaking, of these entities. An ownership perspective is assumed since much of the domestic conflict surrounding SWFs stems from ambiguity over their exact ownership status. Moreover, the typical interests that we associate with ownership such as the rights to control, manage, use and gain income from an object are the sorts of issues I seek to address through my key normative questions.

In Part I, Chapter 2 begins the analysis by trying to ascertain the current ownership status of these funds. A review of existing ownership arrangements reveals ambiguity regarding the true owner of these funds. The literature displays three competing candidates: government, state and citizenry. I seek to resolve this ambiguity by defending a fiduciary conception of the citizen-state relationship as the only viable basis upon which the ownership status of SWFs may be constructed. The fiduciary state model holds that citizens are the ultimate owners of state resources, morally speaking, irrespective of who exerts legal or actual control over the funds.

[136] Ibid. p.10

Having established that citizens are the rightful owners of these entities, I elaborate on this claim in Chapter 3, discussing exactly what the people own and how. I first clarify what SWF property consists of given frequently deployed distinctions between the institution of the fund, its underlying wealth and the returns its investment generates. As I argue that all three elements of an SWF (the fund, the wealth and the returns) should count as citizen's property, I then propose the application of an analytical framework from property rights theory, known as the control-benefit distinction, that can address the issues raised by these distinct components of the one ownership object. Having clarified *what* citizens own and an analytical strategy for addressing those distinct components, I then explain exactly *how* citizens own this property by defending a particular conception of collective citizen ownership. This conception is developed on the basis of what a citizenry requires in order to be an effective principal over its government agent in a legitimate polis. I label this model 'Egalitarian, Autonomous, Collective-hybrid ownership' (the '**EAC Model**'), the implications of which are explored throughout the remainder of the thesis. I conclude by suggesting the application of the control-benefit distinction from ownership theory as a useful prism through which to explore the three key normative issues (control, investment and distribution) as they pertain to the different constituent elements of a SWF (fund, assets and returns,).

The three key normative questions are subsequently divided into discussions of either 'control' or 'benefit' interests attached to citizen ownership of sovereign funds.[137] In Part II, I focus on *control* privileges. I

[137] The most explicit bifurcation of ownership into 'control' and 'benefit' rights is articulated by Christman (1991) who argues that this division is implicit or 'hinted at' by numerous past

address key question (1) on control over fund management in Chapters 4 and 5. In Chapter 4, I establish an ideal theoretical conception of popular control over SWF assets. Chapter 5 then addresses the extent to which current practice among SWF management conforms to this ideal. Chapter 6 then turns to key question (2) on the investment of fund assets. This chapter is an extension of the popular control model set out in Chapter 4 as both issues relate to control privileges over SWFs. I argue for ethically constrained investment of sovereign wealth to ensure a degree of popular control over the specific task of SWF investment. The chapter closes with an examination of the New Zealand and Norwegian sovereign funds (the only two SWFs to boast an ethical investment mandate) and test these funds for compliance with the theoretical ideal.

Part III turns to the question of *benefit*, addressing key question (3) on the distribution of sovereign fund returns. In Chapter 7, I set out the case for individual cash distribution of sovereign fund returns to citizen-owners as the preferred method for realizing benefit rights to this income. I then examine this proposal in practice in Chapter 8, looking at the Alaska Permanent Fund Dividend (the '**PFD**'), an annual non-means tested payment to all Alaskan citizens from the investment returns of their sovereign fund and the only working example of direct individual distribution of SWF returns. I test the potential for the PFD to act as a precedent for a benefit right of ownership against original empirical research on attitudes in Alaska towards their PFD payment. Finally, in Chapter 9 I examine the potential for implementing a programme of dividend distribution throughout SWFs globally by

---

and contemporary theorists of property rights. See p.45. For a fuller treatment of the control-benefit structure of ownership, see Christman (1994) Chs 7 and 8.

investigating sovereign fund attitudes to such a proposal. A near universal anti-dividend consensus exists among the SWF community. I consider the challenges of this consensus.

My thesis concludes in Chapter 10 with a summation of the principles on control of management, investment and benefit from distribution that I have arrived at; principles that are best given effect through a series of reforms and amendments to the GAPP. If exhaustive, the two-fold objective of this thesis will have been achieved, that is to:

(1) provide the first comprehensive analysis of normative issues surrounding SWFs at the domestic level; and

(2) prescribe principles for converting SWFs into domestic community funds that help make real the vision of James Meade set out at the start of this chapter: to create societies resembling Agathotopia: not utopia, but rather—and quite literally—a good place to live.[138]

[138] Meade (1993)

PART I: SOVEREIGN FUND OWNERSHIP

Establishing Citizen Ownership of SWFs

Chapter 2 - Who Owns a Sovereign Wealth Fund: Government, State or Citizen?

'The country is not mature enough to have conversations about whether this belongs to the state or to the people. It is the government's money.'

- SWF Official, United Arab Emirates 2011[1]

'Possibly the Crown and the Public are reciprocally trustees for each other; possibly there is not much difference now-a-days between the Public, the State, and the Crown, for we have not appraised the full work of the Trust...'

- F.W. Maitland 1922[2]

In this chapter, I seek to determine who truly owns sovereign wealth funds, normatively speaking. I do so as a preliminary step to answering my central questions relating to the control, investment and distribution of sovereign funds within their domestic communities. One method for determining who ought to control these funds, and for whose benefit, is to establish the rightful owner of these funds since control and benefit rights are privileges of ownership. This chapter proceeds then as an ownership inquiry into SWFs. In the course of this investigation, I reveal significant ambiguity over the actual ownership of SWFs. Official descriptions contain competing conceptions of their owner, causing real-world conflict over SWF assets. In response to this confusion, this and the next chapter develop a normative framework utilising both fiduciary state and property rights theory, to dispel this ambiguity and provide an unequivocal conception of SWF ownership.

This chapter proceeds as follows. Section 2.1 examines the definitional diversity among legal, policy and organisational descriptions of SWFs. This shows

[1] Author Interview with UAE SWF official (2011)
[2] Maitland (1913) p.xxiv

that much of the inconsistency centres on the word 'sovereign' in the SWF label. While some scholarly consensus is emerging around the notion of the funds as 'government-owned', Section 2.2 demonstrates that even this idea remains sufficiently contestable to demand clarification. Section 2.3 shows why resolution of this semantic confusion matters beyond the desire for clarity. As the quote from the Emirates SWF official above illustrates, SWFs can be considered the property of distinct public sphere actors,[3] including the 'state', the 'government' and the 'public'.[4] Evidence from the SWF world suggests that this terminological vagary increases the potential for different public actors to simultaneously assert ownership of sovereign funds, raising the prospect of conflict over SWF assets.

In the final section of the chapter, I seek to remove this ambiguity by proposing a conceptual and normative framework for understanding SWF ownership. The clarificatory strategy, elaborated in this chapter, involves fiduciary state theory. The underlying principle of fiduciary theory in both political philosophy and legal thought is that 'the duty of the fiduciary is to act with due regard for the best interests of the beneficiary', loyal to the beneficiary's interests alone.[5] In section 2.4, I deploy fiduciary state theory to address the issue of SWF ownership. Following Maitland, quoted above, I suggest that, if we conceive of 'government', 'the state' and 'the public' in a trust-like relationship, where government is the trustee of 'the people' collectively represented through 'the state' and 'government', then normative differences between these seemingly rival

[3] I use a *descriptive* notion of 'public sphere' to refer to apparatus of public authority such as the 'state', 'government' and 'the public' for which they must care. *Cf* the Habermasian *normative* notion of the 'public sphere' as that 'sphere mediating between state and society, a sphere in which the public as the vehicle of public opinion is formed…' that helps create 'democratic publicness'. Habermas (2006) p.103

[4] I treat the idea of the 'public' as synonymous with terms like the 'domestic community', 'citizenry' and 'the people', using these terms interchangeably throughout.

[5] Fox-Decent (2011) p.22

entities dissolve. All public assets, no matter under whose legal name or *de facto* control, must ultimately be considered property of the citizens. In this way, I seek to resolve the contestation over the term 'sovereign' by proffering a fiduciary conception of citizen-state relations as a robust basis upon which to construct the normative ownership status of SWFs.

2.1 Sovereign Wealth Funds and Definitional Diversity

Ever since its formal emergence in 2005, the term 'sovereign wealth fund' has been beset with definitional difficulties.[6] There was never and still is no 'single, accepted, fully operational definition of sovereign wealth funds'[7] with a lack of agreement about the most fundamental terms in the debate.[8] Some have blamed this definitional elusiveness on the opaque nature of SWFs, with public availability of information about fund operation, size and management varying between funds and over time.[9] Others point to SWFs' heterogeneous nature and the absence of an archetypal fund.[10] Still others point to the hybrid public-private nature of SWFs,[11] making them simultaneously public actors responsible to citizens in their sponsoring state and investment destinations, and market actors, accountable to their financial managers operating with profit motives.[12]

I offer a different diagnosis. In my view, this definitional diversity, while affected by the aforementioned factors, is in large part driven by ambiguity surrounding the precise ownership status of sovereign funds. A review of early

[6] Rozanov (2011); Xu Yi-Chong (2010) p.3; Balding (2012) pp.17-18
[7] Truman (2010) p.9
[8] Rozanov (2011) p.249
[9] Ibid., p. 251; Balding (2012) p.15
[10] Ibid.; Murray (2011) p.2
[11] Keenan (2009) pp.432-433; Gelpern (2011)
[12] Keenan (2009)

definitions in scholarly, policy and organizational literature collated in Table 2.1 below reveals not only the proliferation of definitions of 'sovereign wealth fund', but also the extent of inconsistency between definitions. As the sample suggests, the source of the ambiguity is the malleable term 'sovereign' in the SWF label. Within the illustrative sample of definitions, the list of explicit or implied owners identified is extensive (see right-hand column of Table 2.1). While each is some actor associated with the public sphere, the list varies substantially in degree of abstraction, with intangible entities such as 'the state', 'government', 'nation', 'citizens' and 'the country' identified as owners along side more specific candidates like 'the bureaucracy' or particular organizations like the central bank or treasury.

This variation reflects the variety of actual ownership arrangements in place between SWFs and their state sponsors. As Balding notes, '[c]ountries have taken various approaches to the relationship between sovereign wealth funds and governments. Some SWFs are managed by the finance ministry, some by the central bank, and others by nominally independent entities'.[13] Accordingly, similar variation in ownership descriptions is found in SWFs own discussions of their fund arrangements.[14]

[13] Balding (2012) p.19
[14] See Appendix 2 of IWG (2008) in which member countries of the IFSWF provide descriptions of their funds. Not all explicitly identify their owner, but where they do, it generally involves the use of similar terms.

Table 2.1: Sample of select early Sovereign Wealth Fund definitions

Definition (my emphasis)	**SWF owner**
There is no single universally accepted definition of an SWF. [In this paper,] the term "SWF" means a government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities. [*US Treasury, June 2007*]	government (implicit)
Sovereign wealth funds - or state investment funds - are financial vehicles owned by states which hold, manage, or administer public funds and invest them in a wide range of assets of various kinds. Their funds are mainly derived from excess liquidity in the public sector stemming from government fiscal surpluses or from official reserves at central banks. *[Deutsche Bank, September 2007*]	state (explicit) public sector (implicit) government (implicit) central bank (implicit)
Sovereign wealth funds are usually funded by the nation's central bank reserves and have the objective of maximizing financial returns. *[McKinsey Global Institute, October 2007]*	nation (implicit) central bank (implicit)
Government-owned investment vehicles funded by foreign exchange assets. *[OECD, November 2007]*	government (explicit)
Separate pools of international assets owned and managed by governments to achieve a variety of economic and financial objectives. [*Edwin M. Truman, SWF commentator at Peterson Institute, Before the U.S. House Committee on Banking, Housing, and Urban Affairs, November 2007]*	government (explicit)
Pools of money derived from a country's reserves, which are set aside for investment purposes to benefit the country's economy and citizens. The funding for SWFs comes from central bank reserves that accumulate as a result of budget and trade surpluses, and even from revenue generated from the exports of natural resources. [*Investopedia—influential industry website for Forbes Media, December 2007*]	country (implicit) citizens (implicit) central bank (implicit)
An SWF is a government investment vehicle, owned by a sovereign government. It is managed separately from funds administrated by the sovereign government's central bank ministry of finance or treasury (because if it isn't, then other constituencies need not consider it as something different from other agencies of state.) *[Monitor Group, June 2008]*[15]	government (explicit)
Sovereign wealth funds are special-purpose investment funds or arrangements that are owned by the general government (general government includes both central and sub-national government). *[International Working Group on SWFs - Santiago Principles, October 2008]*	government (explicit)
A Sovereign Wealth Fund is a state-owned investment fund composed of financial assets such as stocks, bonds, real estate, or other financial instruments funded by foreign exchange assets. [*Sovereign Wealth Fund Institute, 2008-]*[16]	state (explicit)
SWFs are government owned and controlled (directly or indirectly) investment funds that have no outside beneficiaries or liabilities (beyond the government or the citizenry in abstract) and that invest their assets…according to the interests and objectives of the sovereign sponsor. [*Ashby Monk, Sovereign Wealth Fund Commentator, May 2008*][17]	government (explicit) citizenry (implicit)

Source: IMF (2008) unless otherwise indicated in citations[18]

[15] Miracky (2008) p.11
[16] SWF Institute (2012)
[17] Monk (2008)
[18] Most definitions are from IMF (2008) Annex II 'Selected Definitions of SWFs' pp.37-38.

Not only does this list include a multitude of possible owners; there is a degree of contradiction between ownership conceptions. How can we reconcile Monitor Group's definitional requirement that SWFs must be managed *separately* from entities like the central bank or treasury so as to be distinct from traditional state agencies with other definitions' explicit references to 'the state' as owner or identification of central bank reserves as the source of SWF assets?

One explanation for this inconsistency is that the various terms are *not* intended to refer to different public entities. Rather, they are synonymous, used by different authors to express the same broad idea of public ownership. Indeed, casual commingling of terms is a persistent feature of ordinary language and academic discourse where 'public sphere' terms are concerned. Consider the regular conflation of terms like 'state' and 'nation'[19]; 'nation' and 'country'[20]; 'government' and 'state'[21]; and 'state' and 'citizenry'[22]. Returning to Table 2.1, the Deutsche Bank definition is illustrative of this potentially synonymous use of public sphere concepts as it explicitly identifies 'the state' as SWF owner, while simultaneously using the terms 'public', 'government' and 'central bank' to describe the source and character of its assets. Are the definitional proponents simply employing these terms interchangeably? If so, since all the terms can refer to distinct, independent ideas, which *is* the intended owner of sovereign funds?

[19] See Miller, where he argues that despite their superficial conflation, these two terms must be thought of distinctly with 'nation' referring to a community of people with an aspiration to be politically self-determining, and 'state' meaning a set of political institutions that a people may aspire to possess for themselves. Miller (1997) p.19

[20] Again following Miller's notion of a nation, this clearly can be distinguished from the general understanding of a 'country' as a legally defined territorial entity, yet both are regularly conflated.

[21] Steinberger (2004) at pp.8-13 shows that in both historical and contemporary political discourse, 'state' operates with different meanings, one of which is 'government' as the apparatus of rule. On the ambiguity surrounding the idea of the modern state, see Pierson (2004), especially Chapter 1.

[22] See Habermas (1994) who discusses the blurred line between 'the state' and 'the people' on certain conceptions of democracy. See also Pierson (2004), especially Chapter 3 on the distinction between state and society.

A useful strategy for identifying an answer is to apply Gallie's distinction between 'essentially contested' and 'radically confused' concepts.[23] To explain, Gallie differentiates between concepts that 'will never have unanimous definition amongst users, and are able to develop and flourish through continuous contestation'[24] and a 'thoroughly confusing term which cloak[s] the possibly perfectly consistent use of two or more concepts' which may be separated and defined independently of one another.[25] We are asking then, whether the term 'sovereign' in the SWF label is essentially contested or just radically confused?

If 'sovereign' were essentially contestable, then it would be a mistake to try and establish determinacy since it is through endless contestation that its meaning flourishes, away from its locatable and 'ineliminable core'[26] – what Gallie calls its 'exemplar'. This exemplar is the definitional source of the idea, considered intrinsic to it by all contending users. Beyond the shared recognition of the exemplar, 'it is natural that different features in [the essentially contestable concept] should be differently weighted by different appraisers, and hence that [rival views] should have come to hold their very different conceptions' of the concept.'[27] On the other hand, if the term is just radically confused, then its different parts may be separated out and each individually discussed so a greater degree of clarity is achieved. This is possible because there is no equivalent of the exemplar or ineliminable core, since the multiple and different descriptions of the original confused term clearly derive from distinct sources.

[23] Gallie (1955)
[24] Ibid. p.169
[25] Ibid. p.175
[26] That term is borrowed from Freeden (1998)
[27] Gallie (1955) p.176

It is my contention that the word sovereign when embedded in the 'sovereign wealth fund' label displays the characteristics of a radically confused, as opposed to an essentially contested concept. The list of terms used to define the funds contain fundamentally distinct, albeit related concepts of the public sphere. We can and should meaningfully distinguish between concepts like 'nation', 'state', 'government', 'citizenry' and so on. The various terms 'cannot be derived from a single exemplar, as they actually represent a number of different and distinguishable concepts.'[28] This is evident insofar as the privileging of one above another as the ultimate meaning of sovereign would result in very different ownership structures for sovereign funds, explored more fully in a moment. If this interpretation is fair, then we are fully justified in imposing our own idea of what 'sovereign' should mean in the SWF label and moving the definitional debate beyond the radical confusion it currently displays to some degree of determinacy.[29]

2.2 Imposing Consensus – SWFs as Government-Owned Funds

Following the release of an official definition by the funds themselves in late 2008, more recent definitional accounts display greater consensus around the idea of sovereign funds as 'government-owned'.[30] As such, they offer a useful starting place for developing a more determinate idea of an SWF. As I noted in Chapter 1, in 2008, the International Working Group of Sovereign Wealth Funds (the '**IWG**')

[28] Woods and Urwin (2010) p.3
[29] Even with philosophical clarity, our effort may become just another technical attempt to clarify ordinary usage that itself perpetuates contestation over the term. See Waldron (1994) at pp.524-525
[30] According to Yi-Chong '[t]hese definitions suggest that SWFs are a heterogeneous group of funds that share one key features – government ownership'. Yi-Chong (2010) p.4. Rozanov (2011) p.256 also supports the development of the IFSWF as driving consensus. Evidence of government-ownership taking hold in more recent accounts of SWFs can be found in Truman (2010) at p.10, Clark, Dixon and Monk (2013); Bolton et al (2012); Dixon and Monk (2012) p.105

was established and set out to develop a formal definition for their emerging international regulatory framework (the '**Santiago Principles**'):[31]

> '[SWFs are] special purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage or administer assets to achieve financial objectives, and employ a set of investment strategies, which include investing in foreign financial assets. SWFs are commonly established out of balance of payments surpluses, official foreign currency operations, the proceeds of privatisations, fiscal surpluses and/or receipts resulting from commodity exports'.[32]

Endorsing this definition as capturing the 'true' ownership status of SWFs is to declare sovereign funds *government*-owned. On this approach, the litany of other terms present in SWF literature could be dismissed as variant descriptions of 'government' ownership.

Although appealing, this move might be too quick for several reasons. First, sovereign funds themselves are a group with vested interests just like any other definitional proponent. A review of early SWF definitions noted the partisan interpretation of the word 'sovereign' by three distinct stakeholder groups, including sovereign funds.[33] As such, there is no reason why sovereign funds' *own* version of what constitutes an SWF should prevail notwithstanding its widespread currency within industry and policy circles. Second, even if the description of SWFs as 'government-owned' reflects an emerging semantic consensus, *its* meaning is not obvious. This is evident from theoretical treatments of government

[31] The IWG was established in 2008 by its 26 member countries (see Chapter 1, footnote 67) under the auspices of the IMF.
[32] IWG (2008)
[33] As Gelpern notes '[d]isagreements reflect the competing interests of the definitions' proponents…. [E]arly "definers" fell roughly into three groups: market actors whose business was affected by the rise of SWFs; host country governments managing the political fall-out from SWF investments; and academic and civil society observers engaged in policy advocacy. The three groups used the term ''sovereign''differently.' Gelpern (2011) pp.292-293.

ownership within the literature on public property.[34] Consider the conceptual difficulties that have plagued the idea of 'public ownership', which we can take to encompass government as owner.[35] Historical reviews reveal how '[d]ifferent versions of public ownership' have consistently produced 'different complexities about ownership and control' due to the range of potential owners of 'public property'. [36] Munzer suggests the owners of public property include 'the state, city, community, or tribe',[37] while Reeve observes that the concept of public ownership has been associated with a variety of entities including: 'the public, God, the state, the community, corporations and business firms, churches, charities and families'.[38]

I note two aspects of these descriptions. First, the entity of 'government' does not appear, suggesting it is covered off by one of the other listed candidates, most likely 'state ownership'.[39] Second, if that is so, we are not any closer to resolving what government ownership means since, as Reeve and others have noted, "'[s]tate ownership' and 'public ownership' are often used in ways which suggest that the terms are interchangeable",[40] and thus ambiguous:

> '"Public ownership" as a general formula is too indefinite, too indiscriminate to have any concrete meaning. It can refer to central planning with complete state ownership of resources; to the nationalisation of large industrial and financial concerns only; to state shareholding in private enterprise; to co-determination to public corporations; to decentralized economies; to workers control; to producers' co-operatives; and so on and so forth'.[41]

---

[34] See Reeve (1986) pp.30-32
[35] Using this label is not a straightforward move given some theorists deny this is even a plausible concept. Hannah Arendt holds that the idea of ownership belongs exclusively to private property since 'the public' cannot exercise ownership rights in any way similar to that of an individual. Arendt (1958) pp.256-257
[36] Reeve (1986) p.35
[37] Munzer (1990) p.25
[38] Reeve (1986) p.30
[39] Again, see Steinberger (2004) at pp. 8-13 on the historical conflation of 'state' and 'government'.
[40] Ibid. p.32
[41] Berki cited in Reeve (1986) p.36

Whether or not these labels are fair, the point to register is that an apparent consensus on the idea of *government* ownership of SWFs hardly resolves the ambiguity, since the term 'government-owned' is subject to the general haziness surrounding 'public ownership'. In my view, we need to follow Reeve, who recommended a closer look at '"the state", "the public" and "the community", and at the connections between them' to address ambiguities surrounding public ownership.[42] For *our* investigation, it is necessary to look more closely at the connection between 'the state', 'the public' and 'the *government*', as the most frequently identified owners of SWFs. I do so in the next section by examining the actual experience of domestic communities in possession of a sovereign fund for any potential for consensus. This section suggests that the ambiguity plaguing the idea of public ownership and the relationship between entities like 'the state', 'the government' and 'the public' is not confined to scholarship alone, but is evident in the lived experience of communities with SWFs.

2.3 Conflict and Confusion over Sovereign Fund Ownership

In this section, I set out to show that, even if there is an apparent consensus on the meaning of 'sovereign' in the SWF moniker, it has not succeeded in resolving conflict over the status of sovereign funds within domestic communities (the stakeholders most affected by this question). On the ground, there is deep disagreement and confusion over these funds' legitimate owner(s). I supply evidence of such conflict, briefly examining five domestic communities in which SWFs are based, and which have each experienced internal discord or confusion over their funds: Alaska, Nigeria, Libya, Australia and the UAE. Beyond their common experience of disagreement over the ownership status of their SWF

[42] Reeve (1986) p.32

assets, these states differ vastly in terms of political regime, economic development and culture. My goal is to demonstrate that public sphere actors may compete over sovereign assets *irrespective* of the nature of the fund's state-sponsor and society. I infer that such competition is possible in any community as long as the ownership status of the SWF entity itself remains ambiguous.

2.3.1 Alaska: State versus the Public

The example of the Alaska Permanent Fund highlights how 'the state' and 'the public' may conflict over sovereign funds. I follow local terminology of the Alaskan case study, and mainly use the phrase 'the people' throughout.

To help introduce the nature of the conflict, some background is necessary. The APF was set up in 1976 to save resource windfalls received from the sale and exploitation of Alaska's minerals, principally oil. Unique to Alaska's SWF is the payment of an annual dividend to every single Alaskan based on a share of the APF's investment returns. Known as the Permanent Fund Dividend (**PFD**), the first payments occurred in 1982 and have occurred annually ever since. In the late 1980s, a legal dispute arose over the taxable status of the PFD between 'the state' and 'the people'.

The legal issues in the case illustrate an underlying clash of public sphere interests over Alaska's sovereign wealth. In 1987, two lawsuits initiated by Alaskan citizens went to the U.S. Ninth Circuit Court of Appeals arguing that the APF dividend checks were not taxable. The lawsuits were consolidated and advanced two theories as to why the dividend payments were not taxable:[43]

[43] Rose and Wohlforth (2008) p.169

> 'One [theory] maintained that *the people* already owned the state's natural resources, and argued that they couldn't be taxed on what already belonged to them. The Ninth Circuit Court of Appeals flatly rejected the idea that the people owned the *state's* natural resources, relying on language found in the Alaska Constitution and in the permanent fund status referring to the *state as owner*.'[44] *(emphasis added)*

A statement from the judgment aptly captures the competing conceptions of ownership over the fund:

> Accepting…that the people of Alaska have ultimate sovereignty, we reject [the] conclusion that the people own the state's natural resources. "In adopting their constitution, the people of the State of Alaska have very clearly constituted the state as owner of the natural resources which gives rise to the fund in question."'[45]

Although the court did find in favour of the state of Alaska as *legal* owner, the language of the judgment is premised on the assumption that both 'the people' and 'the state' of Alaska' are capable of asserting legitimate ownership claims over Alaskan shared resources.

The second theory advanced in the other suit 'argued that because the state paid the dividends without expecting anything in return, it constituted a gift and gifts are not taxable.'[46] The court found it difficult to dismiss this argument since they had concluded in the other suit that 'the people' did not own Alaska's resource wealth and therefore, 'the state' did not owe them anything, although the Appeals Court ultimately rejected the gift argument on different grounds. The PFD was declared taxable.

[44] Ibid.
[45] *Greisen v United States* [1987] para. 11
[46] Rose and Wohlforth (2008) p.169

Central to the parties' arguments and the legal reasoning employed by the Appeals Court was the assumption that 'the state' is fundamentally distinct from 'the people'. While the court did not set out what, in its eyes, constituted 'the state' or 'the people', the basic premise of its reasoning was that the two were not only different, but competing entities, capable of wielding unique ownership claims to Alaska's SWF and its underlying assets, the natural resources of Alaska. Without passing judgment on the philosophical soundness of this legal reasoning, the Alaskan litigation still serves as evidence of serious division within the Alaskan community regarding the true owner of the APF.

2.3.2 Nigeria and Australia: Government versus the Public

The second case involves two examples of conflict over sovereign assets between 'the government' and 'the public': the first in the non-democratic setting of Nigeria, and the other in the established democracy of Australia.[47] I include these two examples of the same type of conflict but within vastly different political regimes to rule out the explanation that government contestation with citizens is only a feature of or possible in non-democratic regimes with unaccountable power structures.

(a) The Nigerian Sovereign Investment Authority

As I observed in the Introduction, the Nigerian Sovereign Investment Authority (the '**NSIA**') is one of the world's newer SWFs. Created in May 2011 through the *National Authority Investment Bill* 2011 (the '**Bill**'), the NSIA's purpose is to improve the management of Nigeria's oil revenue and distribute resource profits

[47] According to The Economist's Democracy Index 2012, Nigeria is an 'Authoritarian Regime' while Australia is a 'Full Democracy' ranked 6th best in the world in terms of democratization. See The Economist (2012), Table 2.

more evenly between current and future generations. [48] The NSIA's key objective as stipulated in the Bill is to build 'a savings base for the Nigerian people'.[49] The Bill also vests ultimate ownership of the fund in the 'people of Nigeria',[50] but requires this ownership interest be protected by all levels of the Nigerian government through shared management of the NSIA:

> 'All ownership interest in the Authority shall be held by the Federal, State, Federal Capital Territory and Local governments of the Federation on behalf of the people of Nigeria.'[51]

The Bill's language is interesting, not only for its explicit reference to 'the people' (again taken as synonymous with 'the public') as owner of the state's resources, but also given the implicit notion of government-as-fiduciary in the management of the sovereign fund assets. The only purpose for which a Nigerian government at federal or state or provincial level is held to possess an ownership interest in the NSIA is to promote the interests of the Nigerian people in relation to the fund.

The Preamble further elaborates on the spirit of this fiduciary-style arrangement. The Fund is set up 'as an independent entity to carry out the intention of the Federal, State, Federal Capital Territory and Local governments to, among other things, build a sustainable savings base for the benefit of future generations.'[52] The NSIA is government-owned and controlled, but only for the purpose of the government acting as an *agent* for the Nigerian people, the fund's

[48] In the Bill, the Preamble refers to the reliance of the 'Nigerian State' on the country's hydrocarbon resources. It is the only time the word 'state' features in the Bill, but its presence suggests that conception of at least three different entities with a relationship to the SWF– government, state and people. See *National Sovereign Investment Authority Bill* (2010) p.1
[49] Ibid. para. 3(1)(a). p.2
[50] Ibid. para. 29(2) p.8
[51] Ibid, para. 29(2) p.8
[52] Ibid. p.1

ultimate owner and intended beneficiary.[53]

Despite this, the state level government threatened the existence of the fund, asserting a claim to a portion of NSIA's underlying assets.[54] In August 2011, Nigeria's 36 state level Governors challenged the fund's constitutionality.[55] The Governors demanded 'their' share of Federal revenue be removed from the NSIA and returned to the states. In the words of one of the Governors:[56]

> 'The thing is that it is *our* money and *we* need it. We are faced with so many challenges beyond the scope of our financial capacity and we cannot have a situation where the federal government will compel us to save money by not giving us *our* full dues from the Federation Account…For example, we need money to develop our region, how do we get that? We are confronted daily with security and conflict resolution matters, yet we don't have enough resources to tackle them.'[57] (*my emphasis*)

The Governor's language is revealing. The country's oil revenues are conceived of as belonging in part to *state* governments specifically. There is no acknowledgement that resource windfalls channeled to the NSIA are actually earmarked for *all* Nigerians, the same Nigerians in whose interests state and other governments are meant to act and manage the NSIA assets. Indeed, the state Governors' protest showed disregard for the motivation behind the new SWF to

[53] The Fund's tripartite structure also reinforces the Nigerian people's ultimate ownership claim. The *Nigeria Infrastructure Fund* aims to generate returns on investment in basic infrastructure; the *Future Generations Fund* involves a rolling five-year investment plan meant to provide future generations with a solid savings base after the exhaustion of the hydrocarbon reserves; and, the *Stabilization Fund* provides a last-resort source of financing for budget deficits caused by weaker-than-expected commodity prices, affirming current and future Nigerians as intended beneficiaries.
[54] Only four months earlier, the state governors agreed along with all other stakeholders in Nigeria's federal government to allocate a portion of their oil revenues to the new fund. In return, the Governor's secured a concession that saw them all become members of the NSIA's Board of Governors. OMachonu (2011)
[55] Monk (2011a)
[56] AllAfrica (2011)
[57] Ajayi and Olaleye (2011)

better manage Nigeria's resource wealth in the interests of the people[58] as it significantly delayed the NSIA's establishment and operationalisation.[59]

The point here is not to deny that Nigeria's State governments have legitimate and expensive overheads.[60] Nor is it to deny that federations must work out fair methods for distributing public funds between levels of bureaucracy.[61] Rather, it is to highlight that, even in the case of an SWF explicitly set up in the interests of 'the people', and in which the nature of the government's ownership interest is plainly set out as fiduciary in nature, the fund's ownership remains contestable by different public sphere stakeholders. Local politics is undoubtedly part of the explanation, but so, I would argue, is the exploitable ambiguity surrounding sovereign fund ownership.

(b) The Australian Future Fund

To avoid the inference that government and citizen rivalry over SWFs is merely a function of fragile or absent democracy, I now discuss an instance of similar conflict in the democracy of Australia. Disagreement over the rightful recipient of resource windfalls has dominated public debate over establishing an Australian SWF. A growing corpus of politicians, public commentators and high profile figures have called for a SWF to preserve and augment unprecedented profits from Australia's finite resource base. Interestingly though, the country already possesses an SWF in the form of the Future Fund, a fact underappreciated by the

[58] The NSIA's predecessor, the Excess Crude Account is widely recognised as a corrupt, dysfunctional fund motivated the need for a proper SWF to manage resource windfalls. Ndanusa (2012)
[59] At the time of writing, the NSIA was set to commence investing in March 2013. Ujah (2012). While promising, the overall process has been slow due to internal government discord, taking more than 15 months from when the NSIA Act was signed into law to the unveiling of the board in August 2012.
[60] Ajayi and Olaleye (2011)
[61] Rasheed (2011)

Australian public, suggesting a lack of proper understanding about the ownership status of this existing fund.[62]

The Future Fund was set up in 2006 to fund federal public servant pension shortfalls using a one-off transfer of trade surpluses. The lack of public awareness of the country's existing fund is illustrative of the ambiguity surrounding ownership and use of Australian SWF assets. Significantly, the former Treasurer who established the Future Fund identified the source of this ambiguity as confusion over the implication of 'sovereign' for the ownership of the fund:

> 'The confusion in Australia arises from the difference between ownership and purpose [of the Future Fund]. By definition a sovereign wealth fund is owned by a sovereign power - in our case, *the government*…. The specific purpose it is earmarked for is the growing liability of public sector pensions… But the money in the Future Fund (now $75 billion) is *not owned by public servants*. Public servants did not pay any money into it. It was built by budget surpluses. That money belongs to *all of us* and not just to us, but to future generations.'[63] (*emphasis added)*

The former Treasurer's imploring of the Australian public to realise that this is 'their' money and not the government's highlights the potential for confusion stemming from the ownership status of these funds. There are clearly fund mandates perceived as more or less dedicated to realizing citizen interests. The existing SWF in Australia, set up to meet government pension liabilities, is clearly not viewed in the public imagination as a fund for 'the people'.[64] Rather, it is

[62] As the former national Treasurer Peter Costello observed of the Australian SWF debate: 'All of a sudden everyone has a view on whether Australia should establish a sovereign wealth fund… So it may come as a surprise as you look down the membership of the International Forum [of Sovereign Wealth Funds] to see Australia is listed there. Not only does Australia have a sovereign wealth fund, its fund is so respected that an Australian - the former Commonwealth Bank chief David Murray - was the first chairman of the International Forum.' Costello (2011)
[63] Ibid.
[64] Cummine (2011b)

viewed (if at all) as a fund for meeting the *government's* liabilities as an employer.[65] The distinction between government and the public is once again present, and their potential to compete for priority ownership of sovereign assets is evident, despite Australia's status as an established democracy where one might more reasonably expect government promotion of citizen interests.

2.3.3 Libya: Government versus the State

The fourth example highlights that just as 'the state' or 'the government' can compete with 'the public' over sovereign assets, they can also clash with one another. The Libyan case-study reveals conflict between the former government of Libya, led by Muammar Qadhafi, and the Libyan state as a continuous political entity responsible for collectively representing the citizens over time.

In early 2011, a question regarding the precise ownership of Libya's SWF, the Libyan Investment Authority (the '**LIA**'), arose in the context of democratic uprisings against the Qadhafi regime. The violent suppression of these uprisings by the regime resulted in a United Nations (the '**UN**') Security Council imposing, amongst other things, an asset freeze on 'all funds [and] other financial assets and economic resources…which are owned or controlled, directly or indirectly, by the Libyan authorities.'[66] The LIA was identified as an entity subject to the asset freeze on the basis that it was '[u]nder control of Muammar Qadhafi and his family, and [a] potential source of funding for his regime.'[67]

[65] Ironically, 'Supporters of a sovereign wealth fund say the Future Fund is not a true sovereign wealth fund because it exists solely to fund pension liabilities for public servants.' Colquhoun (2011)
[66] United Nations Security Council Resolution 1973 (2011), paras 19 – 21
[67] Ibid. Annex I.

From an SWF ownership perspective, the resolution was controversial as it declared the supposedly 'government-owned' LIA personal property of the sovereign family.[68] Prior to the resolution, the LIA held itself out to be an asset of the Libyan state. Its purported mandate was to protect assets for future generations of Libyans.[69] Internationally recognised as a legitimate SWF through its membership of the IFSWF,[70] official IFSWF documentation emphasises the LIA's ownership by the *state* of Libya.[71] Elsewhere the LIA is described as a 'savings fund for future generations', and refers separately to Libyan citizens *and* the Libyan State as distinct but equal beneficiaries of the fund.[72]

Subsequent freezing of assets in compliance with the UN resolution reflected a growing view that the LIA was in fact the personal preserve of the Sovereign Muammar Qaddafi and his family.[73] The final determination by companies such as UK publishing company Pearson, in which the LIA held a 3.27% stake, to freeze their holding was done on the basis that the LIA was under

[68] Ibid. p.8
[69] Public information on the LIA is difficult to source. The LIA's website is 'still under construction', but the small amount of information it contains places the Libyan state at the centre of the LIA's mission: 'The LIA was established…to protect and develop the value of Libya's oil revenue reserves and to diversity the sources of national income away from dependence on these'. See http://www.lia.ly/. The idea of the fund benefiting Libyan citizens is more explicit in information provided to the IFSWF which indicates that the fund's mandate is to manage Libya's investments for the benefit of both the Libyan state and the well-being of its citizens. See IWG (2008) p.39
[70] IWG (2008) p.3
[71] 'The LIA …is mandated to manage the financial assets allocated to it by the State.' It aims to provide world class investment management 'for the benefit of the Libyan State' and 'was set up to directly finance domestic infrastructure investments or other public goods or services.' IWG (2008) p 39 and p.14 respectively.
[72] The LIA's mandate is self-described as 'investment management for the benefit of the Libyan state and the long-term future and well-being of its citizens.' IWG (2008) p.39
[73] Consider this BBC 4 Report citing evidence that the LIA was under the direct personal control of Muammar Gaddafi's son, Seif al-Islam: 'The fund is very much the private preserve of the Gaddafi family…Seif had no official position, but everybody knew that the LIA is Seif's baby.' BBC 4 (2011). See also Thomas (2011).

the personal control of the Qaddafi elite.[74] Billions of Libyan assets were frozen abroad in America, Austria, Canada, Italy and elsewhere.[75]

The mechanics of the ban bring out the nature of the state *contra* government distinction in SWF ownership. As per the UN resolution, all income from frozen assets accumulates on behalf of the Libyan *people* and must be released as soon as possible 'to and for the benefit of the people of the Libyan Arab Jamahiriya'[76] when a government capable of representing them is in place.[77] Even in the *absence of a government* then, assets still accumulate on behalf of Libyan citizens, collectively represented by the state. They attach to the continuous political entity of Libya and remain with it, despite the absence of a government to administer and represent the state.[78] The asset unfreezing has been described as constituting 'the first time that *the people* of Libya have the opportunity to gain access to the vast oil wealth that *belongs to their state*' (*emphasis added)*[79]. The Libyan case suggests not only that 'the state', 'the government' and 'the people' are different public entities capable of distinct relationships to an SWF, but also the potential for 'state' and 'government' interests to radically diverge when a government hijacks state assets for the benefit of its own regime.

[74] Behrendt and Sharp (2011) p.9
[75] Behrendt and Sharp (2011) p.16. Although some have flagged a more strategic rationale behind asset freezing being to draw the Libyan people's attention to the misuse of their assets. Truman (2011).
[76] United Nations Security Council Resolution 1973 (2011) p. 5, para 20
[77] This process has commenced with international recognition of the National Transnational Council in Libya and an agreement by world leaders to release $15 billion in frozen assets to those leaders. Behrendt and Sharp (2011)
[78] There is an analogy here to the public international law doctrine of 'state succession' under which successor governments and their citizens inherit the debts accumulated by predecessor governments: The debts are 'legally glued to the territory, notwithstanding changes of government (constitution or extraconstitutional), a churning population, or even the disintegration of the state itself.' Buchheit, Mitu Galati and Thompson (2007)
[79] Behrendt and Sharp (2011) p.19

2.3.4 The SWFs of Abu Dhabi: Government versus State versus The Public

This final case shows, most explicitly of all of the five examples, how 'the government', 'the state' and 'the public' may simultaneously be considered owners of a sovereign fund within one political community. In contrast to the above four examples which involve disagreement over the status of *one* fund, the United Arab Emirates (**UAE**) offers an exceptional case study where multiple funds exist in the one community and each is considered the property of distinct public entities.

The UAE, an Arab Gulf state comprised of federated Emirates (states),[80] houses eight sovereign funds within its territory. This is the highest number of sovereign funds in one country in the world.[81] Of those eight funds, only one—the Emirates Investment Authority (the '**EIA**')—is a national level fund. The other seven funds are emirate level funds, four of which are housed in Abu Dhabi, the capital.[82] This makes the Emirate of Abu Dhabi, with four dedicated funds, home to the highest number of SWFs in a single political community globally.

If the notion of what constitutes 'sovereign' in the SWF label enjoys consensus in practice, then we would expect to see the multiple funds of Abu Dhabi belonging to the same owner and displaying similar ownership arrangements. On the contrary, as Table 2.2 below shows, the ownership arrangements of the Abu Dhabi funds, including the federal level EIA in which Abu Dhabi has a stake, include a variety of possible public ownership interpretations of the term 'sovereign'.

[80] The 7 emirates are Abu Dhabi, Ajman, Dubai, Fujairah, Ras-al-Khaimah, Sharjah and Umm al-Quwain.
[81] The US follows closely in second position possessing at least 10 state funds. However, these are all state-level funds. There is no example of multiple funds within the one political entity.
[82] Another two are based in Dubai and one in Ras al-Khaimah.

Table 2.2: The Ownership of the SWFs of Abu Dhabi

Sovereign Wealth Fund	Legal Owner	Created	Formal mission (*implied owner or beneficiary*)
Emirates Investment Authority ('**EIA**')	Federal Govt of the UAE	2007	To manage the sovereign wealth of the ***UAE federal government*** by 'achieving attractive financial returns and helping to diversify the government's asset exposure. 'The EIA is the sole entity responsible for the future stewardship of ***federal government*** stakes in over 30 corporations...'
Abu Dhabi Investment Authority ('**ADIA**')	Government of Abu Dhabi	1976	To invest funds on behalf of the ***Government of the Emirate of Abu Dhabi*** to make available the necessary financial resources to secure and maintain the ***future welfare of the Emirate.***
Abu Dhabi Investment Council ('**ADIC**')	Government of Abu Dhabi	2007	ADIC is an 'investment arm of the ***Government of Abu Dhabi***'. Its mission is two-fold: 1) To assist the ***Government of Abu Dhabi*** in achieving continuous financial success and wealth protection, while sustaining prosperity for ***the future***; 2) To increasingly participate in and support sustainable growth for the ***Abu Dhabi economy***
International Petroleum Investment Company ('**IPIC**')	Government of Abu Dhabi	1984	To 'bring tangible benefits to ***Abu Dhabi*** in the form of technological expertise and international best practices; strengthen, develop and diversify ***Abu Dhabi's*** industrial base and the hydrocarbon and petrochemical industries and provide financial returns.' While not explicitly identified as the Mission, the Chairman's message does speak of IPIC forming part of the UAE's strategy to: 'continue long term growth for the future... of ***the country***' and using 'the boon of petroleum wealth to build a modern, diversified, economy for the ***benefit of future generations***.'
Mubadala	Government of Abu Dhabi	2002	'To facilitate the diversification of ***Abu Dhabi's economy***, develop a new generation of business leaders, and build a prosperous future for ***its people***.' Mubadala has a double bottom line. Its investments have to be *commercially* viable, generating sustainable profits over the long-term and deliver strong *social returns* to ***Abu Dhabi and the United Arab Emirates***

Source: Compiled by author; based on the SWF's respective websites.

As the Table shows, the UAE funds display three main contenders for ownership: 'the government' (either Abu Dhabi or the federal government of the UAE); 'the state' (expressed by reference to abstract ideas implying continuous, collective projects like 'the country', 'the economy', 'the future' or more specifically 'Abu Dhabi' and 'the UAE') and 'the public' (through references to 'its people' and 'future generations'). Two points are notable. First, the EIA and ADIC are explicitly described as funds *'for'* the government. The investments are conducted in the name of the UAE and Abu Dhabi governments respectively with no mention of how these funds serve the interests of the political communities that their government owners represent. ADIC's obligation to achieve 'financial success and wealth protection' reads as if *for* the government itself, as opposed to the state of Abu Dhabi or its people. Second, this becomes more obvious when contrasted with the mandates of the other funds like ADIA, which invests 'on behalf of' (*contra* 'for') the Abu Dhabi government *and* explicitly identifies the purpose of this investment as helping to secure the welfare of the *Emirate*, not simply its government. The Mubadala and IPIC missions and purpose are even more explicitly linked to the welfare of 'the citizens' or 'the state'. IPIC's mission is connected to the Abu Dhabi's overarching economic strategy to facilitate 'long term growth for the future... of the country' and 'to build a modern, diversified, economy for the benefit of future generations.'[83] Similarly, one of Mubadala's goals is to 'build a prosperous future for *its people'*, the citizens of Abu Dhabi,[84] and to deliver 'tangible social benefits for the *Emirate*' and 'strong social returns to Abu Dhabi and the UAE', all displaying a far more explicit conception of citizen and state ownership than EIA or ADIC.

[83] IPIC (2011)
[84] Mubadala (2011)

The contrasting ownership conceptions between the Abu Dhabi funds were also evident during interviews conducted with sovereign fund personnel.[85] Across the corpus of seven interviews, respondents most frequently conceived of their funds as owned by the 'government', closely followed by the 'citizenry'[86] and 'state'.[87] At least one fund referred explicitly to itself as citizen-owned. In that sense, the interviews affirmed what analysis of official fund discourse suggests: that the various funds in Abu Dhabi display distinct ideas of public ownership.

An additional theme to emerge from the interviews, which further supports this conclusion, was the suggestion that Abu Dhabi's various funds are a product of rivalry between the three most influential Sheiks within the Al-Nahyan ruling family.[88] While the observation of dynastic power-struggles within the Abu Dhabi sovereign family is not new,[89] the suggestion that these rivalries explain the prolific establishment of SWFs in Abu Dhabi is more controversial. If credible, the idea that the various funds were established to provide exclusive mechanisms of influence for individual Sheiks is a powerful indictment of the potential for conflict over SWF ownership. In a society as rich as Abu Dhabi, the conflict can be averted by establishing multiple funds to keep rival stakeholders satisfied, although not without cost to the community. A respondent described the numerous UAE funds as 'duplicative', pointing to several costs incurred through the existence of

[85] During October and November 2011, I conducted seven off-the-record discussions with representatives of some of Abu Dhabi's SWFs. The UAE SWFs do not grant 'interviews' as a matter of policy. For this reason, I do not identify which funds were interviewed, nor interviewees.
[86] Phrases such as 'the people', 'the locals', 'the nationals' and 'the Emirati' were all considered descriptions of citizen ownership.
[87] 'Government' was mentioned 31 times, 'citizen' 16 times and 'state' 12 times. The terms 'country' and 'sovereign' were only mentioned 4 and 3 times respectively and mainly within one interview.
[88] Of the 19 sons of the late Sheik Zayed bin Sultan al-Nahayan, former UAE president, three Princes are widely recognised as most influential: Sheik Khalifa, President and ruler of the UAE is Chairman of ADIA and ADIC; Sheik Mohammed, the Crown Prince of Abu Dhabi and understood to be the effective decision-maker in regards to much Abu Dhabi state business is Chairman of Mubadala; and Sheik Mansour is Chairman of IPIC and EIA. Mansour and Mohammed both sit on the ADIA and ADIC Boards.
[89] See Davidson (2012) and (2009); Abouzeid (2010)

multiple funds carrying out the same function of investing state wealth:

> 'The issue is not so much whether the government managers are corrupt, but whether they are the best decision makers in this industry. This is not so much about making decisions against the interests of the people, but the people's needs may not be optimally represented if government ownership is more about concentrating the power of elites.'

This observation is relevant for all types of states housing SWFs for it isolates a modest way in which government interest may not reflect that of the people. It does not concern outright corruption, as was the problem in Libya. In the UAE, the presence of power politics in the ruling elite was enough to potentially compromise the best interests of UAE citizenry through the establishment of superfluous and costly funds. Once again, exploitable ambiguity around SWF ownership demands redress.

2.4 The Fiduciary State and Citizen Owner

In the final part of this chapter, I propose a normative framework to help remove confusion surrounding SWF ownership. The above examples of conflict and uncertainty over SWFs motivate the need for a conceptual apparatus that can adjudicate between claims of ownership. This framework must be able to recognise the relationship between government, the state and the public and the potential connection of all three to a sovereign fund, while also pronouncing on who should be held the rightful owner, normatively speaking.

For this task, I propose the resurrection of a core, yet somewhat under-utilised aspect of liberal political philosophy that assumes a conception of the state as an agent of its citizens, generalised across time. Formally referred to as

'fiduciary state' theory by lawyers[90] or the 'political trust' metaphor by political philosophers[91], this conception of public power holds that the state and its institutions, including government, are trustees for their principal, 'the people'.

Widely credited to Lockean political thought[92] and considered a 'common-place' means of understanding state power up until the earlier years of the 20th century,[93] it has since been overshadowed by the conceptual and analytical device of contract in theories of the state.[94] I argue that fiduciary state theory should be revived[95] as an appropriate normative basis for conceptualizing SWF ownership.

I first introduce the fiduciary concept and its applicability to citizen-state relations, and then move to examine the appropriateness of invoking a moral as opposed to a legal trust conception of public power. In this discussion, I draw on the historical use of the government-as-fiduciary concept as a political metaphor. I then defend the conceptual soundness of the moral trust metaphor for contemporary citizen-state relations before closing with an examination of the metaphor's implications for sovereign fund ownership. My goal in this section is not to set out a fully developed theory of fiduciary government, a task already

[90] For a recent, fully developed fiduciary theory of the state, see Fox-Decent (2011). See also Criddle (2010); Fox-Decent and Criddle (2009); Criddle and Decent (2009); Criddle (2006) and Fox-Decent (2005).
[91] The term is Gough's in Gough (1973)
[92] Laslett (1988) p.367. Although Gough notes, '…not all commentators on Locke have fully appreciated the implications of his use of [the trust concept], and some have treated it as merely a variety of the theory of contract.' Gough (1973) p.155
[93] Gough (1973); Maitland (1911) p.403
[94] The dominance of contract as an analytical device in contemporary political philosophy is evident in the theoretical importance of political and moral contractarianism. See Cudd (2008).
[95] Both legal and political theorists have observed the historical importance of the trust concept in their respective fields. Purdy and Fielding note the recent obscurity of private law concepts like trust, agency and wardship in international public law despite their historical centrality in jurisprudential thinking. Purdy and Fielding (2007) p.166. See also Finn (1995). In political thought, John Dunn argues that 'the attempt to think comprehensively about this conception (of trust in politics) has essentially disappeared from modern political philosophy, both in its Marxist and in its liberal or conservative variants.' Dunn (1984) p.279

carried out ably elsewhere,[96] but rather, to establish fiduciary state theory as the right framework for tackling the problem of SWF ownership.

2.4.1 The Fiduciary Concept and the Citizen-State Relationship

In legal terms, the concepts of a 'fiduciary' and a 'fiduciary duty' arise out of a special relationship in which one party, in a position of vulnerability (the '**principal**') entrusts another party (the '**fiduciary**') to act loyally on the principal's behalf, solely in the principal's interests and solely for the principal's benefit. The fiduciary is then deemed by the law to be under a 'fiduciary duty' to do so, and therefore, to place their personal interests below those of the principal's, and not to profit from the relationship. As Peter Birks surmised, '[a] fiduciary is someone whom one can trust and rely on, as a beneficiary can trust and rely on a trustee'.[97] At essence then, it is a relationship of trust where that trust often arises automatically by virtue of the character of the relationship.[98] Fox-Decent and Criddle have argued that such relations have been generally recognised as arising in 'circumstances in which one party (the fiduciary) holds discretionary power over the legal or practical interests of another party (the beneficiary) and the beneficiary is vulnerable to the fiduciary's power in that he is unable to, either as a matter of fact or law, exercise the entrusted power.'[99]

The conceptual synergy with the citizen-state relationship is immediately apparent. The coercive and monopolistic nature of state power renders citizens vulnerable to their governments in an asymmetric manner. The state may choose to exercise its power in the interests of the citizens, but citizens often lack the means, factually or legally, to shield themselves against an abuse of state power.

[96] Fox-Decent (2011)
[97] Birks (2000) p.8
[98] Fox-Decent (2011) p.93
[99] Fox-Decent and Criddle (2009) p.311. See also Fox-Decent (2011) pp.93-94

Nor may they carry out many of the functions that the state undertakes on the citizens' behalf. This is an un-negotiated, unequal relationship with substantial asymmetries in terms of information and power, and therefore renders citizens 'peculiarly vulnerable' in the characteristic sense of a beneficiary.[100]

While these properties of the citizen-state relationship have led legal theorists to view governmental authority in fiduciary terms, the citizen-state relationship is not a *legally* recognised fiduciary relationship. At law, such relations include: agent-principal, director/corporate officer, doctor-patient, lawyer-client, trustee-beneficiary, partner-partnership and parent-child. The case for extending this principle to the citizen-state relationship has been persuasively put by a growing number of public law theorists who argue that the state's legal authority rests on fiduciary foundations.[101] The implications of this claim have been explored in a number of jurisprudential areas including administrative law,[102] human rights law,[103] international law[104] and most fundamentally, as a new justificatory basis for the rule of law itself.[105]

Such arguments proceed from a conceptual assertion about the 'deeply fiduciary'[106] character of citizen-state relations to a *legal* claim about the existence of an actual fiduciary duty between state and citizen.[107] Whether the state is or

[100] Fox-Decent and Criddle (2009) p.311
[101] Ibid. footnote 90
[102] Criddle (2010)
[103] Fox Decent and Criddle (2009)
[104] Criddle and Fox Decent (2009)
[105] Fox-Decent (2005)
[106] Ibid (2005) p.259
[107] See Criddle (2010) and Fox-Decent and Criddle (2005) p.314, 317. Criddle (2010) at p.1277 locates the fiduciary duty with public officials who 'stand in a trust-like relationship toward persons subject to their administrative powers. Just as the common law places trustees and other fiduciaries under legal obligations to honor their beneficiaries' legitimate interests, those who wield powers of public administration likewise bear fiduciary obligations to treat their subjects fairly, reasonably, and non-arbitrarily for public-regarding purposes'.

could be subject to a legally enforceable fiduciary duty owed to its citizens is a matter for lawyers.[108] Here, the goal is more modest: to explore the potential for endorsing the moral equivalent of this claim in relation to the ownership of public assets, especially sovereign funds. For while there are precedents for the application of the fiduciary concept to the citizen-state relationship *generally*[109] and to sovereign finance *in particular*,[110] the framework is yet to extend its reach to sovereign funds. If it does prove a defensible normative basis for conceptualizing the ownership of SWFs, we should, I argue, use it as a foundation for deriving norms of good governance for 'government', 'state' and 'citizen' in relation to these funds.

2.4.2 Moral and Legal Trusts

To ask whether the state makes sense as a trust is, for some, exclusively a legal question. That is, to investigate whether a *moral* trust between state and citizen exists is 'purely speculative' and therefore unhelpful, 'since trusts only make sense when they work in law, and always make sense when they work in law'.[111] However, this position ignores a long history of reliance by political theorists on the trust metaphor, both in its legal and general sense, to develop normative apparatus for the citizen-state relationship. Undoubtedly, we may strengthen our theories by exploring the legal nature of fiduciary relations between state and citizen, but much normative work can be done with the general idea of a political trust. This is especially so when we seek to theorise the status of state institutions

[108] For a review of the legal debate on a public fiduciary duty, see Fox-Decent (2005) pp.265-268. Runciman and Ryan argue that the state has constituted a trust in law 'only haphazardly and infrequently' and 'then only when the state was identified with the Crown'. Runciman and Ryan (eds) (2003) p.xxiv

[109] Primarily Fox-Decent (2011)

[110] The fiduciary concept has been applied to sovereign debt [See Oyola and Sudreau (2013)] but not, until now, sovereign wealth.

[111] Runciman and Ryan (2003) p.xxiv. See also Criddle (2010) who argues that 'basic fiduciary obligations of public service are legal obligations because they are rooted in and constitutive of the state–subject fiduciary relation, and because fiduciary duties are legal duties.' p.1277.

within the public sphere, as we do in this project, rather than attribute legal obligation to individual agents within those organisations as would be the more typical objective of a legal analysis.[112]

A brief consideration of the history of the political trust concept is illuminating. While historically the development of the idea underscores the symbiotic relationship of legal and political notions of trusteeship in government, much of the metaphor's evolution relies on the general notion of a moral 'trust' between government and governed.[113] Indeed, the concept operated in a non-technical, general sense prior to, during and after the creation of legal trusts.[114] As Purdy and Fielding observe,

> 'Few ever argued that the powers of governments were notionally boundless, that rulers were infallible, or that whatever was, was right. Political thought always included the idea that governments existed to serve the interests of those who lived under them.'[115]

While their review suggests that the formulation of that intuitive limit on political power in *fiduciary* terms did not occur in English thought until at least the 16th century, there is some evidence that late medieval thinkers used essential elements of the trust concept (although neither the word nor metaphor itself) in their accounts of legitimate authority.[116]

---

[112] For an illustration of the latter, see Criddle (2010) p.1288 where the author sets out the elements for establishing a fiduciary relationship between public officials and citizens in administrative law.
[113] According to legal histories drawn on by Gough, the equitable trust became a common institution in 16th and 17th century England and this may account for the political metaphor of trust assuming a 'definitely legal complexion' over time. However, despite the growing prominence of trusts as legal instruments at the point, much of the concept's early usage suggests it was adopted to connote trustworthiness rather than a formal legal trust. Gough (1973) p.177
[114] Gough's comprehensive sampling of the trust metaphor in political thought from the 15th to the 19th century suggests it was associated 'as much with the general sense of trust as with the equitable trust proper.' p.185
[115] Purdy and Fielding (2007) p.167
[116] Ibid. p.169

Importantly, when the word's first known usage—according to trust historian Gough—occurred in relation to political power in the 16th century, it did so in a non-legal manner. As Gough tells us, a 1556 treatise by Bishop Ponet describes the role of 'kings, princes and governors' as 'office[s] [appointed] upon trust' whose authority is 'of the people'.[117] The vague phrase 'upon trust' foreshadows the concept's typical early usage to connote trustworthiness and confidence in politics that dramatically increased throughout the Parliamentarian and Royalist conflicts of the 17th century.[118] Significantly, most of this usage stopped short of implying a formal legal arrangement of beneficiary and trustee between government and governed.[119] However, by the time of the trial of Charles I, the prominence of political trust metaphor was undeniable. Even the charges against the king were formulated in the language of trust, as was Charles' refusal to plead.[120]

The ongoing power struggles of the 17th century further entrenched the presence of the trust metaphor in political language. The idea of the people as beneficiary became commonplace, although the identity of their trustee was routinely contested between king, parliament or legislature.[121] Of particular note are the writings of parliamentarian pamphleteers that articulated a link between

[117] Gough (1973) p.159
[118] For a detailed survey, see Ibid.
[119] In the first half of the 17th century, as Parliament increasingly challenged the authority of the Monarch, several 'remarkable instances' of the trust metaphor occur. See Gough (1973) pp. 166-167
[120] '[T]he charge against the king asserted that he was "trusted with a limited power to govern by' and 'for the good and benefit of the people and for the preservation of their rights'. Gough (1973) p.168
[121] In the 1640s, the Commons implied trusteeship to the people when referring to themselves as having to 'discharge of the trust we owe to the State, and to those whom we represent'. See Gough (1973) p.178. At the same time, prominent writer and polemicist William Prynne advanced similar arguments but directed to the Monarch rather than Parliament, arguing that hereditary kingdoms were 'but office's of public trust for the people's good and safety'. Prynne quoted in Gough (1973) p.170

popular sovereignty and political trusteeship.[122] On the pamphleteer's view, parliamentary authority was entirely derivative of the beneficial interests of the people, and parliament therefore had to serve those interests:

> "[Y]e are to remember that his [conveyance of sovereignty] was … but a power of trust, which is ever revocable, and cannot be otherwise – and to be employed to no other end than our own well-being."[123]

The overall prevalence of the trust idea grounded in popular sovereignty culminated in its inclusion in official Commonwealth policy following the Civil War.[124] In his first address to the new parliament of 1653, Oliver Cromwell used the idea of trusteeship repetitively, referring to members of the Protectorate government as 'trustees in parliament', and explaining his disbanding of the previous parliament on the ground of their 'high breach of trust'.[125] These and many other instances of the metaphor's use during this period led historian Gough to conclude that 'Cromwell habitually thought of any public office or responsibility in terms of trusteeship; he applied the idea accordingly to the council of state, and constantly to this own position as Protector in the same terms.'[126]

Relying heavily on Gough's historical exposition, I note both 'how common and well established the trust concept had become' by the middle of the 17th century, and that the 'continued vogue of the parliamentary trust concept'

[122] In 1646, phamphleteers Overton and Walwyn address the Commons as follows: 'We are your principals, and you our agents . . . if you or any other should assume or exercise any power that is not derived from our trust and choice thereunto, that power is no less than usurpation and an oppression.' Overton & Walwyn (1646) reprinted in Sharp (1998)
[123] Purdy and Fielding (2007) p.173
[124] Gough (1973) p.172
[125] Ibid. p.180
[126] Ibid.

occurred throughout the Restoration,[127] culminating in John Locke's 'fully developed trusteeship theory of constitutional government'[128] in the *Second Treatise of Government* at the end of the century.[129] Even Locke's seminal fiduciary theory has been read as employing a non-legal sense of a trust, despite the fact that, at the time he wrote it, he was working as a Chancery secretary, where the legal instrument was in vogue.[130]

In summary, our brief review here suggests that the evolution of the fiduciary state concept is indebted in some respects to the development of legal trusts. However, much of the original theoretical innovation of the political-moral trust in the 17th century occurred *without* reference to legal instrument, despite the increased practice of trusteeship in private legal affairs in England at the time.[131] To insist then that the question of the state as a trust is purely legal is to disregard the ground-breaking work done by the moral notion of the metaphor in the history of political thought. Indeed, this abridged historical survey affirms that the general notion of political trusteeship between government and governed has a firm place in the history of political thought, particularly up to and including Lockean 17th century thinking. Today's normative dilemmas over public institutions like SWFs encourage its revival to help theorise the citizen-state relationship without needing to determine the existence of a formal legal trust between government and governed.

---

[127] Ibid. pp.181-182.
[128] Purdy and Fielding (2007) p.171
[129] In his treatise, Locke invokes the language of trust to explain how the whole of government is subordinate to the power of the people: 'the legislative being only a *fiduciary power* to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them.'(*emphasis added)*.' Locke, para. 149 in Laslett (1988) p.367
[130] As Laslett observes, the phrase 'a trust' is absent from the text; instead Locke refers to 'this', 'that' or 'their trust', but never to the formal device of 'a trust'. Laslett (1988) p.114
[131] Gough (1973)

2.4.3 A Moral Trust between State and Citizen

We are now in a position to ask whether it is defensible to apply a fiduciary characterisation to the contemporary citizen-state relationship for the purposes of advocating a moral trust between state and citizen. We saw above that in a broad conceptual sense, citizen-state interactions are analogous to fiduciary relations given the permanent asymmetry inherent in this relationship. I now wish to strengthen the analogy by testing whether it coheres with other features of legal trusts to *inform* the political metaphor.[132] There are two crucial dimensions of legal trusts. These are the fiduciary's power and the beneficiary's vulnerability. Both are 'intimately related' in that this 'kind of vulnerability arises as a direct consequence of the presence of fiduciary power.'[133]

On the definition already supplied, a fiduciary's power must be unilaterally assumed, discretionary and concern important interests of the beneficiary.[134] The presence of these features is uncontroversial in the context of modern state power over citizens. A state clearly enjoys the requisite discretionary power over important interests of its citizens sufficient to satisfy the idea of fiduciary relations. However, Fox-Decent goes further to suggest that this power must also be of a certain administrative kind:[135] 'it must be administrative in nature in that it must be other-regarding, purposive, and institutional in character.'[136] I am only able to offer a perfunctory analysis of these criteria here, but following Fox-Decent and Criddle, it is safe to say that the contemporary state does exercise purposive

[132] Maitland, followed by Runciman and Ryan interpreting his work all caution of the danger in political philosophers smuggling in legal concepts. We may therefore 'hypothesise and poeticise legal relationships', if that is all we are doing. In other words, we may use legal devices hypothetically and not actually to establish a proper working trust. (2003) p.xxiv
[133] Fox-Decent (2005) p. 299
[134] See also Fox-Decent (2011) p.89 and pp.93-94, where his most recent elaboration of the state as fiduciary offers a fuller description of fiduciary power as containing three elements.
[135] Criddle and Fox-Decent (2009) p.349
[136] Fox-Decent (2011) p.89

administrative power in that it is for the limited purpose it was conferred; it is *other-regarding* in that the state undertakes this administration on behalf of someone else and not itself; and, it is *institutional* in that it occurs within a legally permissible structure.[137] Importantly, all these features are also true of the type of power a government exercises over citizens through a sovereign fund. The funds are set up for a limited purpose, in principle to serve the interests of the state or the public in which it resides, within a permissible legal entity of a sovereign fund.

The question of whether the citizenry possesses the requisite vulnerability of a beneficiary under a trust is more complex. As a matter of legal theory, a beneficiary's vulnerability 'must arise from an incapacity on the part of the beneficiary to exercise or control the power entrusted to the fiduciary.'[138] Fox-Decent argues that, in the case of citizens, they are incapable in principle of exercising the kind of power held by the fiduciary state since a fundamental reason for a state's existence is to create a law-governed society. To achieve this, a sovereign power is entrusted to establish the rule of law.[139] This involves the state regulating the common life of the citizens and adjudicating their disputes. Such functions, on Fox-Decent's account, cannot be undertaken by citizens themselves, since a fundamental principle of legality is that one cannot be judge and party to the same cause. Accordingly, citizens need the state to ensure that their domestic community is governed impartially according to the rule of law. However, the price of entrusting that power to the state is incapacity of the citizenry since, in entrusting that power to the sovereign, the citizenry are rendered incapable of

[137] Criddle and Fox-Decent (2009) p.349
[138] Fox-Decent (2011) p.89
[139] Ibid. esp. Chapter 1.

exercising the same power as the state. The citizenry are thus vulnerable in the sense necessary to constitute a beneficiary.[140]

That vulnerability is especially pronounced in the management of sovereign assets, where citizens possess few of the typical accountability mechanisms that exist for monitoring and controlling their representative agencies in more traditional areas of the public purse.[141] But before granting the appropriateness of the fiduciary metaphor in the case of SWFs, it is necessary first to deal with one important difficulty regarding its application to the citizen-state relationship. That is the idea of the *collective* citizenry as beneficiary. The notion of collective beneficiaries is unusual compared to the paradigmatic cases of fiduciary relations. Typically, these involve a singular beneficiary reposing trust in an easily identifiable trustee: the doctor-patient or lawyer-client relationships, for instance. The vulnerability of citizens is exceptional on account of collective nature of the beneficiaries where multiple individuals in a citizen-body are subject to the same power.[142] Since the interests of these citizens might conflict with one another, whose interests count as the 'other' when fiduciary-state must exercises its 'other-regarding' administrative power?

A possible response is to argue that the most fundamental fiduciary duty is not loyalty to the beneficiaries, but loyalty to the other-regarding purposes for which fiduciary duty is held.[143] As long as the state does its best to administrate in a manner that promotes the perceived collective interests of the citizenry, it will have been as loyal as possible to its other-regarding administrative responsibilities.

[140] For a fuller explanation of the nature of a citizen's vulnerability, see Ibid. p.101-105
[141] Chapters 4 and 5 discuss the lack of transparency and accountability mechanisms in SWFs.
[142] Criddle and Fox-Decent (2009) pp.349-350.
[143] Fox-Decent (2005) p.268

Such an approach is analogous to Directors' duties to company shareholders. Given the potentially conflicting interests of multiple shareholders, the Director owes a duty to their collective interests, such as to maximise profits. Alternatively, one might argue that the presence of multiple beneficiaries simply requires fairness and even-handedness *between* beneficiaries, rather than equal regard of all their individual interests. As long as the state's judgment displays fairness and evenness among beneficiaries then it constitutes loyalty to all beneficiaries. Combining these approaches, I would argue that the fundamental duty of loyalty in fiduciary relations can apply to multiple beneficiaries and thus, can exist between state and the collective citizenry, if expressed through loyalty to the other-regarding purpose for which the state was given power and involves the fair and even-handed treatment of citizens in fulfilling that purpose.

In short, features of the legal trust offer conceptual devices for showing that it is defensible to characterise the citizen-state relationship in the modern administrative state in fiduciary terms, and by extension the specific dynamic between citizen and state as experienced through a sovereign fund. As such, there are reasonable grounds for supporting a moral trust as an appropriate conceptual framework for relations between government and governed, and more specifically to the specific state entity of the sovereign fund.

2.4.4 The Fiduciary State and SWFs

What are the implications of the political trust metaphor of citizen-state relations for the specific entity of sovereign funds? The broad consequence is that governments, in their capacity as sponsors of a sovereign fund, would be considered subject to a fiduciary-like obligation to act in the interests of the

domestic community in establishing, managing and using an SWF. Attempts by government or state agencies to exert control over sovereign wealth in a manner that serves their own interests (or indeed the interests of some narrowly defined group within a domestic community), rather than the interests of the community at large, would be inimical to this fiduciary principle.

What might count as a government acting 'in its own' interest and not that of the citizenry is clearly contentious. In the case studies presented in both the Introduction and Section 2.3 of this chapter, we saw several obvious examples. Libya presents a straightforward case of government abuse of an SWF for the personal gain and profit of members of the sovereign family. The Nigerian experience also highlights how serving a government's interest may violate that of the citizenry. Government infighting in Nigeria based on rival government claims to the sovereign wealth in the country's newly established NSIA not only delayed the establishment and effective operation of a fund intended to improve the transparent management of the country's resource windfalls, but it also demonstrated a total disregard by parts of the government for its fiduciary role (in the Nigerian case, a role explicitly set out in domestic law) in managing these SWF assets to benefit current and future citizens.

The Australian and Irish cases are less clear-cut. The Irish Government's political raiding of Ireland's SWF is by definition a violation of citizen interests since it amounts to government depleting wealth ear-marked for conservation to serve short-term political needs; it is less obviously a violation where the drawdown serves a beneficial end like stabilization of the banking system or warding off economic collapse. It is arguable that it did achieve that to some

extent, although at the extremely high cost of all but destroying the country's SWF.[144] In the Australian case, the general lack of knowledge among the Australian public regarding the existing fund suggests that sovereign funds are most likely to be perceived as complying with a fiduciary notion of government where such savings are explicitly mandated for community-wide purposes — long-term national savings goals, infrastructure funding, intergenerational wealth transfer etc — rather than ear-marking this capital for specific part of the public service or for general budget transfer, both of which seem to convey an idea of *government* serving its own immediate needs. Budget transfer may not *violate* a citizen's interest in this wealth, but the Nigerian and Australian cases suggest it may not promote it sufficiently either.

Conclusion

In this chapter, I commenced with a puzzle about SWF ownership. After demonstrating theoretical and actual ambiguity surrounding the notion of public ownership applicable to sovereign funds, I offered a conceptual and normative solution to this problem based on the fiduciary state metaphor. This model holds that the ultimate owner of sovereign funds as public assets is always the citizenry, since government and the state only exist to serve the interests of citizens, their ultimate beneficiaries. Accordingly, any legal or official description of the funds as 'government-owned' or 'state-controlled' investment vehicles must be read in light of this normative claim that governments are mere trustees of public capital, capital which ultimately belongs to the people. Consistent with Maitland's quote at the very start of this chapter, the political trust metaphor acknowledges the distinct aspects of the public sphere: the 'public', 'state', and 'Crown' in his terms;

[144] Slattery (2010)

the ‘citizenry’, ‘state’ and ‘government’ in ours, but collapses the distinction for normative purposes. I sought to achieve a similar conceptual and normative outcome here through a revived application of the political trust metaphor to SWF ownership. By adopting a fiduciary model of citizen-state relations, then, the possibility that states or governments may hold discrete interests in relation to the funds is prohibited. Instead, the principle that citizens are the ultimate owners of these public assets and it is their interests that must be served in their management offers a foundation for identifying norms of good governance for SWFs. That is the task to which the rest of the thesis now turns.

Chapter 3 - A Fiduciary Model of Citizen Ownership: How Citizens Own SWFs

'The idea of *communities* having sovereign indivisible interests, and needs, especially when it comes to property seems alien…. A challenge facing "unowned" common assets is to devise new legal forms of common ownership and/or social practice.'

David Bollier (2003)[1]

In the previous chapter, I argued that if a fiduciary conception of citizen-state relations proves attractive, governments can *not* own sovereign funds in their own right. This chapter develops the positive correlative of that 'blocking' claim: namely, that citizens *are* the principal owners of sovereign funds. Holding that citizens, not governments, are the 'rightful' owners of SWFs still leaves open a host of normative questions about *what* exactly those citizens own, *how* they should possess this shared property, and what this entails for both citizen-principal and government-agent in establishing and managing sovereign funds. Accordingly, this chapter elaborates on the operation of the fiduciary model by clarifying the nature of SWF property and setting out a preferred conception of its popular ownership. In doing so, I seek to devise what David Bollier implores above: a new form of 'common ownership' or 'social practice', for common assets, in this case community sovereign funds.

In Section 3.1, I identify *what* citizens own in a sovereign fund. As discussions of SWF ownership refer to distinct aspects of these funds, I begin by describing the three main conceptual components of SWF property: the underlying assets of the fund (sovereign wealth), the income earned from investing those assets (sovereign returns) and the actual institution of the

[1] Bollier (2003) p.176 and 179

fund itself (sovereign fund). In Section 3.2, I clarify which of these should constitute a citizen-owner's property. I defend a presumption in favour of treating all three elements as citizens' SWF property based on a well-established analytical apparatus from property rights known as the control-benefit distinction. Applying this control-benefit approach from property rights theory to the tripartite conceptualisation of SWF property produces the necessary conceptual and analytical scaffolding for the thesis. With these methodological preliminaries addressed, the chapter moves from the question of *what* citizens own to *how* they should own their SWFs. The final two sections develop a normative framework to provide guidance on the manner in which a citizenry should share ownership of their sovereign wealth, returns and fund. In Section 3.3, I identify potential collective ownership models for SWFs. Section 3.4 concludes the chapter with a set of normative constraints derived from the fiduciary conception of citizen-state relations to adjudicate between these collective property models. Together, these constraints produce principles for my preferred model of SWF ownership, which I label the Egalitarian, Autonomous, Collective-hybrid ('**EAC**') model.

3.1 What Citizens' Own: the Principal, the Returns or the Fund?

I start here with the preliminary issue of what citizens own when they possess a sovereign fund. Here I explain the differences between three conceptually distinct components of an SWF—the principal stock of sovereign wealth, the investment returns that principal generates and the institution of the fund—and why clarifying which of these constitutes citizen-property matters. As I argue below, it is normatively significant whether we treat all three components as a single piece of property, or treat a particular combination of

components as the ownership object (to the extent they can be meaningfully distinguished).

Policy and legal positions on the exact nature of SWF property are murky. When it comes to legal ownership of SWFs, the Santiago Principles differentiate between the institution of the sovereign fund and the sovereign wealth it contains, but they leave open which is the owner's relevant property. Consider the main statement on SWF ownership - beyond the definition of a sovereign fund as 'owned by the general government' - Principle 7. That Principle does not directly state *what* is owned, but appears to imply that the relevant property is the *institution* of the fund:

> 'The owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the SWF's operations.'[2]

All articulated responsibilities of the owner concern the actual organization, suggesting that, in the minds of sovereign funds drafting the Santiago Principles, the relevant SWF property is the fund as institution. Commentary on this principle supports this interpretation, explaining that the owner must clarify the 'broad policy purposes of the SWF', its 'investment mandate', and 'appoint the members of the SWF's governing bodies', while remaining abreast of the SWF's performance, financial situation and risk management systems.[3] No direct owner responsibility for the fund *assets* – principal or returns - is identified.

[2] IWG (2008) p.15
[3] Ibid. p.16

One might assume that any discussion of an SWF owner's interests in the fund itself *extends* to its assets. However, further commentary on Principle 7 challenges this assumption. A footnote to the Principle 7 commentary declares that an SWF owner 'refers to the government as the beneficial and/or the legal owner of the SWF, *or* assets managed by the SWF, depending on the legal structure of the SWF' (*my emphasis*)[4]. While the footnote directs the reader to Santiago Principle 1 for further information, Principle 1 provides little guidance, with the explanatory notes simply stating that 'irrespective of the particular legal structure of an SWF, the beneficial and legal owners of the SWF's assets should be *legally* clear' (*my emphasis*).[5] The Principles leave open, then, whether the legal property of an SWF is *the fund* or *its assets,* countenancing both as independent possibilities.

The Principles do not further define SWF *assets*, at least explicitly. Elsewhere in the GAPP however, the fund principal is distinguished from that of its returns, introducing another conceptual distinction. As noted previously, the Principle 4 commentary envisages that some SWFs 'keep their capital returns, while others pay out targeted annual dividends'[6] while the explanation of Subprinciple 4.1 notes that '[r]eturns on SWF investments also contribute to the buildup of assets under management.'[7] In the GAPP framework then, there are clearly distinct components to SWF assets, consisting of both principal and investment returns that may be treated in different ways.

[4] Ibid. p.16, footnote 26
[5] Ibid. p.10
[6] Ibid. p.14
[7] Ibid. p.14

How then should *we* understand the concept of SWF property: as a single object containing (but not distinguishing between) all three components of fund, principal and returns; or some combination of the three components? If the latter, what combination? Could citizens have an ownership interest in the fund but not underlying stock of wealth or returns? The text of the Santiago Principles arguably allows such a conclusion. Alternatively, should citizens' interests apply just to SWF assets, like the principal and its investment returns, while leaving the control and management of the actual fund to government or another actor?[8] Plainly, determining what counts as SWF property affects the scope and reach of citizen's property interests and in that sense, matters normatively-speaking.

3.2 A Property Rights Approach to SWF Property: Control and Benefit

An intuitive response to what constitutes SWF property is that *all* three elements must count. None presents as especially controversial. Moreover, our previous finding that it is citizens who own sovereign funds, not their government custodians surely tilts the balance in favour of an initial presumption that citizens own any and all potential SWF property.

That intuition is leant further support when we recall an elemental distinction in ownership theory that suggests an owner's property includes both the original owned object and any income it generates. Holding that an

[8] This would make citizen's ownership rights analogous to that of shareholder rights in listed companies, in the US at least. According to Stein, the American corporation consists of 'three quite different constructs. These are the corporation as property (the present legal assets held), the corporation as collectivity (the social entity of the human organization), and the corporation as actor (the legal persona that can itself exercise rights).' Legal ownership applies only to the actual assets. Stein (1976) p.299

agent owns an object generally amounts to declaring that the agent enjoys a set of 'property rights' to that object,[9] where those rights exist between the owner and the property, as well as between the owner and all other persons.[10] Of course, the sort of privileges and claims of an owner vary depending on the property in question, but a helpful starting point for identifying the difference types of right, is Honore's canonical elaboration of the 'incidents of ownership'.[11] Honore identified eleven standard features of ownership that are widely held to constitute 'more or less, the essence of ownership',[12] including: the rights of *possession*, *use*, *management*, to *gain income*, to the *capital,* to *security of property*, *transmission*, to *absence of term*, prohibition of *harmful use*, liability to execution for *unpaid debt* and *residual ownership* once other ownership rights have lapsed.

Before proceeding, one might query whether the use of Honore's framework in our analysis of sovereign funds is appropriate since these incidents describe rights associated with full liberal ownership, and thus, *private* property. Yet, we are theorizing collective citizen property. Not only does this challenge the appropriateness of Honore's framework, but for some, drawing on a private property framework in a collective ownership project might affirm the skeptical view that ownership can not exist other than in private property regimes.[13]

[9]While the precise relationship between 'property', 'ownership' and 'property rights' is the subject of debate, there is a widely held view that ownership relations are expressed through property rights, so that the terms are almost interchangeable. See Reeve (1986) pp.23, 26-27; Macpherson (1962); Christman (1994) pp.17-18 and Snare (1972). But *cf* Munzer (1990) p.24.
[10] Christman (1994) p.17
[11] Honore (1961)
[12] Christman (1991) p.29
[13] Waldron argues that it is only in private property systems that you can properly apply the term 'ownership' to describe the relationship between people and resources. Waldron (1988) p.39. Similarly, Arendt rejects the idea of 'public ownership' or 'public property' as non-sensical, seeing private property regimes as the only context in which the idea of ownership

In responding to this, I again draw on Reeve as in the previous chapter to note that property has been 'attributed to a large class of entities', beyond the individual owner of private regimes.[14] These include, at a minimum, 'the public, God, the state, the community, corporations and business firms, churches, charities and the family.'[15] While some in this list are more analogous to individuals and can more easily be thought of as the archetypal private owner,[16] other entities such as 'the public', 'the state', 'the community', and 'charities' typically associated with 'public ownership'[17] are less easily thought of in these terms.[18] Despite this, as Reeve observes, all of these entities have been conceived of as owners capable of possessing property.

Let us proceed then with Honore's elements as a general guide to the essence of ownership, addressing the extent to which his incidents are fully transferable to shared property as we progress. A compelling interpretation of Honore's elements offered by Christman holds that the central incidents (the rights to possess, use, manage, gain income and transmit, alienate or destroy)[19] fall into two distinct categories of 'control' rights and 'benefit'

---

meaningfully applies. Arendt (1958) pp.256-257. This must be distinguished from the more fundamental concern that certain relationships should not be framed as ones of ownership. Wiggins (2000)

[14] Reeve (1986) p.30

[15] Ibid.

[16] On this point, see Reeve (1986) pp.30-31 where he discusses the analogous conception of individuals as owners to corporations and God.

[17] A 1930s study of British property analysing the national distribution of property counts as public property charities. Campion (1939) pp.94-102.

[18] To complicate matters, Campion suggests that public property may sometimes be thought of as analogous to private property and at other times not: 'Part of the property owned by the State, local authorities and charities is similar in kind to property owned by private persons' such as Houses, Government securities and utilities, but 'public property consists also of property of a kind not owned to any large extent by private persons' such as '[l]ibraries, schools and hospitals'. Campion (1939) p.66

[19] We follow Christman's categorization of Honore's incidents into central and non-essential incidents. Christman deems Honore's last six incidents [right to security of property, transmission, absence of term, prohibition of harmful use, liability to execution for unpaid debt and residual ownership] as 'inessential to the conceptual apparatus of property per se' since they are 'structural necessities' of any ownership system. Christman (1991) p.45, footnote 4. Becker's analysis reaches a similar conclusion, arguing that 'any subset [of the

rights. Control rights include the right to possess; use; manage; and alienate, destroy or transfer an asset (incidents 1-3 and 5). As such, they relate directly to the asset itself. In Christman's words, '[t]hese rights, liberties and powers all concern interests of owners to control the asset in question. The central idea of these rights is that the owner maintains primary say over what is to be done with the thing insofar as this affects only the owner'.[20] They protect the owner as 'final arbiter over what is to be done with a thing'.[21]

Benefit rights, by contrast, relate to the income derived from an asset (incident 4).[22] This right to income is classified as a benefit, rather than as a privilege of control since the benefit flows not from deciding what is to be done with the owned object, but from the productive use of the holding, usually through trade. As Christman explains, '…the idea here is that a right to gain *extra* benefits from a holding—benefits different from the use value of the object —is captured by the right to the income.'[23]

It is this distinction that we can employ to help resolve our preliminary methodological issue concerning the extent of SWF property. The control-benefit distinction tells us that an owner has an interest in both the original object of ownership and any income stream it generates. Returns on SWF investment would then certainly count as a legitimate part of citizen's property. But one might still wonder where the benefit of income is best thought of as stemming from – the fund or its underlying sovereign wealth? It

---

incidents] which could reasonably be called a variety of ownership would have to include at least one of the first five elements (possession, use, management, income and capital).' Becker (1977) p.20

[20] Christman (1991) p.29

[21] Ibid. p 29

[22] Ibid.

[23] Ibid. pp.29-30

is the sovereign wealth that is invested to generate a return, but it is the management team within the fund that oversees and undertakes that process. They are both then intrinsically linked to one another and form an essential part of yielding investment income. We should consequently adopt an inclusive approach, holding both the fund and its assets as the initial property. If for some reason that understanding proves invalid, we may revise this presumption, but we proceed on the basis that citizens own their fund, its underlying wealth and the investment returns earned.

3.3 How Citizens Own SWFs: Collective Ownership Models

Having clarified what citizens own, I now turn to the issue of how they own this SWF property. In the next two sections, I develop a normative framework for popular ownership of these community funds. The framework is informed by two factors. First, there are two distinct means for how groups may own things, described in this section. Since these alternative models ground potentially competing claims to the owned asset, we must adjudicate between them. This adjudication must occur in light of the second factor, the nature of both the group owner and the property in question. In this case, our group owner is a citizenry and our property is a collective pool of financial assets that generates liquid returns. I will argue that, for a citizenry to operate as an effective owner of such collective property, that citizenry must possess certain attributes. Those attributes must be upheld and given effect through the model of shared ownership applied to those citizens' assets. Equally, the nature of those shared assets will constrain the ways in which citizens may exercise their shared ownership rights. Together, these two factors inform the development of our framework for citizen-ownership of SWFs.

Here, I turn first to options for how a group may own property. Broadly-speaking, there are three 'species of property arrangement' that describe how something may be owned:[24] *common* property, *joint* property and *private* property.[25] Private property is, by definition, ruled out, since in private regimes, ultimate decisional authority over property belongs to some individual.[26] Yet our owner is a collective, comprised of multiple individuals, who cannot each readily enjoy individualised possession of and authority over this property without its radical transformation. For any privatization of a sovereign fund would require its dissolution for distribution of fund assets among the citizens of its owning community so that each individual member could enjoy effective decisional authority over their share of SWF assets. Such a move would lead to the curious outcome of extinguishing the very property whose ownership status we are trying to resolve. Private ownership is thus excluded from further consideration.

Of the remaining collective regimes—joint and common ownership—each represent a fundamentally distinct means of sharing property among several persons. While both models endow co-owners with symmetrical claims to shared property by preventing individuals from occupying a 'specially privileged position with regard to any resource',[27] they differ in the extent to which individuals within the collective are empowered vis-à-vis one another. In *joint* property regimes, co-owners determine use by collective

[24] Note that some theorists include 'no-ownership' as a fourth type of ownership status that an entity may possess. See Risse (2005) p. 359. No-ownership is ruled out here since we begin from a reality in which governments exist and have created vehicles for quarantining state assets whose ownership *at this stage* is subject to contestation. Otsuka (1998) p.77
[25] Waldron (2004)
[26] Waldron (1990) p.38
[27] Ibid. p.41

preferences,[28] vesting property rights in the undivided collectivity. So, decisions are made by 'the community as a whole.'[29] By contrast, *common* ownership vests stronger rights in individuals within the collectivity by ensuring co-owners are 'each equally entitled to using [shared property] within constraints'.[30] Such constraints seek to 'secure fair access for all and to prevent anyone from using the common resource in a way that would preclude its use by others.'[31] But these common co-owners are not subject to a constant effective veto by the majority of fellow co-owners as they would be under a joint property regime. Instead, they enjoy equal entitlements to use their shared property within limits but without the need for constant group approval.[32]

3.4 A Model for Citizen-Ownership: the EAC Framework

To determine which, if either, of these collective property regimes offers a suitable model for citizen ownership of sovereign funds, we must consider both the nature of our group owner and the collective property more closely. A citizenry is a group of individuals that share membership in a political community. Our concern, then, is how citizens *qua* citizens not individuals, could own these funds.[33] I reiterate this key distinction within citizenship theory now to help orient this enquiry towards morally relevant attributes of *citizenship*, *contra* humanity or personhood.[34]

[28] Ibid. 41
[29] Waldron (2004)
[30] Risse (2005) p.360
[31] Waldron (1990) p.41
[32] Risse (2005) p.360
[33] Ackerman (1991); Walzer (1989).
[34] Despite its centrality, the distinction has been heavily criticized. Moller Okin (1998); Pateman (1989)

Here, I suggest two such attributes that a citizenry must display to not only count as a legitimate political community generally, but also to constitute an effective principal over their government agent. The selected attributes are widely accepted, intuitive moral goods: these are that citizens, in their relationship with the state, should enjoy basic moral equality, and basic personal autonomy, both of which I address momentarily. Such attributes, I submit, should be considered essential conditions for the legitimacy of *any* citizen-state relationship, since all citizens, no matter what the political incarnation of their governments, are in an asymmetric power relationship with their governing state. This permanent asymmetry demands that citizens enjoy a degree of basic equality and individual autonomy to enjoy adequate power over and sufficient independence from their governments, and consequently, to be an effective principal in their fiduciary state. As such, these attributes motivate constraints on how citizens should own shared assets. I now discuss the nature of these conditions and constraints, before dealing with potential reservations about these conditions as inherently biased towards democratic regimes.

3.4.1 The Egalitarian Constraint

The first constraint on how a citizenry can own 'their' public property rests on an egalitarian intuition. Any morally defensible theory of the citizen-state relationship will, to some extent, be compatible with what has been termed the 'egalitarian plateau' of human moral equality.[35] As Swift has observed:

[35] Swift has attributed the idea of an 'egalitarian plateau' in contemporary politics and political philosophy to Kymlicka. Swift (2006) p.93

> 'Nearly all [politicians and political philosophers] agree with the principle that members of a political community should be treated as equals, that the state should treat its citizens with equal concern and respect.'[36]

Ronald Dworkin has linked this idea of basic moral equality for all citizens to state legitimacy by arguing that the state is under a duty to arrange institutions so they display equal concern and respect for every member of the community:

> 'No government is legitimate that does not show equal concern and respect for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance. Equal concern is the sovereign virtue of the political community – without it government is only tyranny…'[37]

This entrenched principle of moral equality among citizens in theories of the legitimate state can be formulated in the SWF context as supporting an *initial presumption* of equal rights to sovereign wealth from which we can depart if subsequent reasoning justifies differentiation between ownership claims.[38]

Beyond the general desirability of citizens' moral equality for legitimate citizen-state relations, our fiduciary conception of the state supplies a further justification for mandating basic equality of the people. Since the state is a fiduciary of the people over whom it exercises power, the citizenry must be equipped with certain attributes to ensure they operate as an effective principal over their sovereign representative. One such attribute, I suggest, is the basic moral equality of all citizens. For, if following the view of

[36] Swift (2006) p.93
[37] Dworkin (2000) pp.1-2
[38] As White argues, '[t]he principle of moral equality, that all citizens are owed equal concern and respect, does not necessarily imply that everybody in our society ought to get exactly the same amount of every good, but it does require that we be able to advance good reasons for any differentiation we allow'. White (2007) p.17

some egalitarians that inequality 'undermines healthy fraternal social relations and attitudes in society as a whole',[39] then we have reason to believe that *equally respected* citizens within a polis are more likely to form a cohesive citizenry and thus, more effective counterweight to the arbitrary power of the state. The alternative of an *un*equally respected citizenry, where state privileging of some segments of the population above others may lead members of the privileged group(s) to treat those of a lower standing with disrespect, prejudice or indifference, undermines the potential for those citizens to unify against the state when necessary.[40] That is, a formally unequal citizenry is at greater risk of internal discord that fractures the social cohesion necessary for the people to form a unified principal over their fiduciary state. The fiduciary character of the citizen-state relationship accordingly demands a state respect *every* citizen's status as an *equal* member to ensure the citizenry enjoys the minimally necessary equality to act as a cohesive collective principal.[41]

This egalitarian condition demands I restrict my analysis to ownership conceptions that permit *all* citizens to *initially* wield symmetrical

[39] O'Neill (2008) p.123 summarising Nagel.

[40] This claim deserves more attention than it can receive here given the potential theoretical and empirical objections one could mount to the idea that formal or status equality is necessary for social cohesion in a political community. By status equality, I mean what David Miller describes as 'a person's basic standing within a society, as manifested by the way in which he or she is regarded by the public institutions and by other individuals.' See Miller (1994) p.206. For instance, classical republican thought envisages a sort of well-established order of 'estates' that is consistent with the citizenry's cohesion with the city of Rome held up as the archetypal stable society based on class/estate distinctions. For present purposes, I hold that if status equality within a polis is empirically associated with cohesion and healthier fraternal relations, then we have an instrumental reason to prefer the moral equality of all citizens for an effective fiduciary-principal relationship.

[41] Fox-Decent has identified similar arguments regarding the fiduciary state's obligation to the whole and not just part of the community in Plato and Cicero's political thought. Fox-Decent (2011) p.3

claims to their sovereign property, producing what I term the 'Egalitarian Constraint' on SWF ownership:

Egalitarian Constraint: Citizens must own SWFs in a manner that recognises all citizens within a bounded political community enjoy a symmetrical claim on their state's sovereign wealth by virtue of their equal moral standing within the community.

3.4.2 The Autonomy Constraint

Another essential attribute of normatively desirable citizenship is that citizens must, in some non-trivial sense, be autonomous. As much as political philosophy displays an 'egalitarian plateau', so it arguably contains an 'autonomy plateau'.[42] By individual autonomy, I mean what Joseph Raz describes as the capacity of persons to live life according to their own authentic reasons and motives; to enjoy partial authorship over their own lives by developing and pursuing self-chosen goals and relationships.[43] Realising this type of autonomy requires several preconditions, including the existence of appropriate mental faculties within individuals necessary to form their own intentions and attachments; circumstances that allow an adequate set of options to exist from which the agent may choose; and, the absence of coercion.[44] When it comes to the citizen-state relationship, we are particularly interested in the last two preconditions: the circumstances that promote a set of options between which choice is possible and the absence of manipulation or domination by another. For citizens to be considered autonomous agents within a given political community,[45] they must enjoy the capacity for reflective deliberation and choice on private and public matters and they

[42] Blake (2001) p.270
[43] Raz (1986)
[44] For a fuller discussion of these preconditions, see Blake (2001) pp.267-268
[45] I am not engaging here with the claim that a state may have wider obligations to uphold the autonomy of all individuals – citizens *and* strangers. See Blake (2001) for a discussion of the appropriate scope of the autonomy principle in liberal political philosophy.

must not be dominated or manipulated by the state or their fellow citizens when choosing their preferred option. Such an expectation generates an obligation upon the state to treat individuals as, and create the circumstances in which they may be autonomous agents. [46]

Now, the concept of autonomy as a basic moral and political value is far more nuanced and varied than my general description above implies.[47] However, this idea of autonomy I have set out entails the relatively uncontroversial and more specific claim that citizens must exhibit a minimal degree of independence *from the state* and *from one another* when forming and justifying political views and participating in collective decisions, for otherwise, they lack the very conditions necessary for proper reflective endorsement of shared public values. Moreover, citizens must be sufficiently autonomous of oppressive state apparatus to recognise their other basic citizenship values, such as the equal moral standing of all citizens discussed above. The two conditions are therefore interdependent.

Again, the fiduciary character of citizen-state relations supplies further reason to demand basic autonomy, in the liberal sense, for all citizens. Since the duty of the fiduciary is to act with due regard to the best interests of the principal, then that principal must be able to determine their own best interests without arbitrary interference, manipulation or domination. While that determination may not be fully *individualised*— individual reflection may

[46] This is a state-bounded adaptation of Blake's 'Autonomy Principle': 'all human beings have the moral entitlement to exist as autonomous agents and therefore have entitlements to those circumstances and conditions under which this is possible'. Blake (2001) p.267

[47] For instance, Feinberg has argued that there are at least four different meanings of 'autonomy' in moral and political theory: the capacity to govern oneself, the actual condition of self-government, a personal ideal, and a set of rights expressive of one's sovereignty over oneself. Feinberg (1986).

be influenced or informed to some extent by social relations, culture, tradition or even paternalistic state institutions — each citizen's reflective process must still be sufficiently *independent* of the fiduciary power's interests to properly shield citizen beneficiaries from exploitation by the government principal. That is, the precondition for individual autonomy discussed above regarding absence from coercion demands not only that citizens be free from coercive power generally, but also free from *state* coercion specifically, especially where that coercion hinders an agent's ability to develop specific plans, attachments and interests. Chapter 2 demonstrated the conflict surrounding sovereign funds when government interest is conflated with that of citizen interest, so our citizen beneficiaries must be able to competently reflect upon and endorse their own values as distinct from and separate to that of government, including in relation to SWFs.

This gives rise to the 'Autonomy Constraint' on SWF ownership. It demands that our preferred ownership conception allow citizens to independently form views on their interests regarding the use of shared public assets, without excessive influence from the state. Consequently, my preferred version of SWF ownership requires a political community consisting of autonomous agents capable of forming and expressing their own views on, amongst other things, the management and use of shared assets in state-controlled funds. It can be expressed as follows:

Autonomy Constraint: Citizens must own SWFs in a manner that respects their individual autonomy in forming and pursuing their own goals, attachments and interests.

3.4.3 The Collective Compromise – Joint and Common Ownership

Having set out the preconditions for a citizenry to count as legitimate, both in general and when acting as a principal in fiduciary state relations, I now return to my initial question: namely, which form of collective ownership - joint or common - is more compatible with the conditions just laid out for legitimate citizen-state relations? That is, what model(s) of collective ownership are our legitimate citizenry permitted or indeed required to adopt when sharing public assets, including sovereign wealth? Here, I consider the implications of the Egalitarian and Autonomy Constraints for the type of collective ownership a citizenry comprised of equal, autonomous citizens may enjoy. In doing so, I derive a second order principle of collective ownership that acts as a derivative constraint in the ownership model.

Three points emerge regarding the compatibility of our two collective ownership regimes with the first order Constraints. First, both the joint and common ownership models are fundamentally egalitarian. Each model supports symmetrical claims of citizens to their sovereign funds. Equality of co-owners under *joint* ownership is reflected through the demand for collective decision-making procedures, giving each citizen an equally strong voice in decisions over the shared property. Under *common* ownership, co-owner equality is expressed through the requirement to respect each co-owner's status as such when using common property.[48] Each model is thus capable of treating each citizen with 'equal concern and respect', albeit in distinct ways, satisfying the Egalitarian Constraint.[49]

[48] Risse (2005) p.363
[49] Although both models must stipulate that co-owners respect future citizen's rights when exercising decision-making or use rights.

Second, when it comes to co-owner's individual autonomy, the models promote distinct types of citizen freedom. *Common* property arrangements endow citizens with greater freedom in relation to their property. A common owner's liberty is restricted only insofar as is necessary to respect the rights of other co-owners, rather than be subject to group veto. In this sense, common ownership better protects individuals' autonomy *vis-à-vis* one another, since this regime reduces the potential for co-owners to impose their preferences on one another. It better shields citizens from the distorting effect of outside influences such as others desires regarding this shared property and empowers citizens to make their own desires effective. By contrast, *joint* ownership is more likely to trespass on personal autonomy since citizens are likely to form individual desires and motives in light of the fact that the majority must ultimately support their intention for it to be acted upon. In this scenario, the problem of coercive state power has simply been replaced with coercive majoritarianism as citizens undoubtedly shape and mould their own preferences in light of what will muster approval form the majority of their fellow citizens.

Tyranny of the majority seems a high price to pay for collective freedom from state coercion, but even if tolerable, a further critique of joint ownership points to the opposite worry when it comes to autonomy: the tyranny of the *minority*. As Fressola reasons, the very equality of persons that joint ownership is designed to protect through collective decision-making, paradoxically fails to do so since unanimity rules (the more likely decision-making method to be employed to ensure no one is privileged above another)

allows disproportionate influence to determined minorities.[50]As such, minorities could exclude all uses of which they disapprove, rendering members of the minority, in effect, owners of the whole.[51] Not only does this violate our demand for citizen equality, it also fails to sufficiently protect individual citizen autonomy since once again, an all-powerful government may be replaced by an organised and strategic minority whose preferences dominate and manipulate those of the majority.

So far then, *common* ownership looks more attractive. While both models satisfy the Egalitarian Constraint, common ownership does so without resort to the autonomy-stunting equality of joint ownership. It therefore better meets the demands of the Autonomy Constraint. Yet, an immediate empirical objection to understanding SWFs as common property arises if we consider the nature of the property in question. Sovereign funds are, in some unalterable way, an indissoluble asset. Does this empirical fact rule out the possibility of individual *common* use rights? Can SWFs, by definition, only be joint property?

The answer is seemingly yes if we evoke archetypical understandings of common property. The exercise of individual use rights is typically illustrated through the metaphor of a shared field or park. The timeworn hypothetical of a co-owner grazing their cattle on common land within certain limits restricts our understanding of common property to those types of property where use can readily be individualised.[52] But when it comes to communal financial funds, it is not obvious how common co-owners could

[50] Fressola (1981) p.318
[51] Ibid.
[52] See Risse (2005) p.360

exert similar individual use rights over a single pot of money held in government coffers. What is the equivalent of cattle-grazing on common land when it comes to a community sovereign fund?

One strategy for making intelligible the demand that citizens should enjoy individualised rights to use their shared SWF property is to recall the conceptual distinctions regarding SWF property introduced above. As we saw, an SWF can be thought of in terms of its underlying assets, its investment returns and entity of the fund itself. These components are differently compatible with individual use. For instance, while the principal of the fund must remain, by definition, a collective pool of assets (as we saw above, if entirely individualised into private shares, the SWF ceases to exist), there are ways of structuring these collective funds that make the principal and returns partially amenable to individual use.

Consider Karl Widerquist's proposal for enhancing individual control of community funds through Citizen's Capital Accounts ('**CCAs**'). Widerquist suggests giving each citizen an account upon birth containing an equal proportion of their community fund's total value at that time.[53] The principal of the account remains in the sovereign fund and is largely untouchable by individuals, although Widerquist is open to the possibility that individuals can influence its investment to some degree. When it comes to their personal account, the individual has full control, including when and whether to draw dividends from the income stream earned on their share of

[53] Widerquist (2012) p.183

the principal.[54] The only restrictions are that some of the returns must be reinvested to help the principal grow each year and upon death, the entire principal (excluding returns) must be returned to the national fund to finance the next generation's accounts. In this sense, the community owns the fund and its principal, while individuals (partially) own their returns (at least during their lifetime).

Such a proposal highlights first, how the monetary returns on SWF investment are more readily made compatible with individual use through direct distribution to citizens and second, that although the collective principal must ultimately remain a collective pool of assets, it's use may be partially individualised. There are indeed working precedents for the proposal that individuals should influence the investment strategies of money they place in collective financial institutions.[55] When it comes to the actual fund itself, there are also different ways in which individuals may influence and thus 'use' the fund to promote their own ends, depending on the extent to which fund management is democratised. While this is a weaker notion of individual use rights than that envisaged by full common-ownership, the different components of SWF property allow for a degree of individualization that is attractive given our reservations about the autonomy-stunting nature of full joint ownership. Combining our normative preference for common ownership derived from the Autonomy Constraint with the empirical limitations of SWF property produces a third and final derivative constraint

[54] Ibid at p.183 where Widerquist discusses the types of control individuals could wield over their account.

[55] The ethical banking sector in Germany is particularly advanced in this respect. High profile ethical banks like GLS allow customers to choose the sort of asset classes and investment strategies they support and tailor the exposure of those individual accounts accordingly. Hacke (2012)

for SWF ownership – the demand that communities adopt a hybrid of joint and common ownership in establishing and managing their funds:

Collective-hybrid Constraint: equal and autonomous citizens must own SWFs jointly *and* in common, ensuring a hybrid of individual and collective use and management rights to sovereign funds.

Taking our two fundamental constraints together with our derivative condition of hybrid collective ownership for SWFs, we can conclude that citizens require an equality- and autonomy-preserving form of joint and common ownership of sovereign funds to enjoy plausible fiduciary state relations. I call this the Egalitarian Autonomous Collective-hybrid ownership model (for ease, the '**EAC Model'**).

3.4.4 Objections to the EAC Model

The EAC model forms part of our overarching ideal of fiduciary state ownership of SWFs. It identifies the necessary conditions for a citizenry to operate as an effective principal over its government in a legitimate fiduciary state. Those conditions of basic equality and basic autonomy in turn derive a specific requirement for the ownership of sovereign funds - that these funds be owned in a complex hybrid of joint and common ownership. This partially individualised collective ownership model, I suggest, proves the best way to respect the Egalitarian and Autonomy Constraints in the case of community financial funds.

However, this model invites a general challenge, or at least, demands clarification regarding its potential pro-democracy bias. One might argue that the first order Egalitarian and Autonomy Constraints of the model

are more readily associated with democratic polities,[56] and that as a result, I have implicitly 'take[n] for granted that a liberal democratic regime is the appropriate starting-point for … reflections' on legitimate citizen-state relations.[57] This, the objector may assert, amounts to a hidden endorsement of democracy given the model's reliance on inherently 'democratic' conditions for ideal shared ownership of community assets.

Such an objection is problematic since the majority of such funds do not reside in full democracies[58] and yet, we would like to produce a widely applicable theory of citizen ownership for all SWFs. The first point to note in response to this applicability concern is that the EAC model is offered as an ideal, for states of various regime types to aspire towards. In some cases, the realisation of the EAC conditions will clearly require a more fundamental overhaul of a state's political system and institutions. Other more democratized states are better positioned to comply with the basic conditions. But does this mean I should be read as grounding the fiduciary state conception and the EAC model in a democratic theory of the polity?

Space prevents me from offering a full appraisal of democracy as a political good. Accordingly, I expressly acknowledge that the two fundamental conditions of the EAC model are not as compatible with the political institutions of partial or non-democratic regimes and that consequently, I must concede the inherent pro-democratic orientation of my

[56] The concept of free and equal citizenship forms the foundation of liberal democratic civil rights, the basic legal rights a person must enjoy to have status as a citizen in a democracy.
[57] Leydet (2011)
[58] See Appendix 1

EAC model without being able to properly defend that orientation here.[59] Instead, in lieu of a full consideration of the universal goodness of democracy, I will briefly note that there are alternative regime types that may also claim to support legitimate citizen-state relations and which might be compatible with the EAC criteria. Philosophers like John Rawls and Joshua Cohen developed the idea of 'consultation hierarchies' as an alternative form of polis to a liberal democracy that can claim legitimacy on certain criteria even if not by fully egalitarian liberal democratic standards.[60] On their view, a consultation hierarchy involves four features that differentiate it from a democratic regime, but which make it capable of properly respecting human rights, a core liberal democratic goal[61]: (1) Rulers make accountable decisions insofar as they consult with the representatives of the people. Representatives need not be chosen in competitive elections but they must represent all citizens, either territorially or functionally; (2) everyone has a right to object to possible or actual decisions; (3) rulers must give public reasons for their decisions in terms of a common good conception of justice; and (4) accession of rulers to their office is clear. Accordingly, the citizenry of a consultation hierarchy lack the extensive rights of equal political participation in collective decisions associated with democracy, but could still reside in a 'decent' society as long as their government protects basic human rights, while meeting the above criteria for a consultation hierarchy. This, the authors argue, is possible even where full political equality does not exist.[62]

[59] On the moral dimension of this issue, see the debate on whether there is a human right to democracy in Christiano (2011). See also Sen (1999)
[60] See Rawls (1999b) pp.71-81; Cohen (2010)
[61] This summary is from Christiano (2011) p.156
[62] Christiano points to the real-world examples of 'Yugoslavia in the 1980s and the later Soviet Union as well as Islamic states such as Iran in the late 1990s and early 2000s' as coming close to consultation hierarchies since 'they have popular assemblies elected in quite uncompetitive elections and political parties that are also partly popularly based. Their elites claim to rule in

In this vein, we might argue, as Christiano did of human rights protection in non-democratic regimes, that there is 'no conceptual or … metaphysical impossibility'[63] regarding the potential for non-democracies to meet these demands, although it is highly unlikely.[64] We could make an analogous assertion that societies which are not full democracies (again, this is the majority of societies in which SWFs currently exist)[65] could theoretically still be 'decent' – from the fiduciary state perspective - if their consultation hierarchies ensure basic equality and autonomy for their citizens and a degree of individual rights to communal assets. If those hierarchical consultation procedures 'connect the government to various corporate groups within the society, and that allows for dissent from existing government policy',[66] the conditions for genuine fiduciary relations *might* exist in such contexts. Such an argument is ultimately an empirical question to be determined on a case-by-case assessment, given the spectrum of political regimes that exist in today's world.[67]

On balance though, the 'decent hierarchical society' argument is less plausible for the fiduciary state argument than in the human rights protection context. This is because the general absence of political liberties in non-democratic regimes would surely frustrate the very existence of basic equality and autonomy of citizens. That is, the possibility of well-ordered consultation hierarchies promoting human rights even in the absence of full political equality is arguably more likely that the probability of these same societies

---

the name of a conception of the common good defined by the established religion or by an ideological party.'

[63] Ibid. 157

[64] Christiano made a similar point about the unlikelihood of consultation hierarchies being 'decent' insofar as protecting basic human rights at p.157

[65] See Appendix 1

[66] Miller (2008) p.396-397

[67] Ibid. p.385

satisfying the EAC conditions since the critical concern in the latter is that citizens be sufficiently equal and independent to operate as an effective fiduciary over their government agent. Since one of the distinguishing features of non-democratic polities is the power asymmetry between citizenry-beneficiary and state-trustee, the likelihood of less-than-full democracies ensuring basic moral equality and individual autonomy of all citizens is very low. Given this, the possibility of fair collective ownership of sovereign funds by the citizenry in such polities becomes so negligible as to be meaningless. To the extent this is a fair assessment of our actual political communities, I willingly endorse the superiority of democratic modes of governance for the fiduciary citizen-state relationship.

3.5 Applying the EAC Model to Control over and Benefit from SWFs

With the conceptual, analytical and normative scaffolding of the fiduciary model now fully assembled, Parts II and III of this thesis go on to examine the implications of the EAC model for the management, investment and distribution of sovereign wealth. That is, I will apply my *normative* model of EAC ownership to the *conceptual* distinction between sovereign wealth, returns and funds within the *analytical* framework from property rights based on the control and benefit distinction to theorise SWF property. This exercise of bringing together the three frameworks proceeds as follows: I adopt a **control** rights perspective to address the management of *sovereign funds* and the investment of *sovereign wealth* as these both raise questions relating to an owners' (control) rights to manage and use one's property. I then assume a **benefit** rights perspective for addressing the distribution of *sovereign returns*,

as this concerns an owner's (benefit) right to income. Table 3.1 summarises these distinctions:

Table 3.1: Application of Control-Benefit Framework to Sovereign Funds

SWF Property	Control Rights	Benefit Rights
Sovereign fund (institution)	Right to Manage	
Sovereign wealth (principal)	Rights to Use	
Sovereign returns (investment income)		Right to Income

The Table reveals that two of the four control rights from Honore's list identified earlier are not directly addressed - the right to possess (Incident 1) and the right to alienate, transfer or destroy an asset (Incident 5). These are, for the most part, left out given the nature of our SWF property. The question of 'exclusive physical possession' of an SWF associated with the right to possess raises the question of one community's right to possess this sovereign fund over another and we have ruled out that global versus domestic justice question here given our starting assumptions of a domestic level analysis. Nor is it appropriate to address the right to transfer, alienate or destroy the property since we assume the desirability of an SWF for a domestic community and ask what rights that community should wield over an existent sovereign fund. Whether that polis then chooses to alienate, transfer or destroy this fund is a question of public policy for that community. We do not engage here with the issue of dissolution of sovereign funds.

Conclusion

This chapter covered substantial territory and laid important foundations for the rest of the thesis, so it may be helpful to summarise before moving on to

Parts II and III. At the outset of this chapter, I began by noting the outstanding aspects of the fiduciary state model of SWF ownership and responded by seeking to set out a positive case for how citizens can own their funds. I started with the preliminary issue of what exactly citizen's SWF property consists of, identifying different constituent elements of a sovereign fund including the actual fund institution, the principal stock of wealth and its investment returns. I then introduced the control-benefit framework from property rights as a useful analytical apparatus for theorizing the distinct ownership privileges these different components of SWF property may raise. But these conceptual and analytical frameworks could not tell us *how* the citizenry should exercise their control and benefit rights to the fund, underlying wealth or returns. To this end, I developed a normative framework known as the EAC model, deriving constraints on SWF ownership from both the nature of the collective owner and property. I argued that the fiduciary state model implies a form of egalitarian, autonomous, collective-hybrid ownership by citizens. In the rest of the thesis, I examine the practical operation of the EAC model by addressing citizens' control and benefit rights to sovereign funds, sovereign wealth and sovereign returns.

PART II: OWNERSHIP AS CONTROL

The Management and Investment of Sovereign Funds

Chapter 4 - Popular Control of Sovereign Funds in Theory: Democratising Management

Part I of this thesis defended a fiduciary conception of SWF ownership whereby governments must manage sovereign funds in the interests of their domestic community beneficiaries. As ultimate owners, citizens must enjoy the control and benefit privileges over their sovereign funds that ownership endows. But as these funds are not in the direct possession of their collective citizen-owners, questions arise regarding how to give effect to citizens' control and benefit rights. In Parts II and III of this thesis, I explore this issue theoretically and practically. In Part II, I deal first with how citizens can enjoy control over their shared SWF property. In this chapter, I address theoretical considerations concerning citizens' collective control over sovereign funds, while in Chapter 5 I consider desirable forms of popular control of SWFs in practice through the case study of the Norwegian SWF.

In Chapter 4, I begin by contextualizing the role of control in ownership. I then introduce the idea of control *rights* in Section 4.2, describing the limitations of existing (private property) notions of control to shared property like sovereign funds. In response to these limitations, I turn for answers in Section 4.3 to democratic theory, which offers rich terrain for applicable conceptions of collective control given the field's central preoccupation with popular power over government. After reviewing alternative control conceptions and their applicability to financial assets like sovereign funds, I recommend a notion of democratic control known as the 'institutional power' model as most desirable for SWFs. In Section 4.4, I

examine what the institutional power mode of control implies for the democratization of sovereign fund management. In Section 4.5, I deal with objections to the general demand for democratised management of SWFs.

4.1 Ownership as Control

A core aspect of ownership is the ability to control one's property. Indeed, for many property theorists, the idea of 'control' is one of the key definitional attributes of ownership. Consider Waldron's influential description of property as 'a system of rules governing access to and control of land and other material resources'.[1] The idea of control also dominates historical conceptions of ownership. Christman demonstrates that the demand for absolute control over a resource constitutes the 'paradigm notion of ownership' throughout the history of property institutions.[2] Typically expressed through the idea of 'dominium', where 'the owner's prerogatives in regard to his or her property are absolute and unlimited,'[3] control over one's possessions has consistently formed part of the conceptual essence of ownership.[4]

As we saw in the previous chapter however, ownership cannot be reduced to the idea of control alone. There are at least two conceptual

[1] Waldron (2004) p.31. The reference to 'access' could be dropped and subsumed within the idea of control over the owned object, for governing access to property surely forms part of one's control over it.
[2] Christman (1994) p.17
[3] Ibid.
[4] Property theorists often point to the strict views of legal commentators such as Sir William Blackstone and John Austin as evidence of the 'control' or 'dominium-centred' idea of property. Consider Blackstone's 18th century articulation of property as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe', or John Austin's description of property as 'a right… unrestricted in point of disposition – and unlimited in point of duration – over a determinate thing.' See Waldron (2004); Christman (1994) p.18

ingredients to ownership, one being 'control' and the other 'benefit'. The reader will recall that of Honore's five central ownership incidents[5], four incidents — the rights to possess, use, manage and transfer — may be characterised as 'control' rights since they each concern the ability of the owner to be 'the final arbiter over what is to be done with a thing'.[6] To have control over property, then, an owner must maintain primary say over the fate of the owned thing, especially in relation to its possession, use, management and the capital itself (whether to transfer, alienate or destroy).

The question for this chapter is how these elements of control over property may be exercised *by citizens* over their sovereign funds. An initial glance suggests that some of these standard control rights may not be intelligible in the case of a sovereign fund. How might citizen-owners 'possess' an SWF in the way that an owner in more familiar scenarios possesses property like a car, a house, their clothes and so on, where physical control over those objects seems intrinsic to the right to possess.[7] Even in the case of assets outside the *immediate* possession of their legal owners, such as bank accounts or shares, owners still exert a reasonable degree of physical control over those assets through individualised rights to access and influence the assets' fate. I can invariably withdraw, transfer and use money from my bank account at the time and purpose of my choosing. My portfolio of shares may be sold, held or expanded at my discretion. Citizen-owners of SWFs, however, do not wield equivalent physical control over the sovereign wealth

[5] The rights to 'use', 'possess', 'manage', 'transfer, destroy and alienate' and 'gain income from' the property. Christman (1991) p.29
[6] Ibid. p.29
[7] Honore (1961) p.x

in their government coffers. Accordingly, I do not address the right to possess.

Other control rights are more conceptually compatible with SWF property. We can talk more intelligibly about the 'use' and 'management' of a fund and its assets by a collective, or its 'destruction' through legal unwinding or spending down for the benefit of the community. Even then, the translation of these ideas from individual owners to a collective owner like the citizenry is not straightforward. How can any, let alone *all* citizens in a domestic community control the possession, use, management or transfer/alienation/destruction of a SWF when it is in the primary possession of a government, and it is that government which establishes and possesses an SWF, selects the use(s) for its capital, manages the fund by determining its investment strategy and appointing management and chooses the duration of its existence. Yet, if control privileges are indispensable to the structure of property rights, we must identify how citizen-owners could exercise such control over SWFs.

4.2 Control over Shared Property

The particular issue here then is how can multiple co-owners exercise control over *shared* property like SWFs? I argued in Chapter 3 that a sovereign fund must be shared among its citizens partly in common and partly as joint property. Yet, as is well known, the Honore scheme of ownership incidents is intended as a description of 'full liberal ownership', that is, of *private*

property. So too is Christman's thesis on the structure of property rights.[8] Both theories concern the relationship between an *individual* owner and the property over which they wield exclusive authority. This reflects a broader trend in ownership theory whereby control over property has largely been associated with private property regimes.[9] Do control privileges have a place in collective ownership?

Recall again our two main species of collective property examined in the previous chapter: common and joint property. These shared ownership regimes both involve a normative role for control (although they do not explicitly use the term). We know that, under common ownership arrangements, all members of the community enjoy free use rights in regards to their common property, as long as they do not interfere with similar use by others.[10] The fact that all members of that community enjoy a non-exclusive right to use does not imply that the communal owners wield *no* control over their shared property; rather, it means that each owner has a circumscribed sphere of control rights delimited by the non-interference requirement with other member's use rights. Accordingly, common co-owners enjoy meaningful albeit bounded control over their communal property.

Joint property involves a stronger sense of owner control. As we saw, in joint property regimes, the community as a whole determines how their property should be used by virtue of a consensus or majoritarian decision-

[8] As Christman says: 'I will defend and explicate my thesis as a general claim about the ownership rights associated with private property (of any kind).' (1991) p.28
[9] As per Munzer '[c]ontrol is the power to act, command, and restrain. Private property confers various forms of control'. (p.91). And later '[i]t is no accident that the phrase is "*private* property". If a legal system is efficacious, so that legal and actual control substantially overlap, property ownership will also foster privacy.' Munzer (1990) pp.91-92
[10] Cohen (1995) p.261

making procedure. To the extent that joint owners have a stake in determining how property is managed and used, they enjoy a shared 'ultimate decisional authority' over that property. Consequently, joint property owners exert a similar type of control to that of private property owners,[11] but with the crucial difference that the locus of control is the community, not the individual. Individuals exert control purely through mechanisms of collective influence, but it is nevertheless control through participation in the final decision-making over that property.

On these conceptions, control is certainly present in shared ownership regimes. One might object that the common and joint property scenarios weaken the idea of control to such a degree that the concept of ownership is emptied of any real content.[12] Common owners' decision-making is constrained by the consideration of other co-owners' rights, while collective owners must decide how to manage their property as a group, not independently as individuals. On this view, non-private property species, even though they *include* agents in control procedures, fail to bestow owners with the same *degree* of 'control' wielded by private owners exercising exclusive decision-making in their own interest. However, such an objection simply goes to the scope, not the substance, of the control issue. Surely, if co-owners are included in control procedures, then it is not obvious why the kind of control exhibited in the shared property regimes is qualitatively

[11] According to Risse (2005) at p.360: 'Joint ownership ascribes to each co-owner property rights as extensive as the rights of private ownership, except that others hold those same rights as well. It is for this reason that each co-owner must be satisfied on each form of individual use.'

[12] Waldron (1990) at p.39 argues that it is only in private property systems that you can properly apply the term 'ownership' to the relationship between people and resources.

different from an individual agent exercising control in their singular interest. As Christman argues:

> 'In both cases, some entity (the collective, the individual) has control over use, and in both cases, these decisions will usually be made in order to advance the interests of the owner(s).'[13]

As long as the individual, whether a single agent or a member of a collective has the opportunity to advance their *own* interests over the owned property through inclusive decision-making procedures, then control inheres in the owner(s). Put another way, if a degree of control through inclusion in final arbitration over the property is required in all forms of ownership, with only the extent and nature of that control varying depending on the property in question, we need to identify the most appropriate form of inclusive decision-making for the management of SWFs. For this task, we depart from property theory.

4.3 Democratic Control over Shared Property

The dominant association of control rights with *private* property limits the usefulness of ownership literature for analyzing control over collective assets. Democratic theory, however, given its chief preoccupation with the question of popular control over government, is a fitting place to turn. Scholarship on democracy contains extensive analysis of the theory and practice of popular control over the state.[14] Indeed, effective citizen control over government is a

[13] Christman (1994) pp.23-24
[14] See for instance Barro (1973); Ferejohn (1986); Manin (1997) pp. 170-175; Maskin and Tirole (2004); Fearon (1999); Estlund (2008) and Pettit (2012) esp. pp.153-179

core ideal of democratic thought.[15] Here, I draw on a contemporary and detailed treatment of democratic control by Philip Pettit.[16]

In focusing on Pettit's approach, I cannot be exhaustive in my analysis of political thought on popular control; the tradition is too rich and nuanced to achieve such a herculean feat here. Instead, I leverage Pettit's recent, thorough treatment of popular control to tease out the anatomy of the concept. While there are other significant works or conceptions I might have drawn on for this purpose, Pettit's theory of popular control is particularly attractive for its resonance with this thesis. Significantly, Pettit's conception of the legitimate state includes similar premises to those of my EAC Model, offering a neat congruence between the demands of EAC ownership and Pettit's ideal of control.

Specifically, for Pettit, a state can only count as legitimate if the citizens 'support it in such a way that is does not take away from their freedom,'[17] where 'freedom' is understood as non-domination or independence from the arbitrary power of another person or group.[18] Now, since a state by definition will always interfere with the lives of its citizens, Pettit seeks to establish the conditions under which such interference does not constitute domination. He argues that if citizens *control* that government interference, then freedom under government can exist. That control, Pettit argues, must be 'equally

[15] For a critique of the control paradigm within democratic theory, see Borowiak (2011) especially pp.11-14 and p.76. Borowiak challenges the narrow understanding of democratic accountability as control over power.
[16] Pettit (2012)
[17] Ibid. p.152
[18] Pettit has developed his influential concept of freedom as non-domination over numerous works. For Pettit, freedom exists where no other person or group has 'the capacity to interfere in their affairs on an arbitrary basis.' Pettit (1999) p.165. See also Pettit (1997) and (2012).

shared amongst citizens; it must not be conditioned on the willingness of government, or of any other agent'… and it must be 'efficacious' in that the control must work.[19] These three requirements for Pettitian popular control enjoy a synergy with the core constraints of the EAC framework: that all citizens enjoy a symmetrical claim on their state's sovereign wealth by virtue of their equal moral standing; that all citizens enjoy basic autonomy such that they form their interests and preferences independent of the state's and other citizen's interests including in relation to SWF property; and that therefore citizens must enjoy a hybrid of common and joint rights over the use and management of their SWF property since only this combined approach respects the first two constraints when applied to sovereign funds. These principles are clearly consistent with the 'individualized, unconditioned, efficacious'[20] system of control that Pettit desires for citizens, hence I proceed with exclusive focus on the Pettitian concept of democratic control.

Pettit's theory starts by setting out a general notion of control, identifying the concept's two core features - influence and direction. That is, a controlling agent must have directive influence to enjoy control:

> 'To have a degree of control over a result two things are essential. First, you must have some influence over the process leading to the result. And second, you must use that influence to impose a relevant direction on the process, helping to ensure that a suitable result transpires.'[21]

To illustrate with some examples, I control the outcome of a home renovation when my preferences influence the style, timing, and cost of the reconstruction, and these changes result in something acceptably close to

[19] Pettit (2012) p.153
[20] Ibid.
[21] Ibid.

what I had desired aesthetically and financially. Similarly, a flight passenger controls the outcome of her travel when she selects a desired destination, books a convenient flight, and that flight reaches its intended destination on time. In other words, there must be both influence and direction to constitute control. Influence on its own is not enough. If the results of the renovation are quite different from the envisaged improvements, or the holidaymaker's flight is cancelled or delayed by the airline, neither the renovator nor the passenger is in control of their respective process. They may have influenced it with their preferences up to a certain point, but the outcome realised is not acceptable to either agent.

Translating these ideas into the specific context of the citizen-state relationship, Pettit argues that 'the people will achieve control over the state insofar as they attain influence, on the one side, and succeed on the other in using that influence to impose a suitable direction on government.'[22] Again, influence alone is insufficient. Any influence exercised must lead towards a suitable outcome to be constitutive of control. Importantly, the citizenry must exert influence over government in line with a purpose acceptable *to all*, otherwise citizens suffer domination by the state through uncontrolled interference, violating the idea of freedom as non-domination.

In establishing how this theory may provide guidance for control over sovereign funds, I briefly describe Pettit's view on what popular influence and direction consists of and how this might apply to SWFs. I then look at Pettit's preferred conception of democratic control, known as the 'institutional

[22] Pettit (2012) p.187

power' model that combines a defensible version of both citizen influence and direction over government. I evaluate the general intelligibility of the institutional power mode of control for SWFs as well as its specific compatibility with the requirements of EAC Model, showing that this conception of democratic control is viable for establishing citizen control over SWFs.

4.3.1 *Influence over sovereign funds*

Popular influence over government is the first of Pettit's two elements of democratic control. As I noted above, for Pettit, popular control must be 'individualised, unconditioned and efficacious'.[23] What does this mean for the sort of influence citizens must exercise over government, and how well does it cohere with the EAC Model that I propose?

Starting with the requirement for individualised influence, each and every citizen must have an equal share in control over the state. If they do not, they are at risk of public domination, the very thing that a republican theory of government tries to guard against.[24] The condition for 'individualised' control is consistent with both the Egalitarian and Collective-hybrid Constraints of the EAC Model. Just as moral equality is a core motivation for our demand that citizens enjoy equal claims on their sovereign wealth, basic equality drives Pettit's individualization requirement. Because citizens are morally equal, people must share equally in their capacity to exercise influence over government.[25] For Pettit, this means that citizens must enjoy 'equal access to the system of popular influence' and an equal opportunity for

[23] Pettit (2012) p.239
[24] Ibid. p.167
[25] Ibid. p.209

participation in the system (although they are not required to participate equally).[26]

Furthermore, just as I rejected the autonomy-stunting regime of full joint ownership over SWFs, Pettit rejects strongly collectivised forms of control in a democracy like unanimity voting and veto rights, since they violate the requirement that each citizen has an equal share in the system of shared control - such systems remain at the mercy of minorities.[27] For similar reasons, I opted for a hybrid regime of common and joint ownership, advocating it as a form of collective ownership that offers a degree of individualised control within the collective, but which still respects sovereign funds as community property. Those parts of SWF property like the returns that can be individualised, should be so, while parts like the principal, which cannot be altered without fundamentally changing its character, must remain joint property, subject to extensive individual influence.[28] Such individual influence may be achieved through mechanisms like majority voting or non-voting channels of influence, examples of which are explored in this and the following chapter.[29] The crucial point is that my emphasis on the necessity for the individual, rather than the collective, to wield control coheres with Pettit's demand for individualised influence within a polis.

Next, consider that Pettit requires this equally shared influence also be 'unconditioned'. By this, he means that citizen preferences must be independent from the will of government or third parties such as 'a military

[26] Ibid. p.169
[27] Ibid. p.168
[28] See Chapter 3. On an 'individualised system of influence' see Ibid pp.209- 217
[29] Pettit (2012) p.168

service or a moneyed elite or an imperial overseer'.[30] That independence will be evident through the robustness of citizen preferences in the face of changing government will,[31] and if the responsiveness of the government is not conditional at all on any *other* agent's will. There must be a correspondence between the controlling citizen's inputs and the controlled government's outputs.[32]

Here, there is a clear congruence with the Autonomy Constraint in the EAC Model that I propose. The demand that citizens enjoy individual autonomy in forming and pursuing their own goals, attachments and interests is clearly a demand for 'unconditioned' influence over government. On the specific policy issue of how a sovereign fund is managed, invested and distributed, citizens must be able to form and express their own authentic views on the management and establishment of sovereign funds. Such citizens are not truly autonomous if their options are circumscribed by what the agent government will allow.[33] They must, in my view, be able to exert power over themselves, free from the will of another, in forming those preferences, and furthermore, they must exert control over their agent irrespective of the will of that agent.

As Pettit notes, this produces the demanding constraint that citizens' influence over government must operate 'independently of the willingness of government to go along and independently of the willingness of any other

[30] Ibid. p.218
[31] Ibid. p.167
[32] Ibid. p.170
[33] Ibid. p.172

agency to have the government go along.'[34] Popular control cannot depend upon the goodwill of government to go along with the people's directive influence; it must consist of a robust capacity to compel the state to respond to the citizens' desires.

Finally, citizens' influence over government must be efficacious insofar as channels of popular influence are insulated 'against the distorting effects of electoral pressures and private lobbies.'[35] If the popular system of equally accessible and unconditioned influence is to ensure legitimate democratic control, then it must also be 'effective or efficacious enough to impose a popular direction on government that *nullifies the intrusion of alien will'* by the government. (*emphasis added*).[36] Such a requirement demands that the state treat its citizens as equal, autonomous agents, for only then will the citizenry be equipped to ward off the intrusion of private interest or private will of the government representatives. This is necessary for citizen-state relations since those in power have reasonable discretion over what is decided. Citizens must have *sufficient* popular control to ensure that, when their agent government is undertaking such decisions, malign or special interests and dominating wills do not intrude on the process.

This does not mean that every policy decision or every election result must be to all citizens' liking. Clearly that is impossible, and should not be taken to indicate the presence of an alien will. Rather, if citizens have exerted their equally shared, unconditioned influence and can see an unfavourable

[34] Ibid. p.172
[35] Ibid. p. 239. On what constitutes an 'efficacious system of influence', see pp.229-238
[36] Ibid. p.175

public decision as simply 'tough luck', then their influence is efficacious.[37] In other words, the people cannot control *everything* that happens in government, but they must control 'the will at the origin of what transpires.'[38] Essential to citizens' ability to make the 'tough luck' judgment is their equal standing and autonomy *vis-à-vis* the state. Here again we see symmetry with the Egalitarian and Autonomy Constraints of the EAC model. If the people have an equal, undominated status in relation to the state,[39] then the people's influence over their fiduciary possesses the necessary features to be efficacious.

Taken together, to have legitimate popular influence over a government, a citizenry must enjoy an equally accessible, unconditioned influence over the state that is efficacious. I now examine the other essential component of popular control: the imposition of a direction through normatively satisfactory influence that is equally acceptable to all.

4.3.2 *Direction over sovereign funds*

As we saw above, influence is a necessary but not sufficient aspect of genuinely democratic control over government. As Pettit observes, 'the people in a democracy do not control their government if they influence what it does, even influence it equally, but do not secure anything they might as a people value.'[40] Despite this, Pettit notes that it is this conception of

[37] Ibid. p.177
[38] Ibid. p.179, footnote 42
[39] Ibid. p 175
[40] Pettit (2008) p.47

'democracy of influence-without-control' that forms the ideal for many democratic theorists.[41]

In practical terms, this boils down to ensuring transparent elections as the primary tool for exerting influence over government, or at least the appointment of officials. This notion of democratic influence is essentially procedural. The people choose between parties at election time, with or without forming systematic views on why they formed that choice, and 'do not otherwise 'control their political leaders.'[42] For Pettit, this Schumpeterian style of democracy, although it has some attributes, is a 'second-grade ideal', since it fails to endow citizens with a genuine, equally shared form of control over government:

> 'A can properly be said to exercise control over B, and not just to have a causal influence on B, only when the influence enjoyed by A is one that tends towards an effect that fits in some way with A's nature or dispositions or interests or whatever.'[43]

Even where there are free, fair and periodic elections, considerable freedom of discussion within the electorate and an accessible government responsive to public debate, there is still no guarantee that citizen's preferences will be represented. This is especially so in between elections, and very few tools are available to communicate the people's preferences to government and ensure its ongoing responsiveness.

Hence, Pettit's second requirement for democratic control, which qualifies the 'influence' element. To enjoy actual control over government,

[41] Pettit (2012) pp.240-242
[42] Ibid. p.241
[43] Pettit (2008) p.47

'popular influence must push government in a certain direction that is equally acceptable to all.'[44] Only in *directing* government appropriately is the 'undominated status of the people' assured.[45] Typically, this involves the citizenry articulating a purpose or end of government and intending to cooperate in its promotion along with fellow citizens. Pettit notes that the citizenry must either 'intentionally' or 'non-intentionally' impose a purpose they implicitly or explicitly endorse.[46] I cannot do justice to Pettit's detailed discussion of the differences between intentional and non-intentional direction here,[47] other than for a few brief comments that help illuminate difficulties pertinent to the control of SWFs.

According to the *intentional*-direction model, the citizenry must express a 'general will' or 'public interest' or vision of the 'common good' through the act of voting, which in turn tasks elected representatives with implementing this expressed agenda. A satisfactory notion of this public interest involves more than just 'the intersection of private interests'. Instead, it demands citizens form a 'post-social' view of the common good that recognises every citizen's interest in living as an equal member of that community.[48] Citizens may then communicate this view of the public interest to government by either: first forming a view on preferred policies and then selecting representatives likely to support those policies; or choosing preferred representatives and then relying on them to develop 'public-interest policies' on behalf of time-pressured, less informed citizens.[49]As long as citizens are

[44] Pettit (2012) p.239
[45] Ibid. p.240
[46] Ibid. p.243
[47] Ibid. p.247
[48] Ibid. pp.244-245
[49] Ibid. p.245

exercising their individualised, unconditioned and efficacious influence to force government to pursue an identifiable desired end, they achieve 'intentional' direction over government.

Despite its ability to communicate a desired end to representatives, this intentional-direction model fails, in Pettit and my view, since those representatives still have excessive discretion over what should count as the public interest. They must form this judgment in a context of elected power, where their standard concern is re-election, and where they are expected to put aside private interests, withstand pressure from the polls and the party room, and consistently promote the common good, an expectation that Pettit and other republicans dismiss as utopian and dangerous:

> 'Public office is a particular source of corruption… since it gives bearers a special opportunity to benefit from evil-doing and often a special capacity to avoid being caught….To entrust politicians with the articulation and advancement of the public interest, regardless of private concerns, would fly in the face of this caution.'[50]

Pettit then turns to the *non-intentional* form of exerting popular influence over the direction of government. This idea rests on the view that a process may be controlled even where the controlling agent does not exercise control intentionally. An agent may have a general goal or wish that is fulfilled without that agent deliberately imposing the wish on the actor responsible for its execution. The classic example that Pettit uses (drawing on Sen) is that of the comatose patient whose general wishes, specified by the patient in health, dictate the treatment provided. Those wishes are realized through the influence of family and friends, such that the patient's general

[50] Ibid. p.247

desires shape the form of the treatment that is administered. The direction is non-intentional in that sense that it follows general wishes, but it still amounts to control.

In a political context, this idea is given expression through the idea of utilitarian voting. Rather than the people actively forming a general consensus for the purpose of imposing intentional direction on government, an alterative approach relies on the assumption that if all voters simply vote on the basis of self-regarding preferences (rather than with socially-oriented preferences *intended* to communicate the public interest to government), then the aggregate effect is that representatives trying to satisfy these preferences will maximally satisfy the overall interests of electors and thus produce an *unintended* direction for government.[51] Such a direction is utilitarian —the greatest happiness of the greatest number—and has been characterised as the 'invisible hand' direction over government.[52]

I follow Pettit in rejecting this option on the grounds that both 'electors and elected may form coalitions to impose particular sectional interests in a way that is not sensitive to minority interests within society.'[53] According to this model, we would have to trust the citizenry at large to guard against the misuse of unequal power, and, as history suggests, that is too risky a strategy for ensuring equally shared, unconditioned popular control.

How does all of this relate to SWFs? At present, no sovereign fund holds elections for its officials. All SWF personnel are government-appointed,

[51] Pettit (2012) p.249
[52] Ibid. p.250
[53] Ibid.

so citizens lack the basic democratic tools to directly exert even the inadequate notion of 'influence without control' set out earlier. Moreover, few other means for citizens to influence SWFs exist in the absence of direct elections of fund personnel. Some might respond that in a democratic state, direct democratization of sovereign funds is unnecessary so long as citizens exert directed influence over their governments. In that scenario, if citizens control the government custodian of an SWF, then ipso facto, they control their sovereign fund. However, current practice suggests that a democratic state-sponsor is not sufficient to ensure EAC-compatible popular control over the specific entity of the fund. Very few governments, democratic or otherwise, have gone to election polls campaigning with manifesto promises to establish a sovereign fund or indicating how a proposed fund will be managed, invested and distributed in the long-term. On the contrary, SWFs are often conceived and established as a result of internal government or Treasury policy, in between election cycles and subject to little popular input. In these circumstances, the likelihood of citizens being able to form a general will on this policy issue for the purposes of applying intentional direction on government with regard to an SWF is extremely low. So too is the likelihood that they would display general, high-level wishes for these entities for the purposes of voting on the 'non-intentional direction' approach. Regular democratic procedures are therefore not sufficient to establish direct popular control or EAC-compatible control of the funds.

Even if such policies were publicly debated, and even if citizens did form systematic views on SWF policy following these debates such that they expressed their views by electing a certain official to government or a

particular party into power on the basis of promises to implement those views, there is still no guarantee that such an outcome would result in these desired ends for the sovereign fund since the fund itself is not subject to direct democratic control. Even in a democracy, SWF management cannot necessarily be controlled in a manner that ensures the promotion of the ends and interests that the domestic community desires in between elections. Ultimately, the same problems that confront the 'intentional' and 'non-intentional' direction models of shared control also face sovereign funds, but in an even more acute manner, since citizens do not directly vote for SWF officials or on sovereign fund policy. They therefore lack even the standard forms of democratic influence that are prerequisites for exercising shared control over government. Accordingly, it is quite clear, in my view, that a different approach is required in order to ensure that citizens can exert their individualised, unconditioned, efficacious influence to impose a suitably popular direction on government-custodians of sovereign funds.

4.3.3 *Institutional Power over Sovereign Funds*

Recognising positive attributes of each of the 'intentional' and 'non-intentional' direction approaches, Pettit takes the formation of the public interest as a desirable goal for popular direction (from the 'intentional' approach) and combines this with the 'invisible hand' method of monitoring and controlling government (from the 'non-intentional' approach) to suggest a third institutional model. This, he labels the 'institutional power' model. Here, I summarise the institutional power mode of democratic control and

show why it offers an attractive conception for citizen control rights over sovereign funds.[54]

In identifying a form of popular control in which the people direct government towards something like the 'public interest', but through an invisible hand-type process, Pettit uses the metaphor of condominium governance. Typically, residents in shared buildings elect a committee to manage the common affairs of their condominium. Ideally, the committee administers the collective business of the residents guided by universally endorsed terms of reference. These terms should be set out in a mission statement or constitution which identifies the overall purpose of the condominium's management in general terms.

In carrying out this responsibility, the committee will offer residents reasons for its decisions on large and small matters. It should for instance, publicly justify its decisions on minor expenses incurred such as tender of a particular tradesman to undertake work in communal areas, as well as bigger issues, such as the imposition of restrictions such as noise curfews, or the need for structural renovations to the strata building, for which the residents will be levied.

Pettit explains that the committee's justification of its decisions following debate among strata residents and with the committee must be

[54] The most developed version of the condominium model is in Pettit's most recent work *On the People's Terms*. See pp.252*ff*. I work with a simplified iteration of this model set out in an earlier work, termed 'institutional power' over government. See Pettit (2008). This earlier model contains all the essential features but does not engage with deeper issues of democratic theory that relate to group decision-making and the organization of a common enterprise with Pettit engages with in the 2012 work.

based on publicly acceptable reasons.[55] Some reasons will be weighed more or less highly by different strata residents, but all should be within the realm of publicly acceptable justifications to residents. Such norms for what is publicly acceptable are likely to emerge over time by virtue of communal life in the condominium and the participatory processes of collective governance:

> '[I[magine the policy-making norms that are likely to gain hold amongst the owners in a condominium of apartments. Some of those norms will be established in advance under contracts of purchase, but even if they are not pre-established, we can easily imagine them emerging and multiplying as members of the condominium come together to work out the terms on which they are to live together. As owners talk, try out proposals and vote on remaining candidates, they will inevitably establish norms that rule their communal life together.'[56]

The residents may monitor the committee's compliance with their decisions and the terms of reference generally with the aide of 'a demanding set of constraints' on the committee.[57] Those demanding constraints include a range of powers and rights assigned to citizens as well as a series of restrictions on the committee directly. In addition to residents' ability to elect and dismiss committee members, they have certain 'inalienable' rights over their private property that cannot be violated. Moreover, the committee must publish its rulings, declare conflicts of interest, operate by rule of law and adjudicate conflicts among residents and between residents and the committee in accordance with certain procedures.[58] These various forms of institutional power help residents determine if the committee is tracking its purpose as set out in the terms of reference.

[55] Pettit (2008) p.51; Pettit (2012) p.255
[56] Pettit (2012) p.258
[57] Pettit (2008) p.52; Pettit (2012) p.256
[58] Pettit (2008) p.53

The key point to register regarding the attractiveness of this condominium governance is that it requires a form of organised group decision-making where members of the group and their representatives present their preferred policy positions in a manner that counts as *relevant to all*. For Pettit:

> '[t]he idea is that any considerations adduced should help to make the policy acceptable to everyone, given shared assumptions about the dispositions of each; they should engage with those dispositions and help to make the policy congenial to each.'[59]

So, in the condominium, if owners are debating a policy of how to allocate heat and lighting costs in communal areas such as staircases and elevators, those on lower floor apartments might say they should pay less because they use the stairs and elevators less than top-floor owners. But such a reason only reflects the self-regarding interest of those owners. It wouldn't 'pass muster' with other co-owners.[60] However, if lower floor owners could appeal to a higher principle like equality, suggesting that they contribute less to these bills but more to, say, garden maintenance, which they enjoy greater benefit from by virtue of their proximity to the ground level gardens, other co-owners would be more likely to accept these considerations as relevant. If so, then you have a stronger basis for effective shared control over the collective enterprise of managing the condominium since group members 'are willing to think form the point of view of the group as a whole, rather than living in isolation and resentment or seeking after a community that is more congenial to their taste'.[61]

[59] Pettit (2012) p.253
[60] Ibid. p.256
[61] Ibid. p.259

This form of collective control, which Pettit labels the 'institutional power' model, incorporates both the elements of influence and direction necessary for popular control. Individualised influence is achieved through reliance on periodic elections to influence committee decisions through choosing representatives. We can assume that this influence is also unconditioned and efficacious since the strata residents have rights protecting their autonomy and privacy from non-interference by the committee and everyone has the opportunity to equally participate in decision-making if they so choose. Transparency requirements for decision-making empower the residents to ensure that the committee is responsive to their will and not some external interest.

This model also involves directed influence since the strata must set out a universally endorsed mission developed by the residents. The set of demanding constraints limiting the powers of the committee ensure they are bound to act within the scope of this mission. The explicit articulation of a purpose for committee power strengthens the residents' ability to monitor their representatives more than infrequent elections or sporadic, non-inclusive forms of popular participation would allow. So to does the requirement that co-owners must use reasons that all others, no matter what their opinion, can treat as relevant when exerting their influence. Rather than simply expressing their opinion through electoral mechanisms and remaining vulnerable to special interest influences, there is deliberation over policies to help identify community interests. For Pettit, this is tantamount to 'forcing the (condominium) committee to act according to terms of reference endorsed by

the members *as a whole*' (*my emphasis*).[62] It empowers the strata residents far more than if any single resident was trying to act on their own.

At the same time, this mode of control is less demanding than the 'intentional-direction' approach since it does not require the people entrust virtuous committee members with substantial discretion on what constitutes the public interest. Nor does it require the collective to have developed a general will on numerous policy questions other than the overarching question of the general purpose of their governing body. Beyond this, the citizenry need not pre-empt the general will on more detailed and particular aspects of governmental management. There must simply be an overarching popular target for government to pursue, none of which requires a constant collective-will formation, nor excessively vigilant monitoring of unconstrained public representatives. However, this model does require defence of policy preferences in light of reasons acceptable by all. This latter requirement for publicly accepted reasons also moves this model beyond the flaws of the non-intentional direction approach. A utilitarian version of the public interest that is simply the aggregate of individual self-regarding preferences would not count as based on reasons acceptable to all in deliberations on condominium policy.

Noting Pettit's endorsement of this model, we need to consider whether this conception of popular control is attractive for our specific case of government investment funds. Beyond its general merits in combining the requisite elements of influence and direction over government, we must

[62] Pettit (2008) p.52

ask whether the condominium governance approach could translate to SWFs. There are good grounds for thinking that there is compatibility. The basic requirements of the institutional power approach, such as the articulation of a universally agreed purpose arrived at after public debate, can certainly occur in the case of a major policy initiative like the establishment of a SWF. It seems plausible that citizens could have direct input into the content and focus of the foundational document creating the fund if such processes are opened up to public consultation. Accordingly, a first step in realizing popular control according to the institutional power model would be to make public the proposal to establish a SWF and allow the owning domestic community to debate various policy options for its purpose, design and management.

In terms of ongoing management, citizen-owners, just like apartment owners in a condominium would need opportunities to participate in the decision-making and to monitor whether the decisions of SWF management are made exclusively on the basis of considerations that count as 'reasons of the public, considerations that rule in public consciousness'.[63] Only then will a set of norms on what citizens actually want from their sovereign fund, and how they are willing to compromise with co-owners, emerge:

> 'By their participation in deciding on common policies, or revising the processes under which policies are decided, [the citizens] show that they are ready to accommodate themselves to others in various ways, making whatever compromises and concessions are required.'[64]

This brief review suggests that the core features of this mode of collective control are applicable to SWFs. If the institutional power conception of

[63] Ibid. p.54
[64] Pettit (2012) p.259

democratic control is accepted as normatively satisfying, we have a basis for developing principles to institutionalise popular control rights over SWFs.

4.4 Realizing Popular Institutional Power over SWFs

This section turns to practical reforms necessary for realising the regulative ideal of popular institutional power over SWFs. In other words, what aspects of an SWF should be subject to the sorts of processes and constraints detailed in the institutional power model? Let us reiterate the essential features of Pettit's condominium governance model for guidance on the ways in which decision-making in a collective organization can be democratised. Pettit requires condominium residents to control their committee in four key ways:

(1) the residents' must *elect* their committee representatives;

(2) the resident's *directive influence* over the committee must promote the specific target of forcing the committee to act in accordance with the terms of reference that the people have set;

(3) debate among condominium members must occur over issues that face the strata, both on and off the committee and must draw on *publicly available* information including reasons for the committee's decisions; and

(4) the membership must have *institutional devices* for ensuring committee representatives operate according to the terms of reference including *certain inalienable rights* for residents that the committee must not breach and restrictions on committee members exercise of power.[65]

[65] These provisions could include a requirement that the committee adopt rule-of-law rulings, record its proposals, give members time to object, declare conflicts of interest, submit performance to independent audit and include arrangements for adjudicating and disciplining the committee representatives when there is a breach. See Pettit (2008) pp.52-53

Applying these requirements to sovereign funds, I identify the equivalent aspects of SWF policy and management over which citizens should have control.

Table 4.1: Popular control devices for SWFs based on Condominium Model

	Condominium Popular Control Devices	SWF Popular Control Devices
1	Residents elect committee members	Citizens should elect SWF Board/Governing Body Members
2	Residents set a terms of reference for the committee	Citizens should set the content of an SWF's charter or constitutive documents
3	Residents must exert influence over the committee in accordance with the terms of reference	Citizens should exert influence over SWF Board/Governing Body Members in accordance with the fund's founding documents
4	Committee decisions must be based on publicly available information	The Government/Board should publicly release information about the SWF decisions
5	Residents should be able to debate committee decisions and performance in light of their published reasons	Citizens should be able to debate SWF Board decisions and performance in light of publicly released information
6	Committee member powers must be regulated	Government/Board Member powers must be regulated
7	Residents must have certain inalienable rights in relation to their property	Citizens must have a set of clearly stipulated inalienable rights in relation to their SWF

In Table 4.1 above, I summarise the core control devices within Pettit's condominium governance model and translate these into equivalent mechanisms for controlling SWF decision-making. I also examine ways in which the condominium control devices might be adapted to better suit a sovereign fund, or where additional, new devices peculiar to an SWF could be developed as well as identify the limits of popular control.

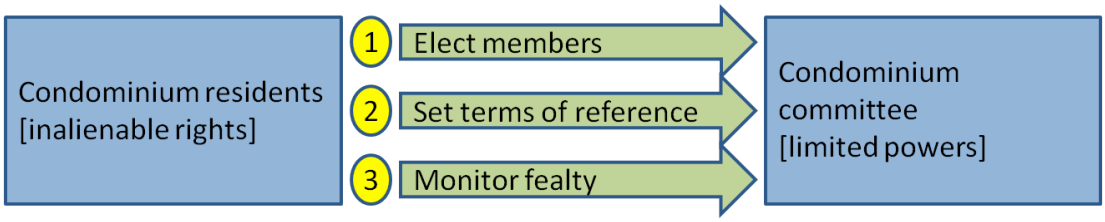
Just as for the residents of a condominium, this list of control mechanisms seeks to ensure citizen-owners of an SWF influence and direct the fund's management towards an end they find equally acceptable. Some devices ensure that citizens can exercise their individualised, unconditioned and efficacious *influence* (election of members, debate on decisions, regulation of committee powers and inalienable rights that protect the citizens from interference by their representatives), while others go to ensuring that this influence pushes those representatives in a direction that is equally acceptable to all (articulation of an equally accepted purpose in the terms of a reference, influencing the committee in accordance with that purpose as set out in the terms of reference, and monitoring of representatives' fealty to those objectives through publicly available information).

To what extent are these devices actually feasible or desirable within sovereign funds? In principle, the elements are all applicable to SWFs. We can imagine elections for SWF Board representatives and the possibility of popular input into the framing of the funds' initial objectives and governance structure. We can imagine the public release of information about fund performance and Board decision-making, the regulation of Board powers and

the stipulation of certain rights for citizen-owners. We can imagine institutions to promote and facilitate robust public debate about the funds performance among the citizenry. However, a closer look at the peculiarities of the SWF organizational structure suggests that some control devices require further elaboration or modification to ensure that they effectively promote popular control over funds.

Figure 4.1: The Architecture of Popular Control: Condominium and SWF

Condominium Control Rights



SWF Control Rights

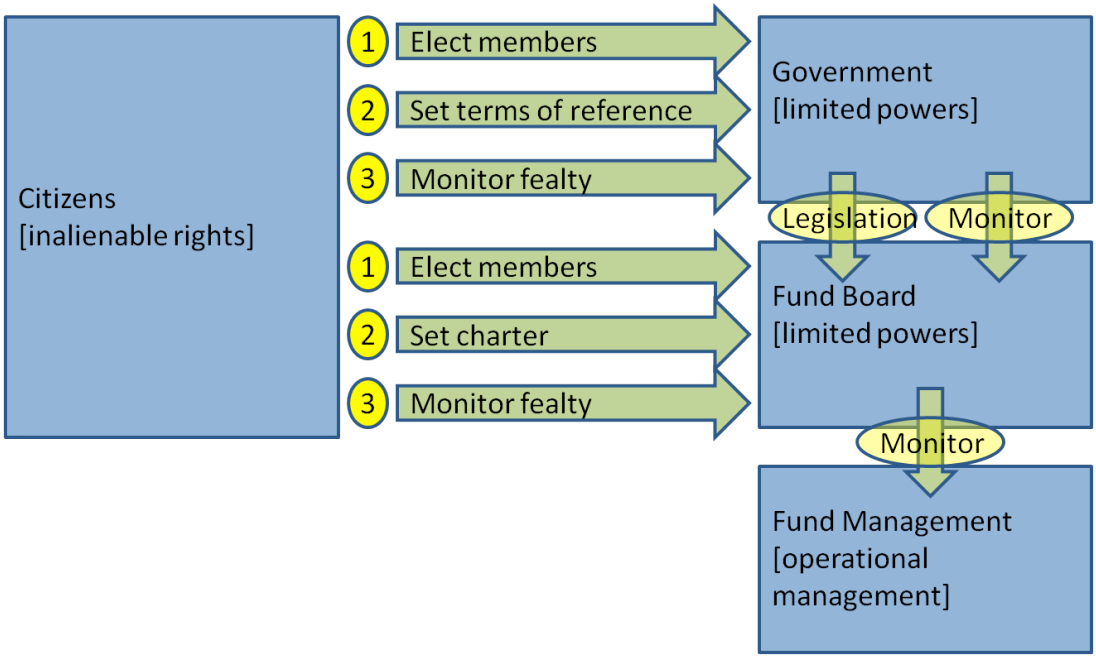


Figure 4.1 depicts graphically the basic structure of a sovereign fund, and the relationship of control between owner and institution it entails, and

compares it with the control dynamic at play in the condominium example. It highlights the different points in the fund's establishment and management at which the citizenry can exert popular control. As the Figure shows, the citizenry's control right targets three distinct aspects of fund activity: *election of Board representatives*; fund governance through *objective-setting* in a founding charter; and *monitoring fealty of representatives* commitment to those fund objectives. Figure 4.1 reveals an important difference in the control architecture of the condominium (and the citizen-state relationship it is meant to reflect) and an SWF. While in a condominium, there are essentially two parties involved in the popular control dynamic: resident and committee (reflecting citizen and government),the SWF control dynamic involves a multi-tiered accountability relationship. In order to satisfy an equivalent level of control to the residents of the condominium, citizens must therefore exert control over their SWF in two ways:

(a) through their government, which has primary custody of the SWF; and

(b) directly, through control over the fund governing Board.

Without the latter form of control, we are simply substituting accountability of the government to the citizenry for proper popular control over the SWF. In that approach, '[t]he … state is accountable to the people, but the Fund is accountable *only* to the state' (*emphasis added*)[66], and the citizens', institutional control over the SWF is incomplete. Accordingly, Figure 4.1 emphasises that the devices of popular control over SWFs must be applied to the *citizen-Board* relationship in addition to the regular control devices a citizenry should wield over its government.

[66] Backer (2009) p.182

Figure 4.1 also indicates that there is a separate entity within a sovereign fund responsible for its day-to-day operational management that reports to the Board, but which is organizationally separate from both government and the Board to ensure independence of the fund's financial decision-making.[67] For reasons discussed below, there are good grounds for not allowing direct or indirect citizen (or government) control over the operational agency and its responsibilities. Instead, the focus of the control right should be on the dynamic between the citizenry and the Board, the analogous relationship to the condominium residents and their committee. For present purposes, I will assume that the requisite control rights are in place between citizen and government, in accordance with the demands of my EAC Model.

Recognising this novel structure of an SWF complicates the application of at least two of the condominium control devices identified in Table 4.1. First consider the proposal for direct election of SWF Board or governing body members. In the condominium scenario, the idea of elected committee members is relatively uncontroversial. What qualifies candidates for representation is their membership of a discrete community whose collective affairs they have a direct interest in helping to administer and with which they are familiar. On this point, the condominium metaphor strains somewhat when applied to a sovereign fund. The status quo for selection of SWF board members is generally government appointment with candidates appointed on the basis of board experience or financial expertise held to

[67] Not all sovereign funds will precisely emulate this tripartite structure of government-owner/fund board/operational management, but it is recognized as the preferable structure for SWFs with the Santiago Principles designed on the assumption of this 'arms-length' structure from government. IWG (2008)

equip them for the specialised task of sovereign wealth management. How appropriate, then, is the device of popular election of SWF Board representatives? Moreover, do we lose anything in terms of popular control if we do not adopt direct election of SWF Board members? Why is it insufficient that citizens directly elect their government who, in turn, appoint Board representatives?

Defendants of the status quo for SWF management are likely to raise two concerns with the direct election proposal for SWF board members. First, the logic behind the current approach of appointed independent experts from outside government is that it ensures independent '*arms-length'* management, avoiding politicization of sovereign wealth investment.[68] The 'arms-length' philosophy for SWF investment decision-making, where governments appoint independent experts to Board management and delegate the actual task of investment to experienced fund managers is encouraged by the Santiago Principles. Board management is to 'implement the SWF[s'] strategies in an independent manner'[69] so as to 'enhance confidence in recipient countries' by ensuring 'that managers' individual investment decisions to implement the SWF's defined strategy [are] *protected* from undue and direct political interference and influence.'[70](*emphasis added*) In other words, governments are not meant to 'intervene in decisions relating to particular investments', and nor presumably are their constituent citizens since such influence may compromise the purely financial basis of investment decision-making. The concern here is that if Board management positions

[68] Not all sovereign funds follow this approach and some involve government members on the Board or governing Body, often the Treasurer of Finance Minister. These idiosyncracies aside, the recommended governance approach by the GAPP is for arms-length management.
[69] Principle 9, IWG (2008) p.16
[70] IWG (2008) p.17

were opened up to electoral processes, the very purpose of these funds (i.e. to quarantine a particular chunk of public money from everyday political pressures and augment it through return-seeking investment) would be compromised.

There are several strategies for responding to this concern. The first involves clarifying exactly what elected representation on the SWF Board would mean. Some might suggest the appointment of elected officials from the government as one means of ensuring a stronger link between the electorate of citizen-owners and Board members. Others might favour direct election of individual citizens to the Board. If we take the politicization concern seriously, direct election of SWF personnel from the citizenry rather than the use of elected politicians as Board members is more desirable. Assuming there was a requirement that elected politicians could not stand for SWF office, elected politicians would not have access to fund resources for their own political ends. Indeed, some SWFs already ban former politicians or bureaucrats from appointment to their SWF Boards to guard against politicization,[71] so there is no reason why similar provisions could not apply to direct elections rather than appointment of Board members. Direct SWF elections would thus uphold the arms-length quarantining of a fund considered essential to its preservation and successful investment.

[71] For instance, the Board of PNG's newly created SWF must consist of non-political appointments with the 7 member Board consisting of a Chair (a PNG citizen from the private sector), another 5 private sector citizens and the Secretary of the Treasury, ex-officio. See Papua New Guinea (2011). The criteria for Board appointment is that a potential member be a person of integrity, independence of mind and good reputation and has substantial experience or expertise and professional credibility and significant standing in at least one of the following: investing in financial assets; the management of investments in financial assets; or corporate governance.

Even with those constraints, the direct election model raises a further concern about whether elections for SWF posts would produce appropriate candidates. With the condominium example, there was no sense that committee members might require special expertise to carry out their function of administering strata business. However, the management and oversight of an SWF obviously requires some technical competence and expertise in order to carry out the function of overseeing and governing the operations of the fund. For this reason, many sovereign funds already require substantial industry experience and technical knowledge as eligibility criteria for Board appointment. Given this, there may well be strong opposition to the idea of ordinary citizens running the investment functions of SWFs through Board membership.

There are two responses to this particular worry. The first and more radical is to defend the election of lay members to SWF Boards. While such a proposal would mark a sweeping departure from the current expert-dominated management of sovereign funds, the idea that citizens should be directly controlling the investment decisions of their own capital is not entirely unprecedented. In the pension fund context, Robin Blackburn has proposed that workers eventually take over the running and investment of employee pension funds as part of the effort to cultivate 'ethical capitalism'.[72] Moreover, there are working precedents for the election of civilian non-experts to governance and leadership roles in specialised areas of policy-making. In Germany, companies are required to appoint employee workers as

[72] Blackburn (1999) p.63: '[t]he ideas I have expounded above amount to arguing that workers should, collectively, take over capitalist institutions and run them. I myself believe that such a profound, if also curious, alteration in property relations almost certainly could not be sustained without provoking a fundamental rupture with the capitalist integument.'

Board members on their company Board and in the UK, since 2012, there are now elections for lay representatives to the role of Police and Crime Commissioner ('**PCCs**') across England and Wales.[73] Elected PCCs do not run the local police, but simply oversight their operations, set budgets, report on progress and identify policing priorities, allowing independent operational management of the police force while reflecting community views on those issues through their electoral mandate. The only eligibility criteria for the PCC position is that a candidate be over 18, registered to vote in the relevant police area, not a current serving member of the House of Lords or Commons and free of certain criminal records.[74] In other words, they must be local citizens with a connection to the community they want to represent and who are independent of government. Their competency for the role is judged by local electors directly affected by their work, not predetermined by Westminster. With the first elections only occurring in November 2012, it is perhaps too early to assess the impact of this change. It is still instructive though insofar as one of the main purposes of the move was to enhance popular democratic control over local policing and crime management.[75] Its establishment shows openness to the possibility of directly elected lay involvement in specialised areas of public policy where the representative does not assume operational management.

This approach of direct popular power over investment governance through elected citizen representatives is arguably the most pure realization

[73] BBC (2012a)
[74] The Electoral Commission (2012)
[75] BBC (2012b). The fact that the elections suffered from 'historically low' voter turnout might caution against the effectiveness of enhancing democratic control through electing officials to more technocratic public administrative posts. Elections were held in 41 districts with voter turn out of 14.9%. BBC (2012a).

of citizen-control over sovereign wealth. It is especially attractive if one doubts the extent to which extensive industry expertise is essential to discharging the functions and duties of SWF management at Board level. That said, research into the effectiveness of untrained civilian representatives in analogous investment decision-making contexts casts doubt on the efficacy of this proposal.[76] As other commentators have observed, 'there are undeniable costs resulting from financial ignorance.'[77] This issue is addressed more fully in the next section, but for present purposes, let us take seriously the degree of technical skill and expertise necessary to conduct institutional investment over long-term horizons in uncertain markets. If so, we want to avoid the scenario in which citizens unwittingly compromise their own financial property through insufficient skills or knowledge motivating the need for a second intermediary response between full citizen control suggested above and the status quo approach of expert monopolization of SWFs. Just as the criteria of expertise and fund management experience are used to select candidates for *appointment* under the status quo, the government could use similar criteria to compile a short-list of appropriate candidates, from which citizens could then elect Board members.

The second control device that does not map neatly onto a SWF is the requirement that, in the condominium context, residents be able to debate amongst each other and with the committee about issues affecting the apartment building, and the decisions taken on behalf of the condominium members. For this to occur, there must be: (1) a high degree of transparency in

[76] Research into the performance of citizen trustees on UK pension fund Boards in investment decision-making revealed their skills 'were little better than the skills of neophytes'. Clark and Monk (2010a) p.1725. For an analysis of the original data, see Clark, Caerlewy-Smith and Marshall (2007)
[77] Clark and Monk (2010b) p.15

both the making of committee decisions and the reasons for decisions; and (2) a real opportunity for residents to input into the decision-making process. Realising both those demands in an SWF context is more challenging, although not impossible, I would submit, when compared to the condominium model. Consider first the requirement for transparency. While sovereign funds are capable of publicly disclosing information on multiple aspects of their operations[78] (as some already do), even the most transparent funds say that there are limits to appropriate transparency. Indeed, Martin Skankce, former Director General of the Norwegian Ministry of Finance with oversight responsibility of Norway's SWF notes that, notwithstanding the Norwegian fund's high levels of transparency, 'there are certain aspects in the management of the Fund that, based on pure business considerations, are not made public.'[79] These include the 'exact timing and procedure of fund allocations in advance of the relevant actions' since the deployment of 'considerable amounts of capital into the financial markets' is involved.[80] Given the size of many sovereign funds, there is a risk of adverse pricing effects if such information is prematurely disclosed.

Those who share this concern would argue that certain aspects of the day-to-day investment operations should be exempt from the same level of disclosure and thus, democratic control, for commercial/competitive reasons. Again this concern is addressed more fully in the next section, but here we may note that if this worry is fair, one might be able to grant a certain

[78] Including formulation of the portfolio design, investment strategy, risk framework and performance benchmark, reasons for the selection or termination of investment managers, the substance of Board meetings; the appointment of Board members; portfolio exposure (what assets does the fund hold, and where?) and portfolio performance.
[79] Skankce (2008) p.6
[80] Ibid. p.6

delimited field of SWF activity as commercial-in-confidence without substantially diminishing citizen control, as long as much of the fund activity is still subject to transparent reporting.

A more complex consideration is whether these aspects of an SWF's business should open up to formal citizen input *prior to their determination*. That is, should citizens not just know about them retrospectively, but actively shape and inform choices made with regard to certain aspects of sovereign fund management? Pettit would surely argue that genuine democratic control does require citizens to influence the direction of government in a manner acceptable to all such that regular and active citizen input into policy questions is essential. At the very least, citizens must be able to determine if there is a gap between the policy direction that SWF management is taking a community fund in and that desired by the citizens. In the condominium metaphor, that demand is easier to realise as committee members and residents have regular and proximate access to each other. But how is this possible with a sovereign fund when representatives on the Board, whether appointed or elected, may not have regular input from the citizens regarding their views?

One institutional possibility for feeding citizen's perspectives into SWF policy on a more regular basis is the use of 'Citizen Juries' or a 'Citizens Assembly'. These alternatives involve small groups of randomly selected participants from the population coming together to deliberate on issues of public policy and make decisions on behalf of the citizenry at large. In that sense, they act as micro-publics offering a citizen's perspective. Democratic

theorists such as Archon Fung have shown that, not only do these methods help identify and generate the popular perspectives on public policy issues, but they can be used to feed back into public decision-making processes.[81]

These challenges notwithstanding, the remainder of control devices identified in the condominium governance model are easily transferable to sovereign funds. Most of these empower the membership with institutional mechanisms for ensuring their committee representatives operate according to the popularly determined terms of reference. They include requirements to: record and publish proposals; give citizens and Parliament time to object to key decisions; declare conflicts of interest; undergo regular independent audits; endow citizens with certain rights that management must not breach; and make arrangements for adjudicating on and disciplining committee representatives when they breach obligations in the terms of reference. Many of these are self-explanatory in the case of SWFs. For others, such as endowing citizens with rights in relation to a sovereign funds, these could be given effect by constitutional mechanisms, for example, an obligation in the SWF's constitution to distribute some of the fund's returns to individuals, or an obligation in the national community's constitution to put to a referendum any proposal to draw down on the fund by Parliament.

If persuasive, this discussion suggests there is potential for implementing popular control over SWFs using the devices derived from Pettit's condominium model, albeit somewhat modified in light of the different function and design of a sovereign fund compared to a

[81] See Fung (2004), (2006) and (2007)

condominium (or government generally). To summarise, such devices constitute a three-pronged control right:

(1) First, citizens influence the fund through *election* of their representatives.

(2) Secondly, citizens exercise directive influence through *formulating the fund's overall objectives*. These can be set down in a Charter outlining the fund's purpose, mission, organizational structure and responsibilities and how these promote the objectives. This must include a clear set of terms on the government's status as fiduciary legal owner, the Board's role as manager and the citizenry's role as ultimate owner as well as the relationship between all three. Such terms should, ideally, be developed after proper public debate.

(3) Thirdly, citizens must be able to exert ongoing control over the fund by monitoring management's fealty to those objectives, and compliance with these terms. There must be frequent and detailed disclosure of SWF performance and the reporting of key decisions on issues like investment strategy, asset allocation, risk management and performance. Headline investment decisions should also be specifically reported on in order to equip the domestic constituency with a proper understanding of activities of the fund that may attract overseas attention. In my view, it is critical to achieving this monitoring function, to utilise institutional devices that promote ongoing interaction between citizen-owners and their representatives. Options here include the use of Citizen Juries or Citizen Assemblies to gather popular opinion on whether an SWF is managed in line with ongoing citizen expectations.

Essential to realizing all these aspects of the control right is meaningful transparency. If an SWF does not disclose its activities, its governing framework and the reasons for its key decisions, its owner citizens will lack the fundamental basis for institutional power over the fund. But if all of these devices can be implemented, we have reason to think that democratic control over SWFs based on an institutional power conception is plausible and desirable. Before concluding as such, I turn in this last section to possible objections to this demand for democratised management.

4.5 Desirability Objections to Democratic Control of SWFs

The previous section addressed several concerns with some of the proposed popular control devices for SWFs and their appropriateness for the particular entity of a sovereign fund. This section extends that discussion by addressing two more general objections to the overall proposal for democratizing SWF management. I label these concerns the 'Incompetent Citizen' objection and the 'Diminished Performance' objection.

4.5.1 The 'Incompetent Citizen' Objection

An intuitive objection to greater citizen control over the management of sovereign funds, briefly touched upon above, is the claim that 'investment management is an exacting discipline and should be protected from the public because of their lack of knowledge and expertise'.[82] Consequently, one might worry that the nature of issues to deliberate over in relation to a sovereign fund are too technical for a layperson to grasp, at least relative to

[82] Clark and Monk (2010a) p.1725

those matters that Pettit envisaged coming before his condominium residents. Issues such as portfolio construction and exposure, performance benchmarks and risk policy might be too technical to be readily grasped and constructively debated by non-experts.

To some extent, the previous section anticipated this concern when discussing the appropriateness of lay representatives on SWF Boards. But the objection can be advanced more broadly, questioning whether citizens in *general* are equipped to provide input into the design, management and monitoring of SWFs, whether as elected representatives on fund Boards or more generally as voters and participants in a popular control regime over sovereign funds. Accordingly, it needs further examination.

This type of objection reflects a common anxiety among opponents of greater popular control over government that certain areas of modern life and public administration are so complex, and yet so important for the public's welfare that they are best delegated to experts.[83] Such anxiety involves not only skepticism about citizen's general fitness for contribution to policy and political matters, but also concerns about the inherently complex nature of particular policy issues. Such a fear has already surfaced in relation to investment management. For Clark and Monk, 'many issues [in SWF management] are so difficult to understand and require the skills and expertise associated with domain-specific knowledge that commonsense or a common commitment to the public good are not adequate bases for collective decision making.' Indeed, according to this objection, democratic processes

[83] Sunstein (2005); Sunstein (2002) in which he argues that citizens have limited reasoning capabilities due to distorted perceptions of risk justifying the limitation of the general public's participation in regulation on risk at pp.28-52

may actually 'overwhelm the best interests of those who stand to benefit (or otherwise) from the collective decision-making process.'[84]

For the sake of this objection, let us grant that the business of investment management requires technical skill and can, in some respects, be highly complex. As the past half-decade has confirmed, capital markets can be volatile, prone to information asymmetries, dangerously interconnected and unpredictably complex. That is why the daily investment decisions of most sovereign funds are delegated to their separate operational arm and from there, to internal or external asset managers. It is the asset managers who conduct the actual task of investment and return seeking. On the status quo then, there is already an extensive level of delegation to experts, which this thesis does not intend to dispute. The essence of this objection must then go towards citizen's competency to have input into the policy parameters within which these experts must operate, and in assessing manager's fealty to those objectives. For example, can citizens, have more meaningful participation at the establishment and framing stage of an SWF's policy framework, and the opportunity for more direct monitoring and review of an SWF's performance during the growth of a fund and evolution of its investment strategy?

When viewed in these more narrow terms, there is, in my view, no good basis for excluding citizens on competency or expertise grounds from greater influence. If the most demanding, technical aspect of the investment management task is already outsourced to experts and not up for grabs for

[84] Clark and Monk (2010a) p.1726

direct citizen control, one might wonder precisely which aspects of this 'exacting discipline' still need to be 'protected from the public'.

Beyond the actual function of investing assets, citizens could, as discussed above, help define a fund's overall mission, investment objectives, risk framework and portfolio design to guide management and the investment experts carrying out the investment activity. To ensure citizens are equipped with the requisite understanding and knowledge to input into these discussions, communities might also consider the use of Citizen Juries or Citizen Assembles to help educate communities, as flagged above. Another option is the use of what Fung terms 'lay stakeholders…unpaid citizens who have a deep interest in some public concern and are thus willing to invest substantial time and energy to represent and serve those who have similar interests or perspectives but choose not to participate.'[85] Governments could engage small groups of willing lay stakeholders for education, discussion and decisions about SWF policy.

Alternatively, if keen to engage a larger sample of citizens in the decision-making, a government might undertake a deliberative poll of a sample of citizens on the crucial foundational SWF policy issues. The key proponent of the deliberative poll concept, James Fishkin explains the idea:

> 'A deliberative poll attempts to model what the public *would* think, had it a better opportunity to consider the questions at issue. The idea is simple. Take a national random sample of the electorate and transport those people from all over the country to a single place. Immerse the sample in the issues, and with the chance to question competing experts and politicians. At the end of several days of working through the issues face to face, poll the participants in detail. The resulting survey offers a representation of the considered judgments of the public – the views the

[85] Fung (2012) p.615

> entire country would come to if it had the same experience of behaving more like idea citizens immersed in the issues for an extended period.'[86]

The world's first nationally televised deliberative poll occurred in Britain in 1994 with much success. It was on the highly evocative social question of what to do about rising crime. The poll assembled 300 participants from all around Britain for a weekend in Manchester and polling of the participants beforehand and afterwards revealed a change in many participants' thinking.[87] This suggests that such initiatives can educate relatively uninformed citizens and empower them to make educated choices on difficult policy questions, casting doubt over the power of the incompetent citizen objection.[88]

While some might consider that a debate on a evocative social issue like rising crime is easier to access than the potentially dry and more technical issue of sovereign wealth management, the key point to register is that citizens showed a high degree of reflection and potential to consider and evolve their attitudes through exercises like deliberative polling. Indeed, over the past two decades, Citizens' Assemblies or 'People's Conventions' have been held in at least six different polities on important national questions of institutional or constitutional design with great success.[89] Many citizen participants in these conventions revealed a change in attitude before and

[86] Fishkin (1995) p.162
[87] Ibid. pp.165-168
[88] Similar evidence emerged from the Australian Constitutional Convention in 1998, a forum of 114 citizens and 38 politicians selected to debate different Republican models in a week-long convention on the future of constitutional monarchy in Australia. Evidence of the pre and post-convention attitude of citizens revealed that when the convention 'sample became more informed and really discussed the issues, it changed its voting intentions significantly.' Fishkin (2009) p.8
[89] See Table 2 in Farrell (2012) where the author identifies six 'People's Conventions' of the modern era that have taken place between 1998 and 2013 on questions of electoral or constitutional reform. Farrell observes that for the most part, 'the outcome of the deliberations is generally clear.' at p.9

after the convention, indicating a degree of reflectiveness among citizens that bodes well for such deliberate democratic techniques. On the basis of similar evidence from his own deliberative democratic experiments, Fung has argued that, 'if ordinary citizens generally possess or can with reasonable effort acquire the knowledge and skills necessary to make wise decisions in this area, then (other factors being equal) considered judgment favors assemblies of citizens over experts deploying their technical prowess'.[90] He goes on to give examples where citizens have, in fact, mastered complex policy issues in a Citizens Assembly context, casting doubt over the idea that citizens cannot grasp technical matters. Such evidence is cause for optimism regarding the efficacy of participatory control devices over SWF management.

A more fundamental line of response to the incompetent citizen objection lies in the claim that the expertise of public administrators, tasked with regulating on behalf of the 'non-expert' citizen, is *only* properly constituted by an assessment of the public's needs and desires. That argument, attributable to John Dewey, is that a regulator's expertise in administering state business, even highly technical matters like sovereign fund management, can only be ascertained through consultation with the public:

> 'For Dewey, the regulator's expertise necessarily involves the kind of engagement with the public that otherwise legitimates the assignment of value choices to the public's representatives. It issues from adoption of a "scientific attitude of mind, . . . apparent whenever beliefs [are] not simply taken for granted but established as the conclusions of critical inquiry and testing." Particularly (though not exclusively) within the realm of regulation, critical inquiry begins with an assessment of the public's needs, which are discerned through consultation with the public itself.'[91]

[90] Fung (2012) p.619
[91] Harvard Law Review Author (2011)

That process is a dynamic one in which the experts help educate the public on policy choices and the public in turn communicates a more informed set of preferences about the future direction of that policy to the experts.

Understanding the democratic control process as a 'mutually educational'[92] one between citizen and expert exposes the quarantined, atomistic conception of citizen and public official upon which the 'incompetent citizen' objection is grounded. The expectation that the citizens should 'arrive' at the policy-making process fully versed and competent to opine on technical matters of state, in my view , involves a denial of the state's responsibility to properly educate its citizens on important policy matters. Indeed, some have argued that '[g]eneral apathy and a lack of sophistication on the part of the public are symptoms of, not justifications for, the exclusion of the public from regulatory decision-making.'[93] In the case of sovereign fund management, when such a significant aspect of public wealth is in the hands of expert managers outside the traditional apparatus of the state, there are strong grounds for mandating regular communication and dialogue between citizens and management to ensure this didactic learning process occurs.

4.5.2 The 'Diminished Performance' Objection

Let us assume that the Deweyan model of exchange between citizens and expert SWF managers occurs such that citizens are competent to opine on matters informing SWF policy. Even so, a second objection arises concerning

[92] Ibid. p.589
[93] Ibid. p.594

the costs to performance of such democratic control. Extensive consultation with, disclosure to and education of the public is costly, both in terms of resources and time. In the competitive world of investment, which often relies on opportunistic decision-making and timely application of expertise, this sort of public engagement could harm the fund's efficiency and ultimately returns.

There are two responses to this objection. The first response is to concede that there are aspects of a SWF that should not be subject to transparency requirements or direct citizen input on account of their potential to compromise SWF performance. As we noted above, there are good grounds for keeping the actual function of investment decision-making confidential. A second response is to note that some of the world's most transparent and accountable sovereign funds do not suffer from relative underperformance, nor a legitimacy crisis in the eyes of their citizen-owners. Norway's sovereign fund is not only one of the world's most transparent funds, but also lays claim to being the world's largest sovereign fund. Similarly, the New Zealand Superannuation Fund has boasted some of the steadiest annual returns in the SWF community since its inception in 2003 at the same time as having one of the most demanding accountability regimes. It is the only SWF, for instance, that requires publication of monthly performance reports and public disclosure of all CEO expenses.[94]

For the sake of argument though, assume that there is a potential cost to investment performance from enhanced public participation in SWF

[94] Truman (2010)

management. The question then becomes whether the goal of functional effectiveness is prior, equal or secondary to that of democratic legitimacy. Surely, if high managers fees for external mandates are justified on the basis of augmented returns that are in the best interests of citizens, then, similarly, expenses to facilitate access to and participation in the democratic control of a fund that is the people's property can be accommodated on the grounds of instilling proper control rights of the true popular owners of sovereign funds.

Conclusion

My task in this chapter was to address theoretical considerations concerning popular control rights to sovereign funds. I commenced by demonstrating the limited resources of property theory for producing conceptions of shared control over collective property. In response to these theoretical limitations, I turned to democratic theory, and specifically, to Pettit's conception of democratic control for guidance on how to implement popular control over shared assets, as this theory enjoys substantial congruence with the principles of the EAC Model that I propose.

While Pettit developed his popular control ideal to defend 'the institutional possibility that the people in a polity might have such control over those who run the state that they are not individually dominated by the interference that the state practices in taxation, coercion and punishment,'[95] I drew on his conceptual apparatus for the distinct task of identifying what popular control consists of theoretically and how this could apply to the specific institution of a sovereign fund. Pettit's general notion of control

[95] Pettit (2012) p.187

included the two essential elements of influence and direction, and his preferred mode of directive influence, known as the institutional power model, offered us guidance on those aspects of decision-making over which popular control should exist and the sorts of devices necessary for such control.

Adapting the institutional power model for applicability to sovereign funds, I identified a three-pronged control right that citizens should exert in relation to SWFs. First, they should *elect* SWF Board representatives; secondly, they should *participate* through public consultation mechanisms in the formulation of the fund's objectives and overarching guidelines; and thirdly, they should *monitor* management's fealty to these objectives which requires transparency by sovereign funds on most aspects of their activity (although not daily investment decisions) and ongoing consultation with management. If these three aspects of popular control are institutionalised through the sorts of mechanisms discussed, citizens would, I suggest, have the potential to exercise 'individualised, unconditioned and efficacious' influence over their fund, moving it towards a collectively desired end.

In closing, I addressed common objections to the proposal for greater democratic control over SWFs, neither of which were sufficiently persuasive to dismiss the idea of popular control over sovereign funds as implausible or undesirable. With a defensible/desirable image of popular control over sovereign funds now laid out, I turn in the next chapter to examine one of the world's most democratised sovereign funds in order to see how it compares to this theoretical ideal.

Chapter 5 - Popular Control of Sovereign Funds in Practice: Democratic Management in Norway and Beyond

Armed with the 'institutional power' ideal of popular control over SWFs developed in the previous chapter, I now turn to examine the extent to which SWF management conforms to that ideal in practice. In Section 5.1, I appraise current control arrangements over sovereign funds against the yardstick of institutional power. The analysis reveals significant variation across sovereign funds in terms of control arrangements, as well as a gap between our ideal of democratised SWF management and existing practice. Accordingly, I find that all citizen-owners of SWFs lack the basic control rights they require to be effective co-owners of shared public property. In response to this finding, I devote the rest of this chapter to identifying exactly what reforms SWFs need to move closer to the institutional power conception of popular control. In Section 5.2, I examine the approach of the world's current best practice fund when it comes to democratic management—Norway's Government Pension Fund – Global (the '**GPFG**')—for guidance. However, as Section 5.3 shows, the Norwegian level of democratization still falls short of our desired standard. A close review of these deficiencies helps isolate necessary reforms. This exercise reveals that 'the [Norwegian] model is far enough away' from our ideal to 'direct us to reforms that are required' to properly endow citizen-owners with genuine popular control over SWF management, but close enough to the ideal in several respects for the suggestions not to appear entirely utopian.[1] The chapter concludes by recommending reforms intended to bring SWFs closer to my proposed ideal.

[1] Pettit (2012) p.188

5.1 Current Control Arrangements Over Sovereign Fund Management

I start by assessing the extent to which citizens exert control over their sovereign funds. As the institutional design and governance arrangements of SWFs vary widely, a detailed review of the individual control arrangements of every sovereign fund is not possible here. Instead, I draw on existing assessments of SWFs that rank individual funds on criteria relevant to evaluating democratic control, such as transparency, accountability, structure and behaviour. While no existing index or scoreboard directly measures *popular* control over sovereign funds, the major indices test for the presence and effectiveness of certain features necessary for democratic control. Moreover, examining SWF performance against these weaker criteria still offers a useful impression of how SWFs are faring in terms of initial democratization efforts. I then supplement these assessments with my own evaluation based on our more exacting standard of citizen control outlined above.

The most comprehensive of these existing assessments is the Truman Scoreboard, developed by economist Ted Truman in 2007.[2] It is helpful in two ways. First, we can analyse the most recent 2009 Scoreboard results to see how transparent and accountable SWFs currently are as a group, on Truman's criteria.[3] The overall focus of the Truman Scoreboard is transparency and accountability. It assesses funds on 33 elements in four categories: (1) structure; (2) governance; (3) transparency and accountability; and (4) behaviour.[4] While popular control is not explicitly measured, the overall

[2] See Chapter 1, footnote 64 and Truman (2010) pp.94-96 for a critique of alternatives.
[3] Truman (2010) p.71
[4] Ibid. p.69

focus of Truman's Scoreboard on whether SWFs are accountable to their home governments and citizens[5] means the Truman rankings bear on the citizens' potential to exert democratic control, since transparency and accountability are crucial prerequisites for monitoring fund management.

Second, I build on Truman's useful groundwork in delineating systematic criteria against which to assess the democratic accountability of SWFs to elaborate specific criteria for our ideal model. Although Truman's focus was not identical to that which I advocate, his Scoreboard offers a detailed foundation for analysing SWF decision-making. I therefore use it as a blueprint for developing recommendations on how to put my ideal control right into practice. Recall from Chapter 4 and Figure 4.1 that my proposed control right covers three areas: election of management, setting of the fund objectives and monitoring management fealty to those objectives. As Table 5.1 below shows, Truman has gone into very fine detail on SWF responsibilities within these three areas. From this, we can identify more precisely the exact aspects of fund decision-making over which I advocate popular control. Let us first turn to the Truman Scoreboard itself to see how the SWF community fared in 2009 on those criteria. The ranking scored a sample of 53 funds from 37 countries on the 33 individual elements. Each element is formulated as a question with a fund scoring 1 if the answer is 'yes', 0 for 'no' or partial scores of 0.25, 0.5 or 0.75 if they partially satisfy the element.

[5] Ibid. pp.70-71

Table 5.1 Results of 2009 Truman Scoreboard

TRUMAN ELEMENTS	Average sample score (%)
Category 1: Structure	
1. Is the SWF's **objective** clearly stated?	96
2. Is there a clear **legal framework** for the SWF?	87
3. Is the procedure for **changing the structure** of the SWF clear?	78
4. Is the **overall investment strategy** clearly stated?	74
5. Is the **source of the SWF's funding** clearly specified?	91
6. Is the nature of the subsequent **use of the principal and earnings** of the fund clearly specified?	67
7. Are the SWF's operations **appropriately integrated** with fiscal and monetary policies?	58
8. Is the SWF **separate** from the country's international reserves?	60
SUB-TOTAL SCORES	**76**
Category 2: Governance	
9. Is the **role of the government** in setting the investment strategy of the SWF clearly established?	77
10. Is the **role of the governing body** of the SWF clearly established?	86
11. Is the **role of the managers** in executing the investment strategy clearly established?	80
12. Are **decisions** on **specific investments** made by the managers?	57
13. Does the SWF have **internal ethical standards** for its management and staff?	33
14. Does the SWF have in place, and make publicly available, **guidelines for corporate responsibility** that it follows?	30
15. Does the SWF have **ethical investment guidelines** that it follows?	25
SUB-TOTAL SCORES	**56**
Category 3: Transparency and Accountability	
Investment Strategy Implementation	
16. Do regular reports on investments by the SWF include information on the **categories** of investment?	75
17. Does the strategy use **benchmarks**?	58
18. Does the strategy use **credit ratings**?	51
19. Are the holders of **investment mandates** identified?	56
Investment Activities	
20. Do regular reports on the investments by the SWF include the **size** of the fund?	79
21. Do regular reports on the investments by the SWF include information on its **returns?**	63
22. Do regular reports on the investments by the SWF include information on the **geographic location** of investments?	45

23. Do regular reports on the investments by the SWF include information on **specific investments**?	36
24. Do regular reports on the investments by the SWF include information on the **currency composition** of investments?	38
Reports	
25. Does the SWF provide at least an annual report on its activities and results?	69
26. Does the SWF provide quarterly reports?	46
Audits	
27. Is the SWF subject to a regular annual audit?	69
28. Does the SWF publish promptly the audits of its operations and accounts?	53
29. Are the audits independent?	66
SUB-TOTAL SCORES:	**57**
Category 4: Behaviour	
30. Does the SWF have an operational risk management policy?	43
31. Does the SWF have a policy on the use of leverage?	22
32. Does the SWF have a policy on the use of derivatives?	50
33. Does the SWF have a guideline on the nature and speed of adjustment in its portfolio?	19
SUB-TOTAL SCORES:	**33**
TOTAL SCORE:	**59**

Table 5.1 reveals that on the whole, SWFs fall short of full compliance with criteria that are noticeably weaker than our popular control ideal, underscoring the gap between the current SWF practice and our desired level of democratic management. Consider first how the Truman criteria are weaker than what we demand. As the reader will recall, a core feature of the institutional power mode of control is that members of a community must be able to critique the decision-making of their representative body, and thus, require information about the decisions of that body and their decision-making process. Nearly all of the Truman criteria relate to this form of control as they concern public reporting requirements. However, the institutional power model demands much more than information disclosure; it requires avenues for citizens to critique those decisions, feedback their views to their representatives, select those representatives, and shape the desired purpose of

the governing body in the first place. None of the Truman elements assess a sovereign fund's arrangements on these counts.

In Category 1 on Structure, the elements focus almost entirely on clarity. While clarity regarding the fund's structure and purpose is essential for citizens to comprehend, and thus monitor, fund management, none of these elements assess whether citizens have *input* into their formulation. Accordingly, from a popular control perspective, Element 1 on an SWF's objective, Element 4 on the overall investment strategy, Element 5 on the source of SWF funding, and Element 6 on use of the principal and earnings, should all be adapted to ask whether citizens influence the determination of these issues and how. Greater citizen control is also critical for Elements 3, 7, and 8, since each concern how easily a government can access the sovereign wealth in its possession, redeploy it to the budget, or borrow against these resources. In other words, they relate to the extent of unfettered government power over how this wealth is used within the national accounts. Citizens' ability to have proper input and oversight on these particular governance issues is essential for SWFs to be truly under popular control.

Category 2 on governance is also deficient when it comes to assessing direct popular control. Element 9, 10 and 11 require that the respective roles of the government, governing body and managers be clearly established, but contain no reference to citizen influence on these fundamental aspects of fund governance. Also, the combined expectation of Elements 13 and 15 that the SWF has ethical investment guidelines that it follows, entails no opportunity for citizen input. However, as discussed in Chapter 4, genuine democratic

control over SWFs must involve a role for both government *and* the public in setting the investment strategy, designing the organizational responsibilities and formulating relevant ethical investment guidelines. By contrast, when it comes to Element 12 (decisions on specific investments), I noted in the previous chapter that this area of SWF activity is not appropriate for direct citizen control. That notwithstanding, citizens should certainly know about which managers are employed on behalf of the fund, and how their activities are monitored.

Category 3 (transparency and accountability criteria) shares the most in common with the requirements of popular control. Most of Truman's criteria in this category for regular reporting and auditing, as well as specific reporting requirements on investment strategy implementation and activities, are sufficiently precise and demanding to endow citizens with regular, detailed information on their sovereign funds. That said, many of the criteria do not measure whether citizens have the opportunity to provide *input* into the formulation of policy on investment activities, as they simply concern retrospective reporting requirements. Yet, our ideal of democratic control demands that citizens are able to influence core aspects of an SWF's design, including the fund's desired size (Element 20), return targets (Element 21), as well as having input into the asset categories, geographic location and currency composition of its investments (Elements 16, 22 and 24).

Finally, Category 4 on behaviour involves more technical criteria, but they are no less relevant for popular control, especially in the wake of the financial crisis. While citizens will not necessarily have strong intuitions or

informed views on issues such as leveraging, derivatives, portfolio adjustment, and risk management, they can be presented with the choices facing experts in this area through mechanisms such as the Citizen Jury and Citizen Assembly initiatives that I discussed earlier. As technical as these matters can be, the choices surrounding them are often driven by ideological preferences, and value judgments. Citizens should therefore be given the chance to learn more about and have input into the selected options. Accordingly, these criteria could be reworked to ask whether citizens enjoy input into these matters of fund policy.

Overall then, the Truman criteria provide some useful insights into existing transparency and accountability levels within SWFs, but they constitute a substantially diluted version of our ideal. The fact that SWF performance against these weaker criteria is poor provides little cause for optimism regarding the uptake of our more radical reforms. The group's overall score of 59% compliance with all elements reflects generally inadequate performance, leading some commentators to characterise SWFs as unaccountable and non-transparent relative to peer institutional investors.[1]

This pessimistic conclusion must be read in the light of the second salient point raised by Table 5.1. While the overall performance of sovereign funds against these weaker criteria is unsatisfactory, there is huge variation in the level of observance of the Truman criteria among funds. While nearly all surveyed SWFs had a clearly stated objective (Element 1), a clearly identified source of funding (Element 5), and explicitly defined roles for the governing

[1] According to Rozanov (2011) at p.258: 'The biggest issue that most policy-makers and commentators seem to have with many SWFs is their perceived lack of transparency.'

body (Element 10) and the SWF managers in executing the investment strategy (Element 11), only a minority of the sample had policies on more technical matters like the use of leveraging (Element 31) and portfolio adjustment (Element 19), and less than half of the group publicly disclosed geographic location, specific investments, or currency composition (Elements 22, 23 and 24). This suggests that the area needing most work in terms of increasing direct citizen control is the decision-making on more technical aspects of SWF policy, such as investment strategy. Indeed, these sorts of issues relate directly to the core objectives of an SWF. Designing an appropriate investment strategy will be intrinsically linked to the purpose and mission of a fund, all issues over which, I argue, citizens should have input. Moreover, citizens must develop an understanding of where and in what an SWF is investing, and how it intends to behave in certain market conditions, to properly assess its performance.

The final point to make in this regard is that there are certain criteria relevant to my proposed ideal of popular control that do *not* feature at all in the Truman Scoreboard. The obvious missing criterion is selection of the governing body/Board members (including the possibility that there should be direct elections for Board members). This is undoubtedly a result of the overall emphasis on *government* contra *citizen* accountability in the Truman elements, a wider symptom of the conflation of government and citizen interests that characterises the SWF discourse (as shown in Chapter 2), and which motivated the proposal of direct control devices between citizens and SWF Boards as part of the institutional power model.[2]

[2] See Figure 4.1 in Chapter 4 and accompanying discussion.

The overall message from my critique of the Truman assessment is that current practice of SWFs is far from my preferred approach. Even when judged against the weaker Truman standards, most funds fell well short. Of the 53 funds surveyed, no fund received a perfect score of 33, although the Norwegian GPFG came close topping the list with 32.[3] These funds displayed a high degree of transparency and accountability relative to their SWF peers, endowing citizens with some of the features necessary for exercising control over their funds. However, these funds were exceptional. The overall scoreboard results revealed a top cluster of high performers (14 funds), a low cluster of poor performers (14 funds) and the majority of 25 funds scoring in the middle.[4] More worrying than the variation is the sizeable cluster of 'poor' performers in which there seems little potential for meaningful democratic control. This bottom cluster is dominated by SWFs from the Middle East, including the world's largest sovereign fund, the Abu Dhabi Investment Authority (the '**ADIA**'),[5] with a score of 3 out of 33.[6] Moreover, as Truman observes, there is no one consistent group of 'good' and 'bad' funds. Across the four categories, different funds fared differently. Even the best overall performer, Norway's GPFG, which scored 100% in the 'structure', 'governance' and 'transparency and accountability' categories, dipped down

[3] The GPFG was closely followed by the California Public Employees Retirement System with 31.5, the NZSF on 31, and the APF and the Canada Pension Plan both on 30.5 points. Truman (2010) Table 5A.1.
[4] Ibid. p.75
[5] Other notably low performers include the Qatar Investment Authority, Sudan's Oil Revenue Stabilisation Account, Oman's State General Reserve Fund, the Brunei Investment Agency, and Venezuela's two funds. Truman (2010) Table 5A.1, p.120
[6] ADIA's low score for the 2009 survey is a fair reflection of its performance for most of its 34-year history to that date. However, in March 2010, ADIA released its first ever Annual Report. Truman rescored ADIA using data in the report, which elevated its percentage score from 11 to 58%, placing it inline with the mean for all SWFs. Truman (2010) p.76.

to 75% in behaviour, an above average score for the category, but nowhere near the top.[7]

If the majority of funds struggle to fully comply with these weaker standards of transparency and accountability, is the regime of control rights I propose entirely utopian or infeasible? In the next section, I seek to establish that, despite this substantial gap between my ideal of direct popular control and current institutional practice, my proposed model is still desirable and feasible. I do so by examining one of the Truman Scoreboard's top performing funds and showing that, although amendments are still necessary to make it fully comply with our ideal, these reforms 'would not be so distant from current arrangements as to seem utterly infeasible.'[8]

5.2 Norway's Sovereign Fund: A Blueprint for Popular Control?

We saw in the last section that sovereign funds as a group fall short of popular control standards. However, the scores also indicated significant variation across funds. One of the world's best performing sovereign funds in terms of democratic control and accountability is the Norwegian GPFG. On Truman's Scoreboard, the GPFG ranked as the world's most transparent and accountable fund, receiving a top score of 32 out of 33. The GPFG is also widely recognised as the world's largest and, by implication, most successful sovereign fund when its wealth is calculated on a per capita basis.

Given the GPFG's superior performance, both in accountability and asset accumulation, my objective in this section is twofold: first, I wish to

[7] Ibid. Table 5.1 pp.72-73
[8] Pettit (2012) p.239

show that, despite the overall weak performance of the SWF community on popular control, the existence of open, transparent and accountable management in the GPFG shows that the basic prerequisites of democratised management are institutionally feasible and compatible with effective financial performance. Second, by studying the GPFG as a partial realization of the democratic control ideal, I hope to bring into sharp relief the reforms required if SWFs are to pursue fully democratised management. Accordingly, I assess below the extent to which the GPFG realizes the institutional power ideal. To do so, I provide an overview of the GPFG, focusing on those aspects of its management over which Norwegian citizens do (or should) have a high degree of input and influence. I conclude with an evaluation of the extent to which Norwegians wield institutional power over their fund and identify improvements necessary to the GPFG where they lack sufficient control.

5.2.1 History and Structure of the GPFG

Norway's sovereign fund was established in 1990 as the Government Petroleum Fund (the '**GPF**') by an Act of the Norwegian Parliament (the '**Storting**').[9] There was no referendum on whether to establish the fund or public consultation on its design, but there was a reasonably high degree of public awareness about the proposal given the importance of its underlying assets.[10] The fund was created with proceeds from Norway's North Sea oil and gas discovered in 1969.[11] Initially, it had a twofold purpose: to 'decouple government spending from oil revenues in the short term' (i.e. to guard against the distorting effects on public spending of the substantial new

[9] Act of the Government Petroleum Fund (Lov om Statens petroleumsfond) 1990
[10] Skancke (2003)
[11] See Clark and Monk (2010b) pp.1727 and Clark and Monk (2010c) p.14

resource wealth); and to act 'as a long-term savings vehicle…to help cope with expenditures associated with the ageing of the population.' [12]

To secure these ends, policymakers put in place a series of rules to create transparency around the management of Norway's sovereign wealth. While these policies were determined without public consultation by Ministry of Finance bureaucrats, they are today considered effective in creating transparent fund management, and thus equipping citizens with an ability to monitor the fund properly.[13] The first steps were full integration of the fund with the budget, and the adoption of a rule-based approach for transfers to and from the fund. For the long-term, the government declared a notional 'share' of resource wealth to constrain its spending reliance on oil and gas revenues.[14] In the short-term, transfers from the central budget to the fund were made conditional on a budget surplus to avoid the perverse situation of the government sequestering resource windfalls, while accumulating debt elsewhere.[15]

The first transfer to the fund did not occur until fiscal year 1995, six years after its establishment, due to recession in the first half of the 1990s.[16] As for withdrawals from the fund, a 'Spending Rule' adopted in 2001 restricts the government from spending more than 4% of the fund's returns on the annual national budget. Notably, for our purposes, citizens did not participate in the design of these rules, but are considered their beneficiaries.

[12] Skancke (2003) p.317
[13] Clark and Monk (2010b)
[14] Ibid. p.1727
[15] Skancke (2003) p.317
[16] Ibid. p.318

5.2.2. Institutional Structure and Control Arrangements

In contrast to the dominant model of SWFs as separate legal entities outside government, the GPFG is housed within Norway's central bank, the Norges Bank. As with other 'internal' sovereign funds residing within government,[17] the GPGF is a deposit account in the central bank managed by public servants (rather than an 'arms-length' Board of Trustees and independently hired management). Operational management rests with a special team within the central bank called Norges Bank Investment Management (the '**NBIM**'). Major policy decisions relating to the fund's management are undertaken by the Ministry of Finance as principal and legal owner.

The extent of the Ministry's 'owner' responsibilities is notable. The Ministry is responsible for the overall management of the fund including framing and performance of the investment strategy, identification of permissible asset classes, allocations and geographic exposure, implementation of ethical investment decisions and risk control. All these tasks are undertaken *without* public consultation. The Ministry also regulates 'the benchmarking of investment portfolios, the rebalancing of the fund, the limitation of tracking errors, and the valuation, measurement, and control of investment risk"'[18]

In operationally managing the fund, NBIM may appoint external asset managers and exercise ownership rights in investee companies. It also

[17] The IMF has argued that the institutional structure of SWFs may take one of three legal forms: a separate legal entity outside of government, a unit within the Central Bank or a unit within the Ministry of Finance. The first constitutes proper 'arms-length' governance outside of government, while the latter two structures should still involve independent management but from inside government. Those SWFs sitting within Ministries of Finance are the least independent. Das et al (2009) p.13

[18] Clark and Monk (2010b) p.1730-1731

formulates strategy advice for the Ministry and Parliament regarding the investment of the fund. Overall though, the extent of the government owner's power over the GPFG is unusually high, standing in contrast to typical 'arms-length' governance arrangements in which governments delegate core tasks to a designated expert Board.[19]

Entirely unique to the Norwegian fund is the third and final aspect of its organizational structure, the *government-appointed* Council of Ethics. The Council provides advice on compliance with the ethical investment guidelines including the exclusion of companies. It is made up of five government appointed members, expected to be independent experts in the theory and practice of ethics, as well as Norway's international commitments in treaties and conventions, and eight government staff members. For some, this structure, along with the high profile ethical investment mandate, means the fund is worryingly 'enmeshed in the machinery of government' and consequently 'not "protected" from parliament and public opinion through statutory powers invested in its trustees'.[20] If that is true, then, conversely, the GPFG appears promisingly open to public scrutiny and parliamentary oversight from our perspective of popular control.

5.2.3 Transparency and Accountability

It is certainly the case that transparency and accountability are considered essential elements of the GPFG's governance framework. According to Martin Skankce, the former Director General of Asset Management at the Norwegian Ministry of Finance, professionalism, accountability and transparency were

[19] Clark and Monk (2010b) p.1729
[20] Ibid. p.1724

the three key priorities in the design phase of the fund.[21] Accountability was achieved through checks and balances with 'a clear division of responsibilities between Ministry of Finance and Norges Bank',[22] while transparency was deemed essential for building consensus around the Petroleum Fund and imposing a disciplinary effect on the fund management.[23] With fund assets exceeding 100% of GDP in value building up in visible, financial assets, sufficient disclosure of GPFG performance to allow policymakers to 'tell the public exactly how they are going to invest the money, and what the returns on investments are' was and is considered critically important.[24]

For these reasons, the GPFG is subject to extensive reporting requirements. Norges Bank presents quarterly financial reports to its government owner containing valuations and measurements of returns, *which are publicly released*, with a full list of every single asset held by the Fund published yearly in the Annual Report. The Annual Reports also contain detailed figures on the total return, benchmark return, management costs, and attribution of the excess returns, as well as articles on investment philosophy and process for selecting external managements. The reports are presented to the Norwegian Parliament, with most information in both Norwegian and English. It is one of the most impressive annual reports in the SWF community in terms of disclosure.[25]

Norges Bank also provides extensive information on assessment, measurement and reporting of investments, as per its obligations under the

[21] Skancke (2003) pp.327-328
[22] Ibid. p.327
[23] Skancke (2008) p.5
[24] Skancke (2003) p.327
[25] Truman (2010)

Management Regulations and under the Santiago Principles,[26] and from 2007 onwards, it has published a full list of how it voted on every issue in every company in which it invests where it exercised its ownership rights.[27] As the manager, Norges Bank also reports to an independent company hired by the Norwegian government that checks the fund's calculation of the difference between actual and benchmark performance. These reports are publicly released. Finally, there is an Independent Audit by the office of the auditor-general, which is reported directly to Parliament.

The Storting also exerts control in other ways. Skankce has observed that 'all significant changes to the Fund's investment strategy are in practice presented to Parliament before implementation as a way of ensuring broad political support for important strategic choices.'[28] As well as changes to the investment strategy, the Ministry typically communicates updates to Parliament on all important matters affecting fund management, including the size of the Petroleum revenues, the size of the Fund, and the outlook for fiscal sustainability, as well as specific fund performance data, giving Parliament an extensive oversight of the GPFG.[29]

That said, there are certain elements of the GPFG's management that are not deemed appropriate for public disclosure on commercial grounds. For instance, the fund does not disclose the 'exact timing and procedure of fund

[26] See sections 4.2 and 4.3 of the Guidelines
[27] This amounted to almost 40 000 issues in more than 4 000 companies. Skancke (2008) p.5
[28] Skancke (2008) p.3
[29] Ibid. p.12

allocations in advance of the relevant actions' on the basis this could have adverse pricing effects.[30]

Beyond reporting practices, the fund's rule-based approach to managing flows in and out of the fund is considered a 'tool to ensure transparency in the use of petroleum revenues.'[31] Clark and Monk have characterised these rule-based constraints on short-term government spending as 'an implicit contract between political elites on behalf of the national best interest' with its 'robustness depend(ing) upon a deliberate, though oftentimes unstated, denial of the advantages of mobilising vocal minority interests for immediate political gain.'[32] In other words, Norwegian citizens enjoy control over their fund by virtue of the extensive rule-based system stipulating permissible government management of the GPFG.

5.2.4 Investment Approach

Finally, in the area of investment strategy, the GPFG is subject to the least public influence. The fund's initial investment strategy was determined by civil servants in consultation with expert economists.[33] The central requirement that all investments be in foreign assets was driven by the desire to avoid overheating the Norwegian economy. The GPFG commenced investing in bonds, adding equities to its portfolio in 1998 in accordance with new guidelines determined internally within the Ministry of Finance.[34] Emerging markets were added to the portfolio remit in 2000.

[30] Ibid. p.6
[31] Skancke (2003) p.320
[32] Clark and Monk (2010b) p.1728
[33] Personal interview with Martin Skancke (2010)
[34] These required 30% - 50% of the GPF be invested in equities. Skancke (2003) p.318

One exception to this bureaucratically-dominated process of investment policy formation was the emergence of ethical guidelines for the GPFG in response to public demand. In 2001, the investment strategy of the GPFG underwent a significant change with the introduction of a Socially Responsible Investment ('**SRI**') mandate. The move occurred by popular demand when, 'at the end of the 1990s, Norwegian public opinion insisted that the sovereign wealth fund should not only be used for intergenerational justice, but should also contribute to the implementation of universally accepted values and norms.'[35] This shift in public opinion was spurred by a news story in 1999 revealing that the fund was invested in a Singaporean company producing anti-personnel mines. The report caused a public backlash given Norway's high profile in the Ottawa process that led to the creation of the Mine Ban Convention prohibiting the use, development, stockpiling, production and transfer of anti-personnel mines. Norwegian citizens struggled to comprehend how Norway could be a party to this Convention, and nevertheless invest public money in anti- personnel mine production.[36]

The Norwegian Government was highly responsive to the public mood and established an expert committee to clarify the fund's approach to ethical investment and develop guidelines. While the fund was subject to some ethical obligations, these had focused narrowly on environmental sustainability. It tasked the expert committee, chaired by philosophy Professor Hans Peter Graver (the '**Graver Committee**'), to provide advice on the formulation of a 'normatively and procedurally clearer' ethical investment

[35] Reiche (2008) p.2: Richardson (2011) p.7
[36] Nystuen (2006) pp.207-208

framework.[37] The Graver Committee handed down its recommendations in 2003 (the '**Graver Report**'),[38] resulting in the adoption of new Ethical Guidelines in 2004 and the establishment of a Council on Ethics for evaluating compliance with the new guidelines in 2005.

The Graver Committee consisted of 10 committee members, who met eight times to develop their report. The Committee also held meetings with non-governmental organisations to collect input for its work and called on various experts in order to achieve the soundest possible basis for the proposal. Furthermore, the Committee had a seminar on ethical guidelines in fund management with the participation of non-governmental organisations, consultants and fund managers from Norway and abroad.[39] There were, however, no opportunities for direct citizen input, and none of these sessions were open to the public.[40]

Despite the lack of public participation, the Graver Report sought to identify a legitimate democratic basis for the fund's ethical obligations. Acknowledging an inherent pluralism in ethical outlook among Norwegians, the Committee still observed an 'overlapping consensus' on certain ethical principles among citizens.[41] On this basis, it argued that Fund's ethical guidelines must be 'firmly rooted in the values underlying Norwegian policy'. To discover these, the Committee argued it must search for the 'main normative characteristics that are consistent over time.'[42] Only then, could

[37] Richardson (2011) p.8
[38] See Graver Committee (2003)
[39] Ibid. Appendix 1
[40] Author Interview with the Council of Ethics (2010)
[41] Graver Committee (2003) Section 2.1
[42] Ibid.

they ensure 'lasting support from the Norwegian public for the ethical foundation of the Petroleum Fund', including from future generations whose values they could never know, but whose interests they could do their best to represent by extrapolating from existing values.[43] Following the adoption of the Graver recommended proposal, 'the Fund's mission evolved to include ethics as a core component of investment policy.'[44] As Clark and Monk observe, 'the GPFG appears to have become both an instrument of long-term national welfare and an expression of Norwegian commitment to global justice.'[45]

The significance of these investment reforms required the formulation of a new statutory framework. The *Government Pension Fund Act* 2005 replaced the *Government Petroleum Fund Act* 1990, prompting a renaming of the fund.[46] The GPF became the Government Pension Fund – Global (the ' **GPFG**') better reflecting both the renewed focus on 'global justice' driving these reforms, as well as the fund's role as a government savings vehicle that could provide a buffer for any shortfalls in pension liabilities.[47] Since that time, the accompanying regulations to the Act governing the fund's investment mandate have been regularly revised by the Storting, most recently in 2010.

These evolutions in the GPFG's purpose and investment approach mean that, today, the fund is best thought of as having a revised twofold mission on behalf of the Norwegian state. First, it is a long-term savings vehicle

[43] Ibid.
[44] Clark and Monk (2010a) p.14
[45] Ibid.
[46] Act of the Government Pension Fund (2005)
[47] Unlike a traditional pension fund, the GPFG does not have a designated beneficiary, its management is not governed by fiduciary duty and it is not acting according to a defined time horizon. Clark and Monk (2010b) p.1723

promoting intergenerational equity by ensuring that a reasonable share of Norway's petroleum wealth benefits future generations of Norwegians (including by being available to support the pension liabilities of the Norwegian state to current and future generations). Second, it should avoid investments that would make it complicit in unethical or harmful social and environmental practices. No political decision has been made about when the fund can be used, and to what purposes it may be limited.

5.3 Assessing Norway's GFPG: Sufficient Democratic Control?

Many of the features just described contribute to the GPFG being considered one of the best-governed and most accountable funds in the world. It is also clear that the fund possesses many attributes, which my proposed extension of the Truman Scoreboard would find laudable. That said, it would also have been evident to the reader that the GPFG's management and design lacks many attributes associated with the institutional power mode of popular control. Despite some commendable features, overall the GPFG fails to bestow Norwegian citizens with sufficient popular power over their fund. In this final section, I first identify those aspects of the fund's management which contribute to a degree of democratic control, or suggest potential for evolution towards a more fully democratised approach. I close with a summary lessons on giving effect to my proposed popular control right.

5.3.1 Merits of the Norwegian Approach: Foundations for Popular Control

Three features of the GPFG model are virtuous when viewed against our ideal standard of popular control. First, the GPFG is exemplary in its public disclosure, creating the preconditions for genuine popular control through its

substantial reporting on fund performance, investment, size of assets, risk procedures, fund structure and so on.

On the Truman Scoreboard, sovereign funds were deemed to be accountable and transparent if they simply reported this data to the citizenry. By contrast, my proposal requires citizens to have direct input on several of these aspects of fund management, including information on the size of the fund, returns, categories of investment, geographic location, currency composition and specific nature of investments. While the GPFG does *not* give citizens direct opportunities to influence these decisions, the fact that any changes on these matters are put before the Storting for approval does allow for public awareness and debate on these matters. In this respect, the GPFG goes closer to, if not all the way towards, democratic control of SWF management through citizen-oriented transparency and accountability. It fosters the circumstances for informed, open debate on the fund's policies; a prerequisite for citizens to exercise *directed* influence over the fund's management, since the citizenry cannot direct a fund to its equally acceptable end if they cannot determine the ends which it is currently pursuing.

The second positive attribute of the GPFG is the fund's overall emphasis in its governance arrangements on popular accountability. Indeed, the GPFG goes well beyond the Truman criteria, which simply require clarity on fund structure. Instead, the GPFG actively incorporates a citizen-centred conception of its purpose and structure. Consider that the GPFG defines the relationship of Norwegian citizens to the fund and explicitly declares equity between current and future citizens as one of its central purposes. In this area,

the GPFG shows potential to adopt an even more citizen-oriented understanding of its ownership that could translate into explicit and direct popular control rights over the fund.

In the absence of a regime directly answerable to the citizens, the Norwegian fund still exemplifies a highly accountably management framework. Clark and Monk observe that the governance of the GPFG 'places a premium on public accountability, represented by the minister of finance and the accountability of the minister to government, and ultimately, parliament.'[48] These governance arrangements, it is argued, derive their legitimacy from the processes used to represent the public interest, rather than the performance of those institutions. As a result, the fund enjoys bipartisan support for its commitment to global and intergenerational justice, even if these commitments may compromise the performance of the fund on some occasions. This bipartisanship suggests a wider consensus in Norwegian society on the fund's purpose, which the fund is promoting by operating in a way that is, broadly speaking, equally acceptable to all. Of course, according to the theoretical ideal that I propose, it would have been preferable if the people themselves had identified that purpose through participatory mechanisms and enjoyed the chance to choose the fund's objectives in line with that shared purpose, but in the absence of fully democratised control process, it does appear that the fund, perhaps because of its high transparency and accountability, or perhaps on account of a happy instance of good governance by the relevant bureaucrats and politicians, does pursue a purpose that seems broadly acceptable to the Norwegian citizenry.

[48] Clark and Monk (2010b) p.1736

Finally, the implementation of the fund's ethical investment mandate following popular demand for more socially responsible return-seeking also suggests a widely agreed purpose for the fund across the Norwegian citizenry. The Norwegian experience suggests that a citizenry can hold strong views on issues of investment policy, and that fund investment strategy is capable of evolution in line with those views.

The fact that the Norwegian Government responded by appointing a committee to provide advice on the options for this investment approach, and subsequently incorporated Ethical Guidelines into the investment strategy of the fund also suggests that, even in the absence of formal channels for citizen input, the Norwegian citizenry exerted a degree of popular control over the management of their fund – at least insofar as public pressure led to the adoption of ethical considerations in investment as the public's behest. What we cannot confidently determine however is whether the precise content of those guidelines truly reflects public values given the Graver Committee deliberations were not open to public input. While the Graver Committee appeared to give effect to Norwegian public values by identifying an 'overlapping consensus' on ethical principles as a basis upon which to form the fund's ethical guidelines, we can not be sure that the Committee were not just articulating their own preferences and those of ethical experts and repackaging these in line with public values. On one view then, the GPFG has demonstrated a capacity to reform its operations in accordance with Norwegians evolving sense of an equally accepted purpose for the fund, despite the absence of formal channels for public input. But in another sense,

the procedures used to do so are not rigorously democratic enough to really ensure the people's values are captured and constantly projected through its investment decisions.[49]

On the whole though, if Norway's citizens are capable of exercising a degree of directed influence through less direct means than our ideal model proposes, then the Norwegian approach holds substantial promise for the institutional feasibility of basic reforms as the first step towards more radical popular control initiatives.

5.3.2 Deficiencies of the Norwegian Approach: Insufficient Popular Control

As already foreshadowed, these commendable attributes of the GPFG notwithstanding, the fund still lacks the facility for direct popular participation in the three areas required by my proposed control right (see Figure 4.1).

First, Norwegian citizens do not influence the appointment or selection of those running the fund since that task is undertaken by internal civil servants. A more radical reform option would be to remove the task of running the fund at Board level from the civil service and instead, ask those same bureaucrats or government ministers to prepare a shortlist of suitable candidates for this role from which citizens can elect representatives, as proposed in Chapter 4. Alternatively, if too radical a departure from the specifics of the Norwegian approach which employs public servants as fund

[49] *Cf* Clark and Monk (2010b) p.1737

Board members, there could be a more transparent government appointment process of NBIM members.

Second, despite extensive public disclosure and the incorporation of public values into decision-making on investment decisions, there are no formal opportunities or channels for citizens to *directly* participate in the formulation of fund objectives and policy. As Richardson observes '[w]hile the NGPF-G functions under a legal framework that reflects a 'public commitment to procedural democracy', the general public itself has few opportunities to participate directly in the fund's governance except circuitously through their elected Storting representatives.'[50] This criticism is echoed by Backer, who, as already cited, concludes that '[t]he Norwegian state is accountable to the people, but the Fund is accountable only to the state.'[51]

This substitution of direct citizen control with government accountability goes to the essence of what motivates the need for our popular control model. Even in those aspects of the GPFG's governance that have been more citizen-oriented, such as the Graver Committee's attempt to identify a 'broad, democratic basis' for ethical investment decisions, the process for formulating that basis was not open to the public. Instead, the expert committee heard only from select NGOs and chosen civil society representatives, resembling a sort of 'professional stakeholders' approach to direct citizen involvement in collective decision-making.[52] The inclusion of

[50] Richardson (2011) pp.6-7
[51] Backer (2009) p.182. See also Figure 4.1 of Chapter 4 where Backer is cited.
[52] Professional Stakeholders in participatory democracy 'are frequently paid representatives of organized interests and public officials.' Fung (2012) p.615

civil society but exemption of the ultimate citizen-owners from this process underscores the essence of the GPFG's shortcomings when it comes to meaningful citizen control rights.

For this reason, Norwegians' ability to properly monitor management fealty to fund objectives and policies is somewhat stunted. Consequently, the fund is found wanting in this third aspect of popular control rights. While the GPFG's extensive disclosure practices mean more information is disclosed about fund practices, behaviour, and policies relative to most sovereign funds, I have argued previously that retrospective disclosure is not sufficient for genuine institutional power (see Chapter 4). Accordingly, in my view, Norwegian citizens need greater opportunity to directly influence the ongoing direction of the fund in response to this reported information.

On reflection, if the initial formulation of the fund's design, purpose, objectives and investment strategy had been open to public input as well as subsequent reviews of its performance, there might not have been such outcry around the ethics of the fund's early investments, prompting a complete overhaul of the existing guidelines, a new statutory framework and redefined mandate for the fund. As this exercise bore all the hallmarks of an initial 'starting-from-scratch' drafting process, it raises the question: how much time and energy might have been spared if the Norwegian government had pursued a fully inclusive and open process that incorporated popular input from the outset?

5.3.3 Lessons for Reform

What can we learn then from the Norwegian approach in terms of institutionalizing genuine popular control? First, accountability to Parliament or government agencies alone is not sufficient. Given the core demand of the institutional power mode of popular control is that citizens should be endowed with an independent ability to influence the objectives and governance arrangements of a sovereign fund, as well as to exert ongoing control over the management team and monitor their fealty to these objectives, the Norwegian government should establish mechanisms like deliberative polls or regular Citizen Assemblies to allow citizens to hear updates on the fund's progress from GPFG management, and then discuss and decide on any proposed changes to the fund's strategy and operations.

Second, participation by *civil society* on behalf of citizens while desirable is not a substitute for direct citizen participation. These organizations come with their own agendas and represent their own views. There must be mechanisms for direct citizen input to SWF management regarding popular preferences on investment strategy and objectives.

Third, the opportunities for public participation should not be limited to the establishment phase, but must be part of an ongoing process of review, especially given the likely evolution of the fund's investment strategy as the fund matures. The public fury over the Norwegian fund's unethical investment practices several years into its investing life shows that public awareness takes time to grow, and that attitudes can shift over time.

Constant review is therefore essential to ensure the fund continues to respect and promote the values of its citizenry.

Conclusion

In this chapter, I sought to test the ideal of popular institutional power over sovereign funds against the reality of practice. I identified a gap between desired and actual practice by first looking at the general state of democratic control within the SWF community, then supplemented this with an in-depth analysis of the Norwegian GPFG as the world's best-practice fund on democratic management according to existing standards. My analysis revealed that SWFs, as a group, fall significantly short of the ideal. Indeed, the most demanding existing Scoreboard does not even include criteria for evaluating the potential for direct citizen participation in SWF management. Even the role-model Norwegian approach, which in some important respects was close to our ideal, fell conspicuously short of the core demands of meaningful citizen-control. While impressive in its high transparency and extensive disclosure, and its responsiveness to public opinion on the need for an ethical investment strategy, these are only some of the features necessary for a comprehensive regime of popular control. Much of the fund's current structure depends on accountability to the Storting, with no formal avenues for direct citizen input or monitoring. For this reason, the Norwegian example fails to satisfy the essence of institutional power over SWF management: the potential for independent, directive influence of the citizenry. There is still a long way to go, then, until the world's sovereign funds endow citizen-owners with proper control rights over their SWF property.

Chapter 6 – Popular Control of Sovereign Wealth: Ethical Investment in Theory and Practice

'The Future Fund should be at arms-length but it is public money invested and it is a public institution. That fact alone obliges us to consider the implications of its actions. It is a tool that exists to achieve a specific aim —to take a liability off the budget books. It should seek profits only in so far as they help to balance the ledger. If we cannot do that without causing harm in other countries, how can we endorse this enterprise?'

-Senator Richard Di Natale, Greens Party, Australia[1]

'[t]he concerns raised by inherited wealth built on crimes are real concerns for one concerned with living ethically. They demand reflection and perhaps response.'

Christopher Kutz[2]

This chapter continues to address the overarching question of Part II regarding citizen's control rights over sovereign funds. The two previous chapters set out what an ideal conception of popular control over SWF management might look like in theory and practice. This chapter is an elaboration of one aspect of that model, focusing on the right of citizens to control the ethical parameters of an SWF's investment activities. In considering this aspect of investment policy more closely, our gaze shifts from the general challenge of democratising SWFs as *institutions* to the particular issue of democratic control over their underlying asset: sovereign wealth.

As we have seen, my model of popular control demands direct citizen participation in the formulation of numerous investment policies, including the fund mandate, investment strategy, portfolio design, and ethical

[1] Di Natale (2012) p.6848
[2] Kutz (2011) p.70

guidelines. Short of making the actual investment decisions and directly investing fund assets, citizens must enjoy expansive influence over all fundamental policy questions affecting SWF management to ensure popular control over sovereign wealth specifically and sovereign funds generally.

Within this suite of policies, the formulation of ethical guidelines invites special consideration. The right to influence the investment mandate and strategy, as well as to help design the investment portfolio all form an intuitive part of what an owner's right to manage financial property entails. Yet, the delineation of ethical constraints on these activities goes beyond mere management. It concerns the owner's right to shield their ethical exposure to activities that do not cohere with their own values. While our suggested package of reforms for democratising SWF management set out in Chapter 5 includes the popular formulation of ethical guidelines, it provides no guidance on the appropriate design and content of such guidelines, how they might interact with a citizen's own ethical agency, and why that matters for ownership of SWF property. This chapter takes up these issues in an effort to fully specify the model of popular control rights I advocate.

In section 6.1, I tease out the issues at stake by examining a real-world ethical controversy surrounding the New Zealand sovereign fund. The episode shows that despite the presence of a responsible investment ('**RI**')[3] obligation, fund management's interpretation of its ethical obligations did not

[3] I use the terms 'ethical', 'responsible' and 'socially responsible' investment interchangeably. For a discussion on the evolution of terminology in the ethical investment space that addresses the relationship between the phrases 'ethical', 'responsible', 'socially responsible' and most recently 'extra financial' investing, see Solomon (2010) pp.304-307. See Woods and Urwin (2010) for a survey of the different types of investment strategy to which these terms can apply.

cohere with citizen-owners' expectations, motivating the need for further discussion on what citizens must seek to achieve when setting out ethical parameters for SWF investment. Section 6.2 probes deeper into what is at stake, ethically speaking, when a community fund invests on behalf of its citizens and why this justifies a more detailed consideration of an SWF's ethical investment guidelines within the wider suite of investment policy. I examine how the individual integrity of citizen-owners is at risk of coercive harm through SWF investment, and why citizens cannot shield themselves from complicity through their fiduciary state. Section 6.3 addresses objections to this proposal before Sections 6.4 and 6.5 turn to existing practice of ethical investment ('**EI**')[4] within the SWF community, finding a significant gap between our demands and the investment approach of most sovereign funds. Two exceptions exist: the Norwegian GPFG and the New Zealand Superannuation Fund (the '**NZSF**'), both of which boast an ethical investment mandate. Accordingly, section 6.6 evaluates the respective EI approaches of the GPFG and NZSF to assess their compliance with my popular control model as it bears on responsible investment obligations. I conclude with lessons learned from the case-studies for the realisation of popular control over sovereign wealth through ethical investment.

6.1 The Special Status of Ethical Investment Obligations

The ability of citizens to participate in formulating key aspects of an SWF's governance framework is central to my citizens' control model. Recall that, under this approach, while sovereign funds remain in the primary custody of their founding governments, managed by an (elected) governing body of

[4] See footnote 3 above.

experts and run on a daily basis by expert investment professionals, citizens play a crucial role in setting out the rules and constraints under which these various actors must operate.

As we saw in Chapter 4, one key aspect of the policy framework into which citizens should have input is the SWF investment mandate and strategy. Ideally, citizens will express their (informed) preferences in relation to various aspects of the investment policy, including return targets, portfolio design (permissible asset classes, sectors, geographic destinations, currency composition, and the desired split between domestic/overseas investment); risk tolerance, and any ethical obligations constraining fund investment activity. Of these, it is this last area of investment policy regarding ethical preferences of citizen-owners that requires elaboration, for unlike the other aspects of investment policy which citizens must influence (for example return targets, portfolio design and risk levels), the imposition of ethical preferences on a SWF ushers in a distinct set of moral and practical considerations. As Kutz has asked, '[w]hat does it mean for a nation to decide that its wealth should be invested ethically? In particular, what are the moral costs of failing to apply ethical principles to national investment?'[5] These questions require specific attention from the point of view of popular ownership of sovereign funds. We need to understand precisely what these ethical requirements imply, and how they interact with my model of citizen control over SWFs.

[5] Kutz (2011) p.65

To illustrate the sorts of issues at stake, consider the following real-world scenario involving the ethical investment practices of the NZSF. The NZSF has been subject to a statutory responsible investment obligation in its founding legislation since the fund's inception. Created in 2001 by the *New Zealand Superannuation and Retirement Income Act* 2001 (the '**NZ Act'**) to pre-fund the country's rising superannuation costs,[6] the NZSF commenced investing in 2003 with NZ$2.4 billion in seed cash and currently holds almost NZ$20 billion.[7] To prevent political interference, the fund is administered independently from government by a separate entity known as the Guardians of New Zealand Superannuation (the '**Guardians**'), wholly owned by the Crown, and consisting of five to seven members 'appointed by the Cabinet on the recommendation of the Minister of Finance, after nominations from an independent nominating committee and consulting with representatives of other political parties.'[8] The candidates must be persons with 'substantial experience, training, and expertise in the management of financial investments'.[9] Such an appointment process, while transparent, clearly lacks the level of popular participation that my citizens' control model demands.

The NZ Act set outs the overarching investment mandate, which requires the Guardians 'to invest the Fund on a prudent, commercial basis ... in a manner consistent with: (a) best-practice portfolio management; and (b) maximising return without undue risk to the Fund as a whole; and (c)

[6] The NZ Government is obliged to pay a universal retirement entitlement to all eligible citizens aged 65+ through a scheme known as New Zealand Superannuation. Following government projections showing the number and cost of eligible New Zealand retirees between 2005 and 2050 would double, the Government set up the fund to help offset its liabilities and smooth the tax burden between generations of New Zealanders. NZSF (2013)
[7] September 2012
[8] Richardson (2011) p.17
[9] Section 55(1)(a), NZ Act

avoiding prejudice to New Zealand's reputation as a responsible member of the world community.'[10] (*emphasis added*). The legislation does not provide any guidance as to the terms' meaning or lexical ordering,[11] but the Guardians have interpreted the mandate to imply none of three components of the investment mandate has precedence over the other so each must be taken in to account when considering investment issues.[12] No further guidance was provided on the meaning of clause (c) relating to RI, but it has since been interpreted by the Guardians to imply a series of ethical obligations and duties in investment decision-making.

Despite detailed policy statements on this obligation, the fund has attracted significant controversy over its interpretation of the RI obligation, the sort of controversy that highlights the need for popular input into SWF ethical investment guidelines. A recent episode involved the NZSF's equity holdings in mining giants Freeport and Rio Tinto, which run gold and copper mining operations in West Papua. In 2003, serious allegations concerning human rights abuses, severe environmental destruction and damage to the local indigenous population were publicly documented in relation to Freeport and Rio Tinto's Grasberg mine.[13] Multiple institutional investors, including the Norwegian GPFG, divested their Freeport and Rio Tinto holdings in the years following.[14] Despite this information, the NZSF acquired equity holdings in both companies in 2006, and maintained those holdings amid

[10] Section 58(2), NZ Act
[11] NZSF (2012b)
[12] NZSF (2012c) p.3
[13] Brundige et al (2004)
[14] The GPFG was instructed by the Council of Ethics to divest its Freeport holdings in 2006 and its Rio Tinto holdings in 2008 on the basis of severe environmental damage caused by the Grasberg mine and the absence of any evidence to suggest that company practices would change. See Norwegian Ministry of Finance (2008)

ongoing reports of ethical transgressions at the Grasberg mine. Fund management argued that these investments were permissible under the statutory RI obligation in their investment mandate, since the Board's interpreted that obligation as mandating the fund to engage with offending companies to change their behaviour.[15]

In 2011, a freelance journalist Karen Abplanalp, published a scathing critique of New Zealand's Freeport investment, deploring the fund's ongoing investment despite fresh evidence of human rights breaches, corruption and environmental harm at the Grasberg mine.[16] Abplanalp queried whether the fund's NZSF's stated strategic preference for engaging with company management rather than excluding the investment permanently was out of line with citizens' expectations of the NZSF's responsible investment obligation. It certainly stood in stark contrast to the position of GPFG's management who, in justifying their divestment from both companies several years earlier (albeit on the narrower ground of severe environmental destruction) had concluded that '[t]here are no indications to the effect that the company's practices will be changed in future, or that measures will be taken to significantly reduce the damage to nature and the environment.' The Norwegian Council of Ethics had deemed exclusion essential to ensuring the GPFG did not 'run an unacceptable risk of contributing to grossly unethical conduct.'[17]

[15] Abplanalp (2011) p.41
[16] In October 2011, Indonesian police killed two unarmed, striking miners. Strong evidence continued to emerge of corrupt payments to the Indonesian military to facilitate the mining project. Abplanalp (2011)
[17] Norwegian Ministry of Finance (2008)

In an official response to Abplanalp's article, the Guardians clarified that the holdings were passive investments gained through index investing, which meant they had not 'picked' the stock. They also challenged the equation of responsible investing with *exclusion*, arguing that their engagement approach fully recognised the failed environmental, social and governance ('**ESG**') standards in Freeport, and sought to address those failures by changing company behaviour, rather than walking away through divestment or exclusion. The NZSF CEO, Adrian Orr, argued that retaining the holding allowed the Guardians to continue influencing the company in an effort to improve the situation for West Papuans. On the Guardians' view, when compared to the alternative exclusion option, their attempts to engage with Freeport management for the past five years would have the 'biggest impact on the affected people and environments'.[18]

Whether, in the long-term, engagement could achieve more than exclusion as a responsible investment strategy is debatable,[19] but for our purposes, that is of less relevance than whether the Guardians' investment management approach endowed New Zealand's citizen-owners with a meaningful sense of control over their own fund and its assets. As Abplanalp mused:

> 'Is the fund doing good, as [CEO Adrian] Orr believes, or simply helping to prop up activities that would be illegal in this country – activities that most New Zealanders would be horrified to support let alone make money from, if they were happening here? Do we want our pensions paid for in this way?'[20]

[18] NZSF (2011a)
[19] For a discussion on the efficacy of engagement versus exclusion as an RI strategy for SWFs, see Demeyere (2011)
[20] Abplanalp (2011) p.39

The sentiment, if reflective of wider public feelings on the investment, suggests that the NZSF's approach to ethical investment was out of step with citizen expectations. Certainly, that was the view of some key political figures in New Zealand, including the Green Party leader, Russell Norman, who criticised the fund's lack of divestment action as out of touch with public preferences on this issue:

'In order for engagement to be effective, it needs to carry a credible threat of divestment, which the NZSF has shown time and again it does not have. The divestments they have made in regard to tobacco, cluster munitions and nuclear weapons manufacturers have only come as a result of an enormous amount of public pressure.'[21]

In a worrying sign for New Zealander's democratic control over their sovereign fund, the Guardians' response also highlighted that 'responsible investment is not about making New Zealanders feel good about the Guardians' Investments.' The Guardians reiterated that investment decisions must make sense from a responsible investment *and* commercial perspective, underscoring that the 'Guardians cannot and do not invest to be popular.'[22]

While it is clearly appropriate that sovereign funds should not be populist and reactive in investment decision-making (recall that my citizens' control model emphasises the need for independent financial professionals to oversee the actual commercial task of day-to-day investing, cloistered from political interference), the case at hand raises a subtler dilemma: how best to give effect to citizens' sense of control over their sovereign wealth while meeting the legitimate need to quarantine investment decisions from political agendas. Moreover, it raises the question of how prescriptive ethical

[21] Quoted in Abplanalp (2011) p.40
[22] NZSF (2011a) p.2

investment constraints must be since, in New Zealand's case, the fund had a legislatively entrenched responsible investment obligation, and yet the evidence suggests that this did not translate into citizens feeling that they had adequate control over the investment pursuits of the fund.

Significantly, in September 2012, the NZSF divested its NZ$1.28 million holding in Freeport on account of 'breaches of human rights standards by security forces around the Grasberg mine, and concerns over requirements for direct payments to government security forces'.[23] In defending the decision, the NZSF said it had reached a conclusion that further engagement would not be successful, and that such a consideration was a relevant factor in deciding which strategy to pursue.

The New Zealand experience underscores two points that motivate this discussion of popular control over SWF ethical guidelines. The first is the special status of a fund's ethical activities in relation to a citizen's individual integrity[24]. Just as Karen Abplanalp wondered 'Do we want our pensions paid for in this way?' and Richard di Natale (quoted at the very start of this chapter) questioned 'how [Australians] can endorse this enterprise…' of wealth accumulation through practices 'causing harm in other countries,' all citizen-owners of SWFs concerned with living ethically must ask similar questions of their funds. They must do so since a fund that invests their resources on their behalf; investments from which they and their descendant generations will derive benefit have implications for their own ethical agency. While debates over asset class selection, geographic allocation, the risk profile

[23] NZSF (2012d)
[24] I define and discuss the concept of ethical integrity in the next section.

of the fund and return levels will also generate passionate views, that passion will reflect preferences that do not necessarily bear on one's integrity to the same extent, if at all, as the ethical consequences of a fund's investments. This makes the question of popular control over ethical guidelines qualitatively different to that of other aspects of a fund's investment policy.

The second point that arises from the Freeport example is that the desire to have control over one's ethical integrity is not simply satisfied (or compromised) by the presence (or absence) of ethical guidelines alone. We saw in Chapter 5 that the early investing life of Norway's GPFG generated substantial public controversy regarding the appropriateness of its investment holdings in certain weapons industries. At this initial stage in the GPFG's history, it lacked proper ethical guidelines, prompting a radical overhaul of the fund's investment approach to ensure its investment activities were better aligned with the ethical values of Norwegians.

Yet, similar levels of controversy plagued the NZSF well into its investing life, *despite* the presence of a statutory obligation to invest responsibly. Even with extensive guidelines interpreting that ethical investment obligation, discussed in detail below, and regardless of a detailed, transparent and systematic set of procedures for handling investee companies like Freeport, the NZSF's approach to its holdings in this company appeared out of step with the preferences of New Zealand's citizens. These public controversies suggest that the imposition of ethical guidelines alone is not enough to secure citizens' ability to live with integrity through their fund.

Those guidelines actually have to reflect the citizenry's notion of what it means to live ethically, not the government's idea of what that should mean.

Given this, my model of popular institutional power over SWFs requires elaboration. Up to this point, I have only identified a requirement for a fund to possess ethical investment guidelines; I have not discussed appropriate content for these guidelines, the degree of necessary popular control over them, or their implications for our model of democratised management. Given this and the novel dilemmas that this aspect of a fund's policy architecture raises, this chapter's task is to address the special role of ethical guidelines in contributing to effective democratic control over sovereign wealth itself.

6.2 Ethical Integrity, Coercion and Individual Complicity

I now move to demonstrate precisely what is at stake, normatively speaking, when a SWF invests on behalf of its citizens, and why this justifies ethical constraints on a sovereign fund. I start with the observation that citizens have an interest in the good of ethical integrity, an interest that the coercive nature of unconstrained SWF investment can threaten by rendering individual citizens morally complicit in collective wrongs. Unpacking this normative claim, we find three core ideas/concepts - the good of ethical integrity, the coercive character of SWF investment, and the nature of moral complicity (individual or collective). I explore these three ideas below and their implications for ethical sovereign fund investment.

6.2.1 The Good of Ethical Integrity

I start with the obvious observation that, although sovereign funds invest on behalf of a domestic community, that community consists of individual citizens, each with values derived from their personal beliefs and conceptions of justice. As the New Zealand experience shows, it is all too easy for a sovereign fund, even one with a responsible investment obligation, to expose its citizens in ways that disrespects their values, and in so doing, to jeopardise individuals' ability to achieve ethical integrity. By ethical integrity, I mean as Dworkin does, when an individual 'lives out of the conviction that his life, in its central features, is an appropriate one, that no other life he might live would be a plainly better response to the parameters of his ethical situation rightly judged.'[25] To hold that ethical integrity matters, then, is to claim that it is inherently valuable for citizens to be able to live according to overarching principles and values *they* deem appropriate and with which they wish to be consistent.[26]

In the context of sovereign funds, we could say that a community and its citizens enjoy ethical integrity when they live out of the conviction that the public wealth that helps finance their lives, is accumulated in accordance with citizens' values and that no other alternative means of raising that capital is preferable. If the members of a community cannot say that about their sovereign wealth, then their SWF, through its profit-seeking, has compromised the ethical integrity of its individual citizens; it has impaired

[25] Dworkin (2000) p.270
[26] Dworkin's theory of integrity is most extensively developed in *Law's Empire*. See Dworkin (1986). Here, we take the essence of his concept of integrity for broader application beyond the legal context to the realm of individual and collective ethical integrity. The latter are discussed in Dworkin (2000) pp.270-275

their ability to live consistently with their overarching values.[27] In such an event, their ethical integrity has been compromised 'conspicuously', since these citizens 'are made to live, by the fiat of other people, in a way they regret and never endorse.'[28]

The citizenries of New Zealand and Norway have each experienced regret over, and refused to endorse, certain practices of their respective sovereign funds. Such an outcome is not just disappointing;[29] it is a violation of citizens' interest in controlling their moral agency by avoiding exposure to harms and practices they cannot condone or strongly condemn. If, like Dworkin, we consider ethical integrity a fundamental political value, we have reason to demand that polities establishing sovereign funds do so in a manner that upholds citizens' integrity. In our case, that must involve establishing and managing sovereign funds whose investment practices seek to avoid compromising the ethical integrity of their citizen-owners.

6.2.2 The Uniquely Coercive Nature of SWFs

In what ways does SWF investment pose a specific threat to individual ethical integrity? The New Zealand experience certainly suggests it is possible, but is that situation so different to dilemmas that confront individuals on a daily basis? Citizens, in their capacity as owners, make choices constantly that may compromise their integrity. The new car I purchase may be a high polluter; the clothes I wear may have been made in a sweat shop; the house I live in might have been constructed by exploited labourers, the interest I earn on my bank account might be generated through questionable investments, and the

[27] Dworkin (1986) p.176
[28] Dworkin (2000) p.271
[29] Ibid. p.270

money I inherit from my grandparents might have been built on the proceeds of crime. My right to acquire and possess these objects is not constrained, at least at the point of my acquisition or inheriting of these things, by a restrictive set of externally-imposed ethical constraints. Why then, is this consideration of ethical integrity especially acute in the case of sovereign funds, such that the acquisition and use of this particular citizens' property must be so constrained?

One answer lies in the coercive nature of SWF investment practice. In the case of the other acquisitions listed above, I have an *exit option*. I can reject the inheritance, sell the house, move my money, buy a 'green' car or wear responsibly made garments instead. But when it comes to the collective wealth of a nation in an SWF, citizens lack this ability. There is no exit option. Backer made this same point when comparing the investment approaches of the Norwegian GPFG with a well-known *private* fund, TIAA CREF:

> 'The critical difference [between state-sponsored funds and private funds] is grounded in notions of *coercion* and in whether or not the ultimate investors have a choice in the manner in which they are represented and their funds are invested. In both the public and the private fund, individuals are the ultimate stakeholders and investors. It is for their benefit that these funds are created and it is their interests that they ultimately serve. [However]… [t]he Norwegian Fund's institutional holder is the state apparatus of Norway, but the ultimate beneficiaries are the citizens of Norway on whose behalf the government acts. The TIAA CREF funds are administered *directly* for the investors on whose behalf the fund managers operate. But TIAA CREF investors are *free to exit* the Social Choice Fund at will (or at least in accordance with procedures therefore agreed to when they first invested their funds). Norwegian citizens have *no such right*. They are bound by the choices made for them by the state apparatus. They are *at least one critical step removed* from the Fund. As a consequence, the TIAA CREF Fund has to be more careful and conscious of the wishes of its ultimate investors than does the Norwegian Fund. The Norwegian state is accountable to the people, but the Fund is accountable *only* to the state.'[30](*my emphasis)*

[30] Backer (2009) pp.181-182

Not only is this lack of exit option intrinsically objectionable, but it becomes particularly problematic when we recall the demands of our EAC Model of SWF ownership. In particular, the Autonomy Constraint of the EAC Model holds that citizens are not truly autonomous, in the sense of forming their own desires and interests, if they cannot act on those preferences and ensure they are respected. Such autonomy is clearly absent when it comes to SWF investment decisions taken on behalf of a community and without consultation with the members of that community. TIAA CREF like the GPFG, seeks to invest responsibly, but the ultimate investors and stakeholders in that case are 'free to exit' if the fund departs from the expectations of those investors or transgresses their ethical preferences in some unforeseen way. But citizen-owners of an SWF cannot exercise such protest against their funds. How then can citizens be considered owners of sovereign funds in the sense of controlling their property just like private fund investors, if they cannot shield themselves from exposure to the morally objectionable implications of that property? Don't such practices violate our demand for autonomy-respecting SWF ownership, as well as constitute a specific infraction of the good of ethical integrity.

6.2.3 Individual versus Fund Complicity

This brings us to the final point regarding the ethical dimension of SWF investment, and it concerns the nature of citizen complicity in fund activities. It may be tempting under our model of fiduciary ownership to say that, even if a fund offends the ethical values of its citizen-owners through its investment activities, it is not the moral responsibility of those citizens, since on our theory, it is the government-*agent* and their representatives managing

the fund who undertook those decisions. One might press this point irrespective of whether or not the Board representatives are elected citizens, since the crucial idea is that it is the fund and its managers taking these investment decisions, not the individual citizen-owners as principal.

Here, I follow Kutz in claiming that it is a mistake to talk about ethical complicity and moral responsibility of collectives or corporate entities. It is mistaken for several reasons. The first point goes to the central role of the individual in our system of morality and moral responsibility. On Kutz's persuasive view:

> 'Moral responsibility… is a system through which we humans attempt to regulate our behaviour towards each other and the world to minimize the amount of suffering we cause and perhaps even make some improvements here and there. This system of social control works through our individual psychologies, our motivations to avoid criticism and to receive praise – to feel that our lives have been well-lived. Given such a conception of moral responsibility, it is rather beside the point to talk in terms of corporate moral responsibility – the system of moral responsibility functions, when it functions at all, through our individual consciences.'[31]

So just as we held that the good of integrity attaches to individuals, so too does moral responsibility. Collective funds, which coerce individual citizen-owners into their investment decisions, must then do so within parameters that shield those *individuals* from undesired complicity. Second, we may still acknowledge the potential culpability of a collective association or corporate agent in a moral wrong, while simultaneously acknowledging individual complicity in that act. In other words, one type of culpable agent does not substitute for another blameworthy actor in that act. On that view, sovereign

[31] Kutz (2011) p.72

funds,[32] and/or their government sponsors, may be held morally responsible for ethical transgressions through investment decisions alongside their citizens, but on either approach citizens may not escape individual complicity.

This approach to complicity is also consistent with the EAC Model of ownership, which conceives of SWFs as citizens' common *and* joint property. As the reader will recall from Chapter 3, common ownership is the type of shared property regime that involves a stronger conception of the individual and their rights within the collective, while joint property is that belonging to a collective entity. It would be wholly inconsistent with that hybrid ownership conception if transgressions by a fund were thought of *only* in collective or corporate terms. Indeed, Kutz has argued that the use of an agent, at least in the eyes of the civil and criminal law, *increases* a principal's responsibility for ugly acts, not diminishes it, since the principal enjoys increased powers as well by virtue of this relationship. Consequently, we should not think of 'principal-agent relations as having distinct ethical effects.'[33] More generally, we cannot selectively choose our exposure to fund activities, hiding behind the agent of government or fund management in some areas, but demanding individualised, direct control and benefit privileges in other respects. That would amount to the owners' asymmetric claiming of privileges but denial of responsibilities.[34]

[32] On the possibility of assigning responsibility for past injustices to associations rather that the conventional candidates of states, nations or individuals, see Kukathas (2003)
[33] Kutz (2011) p.72
[34] Miller makes a similar inseparability argument about benefits and burdens in relation to nations inheriting responsibility for past wrongs observing that '[o]ne cannot legitimately enjoy such benefits [of nationhood] without at the same time acknowledging responsibility for aspects of the national past that have involved the unjust treatment of people inside or outside the national community itself, and liability to provide redress in whatever form the particular circumstances demand.' Miller (2007) p.136 and pp.148-151

In sum, if citizens have the right to enjoy the good of integrity, one that is potentially jeopardised by the coercive nature of unconstrained SWF investment and it '[f]und complicity is, at root, a question of citizen complicity', SWF investment must 'answer to the full range of ethical demands'[35] that a citizenry might ask of that fund. Citizens cannot be protected from the consequences of these acts by virtue of their fiduciary relationship with government and the fund. On the contrary, it is precisely because of that relationship that governments must constrain the investment universe of sovereign funds through a general statutory obligation to invest responsibly. The precise content of this obligation should then be determined by the citizens of SWF-owning communities through general participatory processes for determining SWF policy. Only then, can we say that the ethical integrity of individual citizens is properly protected.

6.3 Objections to an Ethical Investment Obligation for SWFs

Just as the general proposal to democratise SWF management met with objections, the specific suggestion that all SWFs be subject to an ethical investment obligation, the precise content of which should be popularly determined by owning communities, invites several objections.

6.3.1 The Trusteeship Objection

The idea that a SWF investment mandate must contain an ethical investment obligation may be criticised for jeopardizing a trustee's ability to promote the 'best interests' of beneficiaries, where best interests are understood in solely financial terms. On this view, a trustee's primary responsibility is to maximise

[35] Kutz (2011) p.73

commercial gain for the beneficiary.[36] Putting aside whether that narrow understanding of a trustee's role is accurate in spirit or legally,[37] and accepting that the notion of what a trustee owes to its beneficiaries will vary depending on the context of the trust relationship, we note that this interpretation of trusteeship persists regardless in the SWF community. Consider the following statement by former IFSWF Chairman David Murray in response to growing calls for sovereign funds to embrace ethical investment:

> 'SWFs are first and foremost wealth preservation and augmentation vehicles [and] [t]his purpose may be jeopardized if funds are required to pursue multiple bottom lines.'[38]

This comment reflects a widespread understanding of SWF trusteeship in which management's fundamental task is to maximise wealth for the state-sponsor and its citizens. Intrinsic to this understanding are two assumptions. The first is the belief that prosperous and virtuous investment necessarily conflict, the veracity of which I address in the next section.[39] The second is that wealth is the highest order interest of domestic beneficiaries, current and future. To quote Murray again:

> 'As SWFs are tools for preserving and augmenting wealth of their founding communities, any constraint on investment strategy impairs a fund's ability to generate an optimal return for their domestic beneficiaries. This deprives not only the fund, but most crucially its *owning community* of wealth, adversely impacting the living standards of both

[36] This is certainly the case legally. As Woods and Urwin observe: 'Under Anglo-American law (both statute and case law), fiduciary duty requires trustees to manage trust funds in the best interests of beneficiaries, which generally means in their best financial interests.' Woods and Urwin (2010) p.10

[37] For a critique of the idea that a beneficiaries 'best interests' should only consist of financial interests in the *pension fund* context, see Johnson and De Graaf (2009); Langbein (2005); and Woods (2011)

[38] Murray (2011) p.14

[39] Clark and Monk (2010a) at pp.14-15 have argued that the ethical investment mandate of Norway's GPFG 'actually constrains the fund's functional efficiency,' and that 'priorisiting ethics over efficiency may be self-defeating in the long-term if it is associated with substandard performance'.

> *current and future generations*. This effect is especially harsh in savings short countries, where the need to ease the projected strain on future public finances motivates the establishment of savings vehicles. Most OECD nations forecast a medium term rise in public expenditure due to their ageing population and shrinking tax base. Reducing the ability of sovereign funds to maximize returns, effectively diminishes *long-term public budgets* for healthcare, pensions and critical infrastructure in savings deficient countries.' (*emphasis added*)[40]

These comments imply a betrayal of future generation's interests where those interests are understood solely or primarily to concern material wealth and the goods it can help secure such as 'healthcare, pensions and critical infrastructure'. If true, trustees fail to attend to the best interests of future citizens by prioritizing ethical investment over wealth maximization, again assuming a trade-off.

There are two lines of response to this conception of SWF trusteeship. First, SWFs need not be constrained by existing legal interpretations of 'trustee' developed in reference to pension funds and other savings vehicles, whose legal liabilities are very different from those of a sovereign fund.[41] Indeed, some sovereign funds have deliberately avoided the term 'trustee' for their Board members, instead employing labels such as 'Guardians', precisely to avoid the common law or statutory importation of fiduciary duties to SWF governance.[42] This provides further impetus for exploration of the fiduciary

[40] Murray (2011) pp.19-20
[41] Clark and Knight (2011) p.337. On the unique nature of SWF liabilities, see Rozanov (2011) p.253-254. Rozanov expressly distinguishes his typology of SWF liabilities from individual or employer-funded pension fund liabilities at p.252
[42] The Board members of both the Australian and New Zealand sovereign funds are called 'Guardians' as opposed to trustees, the title commonly used for governing members of pension funds. Richardson notes that in New Zealand, the fund's establishing legislation explicitly declares that the Guardians 'are not a trustee', the purpose of which he suggests 'is to avoid implying any common law fiduciary standards in the management of the Fund, and to limit its governance strictly to the terms of the enabling legislation.' Richardson (2011) p.17. Clark and Knight interpret the Australian decision differently, arguing that the 'choice made by the government to label board members ''guardians''' rather than ''trustees'' reflects the government's desire 'to invest the role of its guardians with a higher purpose than that attributed to pension fund trustees.' Clark and Knight (2011) p.348

state theory I proposed in Chapter 2 and the possibility of a broader notion of 'trustee', specifically tailored to SWFs that it could imply. Woods and Urwin have noted that it is precisely because SWFs are *not* subject to the same type of legal fiduciary duties that bind pension fund trustees that they are freer to pursue multiple bottom lines as part of their specialised investment missions to improve national welfare or achieve social goals.[43] If the very idea of a sovereign fund is to marry some financial purpose with a wider social goal, surely the notion of *SWF* trusteeship should be similarly broadened to capture interests beyond wealth maximization.[44]

Second, my citizen's control model demands that the narrow conception of trusteeship be expanded for SWFs. Recall my background assumption of intergenerational justice introduced at the outset of this work. That assumption holds that present generations of citizens have duties towards future generations of citizens, including in the realm of distributive justice, on account of the asymmetric influence that the former wield over the lives of the latter. Brown Weiss has identified three distinct areas in which present generations of citizens have a responsibility to future generations: First, a duty to 'conserve the diversity of the natural and cultural resource base so that it does not unduly restrict the options available to future generations' ('conservation of options' principle); second, 'each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received' ('conservation of quality'); third, 'each generation should provide its members with equitable

[43] Woods and Urwin (2010) p.10
[44] Clark and Knight (2011) at p.345 found evidence of a link between 'the apparent goal of fiscal sustainability….and the 'wellbeing of successive generations' justifying the establishment of the Australian Future Fund.

rights of access to the legacy of past generations' ('conservation of access' principle).[45]

Whether or not one endorses Brown Weiss' view of society's obligations to future generations, it does provide a basis for challenging the idea that such interests are met solely by endowing future citizens with commercial security alone. If, in the quest to provide that commercial security, a sovereign fund pursues investments that diminishes the 'natural and cultural resource base', 'the quality of the planet', or 'access to the legacy of past generations', a sovereign fund may becomes responsible for harming the interests, on Brown Weiss' account, of future generations. Since our assumed intergenerational justice obligation demands that present citizens must at least *consider* the interests of future generations (however defined), this could be given broad effect through a *sustainability* constraint on SWF investment. That is, our own intergenerational equity assumption generates an obligation for SWF trustees of today to incorporate sustainability considerations into their investment decision-making.

In the practical world of investment, sustainability is a highly contested concept.[46] A useful definition for our purposes describes sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.[47] Accordingly, a sustainability constraint on trustee duties, where sustainability is understood as requiring investment that meets the needs of the present

[45] Brown Weiss (1990) pp.202–4. For a more general discussion, see Brown Weiss (1989).
[46] For some useful attempts to map the diversity of conceptions of sustainability and sustainable development, see Dobson (1999) and more recently Connelly (2007)
[47] Woods and Urwin (2010) p.2

without compromising the ability of future generations to meet their own needs, arises from our international justice assumption.

Such an obligation does not establish a commitment to ethical investment of any particular kind – sustainable investment involves a range of strategies and goals including a long-term focus in investment, the incorporation of ethical, social, and governance criteria in mainstream funds and thematic investing in sustainability-oriented or green product funds;[48] but it does demand, at a minimum, that sovereign funds are subject to sustainability considerations, based on a definition of what the interests of future citizens may encompass. In fulfilling this obligation, all that can be asked of trustees today is that they act reasonably; to make a judgment to the best of their ability, bearing in mind the possible consequences for the ethically minded citizen of tomorrow. There is obviously a limit to what future generations can demand of today's trustees, since present citizens cannot know what the ethical predilections of future citizens will be, but they can demand that trustees exercise their best judgment about what is ethical and sustainable.

6.3.2 The Efficacy Objection

I now turn to the second assumption contained in the narrow conception of trusteeship as wealth maximization: the assumed necessity of conflict between virtuous and prosperous investing. To better understand the nature of this asserted conflict, consider the Australian Future Fund's response to a recent legislative attempt to incorporate ethical obligations into their

[48] Woods and Urwin (2010) p.2

mandate.[49] Essentially, the fund's major concern was the increased risk of diminished returns.[50] Ethical investment, the fund argued, can threaten returns in a number of ways, including by impairing a fund's ability to diversify its portfolio in accordance with best practice investment and risk management; reducing the available opportunity set of investments; restricting access to specialist managers and strategies given the difficulty in monitoring full compliance with EI obligations through outsourcing investment, and increasing costs and resource requirements in managing the administrative burden of screening, divesting, monitoring and targeting.[51]

The response to this concern is twofold. First, there is an ongoing debate regarding the empirical veracity of the conflict between ethical and commercial investing, with some research showing that the conflict is exaggerated or non-existent.[52] Indeed, some SWFs have made a business case for ethical investing,[53] with both Norway and New Zealand recently adapting their RI mandates to recognise the link between ethical investment and good returns.[54] Analysts have also pointed to the special case for sustainable development considerations enhancing returns in long-term investors like sovereign funds:

[49] Government Investment Funds Amendment (Ethical Investments) Bill 2011, Section 20A
[50] Future Fund (2012) p.9
[51] Ibid. p.13
[52] Several empirical studies of responsible versus 'conventional' unrestricted investing suggest there are not significant differences in financial performance between the two investment approaches. See for instance Goldreyer and Diltz (1999); Statman (2000); Bauer, Derwall and Otten (2007); Galema, Plantinga and Scholtens (2008); and Adamo, Coscarelli, Federico and Notte (2010)
[53] For arguments against a business-grounding of ethical constraints on investment, see Thornton (2008) and Richardson (2009)
[54] The 2012 Annual Report confirmed that 'the Ministry is of the view that a good return in the long run is dependent upon sustainable development in economic, environmental and social terms, as well as well-functioning, legitimate and efficient markets'. NZSF (2012a)

> 'Socially responsible investment does not necessarily entail any irresolvable trade-offs between public and private interests, or financial and ethical goals. While commercial considerations do not always coincide with ethical ones, over the very long-term they should given ecological constraints to infinite economic growth…In the long-term, meaning at least several decades, the economic case for environmentally sustainable development solidifies.'[55]

The second response is that, even if ethical investment did involve some return diminution, this may be tolerable if wealth enhancement is considered one among many values that a community fund might wish to pursue through a SWF, as suggested above. I have challenged the one-dimensional notion of current and future citizens' interests that a sole focus on financial returns implies. I have also argued that an SWF's goal of wealth management should be read in conjunction with the other laudable policy purposes it was set up to achieve when defining the best interests of fund beneficiaries that a board member should consider. These ideas rest on a wider conception of sovereign funds as something other than purely financial entities, whose only accountability is to the supreme value of wealth preservation, augmentation or maximization. Instead, they are new policy tools proving instrumental in securing a wider set of values for an owning community. In the name of that task, some trade-off, if it exists is potentially justifiable.

6.3.3 The Reasonable Disagreement Objection

The final sort of objection concerns the capacity of citizens to agree on the content of ethical investment guidelines. This concern accepts the fact of ethical pluralism—that citizens will embrace different values, diverse comprehensive moral doctrines and distinct conceptions of the good—but it worries that, given this pluralism, more fundamental agreement is not

[55] Richardson (2011) p.23

possible. That is, reasonable disagreement on what is ethically suspect will run so deep that no consensus is achievable, at least not one that can be said to be equally acceptable to all citizens.[56] Accordingly, the reasonable disagreement objection worries about the legitimacy of imposing ethical constraints on a communally-owned fund when the content of such constraints might be subject to reasonable disagreement.

There are two possible responses here. One is more optimistic, observing that what may seem like deep disagreement on serious moral issues may not in fact indicate irreconcilable disagreement on ultimate values. If so, communities may seek to create or 'find' consensus. The Norwegian experience could be interpreted in this way. The Graver Committee, which the reader will recall was charged with developing ethical investment guidelines for Norway's sovereign fund, settled on a form of overlapping consensus for which they claimed to find evidence:

> 'Norway is a pluralistic society and there is no consensus on one particular uniform ethical perspective… The absence of a uniform perspective does not mean that there is no agreement on certain ethical principles. In many instances, Norwegians will arrive at the same answer to questions of ethics from different angles of approach... In these cases, we have what we might call *overlapping consensus*.'[57]

They committee asserted a type of moral consensus as a basis for identifying supposedly widely held ethical values to guide the Norwegian fund's investment.

[56] For a discussion on the structure of reasonable disagreement, see McMahon (2009), Ch 1.
[57] Graver Committee (2003) p.2

An alternative, perhaps more legitimate method for establishing consensus is to actively cultivate that consensus. This involves opening up deliberations on ethical values to citizens (a step that Norway did not take). Deliberative democratic theorists have identified various strategies for resolving disagreement fairly among 'reasonable citizens' interested in reaching agreement.[58] Such strategies typically rely on citizens sharing at least a basic commitment to the legitimacy of fair deliberative process. Here then, communities might be able to reach an overlapping consensus, even if one did not exist initially, sufficient to provide a basis for an ethical investment mandate.

But what if no such agreement is possible? What if reasonable disagreement is fundamental? Is the enterprise of ethical investment ultimately flawed? In such a scenario, one possible answer is to uphold and preserve the fact of reasonable moral disagreement. That is, we should not try to force agreement, but rather, respect the presence of radical or deep disagreement within a community and design mechanisms for our sovereign fund to respond to this reasonable disagreement. One option, inspired by Karl Widerquist's proposal of Citizens' Capital Accounts ('**CCAs**') discussed in Chapter 2, is to give each citizen their own account within the collective sovereign fund proportionate to a per capita share of the fund's total value.[59] For Widerquist, the main objective of this individualised account proposal is to give individuals greater control over the *returns* of their community funds rather than the principal itself:

[58] While Gutman and Thompson suggest 'economising on moral disagreement', Richardson suggests 'deep compromise' and Goodin argues for 'democratic deliberation within', all of these approaches involve some form of compromise or mutual accommodation for the purpose of achieving agreement. See McMahon (2009) pp.22-23.
[59] Widerquist (2012) p. 183

> 'The CCA system would personalize the [collective] fund by giving each individual an account within the larger limits; individual could decide when to withdraw their returns or whether to leave their returns in the account to accrue compound interest that they can draw on later.'[60]

Some have criticised this focus on returns from the perspective of democratic control arguing that 'it remains insufficient as a mechanism of full democratic control' since 'it only focuses on the last decision point' regarding the use of returns.[61] While that criticism is fair, to an extent, Widerquist does briefly flag the possibility that citizens could exert some influence over their account:

> 'Account holders could have some control over the principal, such as the right to direct investing some or all of their to one or more competing funds within the CCA-fund system'.[62]

This idea is not elaborated further, other than to say that any citizen control over the principal must involve regulation over risk levels, an entirely reasonable point.[63]

Here, I would argue that one plausible response to fundamental disagreement would be to vary my popular control model to accommodate a much larger role for citizens in shaping the allowable investments of their SWF account. Individuals could indicate assets, sectors and products to which they do not want exposure and accordingly, forfeit returns flowing from these assets. The fund would then offer different returns levels to each citizen based on the design of their individual account exposure. Consequently, each citizen would, in theory, receive a different amount of returns from their

[60] Ibid. p.184
[61] Casassas and De Wispeleare (2012) p.183
[62] Widerquist (2012) p.184
[63] Ibid. p.203

equally-owned, fund since citizens would design their own mix of asset exposure. For some, this would mean forfeiting returns where their preferred assets underperformed relative to the rest of the portfolio. Other citizens might 'beat' the fund's overall performance if their preferred assets were strong performers. These unequal outcomes would be directly felt through the distribution of returns (discussed in Part III of the thesis).

Whether such a system would be administratively possible, achievable or effective is not an issue I pursue here, other than to note that some pension funds allow a degree of influence to their claimants regarding what assets their retirement savings are directed towards. If the augmented CCA proposal could work in similar ways, this mechanism would offer sovereign funds a practical response to the reasonable disagreement problem, although it does not fully shield citizens from the ethical implications of their fund investments, since the overall fund may continue to invest unconstrained.

The other mediatory initiative that might lessen the extent of coercion citizens experience through investment activities would be to allow citizens the right to decline their investment returns. For this to be possible, the benefit right to SWF income must be individualised, a point discussed in the next chapter. For now, I note that if returns attach to individuals as part of their benefit right to investment income, citizens could decline those returns where they feel they were earned in dubious ways.[64] That is, they could use their benefit right to make their control rights more effective. Such a strategy offers another tool for dealing with serious ongoing disagreement, where

[64] I acknowledge Stuart White for this suggestion.

either that disagreement can not be resolved despite attempts to do so, or the domestic community wishes to support a diversity of moral views rather than seeking to impose a consensus.

One final concern in the democratic vein concerns the development of ethical investment guidelines that speak to the opposite problem of reasonable disagreement. What if, instead of exhibiting deep disagreement, a community displays high levels of agreement, but on the demand for *un*constrained investment. That is, a community may deliberate on the issue of ethical integrity and decide either that its highest obligation to future generations is wealth maximization, or that its own ethical values are a second order interest to that of financial return. Just as it is entirely reasonable to assume that citizens would wish to avoid complicity in morally repugnant practices through government investment, it is equally reasonable to imagine a citizenry preferring its SWF privilege wealth augmentation, even where this might involve ethical transgressions. Consequently, a potential control rights tension may emerge where a domestic community exhibits a trumping preference for prosperity over virtuous investment.

While seemingly an irresolvable challenge for our democratic control model, which prioritises the preferences of citizen-owners in shaping key investment policy, one could respond by pointing out that such a view fails to meet our assumed requirement for intergenerational equity, since achieving citizen control through upholding a preference for wealth maximization above all else gives full deference to the democratic preferences of today's citizens above those of future citizens. As the Graver Committee observed:

> 'We do not manage the Petroleum Fund only on our own behalf, but also on behalf of future generations. As such, the Fund carries hereditary rights and obligations. A defining characteristic of the Fund is that a substantial proportion of those on whose behalf the Fund is managed cannot choose its manager.'[65]

When it comes to sovereign wealth, the imposition of the unconstrained preferences of the present generation of citizens would have irreversible consequences for tomorrow's citizens. At a very minimum then, I would argue that even the most profit-oriented citizenry of today must still curtail their investment expectations to respect our minimum obligation of sustainable investing and where possible, that today's trustees invest with a view to protecting the ethical integrity of future generations.

6.4 The Lack of SWF Ethical Investment in Practice

Of more than 60 funds in existence today, only three sovereign funds have an explicit ethical investment obligation in their overall mandate. Two of these funds—Norway's GPFG and New Zealand's NZSF—have been investing ethically for almost a decade, and are considered world leaders in responsible investment.[66] The third SWF, not yet operational but legislatively established in early 2012, is Papua New Guinea's Liquefied Natural Gas fund, due to receive its first cash transfers in 2014.[67]

[65] Graver Committee (2003)
[66] Richardson (2011)
[67] In February 2012, PNG's parliament unanimously voted to create a sovereign wealth fund to manage its resource revenues. See PNG Post Courier (2012). The founding law sets out the investment mandate which requires the fund to develop ethical investment guidelines for 'avoiding prejudice to Papua New Guinea's reputation as a responsible member of the world community'. This wording is identical to that of the NZSF's 'responsible investor' clause. See Organic Law on the Sovereign Wealth Fund (2011) Section 7.2(c), p.4

If we look beyond portfolio-wide EI mandates to include funds with ad hoc or targeted policies, then up to another 12 to 18 sovereign funds practice some form of limited ethical investment.[68] Ad hoc obligations do not require the assumption of a whole-of-portfolio outlook regarding ethical considerations. Instead, this approach singles out particular industries or companies whose products must be banned given characteristics of the industry, or because such products violate norms the investors want to uphold. As a result, 'targeted' responsible investors lack an overarching obligation to take ethical considerations into account in *all* investment decisions, limiting ethical investment to piecemeal exclusions by sector, instrument, entity or country.

I argued above that sovereign funds must import an obligation to invest ethically into their investment mandate. A question now arises as to whether the targeted approach to ethical obligations will suffice in the light of this demand. The central difference between an *integrated* ethical investment mandate and *targeted* ethical obligations is that the former places funds under a 'thick' duty where ethical considerations assume equivalent status to other components of the investment mandate.

In contrast the larger group of funds with *isolated* ethical obligations are only subject to a 'thin' duty. Targeted requirements do not require a

[68] Rigorous data in this area is difficult to source. This estimate of ad hoc ethical investment obligations is based on the author's reconciliation of two different surveys of responsible investment among SWFs and institutional investors. As these studies cover distinct sample sets and do not fully disclose their methodology for what counts as a sovereign fund *or* ethical obligations, consistency across surveys is problematic. For example, the 2010 Truman Scoreboard finds that of 53 government investment funds surveyed, 14 SWFs had explicit ethical investment guidelines. In contrast, the 2012 Future Fund Senate Submission which reviewed 22 'select' sovereign wealth and pension funds identified the use of exclusions by 11 funds and human rights obligations in operational behaviour within four funds. Personal Interview with Future Fund Representative (2012). The figure of 18 funds here comes from reconciling these two surveys and accounting for overlap between funds.

whole-of-portfolio outlook regarding ethical implications of investment decisions. Instead, the fulfillment of the ethically *un*constrained investment mandate is top priority, while compliance with ad hoc obligations is given separate consideration. In practice, this circumscribed approach to ethical investing means an SWF with *targeted* obligations is at higher risk of ethical transgressions in its wider portfolio not covered by the select ethical constraints. Accordingly, it is only through full incorporation of ethical obligations into the overarching investment mandate that sovereign funds are likely to adequately shield citizens' ethical exposure from complicity in immoral return-seeking and thus meet our normative demands.

Accordingly, my examination of SWF ethical investment in practice and its potential to promote citizen control over sovereign fund investment will focus on the only two operational funds with an integrated ethical investment mandate: New Zealand's NZSF and Norway's GPFG. I now turn to a comparison of their mandates and their respective effectiveness in promoting democratic control of fund investment.

6.5 Models of Ethical Investment Practice: New Zealand and Norway

This section compares the respective EI approaches of the NZSF and GPFG to decipher which, if either, better endows citizens with popular control over sovereign wealth.

6.5.1 New Zealand's RI Mandate, Policies and Practice

As noted earlier in the chapter, the NZSF has been subject to a statutory responsible investment obligation in its founding legislation since the fund's

inception in 2001. The RI clause requires management to invest so as to avoid 'prejudice to New Zealand's reputation as a responsible member of the world community.' The Guardians interpretation of the overall mandate, including the RI obligation, is set out in a *Statement of Investment Policies, Standards and Procedures* (the '**SIPSP**'),[69] in accordance with the NZ Act.[70] The current SIPSP covers both ethical investment policies and the exercise of voting rights,[71]and sets out the Guardians' overarching belief in the importance of 'integrating consideration of environmental, social and governance ('**ESG**') issues into the investment decision making process'. This represents an evolution from the Guardian's initial interpretation of the RI requirement as simply compliance 'with New Zealand Treaties and conventions such as those promulgated by the United Nations and International Labour Organisation.'[72] Today, the Guardians espouse a more ambitious 'belief that long-term financial performance can be affected by ESG issues',[73] and have articulated how to pursue policies in accordance with this belief in their Responsible Investment Framework ('**RIF**'). RI actions under the Framework include investment, engagement, voting, exclusion and/or divestment from the fund. Since 2009, the fund has also pursued 'positive investment' strategies identifying investments that provide social returns such as 'tangible, measurable' ESG benefits.[74]

[69] NZSF (2011b)
[70] Section 60, NZ Act
[71] Section 61(d) of the NZ Act stipulates that the SIPSP must cover 'ethical investment, including policies, standards and procedures for avoiding prejudice to New Zealand's reputation as a responsible member of the world community' and s 61(i) 'the retention, exercise or delegation of voting rights acquired through investments.'
[72] Mercer (2009) p.36
[73] NZSF (2011b) p.12
[74] NZSF (2009)

Of these methods, the Guardians' preference is for *active* strategies of engagement rather than exclusion, as we saw above at Section 6.1.[75] This involves communicating directly with investee companies or external managers where there may be a breach of ESG standards, and trying to foster better corporate governance. During 2011/12, the NZSF engaged with 37 companies on human rights and safety, 18 on severe environmental damage, 22 on bribery and corruption, 376 on meeting best reporting practices and 3 NZ companies on governance issues. The majority of these engagements were part of collaborative efforts, with 16 companies in the portfolio approached directly by the Guardians.[76]

As part of this active approach, the Guardians have described exclusions as a measure of 'last resort',[77] and 'divestment as a form of failure',[78] although recent policy statements have mollified that language,[79] most likely in the wake of criticism of this approach following the Freeport controversy. Despite this preference for engagement, the NZSF has an active exclusions policy that identifies five industries where entities directly involved in product manufacture will be automatically excluded or divested, including: (1) cluster munitions; (2) testing of nuclear explosive devices; (3) anti-personnel mines; (4) tobacco; and (5) whale meat. Specialist screening companies are used to identify companies eligible for engagement, exclusion and divestment. As of February 2013, 164 companies have been excluded

[75] The Guardian's SRI strategy focuses 'on acting as a responsible shareholder and fostering transparent corporate governance rather than necessarily excluding shares or securities.' See Controller and Auditor-General (2008) para. 3.62.
[76] NZSF (2012a) p.40
[77] Richardson (2011) p.20 quoting the 2010 NZSF Annual Report
[78] NZSF CEO Adrian Orr quoted in Abplanalp (2011) p.40
[79] NZSF (2012a) p.40

under these provisions,[80] constituting a rapid escalation of this strategy from just 33 exclusions or divestments in June 2009.[81] This growth is largely being driven by tobacco-related entities, which constitute 86% of all exclusions.[82]

In recent years, the NZSF has refined and expanded its RI approach, partially in response to two independent reviews. Both reviews were generally positive, commending the NZSF's RI approach as 'appropriate and pragmatic',[83]and 'thoughtful and focused',[84]although each identified areas of challenge and recommendations for improvement. The NZ Auditor-General recommended the fund expand its screening process beyond equity positions and sovereign bonds to include corporate bonds as the current approach left the fund at risk of holding an excluded entity.[85] This report also noted the challenge of the Guardians' collaborative engagement approach, in which the fund seeks to engage with investee companies alongside other large investors to maximise influence. The Auditor-General cautioned that such an approach risked rendering the fund dependent on other companies 'making decisions that are consistent with [the NZSF's] "avoid prejudice" requirement.'[86]

Mercer's report noted the Guardians could go further to achieve full integration of ESG issues into their RI practices, given *internal* fund managers 'have not explicitly integrated ESG in their own investment thinking' and the fund needed to 'better monitor and encourage [external] managers' inclusion

[80] NZSF (2013b)
[81] NZSF (2009) p.10
[82] 141 of the 164 excluded companies are involved in tobacco manufacture. See NZSF (2013b)
[83] Auditor-General (2008), para 3.73
[84] Mercer (2009) para. 3.3, p.41
[85] Controller and Auditor-General (2008) para. 3.74
[86] Ibid, para. 3.768

of ESG in their investment processes.'[87] Mercer also noted that the 'Fund lacked an [RI] approach among property managers', and performed worse than some peer funds in allocation of assets to thematic funds for impact or positive investing.[88] Overall, Mercer recommended that the fund more fully align its investment beliefs and objectives with ESG considerations and communicate better to managers its RI expectations.

In response, the Guardians assumed direct oversight of RI policies in October 2009, abolishing the Responsible Investment Committee charged with advising the Guardians on RI matters in an effort to more fully integrate ESG considerations into investment decision-making. This effort was advanced in 2012 with an organization restructure intended to better align investment decision-making with investment goals. Management moved the Responsible Investment Team from back office to the front office Investment Analysis group, signifying Management's intention to better integrate ESG factors into their holistic investment decision-making, and ensure that RI obligations under the Investment Mandate are given deeper consideration in the investment process.[89] Management has also expanded its RI focus beyond traditional RI classes, creating its own specific guidelines for Private Equity and Public Markets responsible investing. Environmental and social risk analysis has also been incorporated into due diligence procedures for new mandates and managers are now required to provide more information on their own RI policies. The fund now conducts an annual review of managers' RI policies.[90]

[87] Mercer (2009) p.39, para 3.2.3
[88] Ibid.
[89] Author Interview with David Rae, NZSF Head of Investment Analysis (2012)
[90] NZSF (2010b) p.2

6.5.2 The Norwegian EI Guidelines, Policies and Practice

The GPFG's experience with ethical investment has been quite different. Although the NZ Guardians have been criticised as 'slow to fulfill their ethical mandate, being initially for two years without in-house SRI experts and lacking a formal policy',[91] Norway's GPFG lacked *any* form of ethical investment obligation in its founding legislation or policy for its first decade of existence. While the fund has always been characterised in ethical terms, embodying an 'ethic of distant responsibility' in the light of its commitment to just sharing of resources across generations,[92] its investment activities did not assume an explicit ethical orientation until 2001.

As the reader will recall from the discussion at Section 5.2.4 in Chapter 5, the GPFG introduced targeted EI constraints in 2001 following a furore in the late 1990s over the fund's holdings in anti-personnel mines.[93] Norwegian citizens began to question what values should be promoted through the accumulation of fund assets.[94] The initial ad hoc policies included a dedicated Environment Fund for investing in companies assumed to have 'limited negative influence on the environment, and in companies that met specific standards given environmental reporting and certification requirements.'[95] Later in 2001, the Government established an exclusionary mechanism, appointing an Advisory Commission to evaluate whether specific

[91] Richardson (2011) p.19
[92] Reiche (2008) p.13
[93] Nystuen (2006) pp.207-208
[94] Reiche (2008) p.5
[95] Norwegian Ministry of Finance (2012)

investments were in conflict with Norway's commitments under international law.[96]

Not long after the outset of this piecemeal approach to EI, the need for a 'normatively and procedurally clearer approach to ethical investment' became apparent.[97] As I mentioned at Section 5.2.4, the Norwegian Government established the Graver Committee, an expert panel charged with developing ethical guidelines for the fund intended to cover 'issues relating to the environment, human rights, labour standards and the board and management of companies'.[98] The Government followed the recommendations of the Graver Committee's 2003 report (the '**Graver Report'**) almost in its entirety, introducing Ethical Investment Guidelines (the '**EI Guidelines'**) in 2004, and replacing the Advisory Commission with a Council on Ethics, responsible for administering a significantly expanded screening policy.

While Norway was slower than New Zealand to develop its RI approach, the Graver Report constituted a more thorough effort to find a 'democratic basis' for exercising the GPFG's EI obligations than any equivalent attempt by the NZSF to do so.[99] The Graver Committee considered several issues when trying to ensure the fund's EI Guidelines would enjoy 'legitimacy in the political community' and properly represent Norwegian values.[100] As described in Chapter 5, the Committee sought to

[96] Ibid.
[97] Richardson (2011) p.8
[98] Graver Committee (2003) p.24
[99] Ibid. Sections 3.1 and 5.2.3
[100] Ibid.

locate an overlapping consensus on the community's 'main normative characteristics'.[101] In developing *strategies* for the fund to give practical effect to these values, the Graver Committee considered whether the fund should adopt a consequentialist, deontological or retributive ethical perspective since each would give rise to a different method for realizing ethical obligations. It ruled out retribution as 'beyond the obligations that should be imposed on the Fund.'[102] Accordingly, the fund should not be required to withdraw investment as an act of punishment for evil-doing. It must instead strive to achieve justice by avoiding complicity in 'gross unethical actions.' The assessment of avoidable investments could draw on both a teleological and deontological basis. A deontological outlook would indicate which investments should be avoided 'under any circumstances' given their categorically evil status.[103] The more common approach would be a teleological one, in which investments with less favourable consequences are avoided while those investments with more favourable outcomes are promoted.[104]

Overall, the Graver Committee concluded that the GPFG must conduct its ethical investment so as to *avoid complicity* in gross or systematic breaches of ethical norms relating to human rights and the environment[105] and to

[101] Richardson (2011) p.9. The committee rejected culture and policy as a firm basis for identifying ethical consensus given their shifting nature. See Sections 4.1 and Section 2.1.
[102] Ibid. Section 2.2
[103] The committee suggested that the deontological outlook would generate few restrictions given the rarity of categorical evils over which there is majority consensus. Section 4.3
[104] Graver Committee (2003) Section 2.2
[105] For a critique of the GFPG's complicity avoidance approach, see Richardson (2011) and Kutz (2011).

comply with sustainable development, considered 'a precondition for return on the Petroleum Fund's financial investments in the long term.'[106]

Following a review of the EI Guidelines in 2008, new ethical guidelines were adopted in 2010 introducing mainly 'procedural rather than normative changes'.[107] The review recommended more engagement with companies, more attention to climate change, more opportunities for public submissions and dialogue with companies, and improved disclosure of implementation of the ethical guidelines and the addition of tobacco companies as a specific criterion for exclusion.[108] Two sets of revised EI Guidelines were issued, one relating to an expanded exclusions policies ('**EI Guidelines I**') and the other to a more comprehensive active engagement approach ('**EI Guidelines II'**). The exclusions policy was only slightly revised, upholding the GPFG's ability to exclude a company, on recommendation from the Council of Ethics, 'if there is an unacceptable risk that the company contributes to or is responsible for: (a) *serious* or systematic human rights violations; (b) *serious* violations of the rights of individuals in situations of war or conflict; (c) severe environmental damage; (d) gross corruption; or (e) other particularly serious violations of fundamental ethical norms (*emphasis added*). The only relevant difference in these new guidelines was the change, italicised above, from '*gross* violations' to '*serious* violations' in the first two provisions in order to make them more expansive.[109]

[106] Graver Committee (2003) Section 3.1
[107] Richardson (2011) pp.9-10
[108] Ibid. p.10
[109] See Graver Committee (2003) Section 6 for original wording.

The new Guidelines I also require negative screening of companies that produce tobacco, produce weapons that violate fundamental humanitarian principles, or sell weapons or military material to pariah states. Given the GPFG's extensive equity holdings, and the resource constraints on the Council of Ethics (with only 8 internal staff), the fund has to be selective in its approach to monitoring investments from an ethical standpoint. This has led to criticisms of subjectivity in its exclusion and divestment decision-making,[110] a problem the fund tries to overcome through the use of external screening agencies. It maintains a short-list of some 200-300 companies that warrant greater scrutiny, still only 'a small fraction of the [GPFG]'s investment portfolio.'[111] As of 2011, the Ministry of Finance has excluded 55 companies on the basis of advice from the Council of Ethics.[112]

By contrast, Guidelines II focuses on Norges Bank responsibility for the active asset management programme. The new Guidelines *explicitly link* long-term financial returns to the maintenance of healthy social and environmental returns, qualifying Norges Bank's objective to achieve the 'highest possible return' as 'dependent on sustainable development in economic, environmental and social terms [and] well-functioning, legitimate and effective markets.' The NBIM team, discussed in Section 5.2.2, focus on six strategic priority areas through engagement including: equal treatment of shareholders, shareholder influence and board accountability; well-functioning, legitimate, and efficient markets for good corporate governance; climate change; water management; and children's rights for environment

[110] Clark and Monk (2010a) p.17
[111] Richardson (2011) p.13
[112] Norwegian Ministry of Finance (2011b), para 4.2.2. Furthermore, the Ministry has placed two companies under observation pursuant to the same guidelines.

and social issues. Norges Bank aims to vote at all annual general meetings, which amounts to about 10, 000 general meetings and more than 85,000 resolutions annually.[113] While a comprehensive policy, commentators have noted that, in practice 'as with the Council, the NBIM has limited institutional capacity and has elected to engage mainly with the largest (but not necessarily the most problematic) companies.'[114]

The overall effect of the 2010 revisions to the GPFG's governance is to put 'more emphasis on the economic case for ethical investing.'[115]Today, the GPFG has a more comprehensive approach to EI as a result of these changes with the updated approach attracting praise for the GPFG as an investor pursuing RI on 'a portfolio-wide basis' that helps the fund 'act as an ethical, universal owner'.[116]

6.6 Norway or New Zealand –Ideal Ethical Investors for Popular Control?

With the main contours of the two funds' ethical investment approaches now sketched out, I now conclude the chapter with an assessment of which fund, if either, better endows its domestic citizens with control over their ethical exposure. Rather than critique the funds respective abilities to promote a specific EI objective such as human rights protection[117] or sustainable development,[118] or the overall effectiveness of the RI mandate in advancing ethical objectives,[119] here, we are interested in how the funds' EI styles fulfill

[113] Norwegian Ministry of Finance (2010) p.24
[114] Richardson (2011) p.14
[115] Ibid. p.12
[116] Ibid. p.16
[117] Cummine (forthcoming)
[118] Richardson (2011)
[119] Kutz (2011)

the distinct goal of endowing citizen-owners with control over their ethical exposure incurred through SWF investment.

Comparing the funds across four factors relevant to their EI approaches: investment mandate; EI governance; coverage; and strategies, the GPFG emerges as superior (although both fall short of my citizens' control ideal). Accordingly, I take the Norwegian model as a benchmark for reform, suggesting the GPFG as a blueprint for the basic model of EI that sovereign funds should seek to emulate, but amended according to reforms necessary for moving the Norwegian approach closer to our ideal.

6.6.1 Responsible Investment Mandates

Starting with the fund's RI mandates, Norway's represents a much stronger commitment to ethical investment than the indirect reputational formulation of the NZSF mandate. Norway's ethical mandate was first set out in its 2004 Guidelines and contained two principles: the first stipulated that the fund's pursuit of a 'high return' was 'dependent on sustainable development in an economic, ecological and social sense'; the second required the fund to 'avoid investments that represent an unacceptable risk of the Fund contributing to grossly unethical activities.'[120] The updated 2010 Guidelines have expanded and clarified the reach of these principles, improving the coverage of the mandate. I note that this formulation complies with my proposal that all SWFs should include a sustainable development obligation to meet their basic intergenerational obligations. Beyond this compulsory component, I argue that each community must popularly determine the content of their fund's

[120] Norwegian Ministry of Finance (2010) p.10

ethical investment mandate, ensuring as best as possible that it reflects widely held ethical values. To a large degree, Norway achieved this with its broad EI mandate that came out of the Graver Committee's detailed investigation into the values of Norwegian society. The major flaw of this approach, from the perspective of my citizens' control model, was the absence of any opportunity for popular participation in the development of the mandate.

The New Zealand RI mandate, by contrast, is couched in far weaker terms asking the fund to 'avoid prejudicing New Zealand's reputation internationally'. There are several problems with this 'world reputation' formulation. Commentators have noted that this mandate, unlike the Norwegian approach, does not explicitly require 'active consideration of social and environmental issues, and promotion of improved corporate behaviour',[121]leaving the Guardians free to interpret its' meaning. This gives rise to the possibility of conflict between the mandate priorities since the Guardians are also required to 'maximise return' and employ 'best-practice portfolio management'. As Richardson has observed:

'the [NZSF] ethical investment duty is comingled with other legislative goals relating to financial considerations. By contrast, Norway's ethical screening Guidelines are placed in a separate instrument to which compliance is not constrained by or conditional on the [GPFG] adhering to other legal norms.'[122]

As the New Zealand legislation provides no guidance on how to resolve conflicts between these goals, nor any clarity on what should happen if the NZSF's reputational and ethical concerns do not coincide, the Guardians are bestowed with substantial discretion to interpret this obligation as they

[121] Richardson (2011) p.18
[122] Ibid. p.18 and p.26

please, while New Zealand's citizens are left dependent on the judgment of these few Board members to give expression to their ethical preferences.

The New Zealand mandate has also been criticised for the vagueness and ambiguity of its language, evident in its failure to prevent the fund's investment in 'companies with unacceptable or questionable human rights behaviour or environmental impacts, such as Nike, Walmart, BJ Services (operating in Myanmar), and Exxon Mobil,'[123] most of which have been excluded from the Norwegian investment portfolio. On the whole, the NZSF mandate compares unfavourably to the more strident and explicitly ethical formulation of the Norwegian fund's mandate.

6.6.2 Responsible Investment Governance

From a governance perspective, both funds are laudable insofar as, formally at least, they encourage integration of ethical considerations into the investment decision-making process. However, the Norwegian organizational structure is far more likely to give proper effect to that requirement. Where the NZSF Guardians have responsibility for the NZSF RI strategy as well as the other components of the fund's investment mandate,[124] Norway's independent expert Council of Ethics enjoys 'institutional separation from the Norges Bank and Ministry',[125] ensuring that ethical evaluations are not encumbered by financial considerations. While the NZSF's recent effort to better internalise and elevate ethical considerations into the investment decision-making process through its organizational restructure is a step in the

[123] Robert Howell, Head of the Council for Socially Responsible Investment (New Zealand) cited in Richardson (2008) p.367
[124] Richardson (2011) p.26
[125] Ibid.

right direction,[126] it is still lacks the impressive status accorded to ethical considerations through the model of a dedicated Ethics Council.

When it comes to the ability of citizens to monitor and influence the direction of the funds' ethical investment programme, both funds are deficient relative to our ideal, but the NZSF falls shorter. Consider that the initial development of the New Zealand ethical mandate was entirely at the discretion of the Guardians, who continue to enjoy broad discretion over the interpretation and implementation of their RI mandate. Similar criticism can be leveled at the GPFG, given its use of an independent expert committee to develop ethical guidelines (a committee that was only open to select civil society organizations and not to the broader public). However, given the high profile nature of the Graver Committee and its report, mandated by the Storting, there was at least some link to the domestic community through parliament, which had, after all, been responding to public opinion when it demanded the creation of those ethical guidelines in the first place. Moreover, the experts on the Graver Committee at least operated from the standpoint that 'the ethics of the Petroleum Fund must be rooted in democratic values'.[127]

While the Graver Committee (or the Storting in drawing up its terms of reference) could have improved their democratic legitimacy by seeking out citizen input to test the Graver Committee's identification of an 'overlapping consensus' in Norwegian ethical values, it did at least conduct multiple

[126] Others criticise this move as a step backwards given the lack of dedicated expertise of the Guardians and the imperative to focus also on the financial implications of its decisions. Richardson (2011) p.18 and p.26.
[127] Graver Committee (2003) Section 3.1

hearings with various civil society organizations, and was subject to extensive public debate.[128] By contrast, the evolution of the NZSF's RI policy has been less transparent, piecemeal and dominated by the Guardians and one expert committee, now abolished. The NZSF's approach has also suffered from lack of proper direction from the New Zealand Government on the appropriate parameters of the RI mandate.

6.6.3 Responsible Investment Coverage

Both funds are deficient then in terms of mechanisms for popular input into the development, evolution and monitoring of ethical criteria. That said, the Norwegian ethical guidelines are more detailed and extensive than those of the NZSF,[129] meaning Norwegians are *more likely* to enjoy proper protection from moral complicity in unethical practices. This is reflected in the extensive reporting undertaken by the GPFG on its ethical decision-making with all recommendations of the Council publicly disclosed and including detailed reasons. The NZSF is also impressively transparent but it provides far less information for the basis of its decisions, reducing the ability of citizens to properly determine the full reach and scope of its guidelines. Again, this is the likely by-product of having a governance approach that asks the same managers to set out policy for return maximization as well as RI.

More generally, both funds have been criticized for focusing too heavily on avoiding complicity rather than influencing positive behaviour.[130] Ultimately, the question of what a fund should focus its ethical investment programme upon must be determined by the citizens, as it goes to the heart of

[128] Author Interview with Council of Ethics (2010); Graver Committee (2003)
[129] Richardson (2011) p.26
[130] Richardson (2011); Kutz (2011)

citizen control over ethical agency. What we can say here though is in doing so, Norway's approach via the auspices of the Graver Committee, to systematically work through these issues on behalf of the Norwegian public, and then identify a basis upon for ethical investment that would enjoy popular legitimacy, is preferable to the haphazard approach of the NZSF to developing its ethical guidelines.

6.6.4 Responsible Investment Strategies

Finally, the lack of clear guidance on public, or at least government, expectations on the NZSF's ethical guidelines has also plagued its choice of strategies for realizing its obligations. As the saga involving the fund's investment in the Freeport mine at the beginning of this chapter showed, the NZSF management's view that 'divestment is a form of failure' was clearly out of step with popular expectations when it came to investments that involved serious human rights violations or environmental degradation. Discussing the Freeport case, the NZSF's Head of Responsible Investment, Anne O'Connor argued that:

> 'Because an issue is particularly challenging, and seemingly intractable, is not in itself a reason to avoid engaging with companies. In fact, it may be the very issue that investors should focus more on, within their own resource constraints.'[131]

Whether this is an appropriate interpretation of the fund's strategic approach is ultimately a question for the New Zealand citizenry. Given the outcry over the NZSF's Freeport investment and the fund's subsequent divestment, it would seem that the current strategic approach is not aligned with popular expectation. Yet, that is essential for a sense of public control over the fund's

[131] Quoted in Abplanalp (2011) p.41

ethical exposure. In this respect, New Zealand clearly trails Norway, which has pursued a more active divestment policy from the outset. This may explain why New Zealand 'has been dogged by criticisms for alleged complicity in some unethical or unsustainable businesses', more so than its Norwegian counterpart.[132] Part of the criticism highlights that some of the NZSF's most questionable investments have been excluded by Norway. This point was put directly to NZSF management during the Freeport debate given Norway had already divested from Freeport in 2006 and from Rio Tinto in 2008 over 'severe environmental damage caused by that mining operation' and concluded that there were 'no indications [that] the company's practices will be changed in future.'[133] The NZSF replied that 'different ethical principles and laws apply to New Zealand from those in Norway', which, as my analysis suggests here, may be the very essence of the problem.[134] I refer again to the comments of the New Zealand Green Party leader, Russell Norman, set out in Section 6.1 above, where he implored the fund to 'carry a credible threat of divestment' in order for engagement to be effective.

In my view, New Zealand needs, at minimum, a Norway-style process of properly formulating a coherent and legitimate ethical investment policy whose content and strategies enjoy wide popular support. Norway too, fell foul of popular expectations and public pressure to change, but in doing so, took the level of public angst seriously and implemented a systemic overhaul of its investment strategy and ethical obligations. The NZSF, it seems, continues to respond to public pressure on a case-by-case basis, failing to address the root causes of its misalignment with popular expectation. Rather

[132] Richardson (2011) p.21
[133] Abplanalp (2011) p.44
[134] Ibid.

than lurching between the extremes of unpopularity and reactive policy changes, the fund, and indeed New Zealand's citizens, would, in my view, be better served by a properly democratic review of the NZSF's RI mandate and approach and policies to discover a more permanent basis for aligning the citizen and fund expectations.

Conclusion

In this chapter, I sought to demonstrate that, even extensively democratised management under my ideal conception of popular institutional power over SWFs still poses challenges for robust citizen control over a fund's fundamental task of investing. I have instead advocated the imposition of a popularly determined ethical investment obligation on SWF investment to ensure a requisite minimum degree of citizen control over investment decision-making. Such a move would require all SWFs to directly consult their owning communities on the content of their ethical obligations and then integrate identified ethical values into their overarching investment mandates.

Given the virtual absence of ethical investment among sovereign funds, I examined the EI approaches of the only two funds that do boast such a mandate, although neither determined this mandate in direct consultation with their citizens. Despite this flaw, my assessment suggests that popular-determined EI is institutionally feasible for sovereign funds, and that there is much to learn from the more promising Norwegian approach. The more democratic basis adopted for the formulation of the Norwegian ethical guidelines seems to have led to greater legitimacy for the GPFG among the Norwegian citizenry. By contrast, the management-dominated approach of

defining and administering the NZSF's RI strategy has led to repeated public controversy, prompting a series of reactionary back-flips on its preferred engagement approach in the face of sustained public outcry.

Overall, while both examples lacked the sort of mechanisms that my citizens' control model demands for both initial and ongoing popular input, the New Zealand case underscores the extent to which citizens can feel aggrieved at their lack of control over their fund's investment behaviour where a fund's ethical mandate has no basis in public legitimacy. Norway's GPFG, insofar as it has attempted to achieve public legitimacy, even in the absence of direct (and, I would argue, proper) public consultation, has partially succeeded in bestowing a higher degree of citizen control over its fund investment.

Having addressed citizens' 'control' rights in Part II of this thesis, I will turn in Part III to the issue of 'benefit' rights.

PART III: OWNERSHIP AS BENEFIT

Distribution of Sovereign Fund Returns

Chapter 7 – Benefit Rights to Sovereign Wealth Income

'[C]ontrol of a good is fundamentally different in structure and value from the rights to "benefit" from the trade or development of that good.'

John Christman (1991)[1]

'The Permanent Fund earnings are to provide an ongoing stream of benefits to Alaskans through a direct distribution or tax rebates and the provision of public goods and services.'

Office of the Governor, Alaska (1979)[2]

Alongside control, the idea of 'benefit' forms the other major conceptual component of ownership. Part III of this thesis addresses how citizen-owners can benefit from sovereign wealth. As benefit from property is typically understood as the 'right to income derivable from an owned thing',[3] this chapter considers a citizen's right to income generated by a sovereign fund. That is, it looks at the right of citizen-owners to the monetary returns earned from SWF investment in financial markets. Accordingly, in this final Part of the thesis, we turn to SWF *returns* as the third morally distinct component of sovereign funds requiring normative examination.

Section 7.1 introduces and briefly critiques the income-based conception of benefit from property. I consider how benefit from property income endows an owner with a distinct and essential type of advantage compared to that conveyed by control rights. This lays the foundation for Section 7.2, in which I apply the benefit-as-income idea to SWFs. As captured by the quote above from the Office of the Alaskan Governor, there are several

[1] Christman (1991) p.38
[2] Ulmer (1979) p.4
[3] Christman (1991) p.29

ways in which a right to SWF income may be delivered to citizens. Section 7.3 identifies the main methods for distributing such income, categorising them into a typology of benefit based on their mode of allocation (direct/indirect; individual/collective). When assessed in light of the demands of my EAC Model of ownership, a preference for direct cash distribution emerges as the most satisfactory way realising a citizen's benefit right to sovereign wealth.

In the following two chapters, I consider practical issues surrounding cash distribution of sovereign fund returns to citizens. Chapter 8 examines a working model of direct cash distribution of SWF returns in order to demonstrate the feasibility of this approach, and to identify any ways in which the working model deviates from my proposed theoretical ideal. The working model is the Alaska Permanent Fund (the '**APF**' or '**Permanent Fund**'), the world's only sovereign fund to distribute part of its investment income directly to its citizens in cash dividends. As the APF dividend scheme is most frequently characterised as a basic income, a redistributive initiative, a resource dividend or an unconditional entitlement, not as a benefit right. I seek to demonstrate that the Alaskan dividend in both form and function, can also approximate a citizen's benefit right to SWF income. I combine original evidence on Alaskan citizen attitudes towards the dividend, with a fresh review of historical material on the dividend's intended policy purpose to show that there are good grounds for understanding the PFD as an ownership payment that recognises Alaskan citizen-owners' interest in benefiting from collectively-owned state resources. As such, the PFD offers an instructive blueprint for institutionalizing direct individual benefit from SWF returns.

Finally, Chapter 9 addresses the 'desirability' objections to the direct cash distribution model. Based on interviews with SWF representatives, I identify a near universal anti-dividend consensus within the sovereign fund community, posing a significant obstacle to the realisation of my proposed benefit right ideal. I therefore critique the funds' main objections in an effort to offer cogent grounds for dismantling this major barrier to the implementation of democratised sovereign wealth distribution.

7.1 Ownership as Benefit

As I foreshadowed in Chapter 1, in addition to *control*, the other core conceptual component of ownership is the idea of *benefit*. Of Honore's five central ownership incidents, the majority concern an owner's ability to control their property (the right to use, possess and manage property and the right to the capital).[4] By contrast, the remaining incident – the right to income - is explicitly formulated in terms of benefit to owners. From Honore's early description of the right to income as '… a benefit derived from forgoing personal use of a thing',[5] through successive property theories that adopt similar income-based conceptions,[6] the idea of benefit *as derivable income from an owned asset* is firmly entrenched in our understanding of property rights.

In some respects, this income-based conception of benefit from ownership is unnecessarily narrow. If benefit is understood in its broadest

[4] See Chapter 3
[5] Honore (1961)
[6] For instance, James Meade implicitly uses an income-based conception of benefit from property when analysing state versus individual property ownership: 'We are interested… in the ultimate destination of income from property and not in the immediate control over property.' See Meade (1964) p.68. See also Munzer (1990) pp.97-98; Becker (1977) p.19. Christman's explicit articulation of the control-benefit structure of property rights is one of the most direct formulations of the income-based notion of benefit.

sense to mean that which promotes someone's welfare, there are many ways in which owners benefit from property beyond the narrow concept of an income stream yielded by that property. If so, discussion of citizens' right to benefit from their sovereign fund should potentially extend beyond the income stream generated by SWF investment activities.

Consider a home-owner, Sally, who derives a number of advantages from owning her home. Many of these advantages flow from Sally's right to control the house, not just her ability to generate an income from it. For instance, her 'right to use' the house in accordance with her own 'personal use and enjoyment'[7] allows her to live the way she pleases within her own walls. In addition, she enjoys a dedicated space to organise, arrange, design and develop by reference to her tastes alone. Equally, Sally's 'right to possess' the house, to have 'exclusive physical control' of it,[8] offers her family and possessions shelter, a refuge from society, and privacy. She may exercise her 'right to manage' the house, 'deciding how and by whom [the house] shall be used'[9]. She could choose not to live there, using the house occasionally as a holiday home, or as a place of business. She may occupy her house continually, or leave whenever she desires, exercising her 'right to the absence of term', and she may alienate or transfer the property whenever she chooses through sale in accordance with her 'right to transfer'.

We can see then, that Sally's *control* rights to possess, use, manage and transfer her property are all benefits in a general sense, insofar as they help

[7] Becker (1977) p.19
[8] Ibid.
[9] Ibid.

secure various 'goods' for Sally, such as independence, autonomy, privacy, security, and potentially happiness. Such welfare enhancements constitute a similar or even broader range of advantages than that provided by an ordinary income stream, prompting the question: if benefits from an owned asset do not derive solely from a property generating earnings, is it appropriate to employ this orthodox, narrow conception of benefit rights solely in taking the form of income?

Consider the question in the context of sovereign funds. Just like Sally in her home-owner capacity, citizens arguably benefit from the sheer *existence* of a sovereign fund, even when they do not directly receive a portion of its income. Typically, sovereign funds are set up for a particular policy purpose that, by definition, is welfare-enhancing. Whether a development fund for community investment, a savings fund for future generations, a currency stabilization mechanism to prevent economic instability, or a reserve management tool that controls inflation, SWFs are, by their nature intended to benefit the citizenry and state of their founding government.

The presence of a sovereign fund also improves citizen welfare in less direct ways, for example by boosting the credit-worthiness of a government in international markets, where a government can borrow more against that fund and generate more revenue streams for the public sector. Furthermore, if the regime of popular control that I described in Part II was implemented so as to enhance citizens' control rights over sovereign funds, citizens would benefit from more transparent public finances, where SWF assets are subject to genuine democratic control, and a more just government, since the fund

would be required to protect the ethical agency of its citizens through responsible investment by its SWF.

The foregoing might lead us to conclude that, in the case of SWFs (and indeed more generally), the reduction of 'benefit' to the narrower idea of income alone is problematic. Indeed, proponents of such a reduction have conceded that it is 'admittedly rough'.[10] Yet, the distinction persists given the difference in 'structure and value' alluded to at the outset of this chapter between the two *types* of ownership right. As I explain below, it is a distinction that proves very apt for the peculiar character of sovereign funds as collective property that can be partially individualised.

The critical difference between control and benefit rights centres on the 'use value' of an owned object.[11] Advantages conferred by control rights primarily involve an owner *using* their property. Accordingly, control rights must be exercised to reap their derivative benefits. Conversely, benefit from income results from an owner 'forgoing personal use' of their asset.[12] The owner must forfeit full autonomy over their property's use to trigger its income-producing potential. In Sally's case, one can acknowledge that her control of the house does provide advantages independent of any income stream the house can generate. However, to realise her specific right to income from the property, she must rent it out and forgo the privileges of control.

[10] Christman (1991) p.30
[11] Ibid. p.29
[12] Becker (1977) p.19

One may be able to venture scenarios in which this 'forfeiture of control condition' is not obviously obvious in the generation of income from property. How is a factory owner who generates income from the productive use of his factory plants 'forfeiting control' over those plants to generate income from the factories? Alternatively, how is an independent artisan who chooses self-employment to pursue her love of sculpture and painting, the products of which she sells at her own discretion, forfeiting control over herself and her labour to generate the benefit of income?

In both of these scenarios, the answer lies in correctly identifying the relevant property over which control must be forfeited. For the factory owner, while he retains control over the plants, he must relinquish possession and control over the *products* that it produces to generate income. Similarly, the independent artisan does not relinquish control over herself and her labour to generate income, but she does sacrifice the goods that are the product of that labour. The theory of income as a 'reward' for forfeiting use of the property (whether forfeiture through sale, lease, loan or investment) appears plausible.[13]

More generally, this 'forfeiture of control' idea of income is used throughout property theory to explain the conceptual distinction between *control* and *benefit* rights. For instance, Christman describes income rights as '*increased* benefit [from] relinquishing the ownership' of one's property,

[13] Honore's defines the right to income as '… a benefit derived from forgoing personal use of a thing and allowing others to use it for reward.' Honoré (1961) p.169. Becker employs a similar definition: 'the right to the benefits derived from forgoing personal use of a thing and allowing others to use it.' See (1977) p.19. Munzer (1990) describes the income right as a right 'to receive exclusive benefits from others using the thing'.

acknowledging that benefits attend ownership generally while also isolating the specific type of benefit that is enjoyed through a right to income:

> 'The right to income has scope over the *increased* income (or welfare) accrued from a holding by virtue of the productive use of that holding, involving, most centrally, trades…. the idea here is that a right to gain *extra* benefits from a holding – benefits different from the use value of the object – is captured by the right to income'.[14]

Similarly, Honore's characterisation of the right to income as 'a surrogate of use' distinguishes this ownership incident as qualitatively different to the other central incidents, while at the same time conceptually linking control and benefit rights through the theme of 'use'. There is a subtle yet important distinction then in the sorts of advantage that attach to the two different categories of ownership right.

This narrow conception of *benefit* rights from ownership as restricted to *income* alone is therefore justifiable and I adopt this view for the remainder of my analysis. I do so acknowledging that all of the central ownership elements confer advantages upon owners, but that the right to income conveys 'extra', 'increased' benefit in the unique form of monetary compensation. It is benefit at its most literal: a gain; a profit; a reward, contingent on the surrendering of some property right(s). Its structure and operation is thus distinct from the broader benefits deriving from the control rights, and in my view, it therefore warrants separate and specific consideration in relation to sovereign funds.

[14] Christman (1991) pp.29-30

7.2 A Benefit Right to Sovereign Fund Income

The income-based notion of benefit from ownership enjoys a natural intelligibility in the sovereign fund context. By definition, a SWF is an income-seeking vehicle. Its fundamental task is to augment public wealth by pursuing financial returns through market investment. To do so, citizen-owners (and their governments) relinquish their 'use' rights to this portion of public capital in two senses. First, at the SWF creation stage, they surrender their 'use' rights to the capital by supporting its removal from the annual budget cycle and quarantining it in a sovereign fund. Since this public capital would otherwise be available for redistribution to (and use by) citizens through the government's annual budget, there is a relinquishment of control over use through its conversion into sovereign wealth.

After establishment, the citizenry further surrender their use rights by entrusting this capital to skilled managers for return-seeing investment. As already discussed,[15] direct control of day-to-day SWF investment decisions by individual citizens is not desirable. Inevitably then, the investment of sovereign wealth amounts to citizen-owners deriving benefits 'from forgoing personal use of [sovereign wealth] and allowing others to use it.'[16] This is the case irrespective of the investment management approach adopted. Whether a fund outsources to external managers or uses in-house management by government officials, or embraces a more democratic process involving initiatives recommended in previous chapters such as citizen juries or micro-publics that can feed in citizen preferences to the SWF investment decision-

[15] See Chapter 6
[16] Becker (1977) p.19. While there are pressures for SWFs to move more investment in-house in the wake of the financial crisis due to the high cost of externals, even if that where to come to fruition, this does not change the control dynamic.

making process, under all of these investment approaches, citizens forgo personal use of their SWF property so that others may use it for investment that (ideally) generates a reward in the form of financial returns. Hence, the task of investing sovereign wealth satisfies the basic conditions for an income right in which an owner 'allow[s] others to use [their property] for reward'.[17]

Whether there is a reward is, of course, contingent on the investment performance of a fund. Forgoing personal use of sovereign wealth is not a guaranteed realization of this income right since there is no guarantee that the SWF will perform well. Compare this to more conventional cases of deriving income from property, where income is relatively secure. For example, if Sally leases out her house to a tenant, it is part of her contractual agreement with the lessee that they pay rent. Even if the tenant defaults on the rent, Sally's right to income is still legally enforceable as the default amounts to a clear breach of Sally's income rights.[18] Alternatively, contemplate a bank loan in which the bank forfeits its control over some portion of its monetary assets in return for interest payments by the creditor. In both of these examples, legally enforceable income is payable in return for the owner's relinquishing of their ownership rights. A relative degree of certainty of income flow is built into the contractual terms of the trade.

This is not so with sovereign fund returns. An SWF may invest a community's wealth and generate a negative return (as was especially common in the 2008-2010 financial crisis years), and *not* be in breach of any

[17] Honore (1961)

[18] It is of course conceivable that the market does not support a decent level of rent – houses may be so abundant that the market rent is zero, but this is not a likely scenario.

enforceable income right since risk and uncertainty are inherent to financial investing. A market investor anticipates that returns may be volatile and fluctuate in accordance with market conditions without expecting to demand recourse for a legal enforceable stream of income. This distinguishes sovereign fund income from that generated on more orthodox property. Nevertheless, the motivation behind and the manner of SWFs' generation of investment returns satisfy the theoretical essence of an income right attaching to property: citizen-owners forfeit personal use of their sovereign wealth for reward, with full awareness that the reward is variable and cannot be guaranteed. That volatility notwithstanding, I submit that, as owners of sovereign funds, citizens should enjoy a benefit right to sovereign fund income as part of the standard suite of ownership rights.

7.3 Benefit from SWF Income: A Conceptual Typology

Recognising a potential popular right to SWF returns does not, however, provide guidance as to how that right should be realised. The essence of this right is to provide citizens with 'extra benefit' for forfeiting use of their property. Yet, SWF returns do not accrue to citizens, but to sovereign funds. The question, then, is how funds should distribute or use their investment income to ensure it conveys benefit to citizen-owners.

Let us start with the assumption that the benefit right is satisfied as long as SWF income is deployed in a manner that, in some sense, benefits/advantages/profits citizens. If we look at existing treatment of SWF investment earnings, it becomes apparent that there are multiple ways of

conveying some type of benefit to citizens through fund income. In this section, I catalogue these options, arranging them into a conceptual typology based on the different methods of distributing benefit to citizen-owners. The typology is descriptive, classifying distribution alternatives based on their empirical properties. I leave normative evaluation of these options for the final section of the chapter, in which I assess the alternatives to see which, if any, are compatible with my EAC Model of ownership.

Two preliminary points need clarification. First, my discussion of the types of benefit from SWF returns is focused on securing citizen-owners' property right to *benefit.* This is treated in isolation from wider debates about individuals' right to benefit from government through the fair distribution of tax burdens, and debates on the proper scope of public versus private provision of benefits.[19] Both of these important issues have formulated their own 'benefit principles'.[20] While my discussion will draw on some concepts and themes from these debates, I am *not* treating the analysis of a citizen's benefit right to SWF returns as a question of tax policy or welfare provision. On my approach, it is a question about property rights, and the best way to secure those rights.

Second, one might (fairly) wonder whether this exercise of delineating benefit types and adjudicating among the alternatives is in keeping with the spirit of popular control over sovereign funds. That is, if we are truly committed to democratic control of SWFs, then why should we bother setting

[19] These issues are discussed and distinguished in Murphy and Nagel (2002), especially Chapters 2 and 3 at pp.16-18 and pp.48-50.
[20] For a fuller summary of the two benefit principles, Murphy and Nagel direct us Musgrave (1959)

out options for citizens' benefit rights at all? Surely, the appropriate response is just to identify that citizens have the right, and then defer to the democratic process in each community over what form that benefit should take? These questions reflect a wider concern about political theorists 'seeking to supplant or short circuit the democratic process' through their prescriptive contributions.[21] While a valid concern, I submit that the purpose of this exercise is simply to offer resources for, rather than displace, public debate. As Swift and White observe, the political theorist occupies a 'fundamental' yet 'modest' place in the political and policy-making process as a 'democratic under-labourer'.[22] In this role, the theorist can use her analytical tools to offer both clarification, through identifying the values at stake in a particular policy debate, and persuasion, through advancing informed arguments about why certain principles imply particular policies.[23] Rather than usurping the democratic process, this contribution may be seen as enhancing democratic legitimacy where one considers that democratic legitimacy is not just about the people ruling, but ruling in an informed and reflective manner, whether or not they ultimately heed the political theorists advice. And there is the crucial point: that this analysis is simply an offering, one that fellow citizens may decide to accept or not.[24]

7.3.1 Cash Dividend Model: Direct Individual Benefit

The most intuitive realization of a right to income from an owned asset is when the owner directly receives all such income in the original form it was generated. Given that SWFs produce monetary returns, and there are multiple

[21] Swift and White (2008) p.55
[22] Ibid., p 54. For an explanation of the 'democratic under-labourer' idea, see White (2003) Chapter 2.
[23] Swift and White (2003) p.54
[24] Ibid.

individual owners, the most straightforward means of realizing a shared income right is undoubtedly the transfer of investment returns in the form of equal per capita cash payments directly from sovereign funds to each citizen-owner.[25] On this approach, a sovereign fund acts as a temporary repository for investment income before directly transferring any earnings in cash to the ultimate citizen-owners. Let us call this the '**Cash Dividend Model'**.

The benefit conveyed by the Cash Dividend Model is direct and individualised. It is *direct* since the citizen-owner receives the income in the original state it was derived, unaltered by any intermediary. This entails not only that the dividend be in cash, but also that it be condition-free, since the initially derived income on SWF investment is generated in cash without conditions. Cash dividends are also a highly individualised form of benefit since payment goes to every single member of the SWF-owning political community in their capacity as an individual citizen.

The attributes of this approach to benefit distribution may seem obvious, but it is worth setting them out so that we are better equipped to contrast this approach with the subsequent models of benefit. I will do so by examining a working model of the cash dividend approach in Alaska. The reader will recall from Section 2.3.1 that the APF distributes an annual cash payment, known as the Permanent Fund Dividend (the '**PFD**'), to every eligible member of the population based on a portion of the fund's realised

[25] Martin Skancke, Former Director of the Norwegian Ministry of Finance responsible for the GPFG considers that tax-cuts and cash handouts both count as citizens enjoying 'direct' access to sovereign fund returns: 'If you have decided that you want to give the population direct access to the cash, then the choice is between tax cuts or cash dividends. I would argue that tax cuts in terms of economic efficiency are better'. Author Interview with Martin Skancke (2010). The section below challenges the idea that tax cuts constitute direct distribution of SWF returns.

earnings.[26] It doing so, it provides a direct, individualised benefit to every Alaskan citizen. Both of these attributes—its directness and individualisation—are consistently emphasised as central to the PFD's longevity and widespread support. Only two years into its operation in 1984, Jay Hammond, the former Governor of Alaska responsible for the PFD's introduction praised the dividend's directness:

> 'Alaska's dividend program… takes money, *undistilled*, away from the government, and rains it equitably and in *full force and value*, upon the public.'[27] (*emphasis added*)

Hammond's comments echoed the views of PFD advocates, who argued that direct cash distributions 'would deliver benefits more efficiently' than other ways of distributing Alaska's resource wealth.[28] Despite Alaska's massive influx of oil wealth since 1969, and the sevenfold increase in government spending that resulted, dividend advocates pointed out that Alaskans were not seven times better off.[29]

Whether or not this was actually the case, it was certainly the perception of Alaskan citizens at the time. Although much of this money had been spent on beneficial public programmes such as the construction of schools, the financing of generous college loans, and monthly cash payments to Alaskans aged over 65, polls at the time showed 'a substantial majority of Alaskans believed the money was wasted, and many had no understanding

[26] See more generally, Section 8.1 in the next chapter. For the significance of calculating the PDF based on *realised* earnings (or losses) as opposed to the entire market value of the APF's income, see Erickson and Groh (2012a) pp.104-106.
[27] Hammond (1984) p.18
[28] Groh and Erickson (2012) p.32
[29] Ibid.

of what the money brought.'[30] Such findings led Governor Hammond and dividend supporters to conclude that 'private allocation of oil money would result in more efficiency and utility than the government's use of it'.[31] In other words, cash payments to citizens would be far more effective at ensuring individual citizens did benefit and *perceived* that they benefited from their sovereign fund. According to these advocates, less direct forms of distribution risked opaqueness, with Hammond describing selective loan subsidies as 'hidden dividends'.[32] Once operative, the PFD programme assumed a highly direct format of annual cash deposit from government to citizen every October.

The PFD is also celebrated for its highly *individualised* character, both in its underlying justification and form. Its genesis resulted in part from the belief that 'individuals have a right to decide how to use a portion of their oil wealth'.[33] Although the final PFD 1982 bill removed language to this effect, a review by legislators of the preliminary bill characterised the dividend payments as individual compensation for each state resident['s]… equitable ownership of the state's natural resources.'[34] The PFD's current form is also strongly individualised. All Alaskan residents are eligible as long as they have been resident in the state for 12 months prior to the year of their first PFD payment. Even children are entitled to their own PFD payment, with parents receiving the dividends on their child's behalf until maturity. As a result, every single PFD payment attaches to an individual, as opposed to a family, employee, partnership, household or any other economic agent.

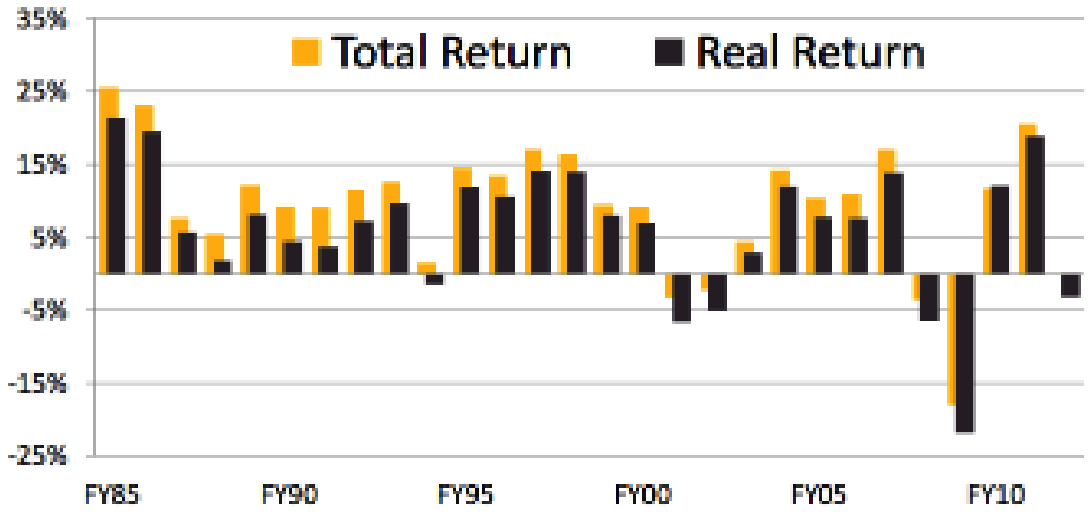
[30] Grohand Erickson (2012) p.18; Greely (1977)
[31] Ibid. p.32
[32] Hammond (1984) p.18
[33] Groh and Erickson (2012) p.31
[34] Ibid.

To determine each Alaskans portion of fund earnings, the PFD is calculated as 10.5% of the APF's realised net income for the past five fiscal years after deduction of programme costs. This figure is divided by the number of eligible Alaskan residents in a given year to produce the individual dividend amount.[35] Erickson and Groh explain that this 'formula was designed as a smoothing mechanism and insures that dividends are not interrupted in the occasional years when the fund loses money on its investments.'[36] An Alaskan citizen who has received all 31 dividends since the first distribution in 1982 and including the latest payment in October 2012 will have received $34,243.31 over the life of the scheme.[37]

The effectiveness of the rolling five-year formula, from the perspective of security of income, is evident when the reliability of dividend payments is viewed against the volatility of the APF's historical returns. As Table 7.1 below shows, despite the odd year of negative returns from investment activities, including consecutive negative returns (2001-2002 and 2007-2008), Alaskans' income right to their SWF earnings has been consistently respected, *regardless* of whether the fund generates a return in a given year. As a result, the PFD ensures that individual Alaskans enjoy secure, direct, and individual benefit from their sovereign fund earnings.

[35] APFC (2010)
[36] Erickson and Groh (2012b) p. 42
[37] APFC (2012b)

Graph 7.1: APF Historical Returns



Source: Alaska Permanent Fund Corporation[38]

While Chapter 9 discusses some criticisms of the Alaskan approach, it is fair to say that the essential elements of the APF and PFD offer a unique model for how [sovereign] wealth can be used 'to *directly* and equally benefit...*individuals*… while largely bypassing tribal chiefs, kings and sovereign governments.'[39] (*emphasis added*)

7.3.2 Cashless Payment: Indirect Individual Benefit

An alternative form of individually distributing SWF income is to use sovereign returns for targeted public provision or tax relief (the '**Cashless Payment Model**'). Like the Cash Dividend Model, these payments are linked to individuals and paid to everyone, but rather than direct cash transfers, the distribution may take a variety of 'cashless', and thus, less direct forms.

[38] See APFC (2010d)
[39] Erickson and Groh (2012b) p.99

Classic forms of cashless payments recognised as providing benefit to individuals include:

> 'unemployment compensation, disability benefits, retirement pensions, child care support, health care, aid to dependent children, food stamps, free school lunches and so forth. Also included are many kinds of educational support, including public universities, subsidized student loans [and] publicly financed scholarships...'[40]

We might add to this list, subsidies for essential goods such as water, transport, energy and housing. Alternatively, SWF income could be used for tax relief. Presumably, every citizen's tax liability could be reduced in proportion to their per capital share of SWF returns, ensuring all individuals benefit through a lighter tax burden.

The essential idea behind these 'cashless' payments, whether in the form of public provision, or tax relief, is that, although citizens would not receive their share of SWF returns as hard currency, they would still benefit individually from the returns in the form of reduced expenditure typically incurred by the individual. To paraphrase Murphy and Nagel, '[a]ll these measure leave … individuals with more resources at their private disposal than they would have if the distribution' of SWF income had not occurred.[41]

Since both the Cashless Payment Model and the Cash Dividend Model are capable of targeting individuals, the models only differ in terms of *directness.* The Cashless Payment Model conveys a less direct benefit in two senses. First, if SWF returns are used to reduce individual liability for public goods and services, then recipients only benefit relative to the counterfactual

[40] Murphy and Nagel (2002) p.48
[41] Ibid. p.48

of having to pay the full or unsubsidised cost of that good. The sense of *immediate* benefit from SWF earnings to the individual citizen may be less palpable when their receipt of that reward is just a product of the state reallocating its system of public transfers. In this sense, a cashless benefit may not feel like as direct a gain for the recipient *to the same extent* as a physical lump sum payment over which a citizen has full discretion.

Second, the indirectness of this model also inheres in its implicit conditionality. The realisation of cashless benefits like subsidies and tax-cuts are contingent on citizens undertaking some act to receive the payment. For subsidies, they must access a particular public service, like an education facility, or a medical centre, to trigger payment. If a tax cut, a citizen must generate a tax liability against which to claim a rebate. In that sense, the instantaneousness of the benefit, both actual and perceived, relative to cash dividends, is reduced. For this reason, I characterise the Cashless Payment Model as an 'indirect individual benefit'.

The SWF world offers a precedent of cashless benefit distribution in Mongolia. In 2009, Mongolia created the Human Development Fund (the '**HDF**'), a general government vehicle for redistribution of mining wealth and social spending created with proceeds from mining royalties.[42] Established as a sovereign fund,[43] with a mission to raise Monogolia's human development

[42] In July 2001, substantial deposits of cooper and gold were discovered in Mongolia's south Gobi desert. See Campi (2012) and Adamson (2012b). Mongolia also has vast coal reserves, and recently re-tendered to maximise production potential. See Isakova, Plekhanov and Zettelmeyer (2012)
[43] Tang (2009)

status to that of a developed country by 2020,[44] the HDF is a hybrid model of cash and cashless distributions. To fulfill its mission, the HDF committed to distributing direct cash payments to citizens, as well as 'payments linked to pensions, health care, education and housing.'[45] On the day the HDF received parliamentary assent, a senior Mongolian civil servant described the Fund as 'the greatest investment…into the Mongolian people' because it allowed the people to 'own shares [in their SWF] in the form of residential and tuition payments, withdrawals of health and social insurance'.[46] In that sense, the HDF resembles an 'Alaska plus' model, offering a combination of cash transfers and 'cashless payments' for other public services. Unlike Alaska, though, the law regulating the HDF does not contain a formula for determining the size of payments or subsidies from the Fund. Instead, they are approved annually in the government's budget process.[47]

The first distributions occurred in February 2010, with every citizen receiving a cash handout of 70,000 Mongolian Tugriks ('**MNT**'), equivalent to about US$50, followed by smaller payments totaling MNT 50,000 by end 2010.[48] In 2011, the payments became more regular, with every eligible citizen receiving a monthly cash handout of MNT 21,000 (about US$15). In August of that year, the Mongolian Cabinet decided that each student regardless of age would receive MNT 5,000,000 for tuition fees.[49] In total, the HDF distributed

[44] Campi (2012). More than 30% of the population, or 2.8 million people live in poverty. Adamson (2012b)
[45] Isakova et al (2012) p.11
[46] Choi (2009)
[47] Ibid., p.11
[48] Ibid., p.10
[49] Campi (2012), footnote 7

approximately US$580 million in 2011 through discretionary handouts,[50] attracting both criticism and praise.[51]

The significant finding for our benefit typology here concerns the nature of the benefit conveyed to the Mongolian people. The Mongolian experience shows that it is still possible to deliver individualised benefit to SWF owners even if that benefit is not in direct cash payment form. Indeed, the Mongolian format for distributing the cash and cashless payments is highly individualised, with every Mongolian citizen in the country issued a Human Development record book used to receive HDF payments. Leading supporters of the HDF still praise its operations as making 'it legally possible for every citizen of Mongolia, for the first time in its history, to be equally eligible to own a share of the nation's minerals',[52] echoing the highly individualised conception of benefit endowed by Alaska's cash dividend scheme.[53]

As noted above, though, the Cashless Payment Model (whether targeted public assistance or tax relief) lacks the same degree of directness that the Cash Dividend Model boasts. I suggested above that this might lead to the recipients suffering a lack of perceived benefit (even if no difference in actual benefit) relative to the cash payment. Yet, the Mongolian experience suggests that this will be entirely dependent on the preferences of the relevant

[50] Isakova et al (2012) p.10
[51] Critics point to the inflationary effects of the handouts and increased pork barreling. As the allocations are not related to the fund's performance and entirely at the government's discretion, the major political parties have tapped the fund in an undisciplined way to win votes. Adamson (2012b).
[52] Campi (2012)
[53] It should be noted though that the overall design and operation of the Mongolian approach is far less secure than the Alaskan dividend programme and given the proposed replacement of the HDF with two new sovereign funds, the status of Mongolian citizens benefit rights to their sovereign wealth is quite precarious.

SWF-owning community. A 2010 opinion poll of Mongolian citizens on the preferred ways of delivering HDF benefits revealed that more than 87% of Monogolian citizens wished to see their benefit in *cashless* form.[54] According to the poll, 22.1% preferred to receive the money in the form of compensation for pension and health insurance, 14.6% for health services, 18.5% for education costs, 18.1% for apartment leasing and rebates on loan interest, with the largest group of 31.4% preferring compensation of livestock and other loans.[55]

Similar findings are evident in 'workshops, community groups, environmental protests and, in the vibrant Mongolian press' pointing to 'a national consensus that the government should utilise mining revenues to focus on improving access to basic services and housing conditions, reducing inequality in life expectancy and material standards of living, and maintaining environmentally sustainable income flows to transform mineral wealth into renewable assets for sustainable and broad-based growth to meet Mongolia's most significant development challenges.'[56] These results are revealing in that they suggest cashless payments can satisfy the idea of individual benefit where this reflects the preferences of the recipient population. Rather than being a drawback of this model, the *indirectness* of this mode of distribution may simply be a neutral difference between the two approaches, which may or may not align better with popular preferences.

[54] Batkhuyag (2012)
[55] Ibid.
[56] Campi (2012)

The question remains though whether, despite popular predilections of a given population, one or other of the individualised benefit models is superior to the other from an ownership perspective. That is, does one better fulfill a citizen-owner's benefit rights to sovereign returns as governed by the EAC model of ownership? I address this issue in the next section. Before that, I finish outlining the conceptual typology of benefit by considering options for *collective* distribution of benefit.

7.3.3 General Budget Transfer: Direct Collective Benefit

A more common method for distributing SWF investment earnings is the 'general budget transfer' approach (the '**Budget Transfer Model'**). While the Cashless Payments Model *could* involve a transfer to the state's budget before redistribution through the preferred public expenditure schemes, the Budget Transfer Model involves the non-earmarked transfer of SWF income to the sovereign sponsor's budget. In doing so, it converts sovereign wealth from *stock* to *flow* - that is to government revenue. This method of distribution involves 'direct collective benefit' because the preservation of SWF earnings in monetary form conveys a *direct* benefit upon the *collective* citizenry. The citizenry as a group directly benefit since the transfer of SWF returns from a quarantined sovereign fund to the government's purse immediately boosts available resources for current spending. On the assumption that the government's budget is then managed in the citizens' interests (a topic I return to below), the community benefits.

One might immediately wonder though about the practical difference between the Cashless Payment Model discussed above and the Budget

Transfer Model, since both use SWF returns for spending on essential services and public programmes through government budgets that ultimately impact on individuals. The main distinction, in my view, lies in the *individual claimability* of the benefit. As the reader will recall, the Mongolian system involves each citizen possessing a book linked to their sovereign fund which can be used to claim his or her individual share of the fund's returns. While the ways in which Mongolian citizens can then use those funds is delimited by the state, the system is still individualised. Each citizen has a claim to a per capita share of the fund and may use that revenue on certain, stipulated expenses.

By contrast, under the Budget Transfer Model, the primary transfer and benefit occurs at the collective level, since SWF returns are transferred first to the general government budget and then (ideally) allocated to certain spending programmes, which will ultimately benefit citizens. The key point to register is that this spending is not allocated to, or claimable by *individual citizens*. While the collective benefit provided by the budget transfer may *eventually* benefit individual citizens by virtue of benefiting the citizenry generally, or a particular group to which certain individuals belong, the benefit is *not* allocated to those *individuals*, and indeed is entirely contingent on the effective spending of these returns by the sovereign sponsor.[57]

The Budget Transfer Model is in operation in several sovereign funds. In Singapore, investment earnings by the two Singaporean sovereign funds,

[57] Contra Murphy and Nagel who in their analysis, do not consider it relevant from a moral point of view to distinguish between direct and indirect benefit, or individual and collective benefit. Rather the key question, in their view, concerns the ends of government and whether that should include the general welfare that looks beyond individual benefit or provision of public goods from which everyone benefits. Murphy and Nagel (2002) p.49.

the Government Investment Corporation ('**GIC**') and Temasek, may be transferred to the annual Budget through the Net Investment Returns Contribution ('**NIRC**').[58] The NIRC allows the transfer of up to 50% of GIC's 'Net Investment Returns' and up to 50% of Temasek's investment income to the government Budget to support public spending.[59] This, the Singaporean government claims, means citizens directly benefit from the investment returns of their sovereign funds:

> 'Singaporeans benefit from the investments of GIC and Temasek as they supplement the annual Budget through the Net Investment Returns Contribution (NIRC). The NIRC, amounting to S$7.8 billion in FY2010, has allowed the Government to make further investments for the long term, such as in education, R&D, healthcare and improving our physical environment.'[60]

While the Budget Transfer Model is constitutionally enshrined, it is discretionary. It is entirely up to the government of the day as to whether it exercises the NIRC transfer option, rendering Singaporeans' benefit rights to sovereign returns vulnerable to government whim. The government also has discretion over how the returns are ultimately allocated within the budget. As the quote above suggests, past allocations have included a mix of expenditures more likely to benefit *present* citizens (for example, education and healthcare) as well as investments associated with long-term benefits, such as R&D, and 'physical environment' improvements that tend to privilege *future* citizens.[61]

---

[58] Singapore Ministry of Finance (2013)
[59] Ibid.
[60] Ibid.
[61] In national accounting terminology, there is a rough general distinction made between *consumption* spending that benefits individuals or the collective and *investment* spending that tends to promote long-term collective benefit, corresponding to our distinction. For a technical discussion of this terminology, see Lequiller and Blades (2006) pp. 249*ff* on consumption and pp. 232 on investment.

An alternative approach is that used by Norway's SWF, the GPFG, which employs a rules based approach to transfers from the fund to the budget. Known as the Fiscal Policy Rule, it states that transfers to the budget from the GPFG may occur to help cover the non-oil deficit in any budget cycle. The transfer amount is capped at the level of the expected long-term real return of the fund, estimated at 4% on average. While actual fund returns may be quite volatile, spending in line with average real returns over the long-term helps preserve the real value of the fund and impose fiscal discipline on the use of fund earnings. For Martin Skancke, former Director at the Ministry of Finance responsible for the GPFG, this rule-governed transfer ensures current generations of Norwegians enjoy direct benefit from their SWF's income:

> 'Current citizens do benefit *directly* from the fund because we take money from the fund annually to finance the budget. We have set up a Fiscal Policy rule that says we will spend every year on average an amount corresponding to the real return on the fund. We are paying dividends in the sense that we are transferring money into the budget. That is how [current] Norwegian citizens enjoy the returns.'[62] (*emphasis added*)

There are two key themes in Skancke's statement that require comment. First, the idea that Norway is effectively providing dividends to citizens by transferring SWF returns to its budget is at odds with the typology of benefit that I have described above. This, as explained, is due to the individuality claimability of the benefit under the Cash Dividend Model and the Cashless Payment Model as compared to the Budget Transfer Model. Since those returns in the general budget are not referable to individual citizens (who therefore have no claim to them), it is a mistake to conceptualise this approach to benefit distribution in dividend terms. This is not to deny

[62] Author Interview with Martin Skancke (2010)

that the Budget Transfer Model conveys benefit, but just to challenge its characterisation as *individual* benefit akin to a dividend distribution.

This brings us to the second point. While the act of transferring fund returns to the government-sponsor's budget maintains SWF earnings in their original monetary form, and is in that sense a 'direct' benefit to citizens, whether this approach ultimately confers benefit upon citizens is entirely dependent on how a given government uses this revenue. In Norway's case, the transfer is directed towards covering the country's non-oil deficit, so the idea of benefit is inbuilt into the purpose of the transfer if a national deficit is considered an inherently deleterious state of fiscal affairs for a community.

Although the Singaporean approach is similar, there is no stipulation there as to how the Singaporean government should spend these returns once they are subsumed in the budget. At the very least, one might hope that the government should not have to further tax citizens to raise revenue for goods and services where SWF income covers a budget deficit. The Alaskan government made this point when first considering how to use the earnings of its sovereign fund in 1979:

> 'Permanent Fund earnings further appear to be the fastest growing source of recurring revenues needed to offset operating budget dependence on oil wealth. Thus these earnings can help allow for the continued provision of public goods and services without drastic increases in tax burden to the state's citizenry.'[63]

That said, whether a transfer of SWF returns to prevent a budget deficit is automatically beneficial to citizens is questionable. If SWF income helps

[63] Ulmer (1979)

push a budget into surplus or to balance the national accounts, this would suggest that the government is supplying sufficient public goods to its citizens and, as Skancke believes, citizens would benefit. On the other hand, a surplus or balanced budget may also reflect parsimonious public spending. A government may receive the returns and then hoard SWF income to help deliver a surplus for its own political advantage. Under that scenario, transfer of SWF earnings to government budgets without further stipulation of what expenditure the government should direct those returns to risks reducing the benefit to citizens so much that it becomes weak or even non-existent. Put differently, the dependence of the benefit's realisation on government's good will to spend the returns in advantageous ways for the citizenry arguably jeopardises the security of citizens' benefit rights to SWF income. Consequently, whether the Budget Transfer Model amounts to little more than a reallocation of SWF earnings from government *stock* to *flow* is entirely at the whim of the government of the day, unless further conditions are stipulated mandating consumption of SWF income on public goods, essential services or other distributive schemes that ultimately benefit the public.

7.3.4 Government Investment: Indirect Collective Benefit

The final distributive model also conveys collective benefit, but of an indirect kind. Rather than a straight budget transfer, some sovereign funds deploy SWF earnings to investment spending in projects that create shared benefit for a community (the '**Government Investment Model'**). Examples of such investment include spending on infrastructure, socio-economic development, community enhancement, and growth stimulating initiatives. Such initiatives must involve the commitment of capital to a particular policy end in this vein

to promote the general standard of living. This mode of distribution, I submit conveys 'indirect collective benefit'.

The main difference between this model and the Budget Transfer Model is that, under the latter, the citizenry directly receive their SWF returns in original monetary form through the budget. Such funds are then theoretically consumed by citizens through the use of these revenues for goods and services. Under the Government Investment Model, SWF returns are converted from a monetary reward into a non-pecuniary benefit through investment in community-enhancing initiatives. The benefit conveyed is still the collective kind, because individuals have no ability to claim the returns, but it is even less direct than the budget transfer approach due to its conversion into a non-financial form. Its directness is also diluted as such investments are typically long-term, meaning SWF returns are locked up in projects that may not deliver benefits for years or decades, thereby only privileging future citizens.

An archetypical example of this Government Investment Model at work is Abu Dhabi's development fund, Mubadala.[64] As we saw in Chapter 2, Mubadala is a strategic fund tasked with the twofold mission of delivering socio-economic benefits to Abu Dhabi citizens, and accelerating Abu Dhabi's economic development. It does so by pursuing an investment strategy with a double mandate of delivering 'strong financial returns and tangible social benefits for the Emirate'.[65] This mandate relates to both the principal and earnings of the fund, such that investment returns are not treated in isolation,

[64] See Chapter 2 for a detailed discussion of the UAE sovereign funds.
[65] Mubadala (2012a)

but redirected back to the fund to help fulfill this mandate.[66] In effect then, fund income is directed towards socio-economically beneficial investments in the Emirate.

There is no guidance on what constitutes 'benefit' for the purposes of Mubadala investments. Accordingly, fund personnel interpret the 'benefit' mandate in light of the fund's broader mission to be 'a catalyst that facilitat[es] Abu Dhabi's ambition to diversify and transform its economy, develop a new generation of business leaders, and build a prosperous future for its people'.[67] To achieve this objective, Mubadala focuses on outcomes such as job creation and construction of social infrastructure. Collective benefits resulting from the fund's local investments to date include job creation in the aerospace and semiconductor sector, establishment of educational infrastructure such as a new university campus affiliated with the Sorbonne University in central Abu Dhabi, and a more diverse economy.[68]

Despite these extensive domestic investments, according to fund personnel 'there is not necessarily a high degree of awareness [of Mubadala] among the citizens'.[69] This does not alter the fact that its investments may confer actual benefits upon the citizenry. For one fund official, Mubadala certainly provides 'indirect benefit to the local population' sufficient to dismiss the need for direct dividend distribution:

> 'The development of Abu Dhabi through social infrastructure and job creation is a tangible benefit to the people… We don't need a [cash]

[66] Mubadala (2012b)
[67] Abu Dhabi Government (2010) and Mubadala (2011)
[68] Author Interview with Mubadala Investment Manager (2011)
[69] Ibid.

> dividend as well because helping the prosperity of the state is enough to help the people….'[70]

Such a statement underscores the idea that, ultimately, all of these forms of distribution ultimately advantage citizens, but the individual claimability of the benefit is what separates the models. Not only are individual citizens unable to directly claim these 'tangible' benefits, but present citizens are also unlikely to experience the advantageous impact of such investment spending. If government *investment* spending is, by definition, meant to foster future benefits, then it is questionable as to whether such an approach sufficiently realises the income rights of both present and future citizens. In Mubadala's case, there was skepticism as to whether the very citizens whom the fund is meant to benefit through local investment and social infrastructure actually knew that it was the fund, and thus *their* public money, that was financing these local ventures. Beyond those citizens directly involved in the construction and development of such long-term projects, it is dubious that present citizens on the whole can be said to benefit sufficiently from SWF investment income under the 'indirect collective' approach.

7.4 EAC Ownership and Preferred Realisation of the Income Right

In the conceptual typology above, I categorised the sort of benefit that different types of distributive methods for SWF returns confer upon the members of an owning community. I did not attempt to discuss all the numerous ways a state could distribute such returns or the various purposes

[70] Ibid.

to which they may be directed.[71] Rather, I sought to condense those options into categories of benefit, and illustrate how each type of benefit might work by drawing on current practice by SWFs in transferring their returns to citizens. Table 7.2 below summarises this conceptual typology:

Table 7.1: Models of Benefit Distribution for SWF Returns

Distribution Type	INDIVIDUAL	COLLECTIVE
DIRECT	Cash Dividend	Budget Transfer
INDIRECT	Cashless Payment	Government Investment

The question now is which, if any of these, is more desirable in light the normative model of citizen ownership, the EAC Model, that I propose in this thesis. To recap, the key demands of citizen ownership under EAC Model are as follows:

(1) *Egalitarian Constraint* (Section 3.4.1 above): citizens must own SWFs in a manner that recognises all citizens within a bounded political community enjoy a symmetrical claim on their state's sovereign wealth by virtue of their equal moral standing within the community;

(2) *Autonomy Constraint* (Section 3.4.2 above)*:* citizens must own SWFs in a manner that respects their individual autonomy in forming and pursuing their own goals, attachments and interests;

[71] For a comprehensive list of potential channels for distributing state wealth to citizens, see El-Katiri, Fattouh and Segal (2011). The authors identify eight main channels of rent distribution for Kuwait's resource wealth at p.7. Kuwait possesses an SWF, the KIA, which the authors argue forms part of this distributive apparatus, although mainly as a tool for distributing wealth to future generations.

(3) *Collective-hybrid Constraint* (Section 3.4.3 above): equal and autonomous citizens must own SWFs jointly *and* in common, ensuring a hybrid of individual and collective use and management rights to sovereign funds.

To satisfy citizens' income rights to SWF returns in light of these demands, a modest presumption in favour of the Cash Dividend Model emerges. I now explain why.

Turning first to the Egalitarian Constraint, all four models are egalitarian insofar as, *prima facie*, none of them discriminates between contemporary citizens right to receive SWF returns. However, all four models potentially violate intergenerational equity obligations. The reader will recall our background assumption of an adapted Just Savings Principle ('**JSP**') identified at Section 1.6.2 above. That principle required that citizens of today 'put aside…. a suitable amount of real capital' to create the conditions needed for a basic structure over time, after which there is no longer a positive duty to amass savings. When our benefit models above are viewed in light of this obligation, all four are deficient.

Let us start with the individual benefit models: the Cash Dividend Model and the Cashless Payments Model. Both threaten my assumed intergenerational justice requirement, since they contain no obligation to consider how their respective return distributions affect the overarching obligation to amass intergenerational savings. That is, they lack mechanisms through which to ensure the interests of present *and future* citizens are given equal consideration. This is easily fixed however, through the articulation of

an appropriate pay out rate. This rate must ensure that the principal is grown sufficiently to meet the assumed JSP obligation before returns are distributed. One way of achieving this is to first transfer some portion of investment returns to the fund principal for inflation-proofing or inflation-proofing plus principal augmentation, after which returns are distributed to present citizens.[72] Both of these measures would arguably give due weight to the interests of future generations.

The collective benefit options also risk violating our intergenerational justice requirement, but for the opposite reason of neglecting *present* citizens' benefit rights. The Budget Transfer Model should benefit today's citizens, but it is contingent on the governments' proposed expenditure of those returns in any given year. Of course, if the transfer capital is spent, it may well benefit citizens. However, recall the concern raised earlier about whether one could guarantee government spending. If these transfers were used to endlessly accumulate large surpluses (perhaps to reflect well on the incumbent government's economic management prowess), this would almost certainly privilege the interests of future generations of citizens at the expense of today's citizens. Here again, the devil may be in the design detail. Remember that the Norwegian approach offered its citizens slightly more security than the entirely discretionary transfer approach of the Singaporean SWF. Still, both of these approaches are deficient insofar as they do not stipulate what these returns should be spent on, once they are back in the budget coffers. Without such a stipulation, present citizens lack assurance about whether their income rights *will* be realised.

[72] This is the opposite of the Alaskan approach, which gives legislative priority to dividends. An appropriation is first made for payment of individual dividends after which the remainder of SWF earnings is used for inflation-proofing. Erickson and Groh(2012a) pp.42-43

Similarly, the Government Investment Model risks neglecting the benefit rights of today's citizenry, since government investment, by definition, is geared towards securing longer-term benefits. Of course, much depends on the life span of the relevant projects and initiatives a government chooses to support under this model. Once again, a population might have to stipulate the sorts of projects a government could invest SWF returns in to ensure an acceptable allocation of benefits as between current and future citizens. But without such stipulations, there is a high risk that present day citizens miss out entirely on their returns under this approach.

Now let us turn to the Autonomy Constraint. At this stage, all four models are still in contention, since they each partially satisfy the Egalitarian Constraint, and to the extent that they do not, they are amenable to measures which would address those deficiencies. When it comes to the Autonomy Constraint though, the models clearly separate in terms of their EAC compliance. Given the neutral, fungible nature of money, citizens enjoy the greatest autonomy under the Cash Divided Model. If genuine autonomy demands a neutral state insofar as no one citizen's interests are privileged or promoted above others, then this mode of SWF returns distribution avoids any imposition of government will on citizens regarding how they should use their benefit right. Such neutrality also strengthens the case of cash dividend's compliance with the Egalitarian Constraint, since all citizens' preferences, now and across time, are equally treated by virtue of privileging none through investment or support of certain schemes that will change the social conditions which future citizens inherit. Instead, discretion is left entirely to the individual.

That said, the other three models: the Cashless Payment Model (indirect individual benefit); the Budget Transfer Model (direct collective benefit) and the Government Investment Model (indirect collective benefit) may also promote individual autonomy where SWF returns are spent in ways that help to secure autonomy. For instance, if public provision under the cashless payment option, budget transfer approach, or the government investment model, went towards education initiatives, health investment or other social spending that empowered individuals and enhanced their capacity to operate as independent, self-reliant agents with the resources to resist the imposition of external government will or that of other agents, any of these models would potentially comply with the Autonomy Constraint.

The major concern, though, as already noted, is that, under both of the 'collective' approaches: the Budget Transfer Model and the Government Investment Model, the government—at least on current working models—retains ultimate discretion over the spending of SWF returns. With the Budget Transfer Model, governments determine how these returns will be spent within the budget, inevitably privileging some citizens' interests over others. Equally, in the Government Investment Model, some sectors will benefit over others, depending on what future needs governments identify and choose to finance. While again, it would be possible to stipulate constraints in line with citizen preferences, under the Cash Dividend Model, there is no need for this additional regulatory step. But the alternative *individual* benefit model - the Cashless Payment Model, if pursued along the lines of the Mongolian example, would ensure citizens retain strong influence over what this income

should go towards. Citizens would therefore be exercising their will largely independent of government (albeit with some degree of reliance on paternal government guidance for identifying the range of uses citizens may put their returns towards).

Having considered both of the Egalitarian and Autonomy Constraints, a slight preference emerges for the *individual* modes of benefit distribution (the Cash Dividend Model and the Cashless Payments Model), which more clearly and easily comply with the fundamental constraints of the EAC Model. How then do all the options fare in terms of the derivative EAC requirement that citizens must wield both common and joint property rights to this property? It is important to remember that the purpose of the Collective-Hybrid Constraint was largely borne out of a preference for an individualised conception of the collective. I sought to uphold a model of ownership that was not completely collectivised to ensure that the members of the domestic community did not entirely forfeit some individual-level rights to their sovereign fund. If we wish to uphold that semi-individualised conception of fund ownership through the distribution of SWF income, we once again will marginally prefer the *individual* benefit models: the Cash Dividend Model or the Cashless Payments Model. This is so because, while individuals will also ultimately benefit under the *collective* models, the claimability of the Cash Dividend Model and the Cashless Payment Model is self-evidently far more easily linked to individuals. On balance though, the Cash Payments Model is most straight-forwardly individualized in terms of claimability and therefore emerges as marginally preferable. We need have no worry under this approach of common use rights to SWF returns being lost.

The importance of keeping the investment returns as individualised as possible becomes clear when we recall Widerquist's proposal for Citizen's Capital Accounts ('**CCAs**'). I already set out the details of this innovative proposal at Section 3.4.3 and further discussed its operation in Section 6.3.3. The reader will recall that CCAs operate on a partially privatised model of ownership of sovereign funds. The underlying principal stock of assets would ultimately remain the property of the collective, but each individual would receive an account within this wider account, over which he or she would exercise some influence regarding its investment, and draw down its returns at his or her own discretion.

The significance of the CCA proposal for our discussion is that it reminds us that a sovereign fund is a combination of collective and individual property rights. Accordingly, the *principal* cannot and should not be fully individualised; it is the property of the community, including its future generations. However, if we are to recognise a partly common ownership approach to a sovereign fund, as I am advocating here, it is necessary to, individualise ownership to some extent. Widerquist's CCA proposal, where individuals enjoy total discretion over their return (i.e. benefit) flows, achieves this. Replicating the mixed-property rights approach of the CCA is most feasible under the Cash Dividend Model since, under the Cashless Payment Model, the financial assets would: (a) remain with the government until accessed by a citizen through their interface with the state; and (b) in any event, be subject to greater government influence in decision-making about the nature of the benefits to be made available for the individual to claim.

The foregoing analysis leads to the conclusion that the *individual* benefit models: the Cash Dividend Model and the Cashless Payments Model, are slightly preferable to the indirect models. Of the individual models, I suggest that the Cash Dividend approach seems marginally preferable given its neutral character. It offers the most impartial form of distribution since such a payment is indifferent as between citizens various priorities and values (up to a point, at least: it clearly privileges the preferences of citizens whose desire is for more money above those who demand more generous public provision of certain goods). Generally, handing citizens their SWF returns in the fungible form of cash minimises the likelihood of privileging the priorities or preferences of some citizens over those of others. Moreover, since cash does not prevent other citizens from pursuing their preferences with this dividend, and the payment of conditional in-kind benefits might, cash payments better comply with both of the Egalitarian and Autonomy Constraints. In addition to these normative considerations, there is also a practicability advantage with cash dividends as they may be easier to implement than the Cashless Payment system.

Before considering the case closed, we should briefly consider two concerns that attend a per capita cash distribution. First, a prioritarian might take issue with our strict egalitarianism in light of special needs. If one believes that certain spending needs have priority above others, than this might tell against a per capita distribution. Without wanting to dismiss the importance of special needs considerations, all I am able to say here is that the objective of this analysis, as foreshadowed earlier in the chapter, is not to ask what role SWF returns should play within a wider theory of distributive

justice and fair economic policy; it is to identify preferred ways of delivering citizen-owners their benefit right to their property's income. This is a first instance analysis, the conclusion of which we may depart from if, for whatever reason, it is decided that sovereign funds should be subject to one particular theory of distributive justice or another.

Second, a skeptic might worry that cash payments are possibly more vulnerable to individual frittering, waste or misuse than cashless payments. If citizens 'waste' their benefit payments, then perhaps they are at more risk of stunting their autonomy by alienating themselves from the income of their benefit right. While the likelihood of the wasteful spendthrift is questionable, both on evidence of experience with such cash schemes that I adduce in Chapter 9, and given the smaller size of these regular payments, the possibility causes us to ask whether the Cashless Payment Model, even if 'mildly paternalistic', might be a preferable alternative. Perhaps most citizens would approve of the sort of restrictions that cashless payments impose, when reflecting soberly on what restrictions they would impose on themselves to protect against irrationality, or weakness of will.

However, it seems more likely that 'sober, sensible citizens', reflecting on what is really conducive to their own individual good, would ideally wish to retain the maximum influence over this one small aspect of sovereign fund property, given that the greater bulk remains in the principal, and is only subject to the stipulated control rights that I discussed earlier in Part II. This is the one aspect of their SWF property over which they might exercise ultimate unconstrained control, which is only fully possible under a Cash Distribution

Model. Moreover, if the benefit right is truly to resemble compensation for forfeited control, citizens surely should therefore enjoy maximum control over their compensation for this forfeiture.

Moreover, if we try to link the idea of control and benefit rights, than we have further reason to think that the EAC Model of ownerships creates a presumption in favour of the Cash Dividend Model. Consider that the distribution of direct, individual benefits can be used as a mechanism for enhancing awareness among, and therefore accountability to citizens regarding their sovereign fund. When a universal payment is due, it gives citizens more reason to monitor the fund as the source of that payment. This in turn improves the citizenry's capacity to be an effective principal over its government.

Evidence of this accountability-enhancing effect of cash dividends exists in relation to the Alaskan dividend scheme, where the annual distribution of returns to citizens helps heighten interest in the management and health of the underlying sovereign fund (discussed in Chapter 8). The Mongolian approach to cashless payments administered through the HD Record Book might also encourages scrutiny of the fund, although one suspects it would be easier to monitor fund performance as a community if everyone receives their payment together, enjoying a common standard against which to judge fund performance.

The accountability potential of direct benefit distribution lies in contrast with the absence of this effect under the indirect collective benefit

model. The observation by the Mubadala official who lamented that the Abu Dhabi fund's extensive social investments and explicit effort to produce domestic social returns has not resulted in a strong awareness of the fund among the local population underscores this point. When it comes to linking the goals of the benefit and control rights, the individual models of distribution emerge as preferable.

Conclusion

In this chapter, I sought to isolate the unique aspects of benefit rights to property in the SWF context. I highlighted that citizen-owners have a right to benefit from the investment returns of their sovereign funds in compliance with the demands of ownership according to the EAC Model. While I argue that we should be deferential to the preferences of owner communities on the question of how they wish to distribute their SWF returns to citizen-owners, this normatively-oriented analysis demonstrates that the EAC Model establishes a presumption in favour of the Cash Dividend Model of benefit distribution. Of course, particular considerations internal to the EAC Model, such as Autonomy, may require a departure from this presumption where citizen preferences demand as much.

This conclusion is important because the alternative of *no* distribution of SWF returns would fail to comply with the EAC Model. Many sovereign funds simply allow their returns to flow back to the fund's principal without pursuing any of the distribution models discussed above. This has been

praised as an appropriately *neutral* way of investing in the future,[73] but while this method appears passive,[74] its effect is to neglect the benefit rights of today's citizens, as all earnings are funneled to augmenting the principal, and therefore flow to the benefit of future generations. My goal here has been to recommend a distribution approach that, at the very least, balances the rights of today's and tomorrow's citizens to benefit from sovereign wealth. The next two chapters further bolster the case for the Cash Dividend Model as the marginally preferable distribution approach by examining how the model works in practice. Chapter 8 examines the world's only working model of SWF cash dividend distribution in Alaska, and demonstrates how this approach broadly conforms to the ideal of the Cash Dividend Model. Finally, Chapter 9 critiques possible objections to the Cash Dividend Model, strengthening the case for its feasibility.

[73] The Norwegian Graver Committee, in its report on the investment practices of its SWF, described the benefits of accumulating *neutral* financial assets in its fund over other uses of its oil wealth: 'In contrast to investing in education and fixed capital today to create wealth in the future, safeguarding value by maintaining financial wealth generates a return that can be used some time in the future.' Graver Committee (2003) p.1

[74] As Groh and Erickson (2012) observe when discussing the emergence of the Alaskan dividend programme: 'The decision made in 1980 that the APF principal would be invested conservatively left open the issue of the earnings. Was the fund's income to flow to the general fund, *as it would if no action was taken*, or was it to be used for something else?' The Alaskan's debate over the question of earnings is more unusual in the SWF world.

Chapter 8 - Realising Benefit Rights: Lessons from the Alaskan Approach

The ethical prescription to realise citizen benefit rights to SWF returns through cash dividends is radical when viewed in light of current approaches to sovereign fund distribution. As I explained in the last chapter, most sovereign funds do not have an active policy regarding the separate treatment of their investment income beyond letting those returns accumulate back into the principal of the fund. The idea that earnings should be conceptualised and treated distinctly, in policy terms, and distributed out of the fund directly to citizens, is therefore a bold proposition. It is particularly bold given the strength of opposition to the proposal among the SWF community, which I discuss and challenge in the next chapter. However, such an approach is not entirely unprecedented, as evident from the discussion of the Alaskan Permanent Fund (the '**APF**')[1] in Chapter 7. The purpose of this chapter is to ascertain to what extent the Permanent Fund Dividend (the '**PFD**'), distributed annually by the APF, is in fact, a potential blueprint for citizen dividends from SWF investment earnings.

To that end, this chapter moves beyond existing characterisations of the PFD as a basic income programme,[2] a natural resource dividend,[3] or a stakeholding grant[4], and asks whether the Alaskan dividend can additionally, and perhaps more accurately, be characterised as a popular right of

[1] At the time of the Alaskan dividend's introduction, supporters described it as almost entirely unique. There was only one known 'historical parallel to the Permanent Fund dividend distribution' in the remote Malaysian state of Sabah, whose citizens received direct cash payments of almost $50 per capita from Sabah's timber and oil resources, equivalent to about 5 % of per capita income. Groh and Erickson (1983) and Permanent Fund (1997) p.29
[2] See Widerquist and Howard (2012a)
[3] Zelleke (2012)
[4] Griffin (2012); Goldsmith (2012) p.60

ownership to benefit from sovereign wealth. Since the rationale for a benefit right of ownership is distinct from those motivating other programmes like basic income and resource grants, it is important to clarify the intention and effect of the PFD. I argue that the close similarities between the Alaskan PFD and my Cash Dividend Model, both in terms of policymaker's intentions for the scheme and citizen-recipient perceptions of the dividend, mean that Alaska's dividend programme offers a legitimate precedent for the implementation of a popular right to SWF investment returns.

I begin by setting out the relevant history of the APF and PFD's creation in more detail than in previous chapters to demonstrate that a central (and underappreciated) motivation behind the PFD was for it to act as a citizens' right of ownership of the Permanent Fund and its resources. In Section 8.2, I argue that the dividend was primarily conceived of as an individualised income right to collective state resources and thus became an extension of the existing 'owner-state' mindset that had emerged in Alaska in the first few decades of statehood. As this initial conceptualization of the PFD as an ownership right reveals substantial overlap with the motivation for, and purpose of, a popular ownership right to SWF returns, there are good grounds for proceeding with a comparison.

However, since aspirations for policy schemes are not necessarily a guide to their actual effects or resonance with the public, Section 8.3 introduces evidence of Alaskan attitudes towards the dividend. If the PFD is to serve as a guide for imitation, we must confirm that recipients consider the dividend beneficial, and ideally, as a recognition of ownership. A paucity of

existing analysis on citizens' attitudes to the PFD motivated the collation of original data on the issue. In April 2011, I conducted focus groups, surveys and interviews with Alaskan citizens and APF officials to determine citizen perceptions to the dividend scheme. This data provides some evidence that Alaskans view the PFD as a monetary benefit of membership of the Alaskan community, which entitles each citizen to an individual share of state resources. Section 8.4 critiques some aspects of the Alaskan approach in light of the ideal Cash Dividend Model. I conclude the chapter with cautious optimism that cash dividends distributed in a manner similar to the PFD would be an effective means of recognising a popular ownership right to sovereign wealth income.

8.1 Creation of the Permanent Fund and the Dividend

The Alaska Permanent Fund was created in 1977 following the start of oil production in Alaska's Prudhoe Bay, North America's largest oil field. The oil's location on state lands meant significant royalty revenues on top of production and property taxes would start to flow to the Alaskan state government (which was then in its relative infancy following the grant of independent statehood in 1955). Since the oil field's first discovery in 1967, an initial windfall of $900 million from exploration licenses alone, then more than 5 times the entire Alaskan budget, had already flowed into *and out of* state coffers in less than a decade. Cognisant of the oil's finite nature and nervous about wasteful misuse of the substantial anticipated future revenues once the oil started to flow in 1977, Alaska amended its constitution to require a portion of the oil revenues be set aside in a savings fund for future generations. The combined desire to convert the state's finite resources into

permanent financial assets and to quarantine these revenues from political misuse drove the APF's establishment as a future savings fund.[5]

It was another four years until the Alaskan Legislature decided how to manage the investment of the APF, and consequently, its earnings. Direct cash distributions of resource revenues had been briefly mooted following the first discovery of oil in the late 1960s, but it was not until the creation of a return-generating APF and the sense of security that it created regarding protection of the oil wealth principal that the prospect of direct distributions received serious attention.[6] Subsequent legislative wrangling combined with 'serendipity', and a 'triumph of strategy' led to the ultimate passage of the PFD as an additional feature of the APF.[7]

The successful passage of the PFD legislation meant that from 1982, every Alaskan citizen has received an equal annual dividend from the APF. The payment fluctuates in size depending on the level of investment returns made by the APF in a given period. Since the principal of the APF is legislatively protected as 'non-spendable', the dividends must be funded entirely from returns. While returns vary, the dividend is calculated based on a 5 year average of returns in order to smooth out the short term effects of market fluctuations (See Section 7.3.1 above). The PFD is universal with no age limit, means-testing or use restriction. The only significant eligibility requirement is that the recipient must have been resident in Alaska for a full

[5] This summary is mainly taken from Groh and Erickson (2012). For further detail on the creation of the fund, see other chapters in Widerquist and Howard (2012a) and Alaska Permanent Fund (1997).
[6] See Groh and Erickson (2012) p.24
[7] Groh and Erickson (2012). For other insider perspectives on the PFD's introduction, see Rose and Wohlforth (2008), especially Chapters 11-13.

calendar year before they are entitled to receive the dividend.[8] It is paid by direct deposit into individual residents' bank accounts on the same day each year.

For supporters of the PFD, this is a highly egalitarian policy in form and effect. Advocates claim that the PFD is 'a strong egalitarian policy, for it grants each citizen an equal share of a natural resource that is held in common ownership',[9] it amounts to a sizeable annual public expenditure of state funds,[10] and has significant equalizing effects. PFD advocates claim that it has helped make Alaska the most equal state in the USA.[11] On one measure, Alaska has the most equally distributed income among all US states as well as the least number of households with incomes under $10,000.[12] Goldsmith observes that, although these outcomes cannot be entirely attributed to the dividend, studies have shown that Alaska's equality of income distribution and poverty alleviation improved dramatically since the dividend's introduction.[13] Given its endurance, and its success as an equality-promoting programme, especially in an era of welfare conditionality and retrenchment,[14] advocates of various redistribution schemes are quick to claim the PFD as exemplary of their own preferred policies, often with little reference to the dividend's intended purpose. It has been held up as inspiration for a variety of policies including basic income programmes,[15] poverty reduction,[16]

[8] See Alaska Statute §43.23.005
[9] Casasass and De Wispelaere (2012)
[10] From 1982 through 2011, the dividend program has paid out about $19.2 billion to Alaskans through the annual distribution of dividend checks. See APFC (2011) p.2. It has trended upward as a share of per capita income at a rate of 1.4 %. Goldsmith (2012) p.50
[11] Vanderborght and Van Parijs (2005) p.25
[12] Goldsmith (2012) p.53
[13] Ibid. p.53
[14] Widerquist and Howard (2012a) p.3
[15] See Widerquist and Howard (2012a); Goldsmith (2012) p.60

resource dividends,[17] stakeholding grants[18], a green tax[19] and a stake in the commons.[20]

While in many respects, the PFD is synonymous with different elements of all of these programmes,[21] none of these characterizations accurately reflect the original rationale for the dividend. Indeed, a review of the PFD's birth suggests that the Alaskan dividend shares more in common, at least in initial conception and objectives, with the Cash Distribution Model for an ownership right to income on state wealth that I proposed in Chapter 7.[22]

8.2 Competing Origins of the Alaskan Dividend: An Ownership Right?

Historical recollections of the impetus for citizen dividends from the APF point to several underlying motivations. Some favoured direct distribution of a portion of Alaska's new oil revenues as a check on government growth and state greed. Others saw it as protection against savings raids on the APF, on the basis that it would give citizens greater interest in the underlying source of their payment. Some supported the proposal on equity grounds, since elites were already perceived to benefit disproportionately through special

---

[16] Segal (2012)
[17] Zelleke (2012); Carter (2012); Widerquist and Howard (2012a) pp.5-6
[18] Griffin (2012)
[19] Hartzok (2012b) p.53. See also Howard who argues for combining basic income goals already achieved through the PFD with a carbon-trading scheme called 'cap-and-dividend'.
[20] Hickel (2012); Flomenhoft (2012)
[21] For instance, Goldsmith produces evidence of the equality-promoting impact of the dividend, while cautioning against its characterization as a basic income or other equality-promoting scheme despite its equalizing effects since the typical level of the PFD payment falls well below the US poverty line. Goldsmith (2012)
[22] A day-long conference on the APF and dividend programme in April 2011 brought together academics, former Alaskan government officials and policy experts to discuss the origin and operation of the programme. For a summary of proceedings, including perspectives on possible motivations for the dividend, see Widerquist (2011)

interest appropriations of oil wealth, while others preferred cash dividends on efficiency grounds, considering individuals better able to utilise the oil revenues than government.[23] Some also made arguments for the dividend on equality and fairness grounds, given the huge benefit it would provide to low income and subsistence Alaskans.[24]

For the main instigator of the dividend concept from its inception to its legislative creation, then Governor Jay Hammond, these arguments boosted the case for dividends,[25] but they were *not* the driving force. According to the principal legislative assistant working on the 1982 PFD legislation Cliff Groh and economics consultant to the Alaska State Legislature at the time of the dividend debate, Gregg Erickson:

> 'For Hammond and the small group of Alaska legislators, aides and ordinary citizens who worked with him when he was governor to achieve a resource-based investment dividend, the shared core idea was neither charity, nor leveling, nor an attempt to build an income floor. Their shared commitment was to the notion of *collective ownership* and the fundamental fairness of *sharing the returns in equal proportion to their equal ownership*.'[26] (*emphasis added*)

This account of the dividend's original conception as an ownership right is also affirmed by the former Director of Policy Development and Planning in the Governor's Office at the time, Frances Ulmer, who recently described Hammond's vision of the dividend as 'ownership income', not 'taxation

[23] Groh and Erickson (1983) pp.29-30
[23] Ibid.
[24] Groh and Erickson (2012) p.30
[25] Hammond (1984)
[26] Groh and Erickson (2012) p.26

income or a Basic Income or any sort of handout.'[27] While there were also strategic motivations for the dividend ('it was a defensive posture to help keep the Permanent Fund alive')[28], Hammond's fundamental belief was that a dividend would give each citizen an individual stake in Alaska's collectively owned state wealth.[29]

Given that one goal here is to recognise the overlooked conceptual primacy of *ownership* in Hammond's vision for the PFD, it would be remiss of me not to acknowledge the intellectual scaffolding already in place for the idea of popular ownership of state wealth prior to Hammond's Governorship. Well before the dividend's inception, the second (and later eighth) Governor of Alaska, Walter (Wally) J. Hickel, advanced his idea of the 'Owner State'.[30] Taking office in 1966, just a decade after Alaska gained statehood and finalised its constitution, Hickel took the antecedents of the 'Owner State' concept laid down in Alaska's Constitution and the Alaska Statehood Act, and sought to entrench this philosophy throughout the bureaucracy and the community. Prior to this governorship, Article VIII of the Alaskan Constitution had already achieved what Hickel deemed the critical first step

[27] Fran Ulmer, former Director of the Division of Policy Development and Planning, Office of the Governor, Alaska during the Governorship of Jay Hammond. In the conference on the Alaskan PFD mentioned above at footnote 22, Ms Ulmer argued that Governor Hammond was strongly opposed to the dividend being viewed as any sort of handout. It was recognition of the fact that 'Alaska's wealth belonged to everyone and each citizen deserved a share of that wealth'. See Cummine (2011c). See also Widerquist (2011) who records Ulmer's views as follows: 'Ulmer and Halford argued that few if any legislators at the time intended to create a basic income. Ulmer, who worked in Governor Hammond's administration argued that he did not and would not have argued for it in those terms. I argued that whatever their intentions, they did create a partial basic income.'

[28] Hammond (1984)

[29] Ulmer (2011)

[30] While the term 'owner-state' was not officially coined until years later, the general notion of the 'state as owner' and thus, the people as collective custodians and beneficiaries of the state's wealth was core to Hickel's governing philosophy. A detailed notion of the term 'owner-state' and what it entails is set out in Hickel (2002) pp.5-8

in creating an owner-state—constitutional enshrinement of local collective ownership over resources:

> 'The legislature shall provide for the utilization, development and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people'.[31]

Significantly, Article VIII also clearly stipulated the public's right to benefit from this collective ownership, a goal which Hickel, '[a]s governor of [the] young Owner State' sought to translate into reality by 'build[ing] an organization of public servants who thought as owners.'[32] The goal was to create a bureaucracy that could help reap the rewards of Alaska's shared ownership of resources by ensuring that resource revenues went back into public goods and services to benefit all citizens.[33]

Notably, for Hickel, translating popular constitutional control of the commons into a reality did *not* involve individualising this right of ownership. On the contrary, Hickel is explicit that the intent of the 'successful Owner State' was 'not to generate cash payments for the people.'[34] Based on competing readings of Article VIII of the constitution, Hammond argued for an 'Owner People' concept and its policy implication of an individual dividend share of Alaska's resource earnings for every citizen, while Hickel rejected this reading and advocated an 'Owner State' notion of collectivised ownership. In Hammond's words:

[31] Constitution of Alaska (1956)
[32] Hickel (2002) p.91
[33] For a discussion of how Hickel sought to operationalise this, see Ch. 5 of Hickel (2002).
[34] Ibid. p.7

> 'Wally Hickel likes to refer to Alaska as an "Owner State"… I prefer to term Alaskans as an "Owner People" to reflect our constitutionally mandated public, rather than state, resource ownership'.[35]

This disagreement plainly stemmed from deep philosophical differences over the roles of government and the individual in domestic communities and echoes the sort of contestation over public sphere actors discussed above in Chapter 2. This difference led Hickel to worry about the sort of political culture and citizen-state relationship that dividend payments would foster:

> 'Government-generated payments or dividends create an insatiable appetite, and the intoxicated electorate will ignore the basic needs of their communities, including the vital ongoing maintenance of the economic and social infrastructure.'[36]

Ultimately, Hammond triumphed, both electorally over Hickel in the race for re-election to Governor in 1978, and in his quest to his preferred individualised dividend model. Whether dividends would have wreaked the sort of detrimental effects that so concerned Hickel is the subject of ongoing debate.[37]

For our purposes, the relevant point is that the PFD's genesis is steeped in ideas of public ownership (whether state- or citizen-based), and the influential role of ownership rights in the origin of the PFD. These debates show that Hammond, the PFD's author, saw the dividend as a means to *individualise the benefit* owed to citizens from their collectively-owned resources, a move that Hickel resisted on the basis of his purely collectivized

[35] Hickel (2002) p.178
[36] Ibid. p.7
[37] See Goldsmith (2012); Goldsmith (2005)

notion of ownership. Accordingly, the PFD shares more intellectual infrastructure in common with my proposal for a Cash Dividend Model of SWF benefit distribution than other characterizations of the PFD imply. As such, I concur with Alaskan economist Scott Goldsmith, who has argued stridently that the 'dividend is not designed to provide a "basic income" to all Alaskans', and is far better understood as an 'equitable redistribution of the earnings from the natural resources owned by the citizens of the state collectively.'[38]

8.3 Alaskan Attitudes to the Dividend Today: Owners or Owed?

The PFD's incarnation as an ownership benefit notwithstanding, the question of whether it functions, or is perceived by its recipients, as such is a separate issue. Yet, for the PFD to serve as a desirable and feasible model for institutionalising a citizen-owner's income right to sovereign wealth, recipients of the dividend should *perceive* the payment as a benefit of ownership. Just as I have argued in Part II, they must intend to influence their fund and its management in a certain direction. These mechanisms should not be accidental correlations with the sort of mechanisms we deem essential for meaningful popular ownership. The reader will recall that an income right is meant to be an owner's 'reward', an additional benefit, *in lieu* of the owner's lost control rights. Its justification is therefore inherently linked to the relationship between the owner and his or her property. In order then for the APF to enjoy democratic legitimacy according to the measures that I proposed in Part II, it is necessary to establish that Alaskans are aware of the APF, the

[38] Goldsmith (2012) p.53

PFD and the relationship. Accordingly, I now examine evidence for how Alaskans perceive their APF and PFD rights.

An immediate caveat is necessary. While I proceed on the basis that the PFD and an SWF dividend both share the status of ownership rights, it is crucial to remember their differences. The Alaska dividend scheme was not established, and does not currently operate, as an income right to *SWF returns*, even though it fits that description. At the time of the APF's establishment, the term 'sovereign wealth fund' did not exist. As Section 8.1 above showed, the morally significant object of ownership eligible for distribution was Alaska's resource wealth and the earnings its market investment generates. The APF was simply a vehicle to hold Alaska's resource wealth. Our analysis proceeds from a different premise. As discussed in Chapter 3, I take sovereign funds to be the normatively relevant object of ownership enquiry, irrespective of the source of their underlying wealth. For the PFD, its status as an ownership benefit was the logical consequence of Alaskan's constitutionally enshrined claim of collective ownership of state natural resources. In contrast, for SWF dividends, their status as ownership rights flow from the normative claim that citizens own their sovereign funds, and thus, as part of their bundle of ownership rights, enjoy a claim to any income this property generates. Are these two subtly distinct ideas still sufficiently similar to make a study of the PFD instructive for our project?

My answer is a cautious 'yes', on two grounds. First, there are enough common attributes between the two schemes that a rollout of an SWF

dividend could be modeled on the PFD, and then adapted where appropriate. Second, if we bear these differences in mind, we are able to dismiss a success or flaw in the PFD based on its identity as a resource dividend as less salient for the design of our distinct sovereign wealth-based dividend. Otherwise, there is sufficient conceptual similarity between these variants of an ownership right to state wealth to proceed with this study.

8.3.1 Popular Attitudes to the PFD: Existing Evidence

Despite the PFD's exceptionalism, little systematic analysis has been devoted to its political, social and economic impact or the popular attitudes fostered towards the dividend.[39] Of the limited analyses that exist, most focus on the macroeconomic effect of the PFD, especially job creation and the amount of personal income generated from consumer spending.[40] In the absence of robust data, the aforementioned Alaskan economist Scott Goldsmith, has attempted to profile the impact of and popular attitude towards the dividend using '[personal] observations', interpretation of anecdotal information, and a limited number of surveys and other analyses of specific effects.'[41] Goldsmith's analysis has produced three salient observations regarding perceptions of the PFD as a right flowing from ownership of state wealth.

First, Goldsmith speculates that the very absence of rigorous data on the PFD's impact is itself an affirmation that Alaskans view this money as *their* share of a publicly owned resource, not a distributive programme worthy of social scientific or policy study. As Goldsmith suggests, 'since most Alaskans view the dividends as a distribution of their wealth, they see no

[39] Goldsmith (2012a) p.49; Goldsmith (2005) pp.553-566
[40] Goldsmith (2005) p.558
[41] Goldsmith (2012) p.49

reason to study it as a phenomenon.'[42] Second, there is no explicit characterisation of the dividend as a payment to achieve a particular public policy or social justice objective precisely because it *is* the citizen-owners' property over which they exercise full discretion. In practical terms, this means recipients receive the dividend with a 'minimum of background notices' accompanying the payment.[43] While this leaves the dividend vulnerable to characterization by retailers, the media, and special interests that want to encourage certain uses of the dividend, for Goldsmith, the non-directive delivery of the dividend is 'consistent with the notion that the dividend is a distribution of the wealth of a publicly owned resource.'[44]

Finally, in a 2005 review of the dividend, Goldsmith argued that Alaskan citizens view the PFD as an 'entitlement that all Alaskans share', not a public expenditure.[45] This is similar to the first point, although its significance and emphasis is slightly different. Goldsmith's labeling of the PFD as an 'entitlement' in popular eyes is not substantiated with any survey or polling data. This conclusion is based on his anecdotal observation that in Alaskan politics, it is 'political suicide' to suggest any change that might jeopardise the dividend's size or certainty.[46] It is further suggested that 'a portion of the population' feels the 'state-owned oil resources belongs to them as individuals rather than to all citizens collectively.'[47] Again, no evidence is

[42] Ibid. p.49. Also p.60: 'Because the dividend is viewed as a distribution of wealth rather than a basic income with public policy objectives, and also because it is relatively small both as a share of a basic income and of actual personal income, there have been no analyses of its long term social effects.'
[43] Goldsmith (2012) p.59
[44] Ibid.
[45] Goldsmith (2005) p.563
[46] Ibid. p.558
[47] Ibid.

produced to substantiate that claim, but it was used to reinforce the idea of the dividend as 'entitlement' rather than public expenditure.

On first glance, the word 'entitlement' is seemingly used in a pejorative sense, to conjure up the idea of greedy individuals demanding their slice of state assets, divorced from any sense of the dividend's intended policy purpose. A less pessimistic depiction of the PFD as an 'entitlement' relies on the ideal of the ownership claim. As Goldsmith later notes, the PFD becomes an entitlement when viewed 'not as a government appropriation, but rather as a distribution of earnings from an asset owned by each Alaskan. Since each resident owns a share of the Permanent Fund, each resident is entitled to an equal share of its earnings.'[48] Here, the idea of entitlement evokes the idea of something that is owed, and thus, the citizen is *entitled* to demand its payment. In other words, viewing the PFD as entitlement may be the product of understanding it as an ownership right to income.

8.3.2 *Popular Attitudes to the PFD: Original Data*

Given the impressionistic nature of the foregoing observations, and the potential significance of the PFD to this study, I sought to redress the evidential lacuna on citizens' attitudes with original and systematic research. In 2011, I conducted qualitative research on popular views on the PFD using a combination of qualitative survey and focus group research in Juneau and Anchorage. Such qualitative methods are appropriate for studies seeking to determine variability of a concept or an idea and which demand a 'high level

[48] Ibid p. 564

of respondent led findings.'[49] Neither seeks to be 'representative' in a statistically significant sense, but they nevertheless offer the researcher a basis for theory-building. *Qualitative surveys* are a newly recognised survey method, consisting of a corpus of between 10-50 written questionnaires or semi-structured interviews that seek to gage the diversity of views within a given population.[50] *Focus groups* are moderated small group discussions between 5-12 selected participants that seek to identify a range of opinions within and across groups and explore ideas in depth.

Using this combination of methods was important since each method offers distinct benefits to the data collation process. Given the lack of extant research into perceptions of the PFD, it was useful to commence with a qualitative survey to discover the range of popular views among the population. Unlike the traditional *quantitative* survey, in which researchers gather information from a representative sample 'for the purpose of constructing quantitative descriptors of the attributes of the larger population',[51] a qualitative survey seeks to establish 'meaningful variation' within a population.[52] It is typically deployed when the researcher's priority is to discover *diversity* of data, rather than its distribution. In this sense, the analytical aims are more modest than those of a quantitative project and require more 'simple research design.'[53] Typically, this takes place in an 'explorative analytical process', aimed at discovering or synthesizing diversity evident in a respondent group.[54] Accordingly, the PFD study began

[49] Gamble and Prabhakar (2006) p.111
[50] Jansen (2010)
[51] Groves et al (2004) p.4
[52] Jansen (2010) para. 7
[53] Ibid. para. 62
[54] Ibid. para 36

with a qualitative survey to elicit the array of views and feelings about the PFD among Alaskans that could be categorised into themes and concepts for subsequent in-depth exploration.

Focus groups were the preferred method for deeper exploration. These small group discussions are designed to explore people's views and attitudes on a particular subject in more depth, and to reveal patterns across groups. The smallness of the group size encourages higher levels of self-disclosure than in an interviewer led one-on-one discussion. Indeed, the distinguishing feature of focus group research is the 'explicit use of group interaction' as research data.[55] Focus groups deliberately use the communication between research participants as part of the method for determining not just what people think, but how and why they think that way. The contestation of ideas among participants may also reveal different dimensions to the descriptive themes and relationships between them. Crucially, both forms of data collation allow the interviewer to take a less directive and dominating role than the traditional one-on-one interview. This meant that, contrary to anecdotally-driven extant research, this study represented an attempt at bottom-up theory building, using citizen's voices to guide the research.

(i) Qualitative Survey: Data Collection, Analysis and Findings

The qualitative survey, a copy of which appears in Appendix 2, asked a sample of 50 Alaskan citizens across three pre-formed groups about their views on the PFD and the APF. The largest sample was collected on an Alaskan airways flight after seeking permission from the airline to distribute

[55] Morgan (1988) p.10

the survey to passengers. Following a brief explanation of the survey's purpose by a flight attendant, passengers were ask to raise their hands if willing to complete the survey and an Alaskan citizen. Thirty passengers returned completed surveys.[56]

A further two samples of 10 surveys were taken: the first in an undergraduate Economics class at the University of Anchorage, ensuring the views of youth were represented in the survey results; and, the second from a group of middle-class Anchorage residents living in Alaska's wealthiest suburb, who attended a dinner party arranged specifically for the purposes of gathering this data.

Analysis of the qualitative survey results was conducted manually with Yes and No answers to each question counted to glean an overall sense of a response to a given question. Key quotes that were revealing or indicative of a distinct perspective on the PFD were used to develop themed categories. The key themes to emerge from this process are summarised below.

(a) Popularity of the Dividend

Virtually all those surveyed receive and like the dividend. Some responses were superficial, citing 'who doesn't like money' or describing the payment as 'free money'. However, a significant number of participants were more

[56] While an atypical setting for qualitative research, the plane flight offered an ideal environment for this canvassing-style survey aimed at identifying the diversity of views among Alaskans. The fact that the carrier was an Alaskan airways flight meant there was a high probability that Alaskan citizens were on board. The typically diverse composition of passengers on low-cost short-haul flights ensured a random population sample spanning age-groups, socio-economic backgrounds and professions. Perhaps most helpfully, the voluntarily formed nature of the group who were in an enclosed environment of their own volition, and for their own purposes, provided a neat solution to the difficulties of participant recruitment often faced in international research were researchers have no prior knowledge of a community and have limited time and resources for data collation.

reflective about their support for the dividend, indicating a range of uses for and benefits of the payment. Participants listed diverse reasons for their support, such as 'appreciate it for saving', '[like it as] extra spending money', '[offers] relief from the hardship of living in Alaska', 'believe in sharing state's resource wealth among residents' and '[is a] responsible way to invest in Alaskans and Alaska'. Roughly 20% of respondents in each of the three groups either disliked, or were indifferent to, the dividend, confirming its widespread although not universal popularity across most groups. The main source of opposition was a belief that it was 'abused' by some citizens, and that the government could use the money more effectively, underscoring our observation from Chapter 7 that cash distribution is not necessarily neutral and lending some support to the attractiveness of the Cashless Payment system.

(b) Competing Conceptions of the Dividend

When answers to the question on whether individual citizens liked the dividend were combined with responses to the question about whether the dividend is good for Alaska (and if so, why), the following competing conceptions of the PFD payment emerged.

Entitlement of Collective Resource Ownership

By far, the majority of responses conceptualised the dividend as a 'share' in the 'state's resource wealth' and thought of the dividend as 'a shareholder's right'. Some saw this as 'compensation' for selling off the state's resources. A few respondents pointed to the 'entitlement' culture this created, and the risk

of dependency on the dividend. On the whole, though, most respondents saw this as a 'fair way to share the revenues of Alaska with its citizens.'

Reward of Citizenship

A large number of responses offered a related, yet distinct, conception of the dividend grounded in notions of citizenship. Rather than highlighting an *individual* right to a share of the natural resources *they* own, these responses emphasised *community*, evoking images of a common state project of which they formed a part. For instance, respondents described the dividend as 'recognition' of their 'membership in the Alaskan community', and 'participation in the state through work and investment'. One respondent described the dividend as a 'good, continuous connection to the state'. These answers suggest a rather elastic concept of citizenship at work with some linked to the simple requirement of state membership or presence in Alaska, while others emphasized active participation and contribution to the state.

This theme also emerged strongly in answer to a question about the form of the dividend payment which asked respondents whether they would prefer a one-off large payment (for example at maturity or birth) or the smaller annual payment that they receive under the current system. Many said that the current regular payment was fairer, since it rewarded those who 'spent time' and 'invested in Alaska'. Otherwise, people could 'cut and run' with the money, rather than reinvesting it in Alaska and contributing to the future of the state and its people. These answers also suggest a varied conception of citizenship at play, with some highlighting sheer presence and others demanding contribution and participation. Typically, such responses

emphasised the right to a share in 'state revenues', rather than focusing on the source of those revenues as Alaska's natural resources, which was more typical of respondents with the shareholder conception.

Hardship Relief

A number of participants indicated that the dividend was good because it compensated citizens for the 'hardship of living in Alaska', and made an otherwise 'difficult life in the north' easier. This response was based on a perception of 'high living costs' in Alaska relative to other states. Implicit in the response was a sense of a frontier community in which Alaskans were taking part. In that sense, it overlaps somewhat with the above conception of the dividend as recognition of *participatory* citizenship. But the central concept at work here was one of suffering and compensation rather than community and membership in a collective project.

Accountability Mechanism

A noticeable minority thought of the PFD as an accountability device, explaining that the dividend makes politicians 'more observant of voter's needs' and 'prevents the legislature from uncontrolled spending'. Interestingly, this 'accountability' conception was *not* present at all among the university students.[57] It was prevalent among responses from the flight survey and the wealthier, older response group. This may be explained by older generations' familiarity with the history of the APF's establishment, Governor Hammond's strong rhetoric on the dividend as an accountability

[57] Goldsmith has found that young Alaskans 'have very little understanding of the source and rationale for the dividend. When asked, a class of middle-school children felt that the dividend either was compensation for the high cost of living in the state, the hardships associated with life on the 'last frontier' as it is sometimes called, or for the high taxes paid by their parents.' Goldsmith (2005) p.562

mechanism[58] and the controversy surrounding the earlier expenditure of the first tranche of oil revenues in the 1970s.

Redistribution Tool

A minority of respondents explained the desirability of the dividend in redistributive terms. Some observed that it 'helps poorer families', others emphasised the assistance that it provided to poor regions in rural areas of Alaska and some specifically described it as a redistribution mechanism.

(c) Form of Dividend

There was almost universal support for the current form of the dividend as an annual payment. While no respondent characterised the dividend as a 'basic income', there was little support for the money to be distributed as a lump sum payment at birth or maturity resembling a Basic Capital style programme.[59] Most opposition to this proposal was based on the belief that young people would 'blow their stake', while others thought it *diluted the connection* the dividend offers between citizen and state since recipients could potentially leave the state after they received their one-off payments. In contrast, an annual payment requires *continued* presence in the state (with some limited exceptions) to receive the PFD. In that sense, preferences on the format of the dividend provide further support for the predominant conceptions of the dividend discussed above, as a stake in the collective

[58] Speaking in 1984 when concerned about threats to the dividend, Hammond argued that 'some things should be done to increase prospective dividend benefits, to maintain public support for them, and ultimately, to protect the Permanent Fund itself – *for the dividend is the best protection for the Fund,* even while it is the most equitable distribution of its earnings.' (*emphasis added*). Hammond (1984) p.19

[59] For discussions on Basic Income versus Basic Capital schemes, see White (2011)

resources of the state contingent on *participatory* membership in the community.

(d) APF Awareness

Awareness of the APF and how it was related to the dividend was mixed. There was a relatively sophisticated understanding of the APF among the university student and the wealthier professional respondents compared to the random aeroplane sample. Two themes emerged. First, all respondents in the former two groups knew of the APF and understood its purpose distinctly from the dividend. Second, despite this high degree of awareness, there were very different understandings of the *purpose* of the APF. The three main ideas to emerge were that is was: (a) a *distributive mechanism*, either from state to citizen, or intergenerationally between citizens across time; (b) a *savings mechanism* to help Alaska and its residents in the future; and (c) a *government finance mechanism* to help fund the operating costs of government when oil revenues eventually decline.

Among the aeroplane passengers, explanations were less nuanced. Awareness of the APF was high, as was support for it, but many answers did not distinguish between the purpose of the dividend and the APF. For many, the APF was about 'sharing part of the state's wealth [with] the people of Alaska'. This echoed the language used to describe the dividend, suggesting that respondents do connect the two, again supporting the idea of the APF as a collectively owned asset, and the dividend as recognition of an individual's share in that asset. Additional or discrete purposes for the APF were not

identified, and respondents tended not to explain in detail *why* or *how* the wealth should be shared.

(ii) *Focus Groups: Data Collection, Analysis and Findings*

In order to examine these initial findings in more depth, three focus groups were conducted in Anchorage, Alaska during April 2011, comprising a total of 25 Alaskan citizens. Research suggests that three to four focus groups is sufficient for determining whether data collation has hit 'saturation' point – 'the point where you have the range of ideas and aren't getting new information.'[60] Further focus groups tend to be superfluous. In the present project, the third focus group yielded little new information in terms of views of the dividend.[61] This, in combination with time and resource constraints, meant that I capped the number of groups at three.

The key criterion for participation in the group was Alaskan citizenship and receipt of the PFD. All three groups were homogenous to the extent they contained Alaskans who receive dividends. On the assumption that different demographic groups might hold varied views on the PFD, I strove to construct a sample characterised by inter-group diversity and intra-group homogeneity. Creating groups of similar profile participants aimed to isolate genuine conceptual differences in opinion that could not be explained away by virtue of different identity attributes. If socially similar participants clashed, these clashes would be more likely to reflect genuinely different

[60] Krueger and Casey (2009) p.21

[61] That said, some variation in interests and ideas between the three groups emerged, hinting at connections between distinct demographic attributes and particular attitudes. Further investigation into these links was not possible during this study given time constraints and the primary objective of the project to broadly survey *citizen* conceptions of the PFD.

philosophical or political views on the topic. Age and socio-economic status were assumed to be the most likely drivers of different views on the PFD, and as such, groups were organised around these common attributes. The whole sample was thus geared to discover possible links between identity attributes and attitudes when comparing across groups. Other aspects of identity diversity such as gender and ethnic origin relied on the internal composition of the group. To this end, the three focus groups assembled comprised of:

(1) ten undergraduate economic students at the University of Alaska, held on the Anchorage campus

(2) ten middle class professional Anchorage residents living in Alaska's wealthiest suburb, held at a participants' home

(3) five lower socio-economic status individuals, comprised of three female assisted care home workers and two homeless men, conducted in a care facility in Anchorage.

These groups were also selected in order to simulate certain anticipated findings. The inclusion of the University group, in which no one was above 30, aimed to test awareness and understanding of the APF and Dividend among a cohort who did not witness the establishment of these programmes. This group could also offer an insight into whether the PFD breeds an entitlement culture. The older group of middle class Alaskans included a variety of ages and professions, although the group had, on the whole, witnessed the establishment of PFD and APF. Many could also speak to life before the dividend and observe differences among Alaskans before and after its introduction. As highly educated professionals, this group was expected to have a high degree of awareness of the politics and policy around

the fund and dividend. The low socio-economic status group was compiled to test for any obvious class differences in dividend perception. Low income Alaskans are often held to benefit the most from this programme so it was useful to see whether needier Alaskans view the dividend differently, given its more significant role in their income.

Each focus group lasted approximately two hours, with the author as facilitator. The focus groups were structured around a list of 8-10 pre-prepared questions that sought to tease out themes from the findings of the qualitative survey. For the most part, the discussion was left to evolve at the participant's initiative. On the whole, the focus groups deepened the findings of the qualitative survey, with the most significant findings described below.

(a) The PFD as a 'citizen' contra *'individual' entitlement*

Previous research has observed that many Alaskans view the PFD 'as a distribution of earnings from an asset owned by each Alaskan.'[62] The qualitative survey confirmed that observation, but with different implications. For some citizens, this sense of entitlement stems from greed, resulting in a dividend entitlement culture at all costs. According to Goldsmith '[t]here is a strong feeling among a portion of the population that the state-owned oil resource belongs to them as individuals rather than to all citizens collectively.'[63] They would want their dividend no matter what. For others, the sense of entitlement derives from the idea of the dividend as an individualised monetary benefit that reflects each citizen's share of the APF assets; it is an owner's entitlement related directly to shared property.

[62] Goldsmith (2005); Goldsmith (2012a)
[63] Goldsmith (2005) p.558

To test whether one or other of these views was dominant in the surveys, participants were asked to consider the option of dissolving and 'cashing out' the fund. A likely extension of the 'greedy entitlement' view is that the APF should be cashed out equally among all its Alaskan citizen shareholders. If the APF is nothing more than the aggregate of *individuals*' shares in Alaska's resource wealth, then surely citizens would support a one-off distribution of their entire share through the dissolution of the APF. There has been a concrete proposal in Alaska along these lines, which at the time would have resulted in an individual 'cash-out' of $40,000. The proposal was almost universally rejected, suggesting a triumph of altruism and civic concern over individual greed. That said, the defeat of the 'cash-out' proposal is still seen by some as evidence for the individual entitlement thesis since its failure may be explained by the attachment of a specific condition to cash-out requiring the cessation of dividends and the use of all future oil revenues for funding government.[64]

A similar proposal was put to the Focus Groups, but using an individual cash-out figure of $67,000 reflecting the per capita worth of the APF in 2011. Interestingly, there was almost unanimous opposition to this proposal. Participants explained that this betrayed the purpose of the APF to save for future generations, as well as to share resources with present citizens. One concern that was widely shared was that if the fund was cashed out, 'the money would go everywhere, it would go out the state'. Cashing out the fund was seen as tantamount to 'cut and run' which violated the spirit of the APF and the dividend as recognition of citizen participation in the state. The fact

[64] Goldsmith (2005) p.558

that these views spanned age groups and income brackets was also revealing. These explanations suggest that the individual entitlement thesis may be too simplistic a characterisation of Alaskan attitudes.

Evidence for the 'citizen entitlement' interpretation also emerged through participants' anger towards temporary military personnel's receipt of the dividend, and possible immigration to Alaska for dividend-seeking. Any type of recipient who did not appear to be 'invested' in Alaska, either as a resident or a patriot, and who just saw the dividend as a cash-cow was seen as 'undeserving'. Interestingly, this did not lead participants to support active participation in Alaskan society. When asked if a citizen could take their money and 'go bush', not using it to participate in mainstream society, on the whole participants accepted this as long as the citizen remained in Alaska and continued to lived off the land. Such findings suggest that the entitlement conception that emerged from the survey is best understood in a 'positive ownership' sense, rather than in an 'unconstrained entitlement' sense.

(b) Anti-Welfare Sentiment Affirms Sense of Ownership Right

All three focus groups showed almost unanimous rejection of the PFD as a tool for egalitarian redistribution or welfare-related goals. There was a total absence of language associated with such schemes. For instance, words like 'freedom', 'equality', 'basic needs', 'poverty' and 'fairness' hardly feature in the transcript. Equality appears only when participants discuss their 'right' to an equal share of Alaska's resources. However, language that does occur frequently includes words like 'citizenship', 'community', 'membership' and 'accountability'. This suggests that the dominant conceptions of the dividend,

when the focus group results were taken together with the survey, were: the dividend as an accountability mechanism; and the dividend as a reward for community membership that attached to individual citizens *qua citizens*. That is, there was a sense of the *embedded* individual and a concept of desert grounded in citizenship. These findings challenge earlier analyses that cast Alaskans' attitudes as based on mere individual entitlement. The idea of ownership also came through strongly in the rejection by most participants of: the proposal for 'use' restrictions on the dividend; and the proposal for means-testing or other measures to ensure more needy Alaskans can benefit.

8.4 Implications for an Income Right to SWF Returns

The combined findings of the survey and focus groups suggest that Alaskan attitudes towards the PFD reflect a more nuanced understanding of their right to a share of resource wealth than existing studies have implied. Three salient themes emerge. First, previous characterizations of popular attitudes to the dividend as an individual entitlement are only partially accurate. My research suggests that while many citizens consider the dividend *their* share of Alaska's collective resources, this view is grounded in and qualified by notions of citizenship and collective ownership of state resources. We cannot say then that the PFD is simply viewed as an unqualified entitlement, as Goldsmith speculated, or the result of individual greed as Hickel had feared. Alaskans strong hostility towards 'cashing-out' the fund, or converting the dividend into a one-off lump sum payment challenges these claims. Moreover, alternative characterizations of the PFD as a basic income, an egalitarian redistribution or a needs payment cannot explain popular resistance to more generous distributions of this wealth. Rather, such findings are better explained by popular view that it is the Alaskan *citizen*, not

individual who should receive the PFD benefit. In other words, it is not the idea of 'entitlement' that does the normative work in explaining popular attitudes to the PFD; rather, if this research is reflective of wider public sentiment, it is notions of citizenship and collective ownership of the Permanent Fund that best characterise Alaskans' conception of the PFD and explain their support of its current dividend format. If correct, this lends support to the characterisation of the PFD as an income right attached to collective ownership.

Second, while popular perceptions of the PFD were intrinsically linked to the idea citizenship, the notion of citizenship employed was elastic. That is, what counted in the minds of participants as citizenship varied. Some required sheer presence in the state; others articulated more demanding notions of active participation and contribution. The desire of some for the PFD to be reinvested in the state and for recipients not to 'cut and run' with their dividend money suggests a stronger sense of active citizenship, underscored by a love of community, akin to that of an owner protective of their communal property. To the extent that there were latent notions of patriotism and state pride present in responses, I suggest this provides further support for the conception of the APF as collective property for which community members must be responsible and protect. But on either conception of citizenship, whether just membership in the state or a thicker idea of participation, as long as Alaskans link the idea of the PFD to a sense of belonging in their community, then there is support for framing of the dividend programme as recognition of every single co-owner's equal right to their communal property's benefits.

Finally, the clear distinction drawn in respondent's minds between the idea of the APF and the PFD as the 'people's money' and not the 'government's' further supports our demand in Chapter 2 for a clear distinction between state and citizen property. For many respondents, the PFD was the one clear mechanism that recognized *their* claim to these collective resources: distribution to government coffers was not considered a distribution to the state's citizens. On the contrary, citizen's felt they had to protect the APF and their dividend from government greed and frittering. To the extent the dividend was seen as an accountability tool that assisted in that task, there is support for our model of hybrid collective ownership. Alaskans display a strong desire to maintain the principal of the APF as joint property, rejecting proposals to cash it out or dissolve it, *at the same time* as they are committed to receiving their individual dividend payment. In other words, there is a demand for both joint and common property rights to this sovereign wealth. In that sense, Hammond's idea of the Owner People triumphs over Hickel's idea of the Owner State, indicating the greater desirability of the Cash Dividend Model over the collective distribution approaches of the Government Investment and Budget Transfer Models, discussed in Chapter 7 when it comes to treatment of SWF returns.

Overall then, while we must temper the extent to which we can generalise from these findings given the non-representative nature and small size of the samples investigated, these findings do lend support to the view that the PFD offers a useful practical precedent for the Cash Dividend Model of benefit rights to SWF income.

8.5 Criticisms of the Alaskan Approach

If the PFD is to be used as a model for realising direct, individual benefit to citizen-owners, there are some aspects of the PFD approach which must be critiqued in the light of these objectives. A crucial feature of the APF model is that *all* fund earnings are placed in a separate earnings reserve account, which is kept entirely separate from the principal of the APF. The reason behind this separation of the APF's principal stock of wealth and its income is that the income is subject to legislative appropriation for dividends payments and other purposes, while the APF principal is constitutionally protected from draw-downs;[65] the Permanent Fund is therefore intended to be truly permanent. As of 2012, the APF has generated $40.8 billion in fund income since its inception.[66] Of this, the amount distributed in dividends to citizens since the PFD's commencement in 1982 is $20.2 billion, constituting 49.3% of the APF's total income.[67] The other 50.7%, or $20.6 billion in investment returns, has been deposited back into the principal of the APF, for inflation-proofing or discretionary legislative appropriation.

APF Management conceptualises this split allocation of fund income to both dividends and the fund principal as a recognition of both current and future generations claims' to this capital.[68] Indeed, the 2012 Annual Report of the APF describes the cumulative distribution of fund earnings since inception as resulting in a 49% allocation to current generations, with the remaining 51% directed to future generations, given its redirection back to the

[65] Erickson and Groh (2012b) p.42
[66] APFC (2012a) p.1
[67] Ibid.
[68] Author Interview with Mike Burns, APF CEO (2011)

APF principal.[69] In effect, this means 100% of APF investment returns are allocated to citizens, although only half of the APF's earnings to date have been used to finance a *direct, individual* income right to sovereign wealth returns.

While a larger principal will of course enable even higher future returns, eventually financing future PFD distributions, it is debatable as to whether this split of investment returns between the PFD (present citizens) and augmenting the APF (future citizens) is just. It could be argued that sequestering and transferring the principal of a sovereign fund is a sufficient recognition of future citizens' rights to sovereign wealth. On this view, additional allocation of present income flows to SWF stock is over-privileging future generations at the expense of present citizens' right to income. In other words, the right to income is a *present* right, and on that basis, present citizens should receive *all* of the investment returns besides that necessary for inflation-proofing the fund.[70] Interestingly, the design of the APF attempts to achieve this—despite allocating less than 100% of returns to the PFD—by giving dividend payments legal priority above inflation-proofing.[71] If there is not enough money in the earnings reserve to pay out dividends and inflation-proof, dividends have priority. Fortunately, reserves have always been sufficient to meet the annual inflation-proofing requirement.[72]

In my view, a more desirable approach would be to inflation-proof the fund first to protect its future value, but remove the other means for diluting

[69] APFC (2012a) p.1
[70] The requirement to inflation-proof the fund as a demand of the Just Savings Principle was discussed in Chapter 4.
[71] Erickson and Groh (2012a) p.43
[72] Ibid. p.47, footnote 7

the earnings reserve account, namely discretionary legislative appropriation. Of course, maintaining the fund's real value does not necessarily secure intergenerational justice either. Perhaps intergenerational justice requires the fund to grow in real terms for some reason. That will vary from community to community based on how the Just Savings Principle ('**JSP')**, outlined in Chapter 1 applies to the demands of a specific context. In the APF case though, $4.3 billion of the total $40.8 billion generated has been legislatively appropriated from the earnings reserve back into the principal.[73] On one view, again depending on the demands of the JSP as they apply to Alaska, such an allocation could potentially violate the income rights of present day Alaskans to fund returns. That is, it may be too generous. That is a question for a different analysis. Nevertheless, we can say here that the overall mechanics of the PFD programme constitute one of the most direct, individualised conceptions of benefit rights to sovereign fund returns in practice today.

Conclusion

In this chapter, I sought to determine whether the PFD, the only scheme in the world where SWF returns are directly distributed to citizens in cash, could act as a precedent for the implementation of an income right to sovereign fund earnings. At least superficially, it displays the core attributes of my Cash Dividend Model that seeks to convey direct individualised benefit on citizen-owners. What this chapter showed is that those similarities run deeper than existing commentary has appreciated, making the Alaskan PFD a legitimate practical precedent for the realisation of our particular, novel ethical prescription. Crucially, an examination of the dividend's genesis revealed a

[73] Ibid. p. 42

strong ownership narrative that shares much in common with the justification for my proposed dividend model. The rest of the chapter sought to determine whether Alaskan citizens do, in fact, consider their entitlement to the PFD to be an ownership benefit. Sufficient evidence emerged from original focus group and survey research in Alaska to suggest an ownership conception of the Permanent Fund and the PFD, but a conception that was ground very much in a community notion of ownership, where co-owners were eligible by virtue of their legitimate membership in the Alaskan community. These findings suggest that Alaskans do conceive of their dividend as an individual benefit stemming from collective resource ownership and that support exists for the 'common property' style approach individually distributing earnings of SWF investment, while preserving the principal as truly joint property, owned by the collective as one. In this respect, the Alaskan experience offers a practical policy precedent for domestic communities with an SWF that wish to realise their citizen's benefit rights to collectively-owned sovereign wealth through a scheme akin to the Cash Dividend Model.

Chapter 9 - Desirability Constraints on Direct Distribution of Sovereign Wealth Income

In the last chapter, I examined the Alaskan dividend scheme as a working precedent for my normative demand to distribute SWF returns as cash dividends to citizens. In this chapter, I ask why Alaska is an isolated precedent. I do so by identifying desirability objections to realising benefit rights of citizens to their sovereign wealth in dividend form. My central contention, based on interviews with SWF personnel, is that an entrenched *anti*-dividend posture exists among SWFs, acting as a major barrier to the consideration and implementation of sovereign wealth distribution.[1] I describe the nature of this non-distribution preference and critique it with a view to bolstering the desirability of SWF-funded dividends.

I consider the anti-dividend case by first reviewing caveats to this characterisation of an anti-dividend posture in Section 1. I then explain and test three common objections to dividend schemes advanced by SWFs: the Anti-consumption objection; the Savings objection; and the Technical Concerns objection. My discussion of these objections in Section 9.2 reveals that, far from a coherent anti-distribution philosophy, there is considerable variation in SWF perception of the detrimental effects of dividends. This suggests that there is room for maneuver where dividends can be made compatible with domestic fiscal demands. Indeed, dividends emerge from this review as far more feasible than the current monolith of opposition implies, boding well for the development of targeted dividend proposals

[1] The majority of interviews with SWF representatives were conducted at the May 2010 meeting of the IFSWF in Sydney. Most interviews were conducted on a confidential basis. Non-confidential interviews and interviews conducted at other times are cited accordingly.

adapted to the needs of individual SWFs. I conclude with some thoughts on the reasons behind the strength of the current anti-distribution posture.

9.1 Caveats

Before we proceed, three caveats are necessary. First, the current anti-dividend posture may be a product of timing, rather than permanent institutional preference. Following the upheavals of the ongoing global financial crisis, it is not surprising that skepticism exists regarding dividend desirability. Unexpected disruptions to the strategic asset allocations of funds forced asset sales at historic market lows. The disgorging of monies to rescue packages, national budgets and stimulus programs makes for a difficult climate in which to discuss further distribution of sovereign wealth.

Second, treating SWFs as an aggregate unit for the purpose of stating the general nature of the objections that they raise may falsely imply the existence of a coordinated opposition amongst them to the concept of dividends. This is not my intention. Rather, I would note that the diversity in cultural, national and formation rationale factors behind each SWF makes their common opposition to dividends particularly striking. It is my intention here to elucidate more precisely the nature of that opposition.

Third, this chapter proceeds on an 'ideal speech' basis, treating the objections of sovereign funds as rational, and assuming that they can be dealt with rationally. Such an approach may appear to ignore the possible role of social power relations as an explanation for behaviour of sovereign funds in objecting so strongly to the payment of dividends (a subject I will return to at

the end of this chapter). That is, such hostility to direct dividends may be little more than the establishment defending privileged access and control to their asset pool. I will proceed here on the basis that, just because there is a social or power-related explanation for where these objections come from, that does not necessarily invalidate their logic. I will therefore address these objections directly by offering a rational critique of them.

9.2 Objections to Dividend Distribution

Discussions with SWF representatives reveal a number of practical and philosophical objections to the idea of SWF-funded dividend schemes. For many funds, the issue of dividend distribution has not been explicitly considered by management nor ruled out as a policy option. Yet, when asked about the idea, SWF representatives respond with skepticism. The essence of the response is that dividends are incompatible with the core purpose of an SWF: to ring-fence resource returns as part of a fiscal strategy to manage the macroeconomic effects of resource booms and save for long-term expenditures. Against this understanding, distribution amounts to disgorging and diminishing these assets, jeopardizing the fundamental goal of an SWF. Beyond the presumption of conceptual incompatibility between dividends and the purpose of SWFs, a number of specific concerns were identified. Consequently, an automatic, but not necessarily justified, preference for non-distribution exists within the SWF community. This institutional skepticism is one of the most powerful obstacles to the creation of dividend programmes. While there are some valid concerns couched within these objections, they are not sufficiently powerful to warrant an unequivocal anti-distribution preference. I examine the most common objections below.

9.2.1 Anti-Consumption Objection

Perhaps the most frequently advanced objection to dividends is that they are inappropriate for use in states that have a small population and a resource-dependent economy, because they consume national wealth that should be invested. For such economies, ring-fencing and investment of resource windfalls is crucial, since the dominant source of prosperity is finite, and establishing alternative sources of income is difficult since economic diversification is harder in states with comparatively small workforces. SWFs help these states to achieve their twofold development priority of: economic diversification; and preservation of long-term prosperity by turning temporary resource revenues into permanent financial investments. Examples of high resource-dependence and low diversification economies with SWFs include Norway, Azerbaijan and the Gulf States of Kuwait, Oman, the UAE and Qatar. Despite the relative wealth of these states' respective funds, none are supportive of regular dividend policies. Indeed, expenditure on dividends is often viewed by such funds as consumption of resource revenues that should be preserved and grown through investment.[2]

While this Anti-consumption objection of course represents prudent conduct with regard to the management of temporary resource windfalls, there are several lines of response. Most obviously, if a community has invested enough in its SWF to meet the claims of intergenerational justice in compliance with our Just Savings Principle, then arguably the present generation has every right to consume SWF returns. But in the event that insufficient capital has been amassed to satisfy the JSP and our EAC model

[2] SWF Officials (2010)

demands that present citizens must still enjoy their benefit rights to SWF returns, how can we respond?

The first response, discussed more fully below, is that SWFs can both save and spend. The Alaskan experience demonstrates that dividend distribution is not incompatible with ambitious community savings goals. Second, this anti-consumption view is problematic insofar as it conflates dividend payments with consumption. Consumption is typically defined as the purchase of final goods. On this definition, consumption does not occur until citizens use their dividend capital to purchase goods or services. Recipients may, however, choose to spend their dividend on intermediate goods or financial assets. In this case, the dividend is invested, not consumed. On this view, the only difference between dividend-distribution and pooling of resources in an SWF is that, under a dividend scheme, the ultimate investment or consumption decision is transferred to households or individual units, rather than being retained by government. Put another way, dividends do not, by definition, equate to consumption. They simply transfer the investment/consumption decision out of government hands and into the hands of individuals, who may, in turn, decide to consume or invest.

Even so, the major SWF concern seems to be that that dividend schemes pose a far greater risk to preserving revenues, since individuals are more likely to consume than invest their dividend. This brings us to a further response to the Anti-consumption Objection, which is that the evidence suggests that we simply cannot assume that individuals will automatically consume their dividend. Empirical data from Alaska indicates that dividend

use is mixed. In a poll conduced by a local Alaskan news station following receipt of the 2009 PFD, respondents were asked what they would do with their dividend that year. Of the 857 surveyed, 24% said 'Spend', 33% said 'Save', and 40% said 'A little of both'.[3] This echoes the results of an informal survey conducted by the APFC 15 years earlier on the use of dividend cheques, in which three-quarters of respondents reported that they planned to save half or more of the dividend (including debt reduction).[4] A decade prior to that, in 1984, there was also strong anecdotal evidence of dividend saving. Approximately one-third of dividend income went to saving and debt reduction, after federal income tax. Of course, an ardent opponent of dividends might still object that this data demonstrates 'too little' saving, but it does offer some basis, in my view, for challenging the idea of individuals as automatic consumers.

Academic research on how receipt of the PFD affects Alaskans' consumption behavior also supports this response. A 2003 investigation into this issue found no evidence of a sudden spike in consumption behavior by Alaskan households following PFD payment that would support a presumption of 'dividend blowing'.[5] The article found 'no evidence that the seasonal pattern of consumption in Alaska differs from that in the other 49 states or that households in Alaska are subject to fewer liquidity constraints, engage in less buffer-stock saving, or spend a smaller fraction of their income on semi-durable goods than households in the rest of the United States.' One interpretation of this data is that Alaskans either saved their dividend income,

[3] Alaska Channel 2 News (2009)
[4] Harrison (1999)
[5] Hseih (2003)

or used it to pay down debt.[6] While this provides some basis for questioning the belief that individuals are automatic dividend spenders, such cross-sectional data does not disprove the thesis that, over time, too much of the dividend goes into spending on consumption.

For this reason, such findings must be treated carefully. Goldsmith has argued that, even if we can rely on survey data regarding what Alaskans will do with their dividends, this only indicates what individuals did with the payment *immediately upon receipt*; not how their consumption behavior may have changed over time.[7] Furthermore, Goldsmith has argued that, if people view the dividend payment as indefinite, they may spread consumption over a lifetime, treating it like a permanent increase in annual income.[8] Known by Economists as the Permanent Income Hypothesis, this theory would distinguish between 'proximate' and 'ultimate' use of dividend funds.[9] Absence of a consumption 'spike' at the time of PFD payment might not indicate savings, but simply reflect a generally higher level of increased consumption, which has been smoothed out over a lifecycle. In Alaska, this is circumstantially supported by the fact that there is no evidence of dividends having led to 'a significant accumulation of wealth or provided a base of assets, or "grubstake"…. leading to private sector investments generating economic development'[10].

However, even where there is some evidence of increased expenditure around the time of the PFD, this cannot be taken as proof of *dividend*

[6] Ibid. p.401
[7] Goldsmith (2005) pp.553-56; Goldsmith (2010) p.10
[8] Goldsmith (2010) p.10
[9] Ibid.
[10] Ibid. p.11

consumption, since those funds may be used to purchase goods that Alaskans were likely to purchase irrespective of whether they received the PFD. The coincidental timing of their expenditure with dividend receipt may thus be better explained as resulting from a perception of increased liquidity, rather than 'dividend blowing'. In other words, the PFD may be influencing *timing* of pre-planned consumption, not increasing overall consumption. If we draw again on the results of the 1984 survey of dividend use, despite most respondents indicating that the dividend went on daily expenses, most said it had little or no effect on consumption behavior. That is, it didn't increase overall consumption. To illustrate, Goldsmith often refers to the fact that, on certain dividend 'use' surveys, many Alaskans indicate they would use their PFD money to purchase winter clothes for their children, hardly an item they would have forgone in the absence of a dividend.[11]

In short, then, the evidence of dividend spending on consumption versus saving is mixed in Alaska. The mix of evidence suggests the PFD does not encourage consumption sprees, but neither does it disprove the skeptic's suspicion that a PFD simply encourages a generally elevated level of spending on consumption. At best, it may simply alter the timing of consumption. Unfortunately, rigorous longitudinal data of dividend use do not yet exist. For decisive conclusions about dividend behaviour, we need to collate data on how Alaskan citizens' savings fluctuate proportionally in relation to the PFD payment. If the dividend causes people's income to go up by X%, we need evidence that individual savings are increasing by more than X% to establish that more of the dividend is being saved than of individuals'

[11] Ibid. p.10

regular income. In the interim, I suggest that we can speculate, based on the combination of anecdotal use surveys and quantitative analyses, that there are reasonable grounds for questioning the assumption held by the SWFs that individuals are compulsive and inveterate spendthrifts.

9.2.2 Savings Objection

Part of what underpins the Anti-consumption is the idea that SWFs are, first and foremost, savings vehicles for the citizen body as a *collective*. Individuals have a right to benefit from this wealth, but only *indirectly* via their membership of the community, not *directly* as individuals. Even if individual rights to this wealth exist, the jointly held rights of the community to this wealth – in the eyes of many SWF managers - should trump *because* of the ultimate purpose of sovereign funds. The objection that the community savings obligation of SWFs should always trump a right to dividends, I will refer to as the '**Savings Objection'**.

This conception of a sovereign fund is explicit in many of the funds' establishing documents which conceive of these vehicles as national savings funds set up to ring-fence capital to help meet long-term community liabilities.[12] For instance, the Australian Future Fund was set up to meet a specific long-term *savings* challenge: the funding of Public Servant pensions from 2020 that current projections show are unfunded.[13] This sort of challenge is *national* in character as are most of the issues these funds are set up to address (ageing population, intergenerational wealth inequity, depletion of resources). The idea of private individual dividends does not sit easily with

[12] See Appendix III of IWG (2008) pp.31- 49.
[13] Murray (2010)

this widely held view of SWFs as *community* savings funds tackling collective challenges.

The main response to the Savings Objection is to note that SWFs, just like individuals, can both spend *and* save. While legitimate saving goals constrain dividend distribution, they do not wholly preclude it. For clear evidence of this, I again point to the APF, the one SWF which does distribute dividends and which achieves both tasks. As the reader will recall, the APF was established to make permanent temporary resource windfalls. Nevertheless, shortly after the establishment of the APF, its dividend payment, the PFD was introduced, partly as a tool to build a political constituency for the APF (as we saw in Chapter 8).[14] Even though the fund has paid out 50.7% of its income as dividends since the PFD's inception in 1977, it is noteworthy that this has not prevented the APF from growing from an initial investment sum of $734,000 in 1977[15] to approximately $37.1 billion in 2010,[16] making it larger than any endowment fund, private foundation, or union pension trust in the U.S.[17]

This is partly the result of a well-designed fund with effective governance mechanisms. As Chapter 8 touched upon, the fund is comprised of two parts: 'non-spendable capital' (i.e. principal) and 'assigned capital' (i.e. realised income), and it observes the goal of 'principal protection' by mandating that the 'non-spendable' principal sum must never be used to fund dividends. In turn, the non-spendable portion of the fund is invested

[14] See Rose and Wohlforth (2008) Ch.13
[15] Today's inflation-adjusted value of the initial seed figure is $2.7 million. See footnote 36 in the Introduction for a discussion of these figures.
[16] APFC (2010c) p.2
[17] APFC (2010b)

permanently and cannot be spent without amending the state constitution.[18] By contrast, realised returns earned on the invested principal may be spent, and are used to fund dividends. As at 30 June 2010, the non-spendable principal of the fund totaled $33.6 billion,[19] while the assigned capital dividend funding and inflation transfers stood at just $1.2 billion, or only 4% of the fund.[20] In my view, the Alaskan model demonstrates in the clearest terms that there is no *prima facie* reason why an SWF cannot achieve the twofold objective of: accumulating national savings; *and* distributing dividends to individual beneficiaries. If one task is a higher priority than the other, the fund design can take this into account and weigh its investment and distribution mix more towards accumulation or distribution based on the owning-communities' particular obligations under the JSP.

9.2.3 Technical Concerns Objection

A closely-related aspect of the Savings Objection is a technical concern with the macroeconomic consequences of dividends, which I refer to as the '**Technical Concerns Objection'**. A critic of dividends may accept that, in principle, an SWF can save *and* spend, and yet still be concerned about the technical consequences of dividends. As noted SWF analyst Andrew Rozanov argues that:

> 'One of the problems with directly distributing excess commodity revenues to citizens in the form of individual pay checks is that it offsets some of the anti-Dutch Disease effects of SWF saving and management.'[21]

[18] The Constitution of Alaska requires at least 25 % of certain mineral royalties received by the State to be placed into the principal of the Fund. This amounts to approximately 10-12% of total revenues from state resources. See APFC (2010c), p.4 and p.29
[19] This is the total non-spendable principal as at 30 June 2010. See APCC (2010c) p.24
[20] APFC (2010c), see graph on p.16
[21] Monk (2010b)

Rozanov's concern, which echoes that of several major funds, is that dividend distribution might impair a SWF's ability to deliver the macroeconomic benefits of constraining currency inflation and preventing decline in the manufacturing sector that can accompany resource booms. A detailed technical analysis of dividends is beyond the scope of this thesis. Instead, we note one technical point here: if one accepts a cyclical view of the macroeconomic environment, there is a cogent macroeconomic argument that it is preferable to distribute dividends on an adjustable basis, rather than no dividends.[22]

This argument is as follows. In a cyclical environment, there are times of contraction, when a higher rate of spending from government fiscal sources (such as an SWF) is appropriate. These are interspersed with boom times, when there is greater pressure on government to retrench in order to avoid aggravating an overheated, inflationary economy. During such times, government should save through higher tax intake and lower spending to build up a buffer for the (inevitable) downturn that will follow.

It follows, then, that in times of downturn, government spending through SWF-funded dividends may be an entirely appropriate Keynesian policy tool to help stimulate demand. Equally, when the economy is booming and private sector demand is sufficient, government spending schemes such as dividends may need to be curtailed. The latter could be achieved by suspension of the dividend program, and preservation of that year's dividend

[22] Economist James Meade set out a similar argument in the 1930s. See Howson (1988) p.112

capital in the SWF until conditions are right for recommencement.[23] This suggested approach is similar to the fiscal management of interest rate levels by Central Banks.

A related aspect of the Technical Concerns Objection is that dividends are only desirable when funded by *actual* savings in an SWF. According to Martin Skancke of the Norwegian Ministry of Finance, 'running a budget surplus is the only way a government can accumulate financial assets on a net basis. If a [sovereign wealth] fund is set up with an allocation rule that is not linked to actual surpluses, the accumulation of assets in the fund will not reflect actual savings'.[24] Accordingly, the Norwegian Petroleum Fund only receives allocations when the budget is in surplus. This has meant that despite the Petroleum Fund's establishment in 1990, the first transfer to the fund only took place in 1995, after Norway had come out of recession.[25] Otherwise, the Norwegians argue, the government is being forced to borrow money to cover allocations to the fund. For this reason, Skancke rejects the Alaskan dividend model.

The Alaskan PFD program runs irrespective of whether the State of Alaska is in surplus or deficit. Every year, at least 25% of mineral resource revenues must be put into the Fund, regardless of whether Alaska can balance its budget. During several years over the past decade, the APF has grown while the State Budget of Alaska has faced deficits.[26] Despite a deficit in 2000,

[23] Dividend proponents concerned with income stability would likely object to the idea of adjustable dividends.
[24] Skancke (2003) p.320
[25] Ibid. p.318
[26] Alaska faced possible deficits in the 2008-2009 and 2009-2010 budget cycles, requiring draw downs on other reserved funds in both years to avoid deficits. However, the APF's earnings

the legislature appropriated an extra $250 million for the APF principal from the earnings reserve.[27]

From the Norwegian perspective, such an arrangement means the APF is not truly achieving its purpose of being a *savings* fund, again echoing the anxiety of the Savings Objection. Indeed, proponents of this Technical Concerns Objection would argue that these savings are built on a fiscal illusion of surplus where the obligation to pay dividends becomes detrimental to the long-term financial health of the state. The legislature becomes constrained, as the dividend becomes an expected component of individuals' income. For example, an October 2003 poll by Dittman Research Corp. found that 64% of Alaskans believed that they were entitled to their dividend, even if the Alaskan government had a budget deficit.[28] As Skancke argues, 'the real issue is whether there is any higher public support for net, as opposed to gross, asset accumulation. It does not help much to protect the oil fund if debt is being accumulated elsewhere.'[29]

If popular support favors net asset accumulation, the solution to this Technical Concerns Objection is that dividend schemes must only be paid out in years where there is fiscal surplus. This is a design issue, but it is not a valid reason for opposing the implementation of dividends, *per se*. I do accept that it is an issue that illustrates the importance of a polity determining how they weigh the rights of future generations against those of current

---

first exceeded the State's general oil royalty and tax revenue in 1998, as it earned revenue of $2.6 billion with assets of $25 billion. See Olson (2006) p.166

[27] Anderson (2002) p.63

[28] Lewis (2004) p.81

[29] Skancke (2003) p.321

generations. If a country's future economic growth and government revenues are lower than expected, it may be desirable to offer higher protection to future needs than current public outlays.[30] In this case, the Alaska dividend model, insofar as it declares the principal as non-spendable and only distributes returns on investment, is, in my view, an acceptable model. Alternatively, a fund may be designed with a similar allocation rule to that of the Norwegian Petroleum Fund, but also allow expenditure of the fund's real returns on dividends.

Skancke offers one further objection to the dividend proposal, arguing that 'if [the government] has decided to give the population direct access to the [resource] cash, then the choice is between tax cuts or cash dividends. I would argue that tax cuts, in terms of economic efficiency, are better…. If you paid a direct cash dividend, for any given level of spending, you will have to increase taxes… If you think that taxes are distorting, you would prefer to give priority to tax cuts.' [31] For Skancke, the preference is to reduce the tax burden by spending oil revenues in government budgets to avoid future tax hikes. However, this surely comes down to the individual's (and indeed the community's) perspectives on the balance to be struck between tax cuts and dividends. Moreover, as Skancke himself observes, he is only considering this issue on efficiency, not equity, grounds. Accordingly, if, on the other hand, one were to conclude that justice trumped efficiency, surely the distribution of dividends instead of tax cuts may be worth some loss of efficiency, if the positive effects on income distribution were significant?

[30] Ibid. p.320
[31] Author interview with Martin Skancke (2010)

Again, this reinforces that the design of individual SWFs must reflect the macroeconomic needs, fiscal profile and policy preferences of individual states and their domestic communities. Technical concerns are not arguments against SWF funded dividends *per se*, but rather, arguments for a particular set of preferred policy outcomes that dividends may or may not help achieve.

Conclusion

This chapter reviewed three common objections offered by SWFs to the proposal of a dividend scheme. By questioning the SWFs' objections to dividend distribution and showing they are either unjustified, philosophically speaking, or surmountable, practically speaking, I have added more weight to the case for the distribution of SWF dividends. None of the SWF objections offered a decisive defeat of dividends. The Anti-consumption Objection suffered from misguided interpretations of how dividends work. The Savings Objection and Technical Concerns Objection each expressed valid reservations about dividends adversely affecting the core macroeconomic purposes of SWFs. However, the Savings Objection exaggerated the mutual exclusivity of saving and spending goals, while the Technical Concerns Objection simply underscored that SWFs and dividend programmes need to be carefully designed, not that dividends are inherently problematic for countries wishing to achieve savings goals.

A question then remains though as to why this anti-distribution preference exists throughout the diverse SWF community if the core claims supporting this position are not compelling. Perhaps part of the argument

against direct distribution is simply a political one. That is to say, the critic might concede that in principle one could distribute benefits as cash grants to all citizens without this leading to the fund being run down and causing violations of intergenerational justice. But in practice the critic worries that this won't happen. Again, it seems relevant to recall the functioning example of the Alaskan SWF. More importantly, this thesis has offered a variety of institutional mechanisms for helping secure the interests of future generations and balancing these with the interests of current citizens surrounding SWFs.

Alternatively, such objections may, in large part, be a rhetorical front for a shared, yet independently formed, institutional preference within SWFs for centralised control over SWF capital. That is, managerial elitism may explain much, if not all, of the SWFs' desire to preserve maximum control over SWF assets under management. This echoes the sort of worry about government or elite interests that are distinct from citizen interests that partly motivated this thesis. Dividend distribution shares the profits of SWFs with the public, heightening citizen awareness of fund activities. It realises benefit rights, while reinforcing control rights of citizens to sovereign funds. Accordingly, exaggerating the downside of dividends serves as useful justificatory tool for current SWF arrangements, where significant national savings stay under the direct and relatively autonomous control of financial managers and political elites. Given the core claims of this thesis, this is especially regrettable, as these savings are, as I have sought to demonstrate, the moral property of their citizen-owners who should therefore be entitled to enjoy the benefit of them in the manner which I have advocated throughout this thesis.

Chapter 10: Conclusion – From Sovereign Funds to Community Funds: Recommended Reforms

This thesis set out to interrogate a series of ethical issues raised by sovereign wealth funds at the domestic level. In the Introduction, I identified three key normative questions to address: (1) How (and by whom) should sovereign funds be **managed**? (2) How should sovereign wealth be **invested**? (3) How should the earnings of sovereign fund investment be **distributed**? I approached these questions through the prism of ownership theory given the widespread ambiguity surrounding the ownership status of these entities in popular and academic discourse and within domestic communities that establish such funds. I argued that the rightful owner of these funds is the citizenry, as opposed to the state or government who enjoy legal and physical possession of SWFs. In advancing this claim, I drew on the recently revived fiduciary conception of the citizen-state relationship and extended its application to the specific entity of the sovereign fund. On this view, the ownership status of sovereign funds, properly understood, is that the entities are citizen property, held on trust by governments, who must establish and manage these funds in the interests of their citizenry-principal.

I then examined the implications of this ownership conception for the popular control of and benefit from SWFs in Parts II and III. Applying the control-benefit analytical framework from property rights theory allowed us to separately and systematically consider the components of SWF property over which citizen-owners could exercise their ownership privileges: the institution of the fund, its underlying sovereign wealth and the financial

returns earned on investment of these assets. We saw that the model of citizen ownership defended implies demanding levels of popular control over the management of sovereign funds and investment of sovereign wealth, including the integration of ethical constraints into SWF mandates. It also implied direct, individual benefit from SWF investment income for citizen-owners, preferably in the form of cash dividends. After setting out the nature of these ownership privileges as ideals, I explored options for and challenges to their realisation in practice.

That objective is now met. A key remaining task is to translate the demands of our ideal model of citizen ownership into a set of practical first steps for achieving popular management, investment and distribution of sovereign funds. For while we identified various institutional and policy reforms throughout that should occur at the individual fund level, the question remains as to how to pursue such reforms. The task of the conclusion then is to set out my preferred reform programme, translating my general findings in relation to management, investment and distribution of SWFs into concrete policy proposals. Section 10.1 sets out these policy recommendations, suggesting a reform effort that targets the Santiago Principles as the most influential framework guiding the behaviour and practice of sovereign funds. This is consistent with our exclusive focus on this framework justified in the Introduction. While I largely focused on the deficiencies of the GAPP until this point, there is much to commend in the principles, especially their widespread uptake by sovereign funds from across the globe. It would be strategic then to build on that impressive foundational work by directing our reform programme to the refinement and amendment

of the existing framework rather than developing an entirely new set of principles. After summarizing the reforms, Section 10.2 suggests directions for future research that would contribute to our overarching objective of turning SWFs into community-funds.

10.1 First Steps: Reforming the Santiago Principles

What sort of reforms should we look to enact in order to establish the sort of robust popular ownership of sovereign funds advocated within domestic communities? For some communities, the extent of reforms necessary will be far-reaching since certain SWF-possessing societies currently do or could not easily satisfy the conditions of EAC ownership. As discussed in Chapter 3, those conditions require that citizens enjoy a degree of basic equality and autonomy in both relations with their government as well as with fellow co-owners. Only then, I suggest, can a citizenry operate as an effective principal over its government agent in a fiduciary state relationship necessary for meaningful popular ownership of a SWF. Where domestic communities do not already respect and promote such conditions, systemic, political reforms to those societies will be necessary. But those sorts of sweeping reforms are not our concern here. Nor, as touched upon in Chapter 3, is the deeper question of whether such reforms are only achievable through democratization of political regimes. All I said on this issue is that of existing regime types, democratic polities appear better placed to support and foster the conditions required for the EAC Model of SWF ownership and fiduciary state relations. As I flag below, a fuller analysis of that theoretical and empirical question is an important topic for future research.

Instead, our more contained focus is on the implementation of our recommendations for the proper management, investment and distribution of sovereign wealth. As indicated above, initial efforts must target the Santiago Principles. As the standard-bearer for sovereign fund design and management,[1] it is crucial that this document reflect the core thrust of our analysis – that SWFs are citizen-owned funds which should be democratically controlled by and provide direct benefit to their citizen-owners within their owning communities. To this end, this section recommends the following reforms to the Santiago Principles (suggested insertions *italicized* and deletions ~~struck through~~).

10.1.1 A citizen-oriented definition of SWFs

First and foremost, the GAPP's existing definition of a SWF found in the preamble must be amended to explicitly identify the citizen ownership of sovereign funds. The fiduciary nature of government's relationship with its citizens and how this bears on their responsibilities regarding the management of SWFs must also be plainly set out:

Proposed amended definition: '[SWFs are] special purpose investment funds or arrangements, ~~owned~~ *managed* by the general government *in a fiduciary capacity on behalf of their citizen-owners. Citizens own these funds and their underlying assets jointly and their investment returns in common as a people.* Created by the general government for macroeconomic purposes *that seek to enhance the communities welfare,* SWFs hold, manage or administer *public* assets to achieve financial objectives, and employ a set of investment strategies, which include investing in foreign financial assets.'

This amended wording achieves two things. First, it the preserves original definition's emphatic message that SWF's are primarily *financial* entities. The

[1] See Section 1.5 of the Introduction.

initial definition sought to quell recipient countries fears that SWFs are purely political instruments created to serve geopolitical purposes through investments. Given that distrust of these entities can produce unnecessary protectionist backlashes in the international investment landscape, the IFSWF's valuable effort to allay those fears through reiterating the funds' commercial objectives to ensure like treatment of SWFs with peer investors should be continued. The preservation of much of the original wording then upholds the characterisation of these entities as primarily investment vehicles, while emphasizing a higher policy purpose than wealth management as their ultimate end.

The second goal of this amendment is clarificatory. As conflicts regarding the ownership status of funds persist domestically, the amendments seek to refine the definition so as to dispel any confusion that exacerbates these tensions. By removing reference to government *ownership* and replacing it with the idea of government '*management*' and explicitly identifying the citizenry as owner, this makes the fiduciary relationship between citizen and state emphatic. I avoid use of the words 'principal' and 'agent' given its particular legal connotations, something which this thesis did not address. Instead, I briefly characterize the citizen-state relationship in fiduciary terms to evoke the spirit of this dynamic, rather than to import a legal declaration into the GAPP. For complete clarity, this definition specifies that government is a *custodian* of these assets, which are ultimately owned by the people.[2]

[2] This may be inserted in p.3 of the Santiago Principles in the general discussion on their objective and purpose.

10.1.2 Specification of popular control arrangements

Due to the absence of the concept of citizen-ownership in the Santiago Principles, there is of course no discussion of popular control arrangements and certainly not in the sense that we require. In fact, as noted in the Introduction, the concept of control over sovereign funds is largely omitted from the Principles. Despite the GAPP defining SWFs as 'government owned and controlled',[3] there is very little description of what government control should consist. With the exception of Principle 7 which stipulates that 'the owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the SWF's operations'[4] and Subprinciple 22.1 which identifies the need for appropriate operational control arrangements within a fund,[5] control measures are not addressed.

Given our prescriptions for democratizing fund management, requiring popular influence over the setting of an SWF's objectives, shaping of the investment strategy and assessment of management's fealty to those objectives, three amendments are necessary. First, Principle 7 quoted above should be amended. In the explanatory commentary to this Principle, the GAPP explains that 'the owner refers to the government as the beneficial and/or the legal owner of the SWF, or assets managed by the SWF, depending on the legal structure of the SWF.'[6] This clarificatory description is now redundant in light of our new proposed definition of SWFs. Accordingly, all references to the 'owner' must distinguish between the government

[3] IWG (2008) p. 4
[4] Ibid., p. 7
[5] Ibid., p. 15
[6] Ibid., p.16

custodian and the citizenry owner. Accordingly, Principle 7 should be reworded as follows (with suggested insertions *italicized*):

Amended Principle 7: 'The owner, *meaning the citizenry of the SWF establishing community,* should set the objectives of the SWF, *its overarching investment policy,* appoint the members of its governing body(ies) in accordance with clearly defined procedures and exercise oversight over the SWF's operations *through participatory democratic mechanisms.'*

The explanation and commentary to this principle should be updated to clarify the objectives of this reformed principle. It should underscore that it is up to individual communities as to what participatory mechanisms are used for consulting the people and that such mechanisms may include, but are not limited to referenda, citizen juries, citizen assemblies, deliberative polling and direct elections in the case of the Board member appointments.

Communities may also vary as to the exact content which they subject to popular determination above a certain minimum threshold. For instance, some communities may wish to precisely stipulate asset class allocation, geographic exposure and risk management strategies, whereas others may prefer to express general parameters for these issues, leaving specification of their detailed content to the Board and management. But, the overall objective of this amended Principle 7 is that citizens must be consulted on and a degree of influence over these aspects of a sovereign fund's establishment and management.

Second, as for citizens' *ongoing* ability to influence these policy parameters and assess and monitor management's performance in accordance with their popularly determined objectives, the GAPP principles that refer to

public disclosure obligations must be strengthened. We noted in the Introduction that 17 of the 24 principles include a requirement for public disclosure, although none of these cover substantive issues such as the fund's investment portfolio (including size, composition, allocation, risk indicators and returns).[7] Those aspects of a fund's behaviour are simply subject to internal accountability mechanisms such as timely, accurate and regular reporting to their government owner. Moreover, as Rozanov observed, 'the term 'transparency' does not appear once in the actual text of the [GAPP]'.[8] *All 17 principles* referring to disclosure requirements must be amended to make explicit that any requirements demand full public disclosure *to the citizenry* and not just internal reporting to the *government* custodian. Where there are issues of commercial confidentiality that transparency could negatively affect, these should be clearly set out in the fund's governing documents so the public and government custodian's expectations are clear.

Finally, the word 'transparency' should also be introduced into the document alongside an explanation of its role in enhancing popular control. An obvious place for its addition is Principle 6, the first principle within Part (ii) of the GAPP which addresses issues of 'institutional framework and governance structure'.[9] (suggested insertions *italicized*):

'*Amended Principle 6:* The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability, *transparency* and operational independence in the management of the SWF to pursue its objectives.'

[7] See Introduction, Section 1.4.1
[8] Rozanov (2011), p. 261
[9] IWG (2008) p.5

Commentary on the principle should elaborate on the primary purpose of transparency in empowering *citizens'* ability to exert control over their sovereign funds since transparency serves the needs of multiple actors. This point was acknowledged in the precursor document to the Santiago Principles, 'Sovereign Wealth Funds—A Work Agenda':

> 'Transparency is of interest to very different groups - including the general public, markets, counterparties, recipient countries, and regulators - but their needs differ... The case for such a (transparency) focus is two-fold: First, clear governance structures will help foster *accountability and a disciplined and stable investment policy* which reduces fiscal risk and promotes financial stability. Second, transparency contributes to the efficient allocation of resources by ensuring that *markets and the public have information* to identify risks and better assess SWF behavior.'[10]

The subsequent removal of the word 'transparency' from the final GAPP document is striking in contrast to this explicit acknowledgement of its importance in the predecessor document. Recent research on the GAPP negotiation processes demonstrates that conflicting cultural ideas over the necessity of transparency undoubtedly contributed to the word's absence from the Santiago Principles. Consider the following quote from a western SWF official reflecting on the GAPP negotiations:

> 'I would say most of the concerns were about access of the local public to information. In our context, the people are the fund's owners, as well, so they need to know. In some other places, it is not very clear whether they (the people) have any right to this information ... to what extent (local) citizens of the country have a need to know; well, there were different opinions on that.'[11]

The research goes on to distinguish between the various concerns of the anti-transparency camp contrasting Middle Eastern funds worries regarding the

[10] IMF (2008b) p.26
[11] Mehrpouya (2013) p.34

local public's need to access information with the Singaporean fund's concern about the business impact of transparency on their fund's operations and returns.[12] While these differing cultural views will continue to challenge democratizing reforms to SWFs and the Santiago Principles, they also underscore the extent to which the right of citizens to control their sovereign funds was omitted in the GAPP, making its rectification all the more vital.

10.1.3 Insertion of an ethical investment obligation

Chapter 6 further elaborated our model of popular control, focusing on citizen influence over the investment of sovereign wealth. Having argued against citizens' directly investing fund assets, we demanded extensive popular control over investment policy, most vitally over the content of ethical constraints on a fund's allowable investments. This was to ensure citizens' ethical integrity is properly shielded from undesired complicity in morally objectionable investments given the inherently coercive nature of SWF investment. I argued that governments must impose a statutory obligation on their sovereign funds to invest responsibly/ethically as part of their overarching investment mandate.

Such a requirement could be given effect by amending Santiago Principle 19 on the investment policy of sovereign funds:

Amended Principle 19: 'The SWF's investment decisions should aim to maximize risk-adjusted financial returns in a manner consistent with its *popularly determined* investment policy, based on economic and financial grounds *as well as the ethical obligations of the community*.'[13]

[12] Ibid. pp.34-35
[13] IWG (2008) p.8

Subprinciple 19.1 should also be amended to further explain the operation of the ethical investment obligation. This current version of the subprinciple countenances the possibility of extra-financial considerations in an SWF's investment activity, stating that if 'decisions are subject to *other than* economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed.'[14] This subprinciple should be entirely deleted and replaced with a supporting principle that explains the nature of the compulsory ethical investment obligation, including the minimum expectation that sovereign fund invest sustainably to ensure the protection of future citizens' interests:

'*Proposed Subprinciple 19.1: The statutory investment mandate of all funds must include an obligation to invest in a manner consistent with the domestic and international ethical obligations of the owner state, the content of which should be determined in consultation with the state's citizens and be set out in Ethical Investment Guidelines supporting the mandate. At a minimum, all sovereign funds must incorporate sustainability considerations into their investment decision-making to protect the interests of future generations.*'

The supporting commentary on this principle should stipulate that communities should deliberate over the precise content and nature of the ethical constraints to impose upon funds. Clearly, there will be reasonable disagreement on the content of such values within political communities, now and over time, providing even greater justification for regular public consultation on the content of a community's Ethical Guidelines.

10.1.4 Stipulation of the duty to distribute dividends

Part III examined popular benefit rights to sovereign fund income. Chapter 7 set out the case for individualised distribution of this investment income,

[14] Ibid.

canvassing the possibility of either direct cash dividends in the vein of the Alaskan PFD or indirect cashless payments along the lines of the Mongolia approach.

As noted in the Introduction, the Santiago Principles are largely silent on the question of distribution, particularly distribution of SWF investment income. The commentary on Principle 4 on 'Funding and Withdrawal' rules simply requires public disclosure on these aspects of a fund's policy. In particular, Subprinciple 4.2 requires public disclosure of '[t]he general approach to withdrawals from the SWF and spending on behalf of the government'.[15] The commentary to this principle observes that '(s)ome SWFs keep their capital and returns while others pay out targeted annual dividends.'[16] This deferential approach to the spending or savings preferences of individual SWFs is in violation of our demand for individualized distribution, whether direct or indirect. The whole section is also deficient in terms of properly distinguishing between treatment of investment income and the general principal. As such, a new subprinciple 4.3 should be inserted to address the treatment of SWF investment income:

Proposed Subprinciple 4.3: A portion of the income earned on the SWF's investment returns must be distributed to individual citizen-owners annually.

The exact form and amount of the distribution should be determined by the preferences of respective owning communities, but within the constraint that the distribution must be individualized and annual.

[15] IWG (2008) p.7
[16] Ibid.

These then are the main policy implications of our model of citizen ownership and the reforms necessary to evolve the Santiago Principles into a framework capable of promoting our popular ownership ideal. But moving from theory to the political practice of citizen ownership of sovereign funds is undoubtedly a complex task. Even if all these reforms to the GAPP are heeded, there is no guarantee that those 23 sovereign funds which support the GAPP through their IFSWF membership will amend their own practices and policies in line with the reformed principles. An even trickier task would be getting the majority of sovereign funds who do not enjoy IFSWF membership and have shown little interest in respecting the Santiago Principles as a blueprint for their own design and behaviour to pursue such reforms. But the perfect should not be the enemy of the good. Even partial compliance with some of these reforms will begin to transform SWFs into genuine community funds, democratically controlled by, managed in the interests of and used to directly benefit citizens.

10.2 Future Research

In closing, I want to suggest some areas for further research related to the broader project of converting sovereign funds into community funds. This thesis started with the observation that over the past half-decade, the widespread adoption of SWFs by governments constituted a unique development in the public finance arrangements of contemporary states, a development that largely went unnoticed by political theorists. This thesis tried to remedy that by offering the first, as far as I am aware, sustained normative treatment of these funds. In doing so, it sought to provide fresh impetus to calls for governments to establish such funds by highlighting the

existence of SWFs and asking important questions about their impact on the citizen-state relationship. As community fund proponent Gerald Holtham implored in 1997 'we have got to find a way to finance expenditures which will tend to rise faster than GDP while simultaneously maintaining a stable tax burden. This is where [James] Meade's idea of a [community] fund comes into its own'.[17] At the time of Holtham's writing in the late 1990s, approximately 20 sovereign funds existed globally and yet no connection was made between the proposed community fund ideal and the actual sovereign fund phenomenon. Fifteen years later, the SWF population has more than doubled in size and the reasons motivating the calls for community funds have not subsided. If anything, they have intensified with the public finances of many economies under severe strain as a result of the financial crisis. Whether to finance the provision of essential goods and services,[18] entirely new public projects[19] or achieve egalitarian redistribution,[20] the demand for community funds is only likely to grow in the face of widening economic inequality in many advanced economies and the increased strain on public coffers for a range of structural reasons.

Granting then the likely ongoing interest in the need for community funds, at least two clear lines of research emerge that did not get any treatment in this work. First, this thesis offered a normative theory of SWFs at the domestic level. It bracketed off questions of how SWFs bear on global justice and equality and our duties beyond borders for another project. Yet, sovereign funds are active foreign investors, more often than moving their

[17] Holtham (1997)
[18] Ibid. p.11
[19] White (2003) p.197
[20] Widerquist and Howard (2012a)

assets into foreign economies to avoid overheating their home market. Developing an international normative theory of SWFs is thus both a natural compliment to the domestic theory outlined here and a relatively urgent moral task in light of SWF investment behaviour. At the very least, analysis of citizen's ethical complicity in their fund's activities would be enriched by a deeper understanding of fund operations across borders and how complicity is affected in such transactions as opposed to domestic investment.

Second, an even broader question arises from our analysis of SWF ownership. As we saw in Chapter 2, lurking beneath the confusion plaguing the ownership status of SWFs is a deeper ambiguity regarding the ownership status of state assets generally. That chapter noted the persistent terminological and conceptual confusion around the idea of 'public' ownership and how this relates to state and community ownership. If we proceed on the basis that SWFs are desirable additions to the government policy tool kit, then more governments will look to identify resources they can use to establish such funds. Such a process would be informed by a more systematic, clear statement on the difference between 'state', 'government', 'public' and 'community' assets insofar as they are distinguishable. We have suggested there are prudent reasons for such distinctions to exist. A new research project could interrogate the conceptual and legal differences far more exhaustively than was possible here and look to whether other public resources offer obvious candidates for SWF seed capital.

For now, this thesis has offered a modest contribution to that broader conversation by developing a new ownership framework for one particularly

important and increasingly influential piece of public property. In doing so, it sought to contribute to political theory in another way, which brings me the final observation. As set out in the Introduction, this thesis sought to form part of the recent effort, initiated by Waldron, to reorient contemporary political theory towards questions on the 'structures and processes that are needed to house our acting together under circumstances of moral and political disagreement.'[21] It aimed to do so in relation to a relatively new albeit under-analysed, increasingly prolific and influential state economic institution. Such an entity, in my view, is ideal subject matter for the *political* political theorist that, as Waldron implores, should be concerned with how institutions 'orchestrate what is done about whatever aims we settle on'.[22]

Perhaps the extent to which I have focused on translating my action-guiding normative prescriptions into practical policy proposals and recommended reforms goes beyond the desired core focus of the political political theory agenda, at least as Waldron laid it out. But even if so, it certainly adheres to certain classic visions of the political theorist's vocation. I am thinking in particular of John Stuart Mill's tripartite vision, a vision that I believe should be revived and realized in many aspects of future research within political theory. According to Mill, the political theorists first task is to identify a basic ultimate principle to act as a moral guide in our thinking about politics.[23] I sought to do so by establishing a clear conception of SWF ownership, from which principles for state's obligations in managing control over and benefit from its management, investment and distribution could

[21] Waldron (2012) p.7, footnote 25.
[22] Ibid., p. 8
[23] See Stears (2006) at pp.342-343 for the summary of Mill's view of a political theorist's three essential tasks.

derive. I fulfilled Mill's second task of engaging in 'some form of empirical assessment of the conditions necessary for this goal to be realizable' by examining current SWF policy and practice in these areas and identifying the extent to which any gaps exist between my proposed ideal principles and the status quo. I also pursued this end by contributing original empirical data based on my own field research to assist in the assessment of the feasibility and likelihood of my proposal's realisation. Finally, through the course of the above, I hope to have discharged Mill's third and final task: to persuade others of the rightness of my moral claim that citizens are the ultimate owners of sovereign funds that should enjoy extensive popular control and benefit rights, a claim that I hoped to have demonstrated is both philosophically and pragmatically plausible.

APPENDICES

Appendix 1: The World's Sovereign Wealth Funds (as at March 2013)

Region	Fund Name	AUM (US$bn)	Inception	Underlying Asset	Regime Type[837]
North America and Canada	Alaska Permanent Fund (US)	45	1976	Commodity (Oil)	Full Democracy
	Texas Permanent School Fund (US)	25.5	1854	Commodity (Oil)	Full Democracy
	Alberta Heritage Fund (Canada)	16.4	1976	Commodity (Oil)	Full Democracy
	New Mexico State Investment Council (US)**	16.3	1958	Non-commodity	Full Democracy
	Permanent Wyoming Mineral Trust Fund (US)	5.6	1974	Commodity (Minerals)	Full Democracy
	Alabama Trust Fund (US)	2.5	1985	Commodity (Oil & Gas)	Full Democracy
	North Dakota Legacy Fund (US)	0.7	2011	Commodity (Oil & Gas)	Full Democracy
South and Central America	Central America Social and Economic Stabilisation Fund (Chile)	21.8	2006	Commodity (Copper)	Flawed Democracy
	Sovereign Fund of Brazil (Brazil)**	11.3	2008	Non-commodity	Flawed Democracy
	Fiscal Stabilisation Fund (Peru)**	7.1	1999	Non-commodity	Flawed Democracy
	Oil Income Stabilisation Fund (Mexico)	6.2	2000	Commodity (Oil)	Flawed Democracy
	Revenue Stabilisation Fund (Trinidad & Tobago)	2.9	2000	Commodity (Oil)	Flawed democracy
	Pension Reserve Fund (Chile)	1.4	2006	Commodity (Copper)	Flawed Democracy
	Macroeconomic Stabilisation Fund – FEM (Venezuela)	0.8	1998	Commodity (Oil)	Hybrid Regime
	Fondo de Ahorro de Panama (Panama)**	0.3	2012	Non-commodity	Flawed Democracy

[837] Regime type was classified using the results of the 2012 Democracy Index, compiled by *The Economist Intelligence Unit*. This index uses one of four categorizations for polities: full democracy, flawed democracy, hybrid regime and authoritarian regime. For state-based sovereign funds, I apply to the federal level regime characterisation from the Democracy Index. Available at http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy-Index-2012.pdf&mode=wp&campaignid=DemocracyIndex12

Europe/ Central Asia	Government Pension Fund – Global (Norway)	715.9	1990	Commodity (Oil)	Full Democracy
	Central Europe and Russia Reserve Fund (Russia)	125	2008	Commodity (Oil)[838]	Hybrid Regime
	National Welfare Fund (Russia)	83.6	2008	Commodity (Oil)	Hybrid Regime
	Kazakhstan National Fund (Kazakhstan)	61.8	2000	Commodity (Oil, Gas, Metals)	Authoritarian regime
	Strategic Investment Fund (France)**	25.5	2008	Non-commodity	Full democracy
	National Pensions Reserve Fund (Ireland)**	19.4	2001	Non-commodity [839]	Full democracy
	State Oil Fund (Azerbaijan)	3.3	1999	Commodity (Oil)	Authoritarian regime
	Italian Strategic Fund**	1.4	2011	Non-commodity	Full democracy
Middle East	Abu Dhabi Investment Authority (Abu Dhabi)	627	1976	Commodity (Oil)	Authoritarian regime
	Saudi Arabian Monetary Agency (SAMA) Foreign Holdings (Saudi Arabia)	532.8	1953	Commodity (Oil)[840]	Authoritarian regime
	Kuwait Investment Authority (Kuwait)	342	1953	Commodity (Oil)	Authoritarian regime
	Qatar Investment Authority (Qatar)	115	2005	Commodity (Oil)	Authoritarian regime
	Investment Corporation of Dubai	70	2006	Commodity (Oil)	Authoritarian regime
	Mubadala Development Company (Abu Dhabi - UAE)	53.1	2002	Commodity (Oil)	Authoritarian regime
	Oil Stabilisation Fund (Iran)	42	2011	Commodity (Oil)	Authoritarian regime
	Mumtalakat Holding Company (Bahrain)	7.1	2006	Commodity (Oil)	Authoritarian regime
	State General Reserve Fund (Oman)	8.2	1980	Commodity (Oil, Gas)	Authoritarian regime

[838] As of February 2008, Russia's former Oil Stabilisation Fund was split into two new funds, the Central Europe and Russia Reserve Fund dedicated to insuring the Russian economy against steep falls in oil prices through managing reserves, while the National Welfare Fund is the official SWF and is dedicated to guaranteeing the voluntary pensions of Russians.
[839] Funded through annual transfers of 1% of GNP into SWF.
[840] These funds are managed by the Central Bank of Saudi Arabia and so on certain definitions, would not constitute an SWF.

	RAK Investment Authority (UAE – Ras Al Khaimah)	1.2	2004	Commodity (Oil)	Authoritarian regime
	Palestine Investment Fund (Palestine)	0.8	2003	Non-commodity	Hybrid regime
	Emirates Investment Authority (UAE – Federal)	na	2007	Commodity (Oil)	Authoritarian regime
	Abu Dhabi Investment Council (UAE – Federal)	n/a	2007	Commodity (Oil, Gas, Metals)	Authoritarian regime
East Asia and Australia	SAFE Investment Corporation (China)	568.9[841]	1997	Non-commodity	Authoritarian regime
	China Investment Corporation (China)	482	2007	Non-commodity	Authoritarian regime
	Hong Kong Monetary Authority (Hong Kong)	298.7	1993	Non-commodity	Flawed democracy
	Temasek Holdings (Singapore)	257.5	1974	Non-commodity	Hybrid regime
	Govt of Singapore Investment Corporation (Singapore)	247.5	1981	Non-commodity	Hybrid regime
	Australian Future Fund (Australia)	83	2006	Non-commodity	Full democracy
	Korea Investment Corporation (South Korea)	56.6	2005	Non-commodity	Full democracy
	Khazanah National (Malaysia)	39.1	1993	Non-commodity	Flawed democracy
	Papua New Guinea	30***	2012	Commodity (Gas)	Flawed Democracy
	New Zealand Superannuation Fund (New Zealand)	22.11	2003	Non-commodity	Full democracy
	Timor-Leste Petroleum Fund (East Timor)	11.8	2005	Commodity (Oil)	Flawed democracy
	State Capital Investment Corp (Vietnam)	0.5	2006	Non-commodity	Authoritarian regime
	Revenue Stabilisation Fund (Kiribati)	0.4	1956	Commodity (Phosphate)	No ranking
	Western Australian Future Fund (Australia)	0.3	2012	Commodity (minerals)	Full Democracy
	Mongolia Fiscal Stability Fund (Mongolia)	n/a	2011	Commodity (minerals)	Flawed democracy

[841] This number is an informed estimation due to lack of public sources on SAFE's AUM

Africa	Libyan Investment Authority (Libya)	65	2006	Commodity (Oil)	Hybrid Regime
	Revenue Regulation Fund (Algeria)	56.7	2000	Commodity (Oil)	Authoritarian regime
	Pula Fund (Botswana)	6.9	1994	Commodity (Diamonds)	Flawed Democracy
	Fundo Soberano De Angola (Angola)	5	2012	Commodity (Oil)	Authoritarian regime
	Nigeria Sovereign Investment Authority (Nigeria)	1	2011	Commodity (Oil)	Authoritarian Regime
	Gabon Sovereign Wealth Fund (Gabon)	0.4	1998	Commodity (Oil)	Authoritarian Regime
	National Fund for Hydrocarbon Reserves (Mauritania)	0.3	2006	Commodity (Oil, Gas)	Hybrid regime
	Ghana Petroleum Funds (Ghana)	0.07	2011	Commodity (Oil)	Flawed Democracy
	National Oil Account (Sao Tome)	0.02	2001	Commodity (Oil)	Not ranked
TOTAL	**60**				

Source: Compiled from the SWF Institute Fund Rankings (updated March 2013) and The Economist Intelligence Unit 2012 Democracy Index. AUM figures are estimates.

*n/a = Not Available
** Shaded boxes indicate non-commodity funds
***This figure is based on anticipated revenues ear-marked for the PNG Fund. The fund is not yet operational, but has been legislatively established

Appendix 2: Alaska Qualitative Survey (April 2011)

1) Do you receive the Dividend? Have you ever not received the dividend? Why?

2) How do you typically use your dividend payment? Spend or save? Both?

3) How do you think most Alaskans use their dividend?

4) Do you like the Alaska Dividend? Why or why not?

5) The dividend might grow in the future if oil prices continue to rise. Is there a size it could grow to that would be *too* large, that you think is excessive? Why?

6) You currently receive the Dividend as an annual payment. If you could have received a one-off lump sum at birth or when you turned 18 equivalent to a lifetime of dividend payments, would you prefer this? Why or why not?

7) What do you understand the Permanent Fund to be for? Do you support this purpose and/or the existence of the Permanent Fund?

8) What are legitimate government uses of the oil revenue?

9) Given the oil will one day run out, in terms of managing Alaska's oil wealth, what do you think the government should do. Rank 1-8 with 1 being your most preferred choice and 8 being the least preferred choice.

___ Raise oil taxes

___ Cut budget

___ Spend Permanent Fund in the budget

___ Reduce Permanent Fund Dividends

___ Eliminate Permanent Fund Dividends

___ Bring back the state's individual income tax

___ Adopt a state sales tax

___ Cash out the Permanent Fund

Write in: _____

Bibliography

Abplanalp, K. (2011) 'Blood Money' *Metro Magazine*, December 2011, at: www.pmc.aut.ac.nz/sites/default/files/file_bin/201111/Metro_Dec2011_FreeportSuperfund_pp43-49.pdf

Abouzeid, R. (2010) 'Abu Dhabi Death Could Spark a Dynastic Struggle' *Time Magazine*, 30 March 2010

Abu Dhabi Government (2010) *Abu Dhabi Economic Vision 2030* at: www.mubadala.ae/about/abu_dhabi_economic_vision_2030/

Ackerman, B. (1991) *We the People* vol 1. *Foundations* (Cambridge, MA: Harvard University Press)

Adamo, R., A. Coscarelli, D. Federico and A. Notte (2010) 'The Ethical and Non Ethical Mutual Funds Comparison' *American Journal of Economics and Business Administration*, 2(4): 360-365

Adamson, L. (2012a) 'Riding a New Wave of Wealth', *Institutional Investor Magazine*, 25 September 2012, at: www.institutionalinvestor.com/Article/3088148/Riding-a-New-Wave-of-Wealth.html

Adamson, L. (2012b) 'Mongolia Aims to Join SWF Ranks', *Institutional Investor Magazine*, 25 September 2012

Aizenman, J. (2007) 'Large Hoarding of International Reserves and the Emerging Global Economic Architecture' *NBER Working Paper* 13277 (Cambridge, MA: National Bureau of Economic Research)

Aizenman, J., and R. Glick (2008) 'Sovereign Wealth Funds: Stylized Facts About their Determinants and Governance' *NBER Working Paper* 14562 (Cambridge MA: National Bureau of Economic Research)

Ajayi, Y. and O. Olaleye (2011) 'Governor's Seek to Stop Sovereign Wealth Fund, *Thisdaylive*, 21 August 2011, at: www.thisdaylive.com/articles/governors-seek-to-stop-sovereign-wealth-fund/96813/

Alaska Channel 2 News (2009) 'Respondents Split on How They Will Use PFD", 24 September 2009, at: www.articles.ktuu.com/2009-09-24/pfd_24124985

AllAfrica (2011) 'State Governors and Sovereign Wealth Fund', *AllAfrica.com*, 1 September 2011, at: www.allafrica.com/stories/201109010821.html

Anderson, J. (2002) 'The Alaska Permanent Fund: Politics and Trust' *Public Budgeting and Finance* 22(2): 57-68

APFC (1997) *The Early History of the Alaska Permanent Fund: Perspectives on the Origins of Alaska's Oil Savings Account*, February 1997 (Juneau, Alaska: APFC)

APFC (2010a) 'The Permanent Fund Dividend' at *Alaska Permanent Fund Corporation Website* at: www.apfc.org/home/Content/dividend/dividend.cfm

APFC (2010b) 'About the Fund ', *Alaska Permanent Fund Corporation Website* at: www.apfc.org/home/Content/aboutFund/aboutPermFund.cfm

APFC (2010c) *Annual Report 2010: Designed for Sustainability* (Juneau, Alaska: APFC)

APFC (2010d) 'Historical Returns', *Alaska Permanent Fund Corporation Website* at: www.apfc.org/_amiReportsArchive/Historical%20returns.pdf

APFC (2011) *Annual Report 2011* (Juneau, Alaska: APFC)

APFC (2012a) *Annual Report 2012* (Juneau, Alaska: APFC)
APFC (2012b) Annual Dividend Payments', *Alaska Permanent Fund Corporation Website* at: www.apfc.org/home/Content/dividend/dividendamounts.cfm

APFC (2013a) 'Fund Market Value on Home Page' *Alaska Permanent Fund Corporation Website* at: www.apfc.org/home/Content/home/index.cfm

APFC (2013b) 'About the Fund: FAQs', *Alaska Permanent Fund Corporation Website* at: www.apfc.org/home/Content/aboutFund/aboutPermFund.cfm

Arendt, H. (1958) *The Human Condition* (Chicago: Chicago University Press)

Avendaño, R., and J. Santiso (2009) 'Are Sovereign Wealth Funds' Investments Politically Biased? Comparison with Mutual Funds' *OECD Development Centre Working Paper* 283, December 2009 (Paris: OECD)

Backer, L. (2009) 'Sovereign Wealth Funds as Regulatory Chameleons: The Norwegian Sovereign Wealth Funds and Public Global Governance through Private Global Investment' *Georgetown Journal of International Law* 41(2): 101-192

Backer, L. (2010) 'Sovereign Investing in Times of Crisis: Global Regulation of Sovereign Wealth Funds, State Owned Enterprises and the Chinese Experience' *Transnational Law & Contemporary Problems* 19(3): 3-144

Balding, C. (2012) *Sovereign Wealth Funds: The New Intersection of Politics and Money* (New York: Oxford University Press)

Barbary, V., B. Bortolotti, V. Fotak and W. Miracky (2010) *Sovereign Wealth Fund Investment Behaviour: Semi-Annual Report January – June 2010* (Boston MA: Monitor Group)

Barro, R. (1973) 'The Control of Politicians: An Economic Model' *Public Choice* 14(1): 19–42
Batkhuyag, B. (2012) 'Human Development Fund Survey Results Revealed', *Business-Mongolia.Com,* 1 July 2010, at: www.business-mongolia.com/mongolia/2010/07/01/human-development-fund-survey-results-revealed

Bauer, R., J. Derwall and R. Otten (2007) 'The ethical mutual fund performance debate: new evidence from Canada' *Journal of Business Ethics* 70: 111–124

BBC (2011) *How Libya's Saif al-Islam Gaddafi Seduced the West*, 3 March 2011, at: www.bbc.co.uk/news/world-12626320

BBC 4 (2011) *The Report*, 2 March 2011, at: www.bbc.co.uk/iplayer/episode/b00zf4t1/The_Report_03_03_2011/

BBC (2012a) 'First Police Commissioners Chosen Amid Turnout Concerns' *BBC News*, 17 November 2012 at: www.bbc.co.uk/news/uk-20352539

BBC (2012b) 'Q&A: Police and Crime Commissioners' *BBC News*, 14 November 2012 at: www.bbc.co.uk/news/uk-politics-19504639

Beck, R. and M. Fidora (2008) *The Impact of Sovereign Wealth Funds on Global Financial Markets*, ECB Occasional Paper Series 91, July (Frankfurt: European Central Bank)

Becker, L. (1977) *Property Rights: Philosophic Foundations* (Boston: Routledge & Kegan Paul)

Behrendt, S. (2011) 'Sovereign Wealth Funds and their Commitment to the Santiago Principles', *GeoEconomica Briefing*, April 2011 at: www.geoeconomica.com/index.php/analyses.html

Behrendt, S., and D. Sharp (2011) 'The Libyan Investment Authority: Sanctions and Post-Conflict Resolution', *GeoEconomica Briefing*, November 2011, at: http://geoeconomica.com/index.php/newsreader-9/items/the-libyan-investment-authority-sanctions-and-post-conflict-reconstruction.html

Berki, R.N. (1975) *Socialism* (London: Dent)

Bernstein, S., J. Lerner and A. Schoar (2009) 'The Investment Strategies of Sovereign Wealth Funds' *NBER Working Paper* 14861, (Cambridge, MA: National Bureau of Economic Research)

Birks, P. (2000) 'The Content of the Fiduciary Obligation' *Israel Law Review* 34(1): 3-20

Blackburn, R. (1999) 'The New Collectivism: Pension Reform, Grey Capitalism, and Complex Socialism', *New Left Review*, 233 (Jan–Feb 1999): 3–65

Blackburn, R. (2002) *Death or Investing in Life: The History and Future of Pensions* (London: Verso)

Blackburn, R. (2006) *Age Shock: How the System is Failing Us* (London: Verso)

Blake, M. (2001) 'Distributive Justice, State Coercion, and Autonomy,' *Philosophy and Public Affairs* 30 (2) pp. 257-97

Blanchard, J. (2011) 'China's Grand Strategy and Money Muscle: The Potentialities and Pratfalls of China's Sovereign Wealth Fund and Renminbi Policies' *Chinese Journal of International Politics* 4(1):31-53

Bloomberg News (2011a) 'Future Fund Tobacco Investments Defy Policy' *Sydney Morning Herald,* 11 March 2011 at: www.smh.com.au/business/future-fund-tobacco-investments-defy-policy-20110311-1bqx7.html

Bloomberg News (2011b) 'Greens to Push for Future Fund bar on Tobacco Investment' *Sydney Morning Herald,* 24 March 2011 at: www.smh.com.au/business/greens-to-push-for-future-fund-bar-on-tobacco-investment-20110324-1c7lz.html

Bollier, D. (2003) *Silent Theft: The Private Plunder of Our Common Wealth* (New York and London: Routledge)

Bolton, P., F. Samama and J. Stiglitz (eds.) (2012) *Sovereign Wealth Funds and Long-Term Investing* (New York: Columbia University Press)

Borowiak, C. (2011) *Accountability and Democracy: The Pitfalls and Promise of Popular Control* (New York: Oxford University Press)

Bortolotti, B., V. Fotak, W. Megginson and W. Miracky (2009) 'Sovereign Wealth Fund Investment Patterns and Performance' *Fondazione Eni Enrico Mattei Working Paper* 22 at: www.feem.it

Brown, G. (2009) *Supporting Global Growth: A Preliminary Report on the Responsiveness and Adaptability of the International Financial Institutions by the Chair of the London Summit* (London: HM Publishing) at: www.g20.org

Brown Weiss, E. (1989) *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University)

Brown Weiss, E. (1990) 'Our Rights and Obligations to Future Generations for the Environment' *American Journal of International Law* 84: 198-207

Brumby, J. (2011) 'How to Best Invest the Proceeds of the Great Mining Boom' *The Age*, 7 November 2011

Brundige, E., W. King, P. Vahali, S. Vladeck and X. Yuan (2004) *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control,* April 2004 at: www.law.yale.edu/documents/pdf/intellectual_life/west_papua_final_report.pdf

Buchheit, L., G. Mitu Galati and R. Thompson (2007) 'The Dilemma of Odious Debt' *Duke Law Journal,* 56(5): 1201- 1262

Campi, A. (2012) 'Monogolia's Quest to Balance Human Development in its Booming Mineral-Based Economy', *Brookings Institute,* January 2012 at: www.brookings.edu/research/opinions/2012/01/10-mongolia-campi

Campion, H. (1939) *Public and Private Property in Britain* (London: Oxford University Press)

Caney, S. (2006) *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press)

Carter, I. (2012) 'Left-Libertarianism and the Resource Dividend' in K. Widerquist and M.W. Howard (eds) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model (*New York: Palgrave Macmillan)

Casassas, D., and J. De Wispelare (2012) 'The Alaska Model: A Republican Perspective' in K. Widerquist and M.W. Howard (eds) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model (*New York: Palgrave Macmillan)

Chesterman, S. (2008) 'The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations - The Case of Norway's Sovereign Wealth Fund' *American University International Law Review* 23: 577-615

Choi, D. (2009) 'Law on Human Development Fund, Mongolia's Sovereign Wealth Fund to Pool in All Revenues from Mineral Resources including OT and TT has been Approved' *Dale Choi Blog*, 18 November 2009

Christiano, T. (2011) 'An Instrumental Argument for a Human Right to Democracy' *Philosophy and Public Affairs* 39(2): 142-176

Christman, J. (1991) 'Self-Ownership, Equality and the Structure of Property Rights, *Political Theory* 19(1): 28-46

Christman, J. (1994) *The Myth of Property: Toward an Egalitarian Theory of Ownership* (Oxford: Oxford University Press)

Clark, G., E. Caerlewy-Smith and J. Marshall (2007) 'The Consistency of UK pension Fund Trustee Decision Making' *Journal of Pension Economics and Finance* 6: 67-86

Clark, G., A. Dixon and A. Monk (2013) *Legitimacy, Governance and Global Power* (Princeton: Princeton University Press)

Clark, G., and E. Knight (2011) 'Temptation and the Virtues of Long-Term Commitment: The Governance of Sovereign Wealth Fund Investment' *Asian Journal of International Law* 1(1): 321-348

Clark, G., and A.H.B. Monk (2010a) 'The Norwegian Government Pension Fund: Ethics over Efficiency' *Rotman International Journal of Pension Management* 3(1): 14-19

Clark, G., and A.H.B. Monk (2010b) 'The Legitimacy and Governance of Norway's Sovereign Wealth Fund: the Ethics of Global Investment' *Environment and Planning A* 42: 1723-1738

Clark, G. and A.H.B. Monk (2012) 'Sovereign Wealth Funds: Form and Function in the 21st Century' in P. Bolton, F. Samama and J. Stiglitz (eds.) *Sovereign Wealth Funds and Long-Term Investing* (New York: Columbia University Press)

Cohen, G.A. (1995) *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press)

Cohen, J. (2010) 'Is There a Human Right to Democracy?' in *The Arc of the Moral Universe, and Other Essays* (Cambridge, Mass.: Harvard University Press) pp.349-372

Colquhoun, L. (2011) 'Future Fund Asserts Defensive Strategy' *Financial Times,* 25 September 2011

Connelly, S. (2007) 'Mapping Sustainable Development as a Contested Concept' *Local Environment* 12(3): 259–278

Controller and Auditor-General (2008) *Guardians of New Zealand Superannuation: Governance and Management of the New Zealand Superannuation Fund,* May 2008 (Auckland: New Zealand Government)

Costello, P. (2011) 'Whether Sovereign Wealth of Future, the Fund Needs Funds' *Sydney Morning Herald,* 14 September 2011 at: www.smh.com.au/federal-politics/political-opinion/whether-sovereign-wealth-or-future-the-fund-needs-funds-20110913-1k7l8.html

Criddle, E. (2006) 'Fiduciary Foundations of Administrative Law' 54 *UCLA Law Review*: 117-184

Criddle, E. (2010) 'Mending Holes in the Rule of (Administrative) Law' *Northwestern University Law Review* 104 (3): 1271- 1280

Criddle, E. and E. Fox Decent (2009) 'A Fiduciary Theory of Jus Cogens', *The Yale Journal of International Law* 34: 331-387

Cudd, A. (2008) 'Contractarianism' in E. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition) at: www.plato.stanford.edu/archives/fall2008/entries/contractarianism

Cummine, A. (2011a) 'Overcoming Dividend Skepticism: Why the World's Sovereign Wealth Funds Are Not Paying Basic Income Dividends', *Basic Income Studies*, 6(1), Article 4

Cummine, A. (2011b) 'Share the Wealth While it Lasts' *Sydney Morning Herald*, 11 April 2011

Cummine, A (2011c) Author notes of Fran Ulmer', *Exporting the Alaska Model Workshop*, 22 April 2011

Cummine, A. (forthcoming) 'Ethical Sovereign Investors: Sovereign Wealth Funds and Human Rights' in J. Černič and J. Bohoslavsky (eds.) *Making Sovereign Financing & Human Rights Work* (London: Hart)

Das, U., Lu Y., Mulder C., and A. Sy (2009) 'Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations.' *IMF Working Paper* 09/179 (Washington DC: IMF) at: www.imf.org/external/pubs/ft/wp/2009/wp09179.pdf

Das, U., A. Mazarei and H. van der Hoorn (eds.) (2010) *The Economics of Sovereign Wealth Funds: Issues for Policymakers* (Washington DC: IMF)

Davis, J., Ossowski R., Daniel J.A and S. Barnett (2003) 'Stabilization and Savings Funds for Nonrenewable Resources: Experience and Fiscal Policy Implications', in J.

Davis, R. Ossowski and A. Fedelino (eds.) *Fiscal Policy Formulation and Implementation in Oil-Producing Countries* (Washington D.C: IMF)

Davidson, C. M. (2009) *Abu Dhabi: Oil and Beyond* (New York: Columbia University Press)

Davidson, C. M. (2012) *After the Sheikhs: The Coming Collapse of the Gulf Monarchies* (London: Hurst & Co.)

Demeyere, B. (2011) 'Sovereign Wealth Funds and (Un)ethical Investment: Using 'Due Diligence' to Avoid Contributing to Human Rights Violations Committed by Companies in the Investment Portfolio' in G. Nystuen, A. Follesdal and O. Mestad (eds*) Human Rights, Corporate Complicity and Disinvestment* (Cambridge: Cambridge University Press)

Di Natale, R. (2012) 'Government Investment Funds Amendment (Ethical Investment) Bill 2011', *Second Reading Speech*, 13 September 2012, (Australia: The Commonwealth Senate)

Dixon, A., and A.H.B Monk (2011) *The Design and Governance of Sovereign Wealth Funds: Principles and Practices for Resource Revenue Management*, 30 October 2011 at: www.ssrn.com/abstract=1951573

Dixon, A. and A.H.B. Monk (2012) 'Rethinking the Sovereign in Sovereign Wealth Funds' *Transactions of the Institute of British Geographers* 37(1): 104-117

Dobson, A. (1999) *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford: Oxford University Press)

Drezner, D. (2008) 'Sovereign Wealth Funds and the (in)Security of Global Finance' *Journal of International Affairs* 62 (1): 115–31

Dunn, J. (1984) 'The Concept of 'Trust' in the Politics of John Locke' in R. Rorty (ed.) *Philosophy in History: Essays on the Historiography of Philosophy* (Cambridge: Cambridge University Press)

Dworkin, R. (1986) *Law's Empire* (Cambridge, MA: Harvard University Press)

Dworkin, R. (2000) *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press)

Electoral Commission (2012) *Police and Crime Commissioner Elections in England and Wales: Guidance for Candidates and Agents*, at: www.electoralcommission.org.uk/__data/assets/pdf_file/0009/148743/PCC-Part-1-Can-you-stand-for-election.pdf

El-Katiri, L., B. Fattouh and P. Segal (2011) 'Anatomy of an Oil-Based Welfare State: Rent Distribution in Kuwait' *LSE Global Governance Research Paper* No 13

Erickson, G. and C. Groh (2012a) 'Permanent Perhaps: Challenges to the Model in Alaska in Its First 30 Years', in K. Widerquist and M.W. Howard (eds.) *Alaska's*

Permanent Fund Dividend: Examining Its Suitability as a Model? (New York: Palgrave Macmillan) pp.41-48

Erickson, G. and C. Groh (2012b) 'How the APF and the PFD Operate: The Peculiar Mechanics of Alaska's State Finances' in K. Widerquist and M. W. Howard (eds.) *Alaska's Permanent Fund Dividend: Examining Its Suitability as a Model?* (New York: Palgrave Macmillan) pp.99-114

Estlund, D. (2008) *Democratic Authority* (Princeton, NJ: Princeton University Press)

Farrell, D.M. (2012) 'There's More to Democracy than Polling Day: Citizen Engagement Between Elections', *Keynote paper at the Australian Electoral Research Forum*, 19-20 Nov 2012 (Australia: Australian Electoral Commission) at www.aec.gov.au/About_AEC/research/caber/keynote.htm

Farrell, D., Lund, S., Gerlemann, E., and P. Seeburger (2007) *The New Power Brokers: How Oil, Asia, Hedge Funds, and Private Equity Are Shaping Global Capital Markets* (San Francisco: McKinsey Global Institute)

Fearon, J. (1999) 'Electoral Accountability and the Control of Politicians: Selecting Good Types versus Sanctioning Poor Performance' in A. Przeworski, B. Manin and S. Stokes (eds.) *Democracy, Accountability, and Representation* (Cambridge: Cambridge University Press)

Feinberg, J. (1986) *Harm to Self: The Moral Limits of the Criminal Law*, Vol. 3 (Oxford: Oxford University Press)

Feng, Z. (2009) 'How should Sovereign Wealth Funds Be Regulated?' *Brooklyn Journal of Corporate Finance and Commercial Law* 3(2): 483-511

Ferejohn, J. (1986) 'Incumbent Performance and Electoral Control' *Public Choice* 50(1–3): 5–26

Fini, M. (2011) 'Financial Ideas, Political Constraints: Sovereign Wealth Funds and Domestic Governance' *Competition and Change* 15(1): 71-93

Financial Times (2011) 'After Qaddafi: A Spent Force' *Financial Times*, 8 September 2011, at: www.ft.com/cms/s/0/1b5e11b6-d4cb-11e0-a7ac-00144feab49a.html

Finn, P. (1995) 'The Forgotten 'Trust': The People and the State' in M. Cope (ed.) (1995) *Equity Issues and Trends* 131 (Sydney: Federation Press)

Fishkin, J. (1995) *The Voice of the People* (New Haven, CT: Yale University Press)

Fishkin , J (2009) *When the People Speak* (Oxford: Oxford University Press)

Flomenhoft, G. (2012) 'Applying the Alaska Model in a Resource-Poor State: The Example of Vermont' in K. Widerquist and M. Howard (Eds) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform Around the World,* (New York: Palgrave Macmillan) pp.85-108

Fox-Decent, E. (2005) 'The Fiduciary Nature of State Legal Authority', *Queen's Law Journal* 31: 259 - 310

Fox-Decent, E. (2011) *Sovereignty's Promise: The State as Fiduciary* (Oxford: Oxford University Press)

Fox-Decent, E. and E. J. Criddle (2009) 'The Fiduciary Constitution of Human Rights' *Legal Theory* 15(4) pp.301 -336

Frankel, J. (2010) 'The Natural Resource Curse: a Survey' *Harvard Kennedy School Faculty Research Working Paper Series*, February 2010 RWP10-005J

Freeden, M. (1998) *Ideologies and Political Theory* (Oxford: Oxford University Press)

Fressola, A. 'Liberty and Property: Reflections on the Right of Appropriation in the State of Nature', *American Philosophical Quarterly* 18(4): 315-322

Fung, A (2004) *Empowered Participation: Reinventing Urban Democracy* (Princeton, NJ: Princeton University Press)

Fung, A (2006) 'Varieties of Participation in Complex Governance', *Public Administration Review* 66–75

Fung, A (2007) 'Democratic Theory and Political Science,' *American Political Science Review* 101: 443–58

Fung, A. (2012) 'Continuous Institutional Innovation and the Pragmatic Conception of Democracy' *Polity* 44(4): 609-624

Future Fund (2012) 'Submission to the Finance and Public Administration Legislation Committee', *Inquiry into the Government Investment Funds Amendment (Ethical Investments) Bill 2011* (Melbourne: Future Fund)

Future Fund (2013) 'Future Fund Excludes Tobacco Producers', *Future Fund Media Release*, 28 February 2013

Galema, R., A. Plantinga and B. Scholtens (2008) 'The Stocks at Stake: Return and Risk in Socially Responsible Investment' *Journal of Banking and Finance* 32: 2446–2454

Gallie, W. (1955) 'Essentially Contested Concepts' *Proceedings of the Aristotelian Society* 56: 167–198

Gamble, A. and R. Prabhakar (2006) 'Attitudes of Young People Towards Capital Grants' in W. Paxton and S. White (eds.) *A Citizen's Stake: Exploring the Future of Universal Asset Policies* (Bristol, UK: Polity Press)

Gaspart, F. and A. Gosseries (2007) 'Are Generational Savings Unjust?' *Politics, Philosophy and Economics* 6(2): 193-217

Gelpern, A. (2011) 'Sovereignty, Accountability and the Wealth Fund Governance Conundrum' *Asian Journal of International Law* 1(1): 289-320

GIC (2011) *Report on Implementation of Santiago Principles*, at: www.gic.com.sg/en/about/santiago-principles

Gilson, R. J. and Milhaupt, C. J. (2008) 'Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Merchantilism' (18 February 2008) *Stanford Law and Economics Olin Working Paper No. 355*

Goldreyer, E.F and J.D. Diltz (1999) 'The Performance of Socially Responsible Mutual Funds: Incorporating Sociopolitical Information in Portfolio Selection', *Managerial Finance* 25: 23–36

Goldsmith, S. (2005) 'The Alaska Permanent Fund Dividend: An Experiment in Wealth Distribution' in G. Standing (ed.) *Promoting Income Security as a Right* (London: Anthem Press)

Goldsmith, S. (2010) 'The Alaska Permanent Fund Dividend: A Case Study in Implementation of a Basic Income Guarantee' *Paper presented at the 13th Basic Income Earth Network Conference*, University of Sao Paulo, Brazil, 30 June – 2nd July 2010

Goldsmith, S. (2012) 'The Economic and Social Impacts of the Permanent Fund Dividend on Alaska' in K. Widerquist and M. W. Howard (eds) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model* (New York: Palgrave Macmillan) pp.49-64

Gough, J. (1973) *John Locke's Political Philosophy*, 2nd Edition (Oxford: Clarendon Press)

Gould, M. (2010) 'Managing Manna from Below: Sovereign Wealth Funds and Extractive Industries in the Pacific' *Economic Roundup* 1, pp. 63-86

Graver Committee (2003) 'The Report from the Graver Committee' *Ministry of Finance* (Norwegian Government) 7 July 2003

Greely, J. (1977) 'The Great Juneau Oil Dollar Giveway' *Alaska Advocate*, 20 January 1977: 4-5

Griffin, C. (2012) 'Stakeholding through the Permanent Fund Dividend: Fitting Theory to Practice' in K. Widerquist and M. W. Howard (eds.) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model* (New York: Palgrave Macmillan) pp.225-232

Griffith-Jones, S., and J. Ocampo (2008) 'Sovereign Wealth Funds: A Developing Country Perspective' *Working Paper Financial Markets Reform Program* (New York: Columbia University Initiative for Policy Dialogue) at: www.gsb.columbia.edu/ipd

Groh, C. and G. Erickson (1983) 'The Permanent Fund Dividend Program: Alaska's Noble Experiment' reprinted in Alaska Permanent Fund (1997) 'The Early History of the Alaska Permanent Fund' *Trustee Papers* 5, February 1997 (Juneau, Alaska: APFC)

Groh, C. and G. Erickson (2012) 'The Improbable but True Story of How the Alaska Permanent Fund and the Alaska Permanent Fund Dividend Came to Be' in K.

Widerquist and M. W. Howard (eds.) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model?* (New York: Palgrave Macmillan)

Grosseries, A. (2001) 'What do we Owe the Next Generations', *Loyola of Los Angeles Law Review* 35(1): 293-354

Groves, R., F. Floyd, M. Couper, J. Lepkowski, E. Singer and R. Tourangeau (2004) *Survey Methodology* (Hoboken, NJ: John Wiley & Sons)

Habermas, J. (1994) 'Three Models of Normative Democracy' *Constellations* 1(1): 1-10

Habermas, J. (2006) 'The Public Sphere' in R. Goodin and P. Pettit (eds.) *Contemporary Political Philosophy: An Anthology,* 2nd Edition (Oxford: Blackwell Publishing)

Hacke, C. (2012) 'Ethical Banking – Merely An Exotic Diversion For The World Of Finance?' *Goethe Institute* at: www.goethe.de/ges/soz/wsc/en9414259.htm

Hammer, C., P. Kunzel and I. Petrova (2008a) *Sovereign Wealth Funds: Current Institutional and Operational Practices* (Washington DC: IMF) at: www.imf.org/external/pubs/ft/wp/2008/wp08254.pdf

Hammond, J. (1984) 'Your Dividend: Here Today, Gone Tomorrow?' *Alaska Public Affairs Journal* (Winter 1984): 18-19

Harrison, G. (1999) 'The Economics and Politics of the Alaska Permanent Fund Dividend Progra' in C. Thomas (ed.) *Alaska Public Policy Issues: Background and Perspectives,* (Juneau, Alaska: The Denali Press)

Hartzok, A. (2012) 'Room for Improvement? Assessing the Strengths and Shortcomings of the Alaska Model in Advance of Export' in K. Widerquist and M. Howard (eds.) *Exporting the Alaska Model: Adapting the Permanent Fund for Reform around the World* (New York: Palgrave Macmillan) pp. 51-64

Harvard Law Review Author (2011) 'Deweyan Democracy and the Administrative State' *Harvard Law Review* 125: 580-601

Hatton, K. and K. Pistor (2011) 'Maximizing Autonomy in the Shadow of Great Powers: The Political Economy of Sovereign Wealth Funds' *Columbia Journal of Transnational Law* 50(1): 1-81

Hickel, W. (2002) *Crisis in the Commons: The Alaska Solution* (California: ICS Press)

Hickel, J. (2012) 'Constituting the Commons' in K. Widerquist and M. Howard (eds.) *Exporting the Alaska Model: Adapting the Permanent Fund for Reform around the World* (New York: Palgrave Macmillan)

Holtham, G. (1999) 'Ownership and Social Democracy' in A. Gamble and T. Wright (eds.) *The New Social Democracy* (Oxford: Blackwell)

Holtham , G. (1997) 'A Community Fund', *Business Strategy Review* 8(2): 10-13

Honore, A. (1961) 'Ownership' in A. Guest (ed.) *Oxford Essays in Jurisprudence* (Oxford: Clarendon)

Howard, M. W. (2012) 'A Cap on Carbon and a Basic Income: A Defensible Combination in the United States' in K. Widerquist and M.W.Howard (eds.) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform Around the World* (New York: Palgrave Macmillan) pp. 147-162

Howson, B. (ed.) (1988) *The Collected Papers of James Meade. Volume I: Employment and Inflation* (London: Unwin Hyman Ltd)

Hseih, C. (2003) 'Do Consumers React to Anticipated Income Changes? Evidence from the Alaska Permanent Fund' *American Economic Review* 93(1): 397–405

Hutchens, G. (2011a) 'Pressure for Sovereign Wealth Fund' *Sydney Morning Herald,* 18 February 2011 at: www.smh.com.au/business/pressure-for-sovereign-wealth-fund-20110217-1ay8m.html

Hutchens, G. (2011b) 'Heavyweights call for Sovereign Wealth Fund' *Sydney Morning Herald,* 18 February 2011 at: www.smh.com.au/business/heavyweights-call-for-sovereign-wealth-fund-20110217-1ayb3.html

IFSWF (2010) 'Home', *International Forum of Sovereign Wealth Funds Website* at: http://www.ifswf.org/index.htm

IFSWF (2011) 'IFSWF Member Experience in the Application of the Santiago Principles,' *IFSWF Report by IFSWF Subcommittee 1*, 7 July 2011, at: www.ifswf.org/pst/stp070711.pdf

IMF (2008) *Sovereign Wealth Funds—A Work Agenda* (Washington DC: IMF) at: www.imf.org/external/np/pp/eng/2008/022908.pdf

IPIC (2011) Chairman's Message, *IPIC Website* at: www.ipic.ae/en/Menu/index.aspx?MenuID=3&CatID=2&mnu=Cat

Isakova, A., A. Plekhanov and J. Zettelmeyer (2012) 'Managing Monogolia's Resource Boom' *European Bank for Reconstruction and Development Working Paper No. 138*, January 2012

IWG (2008) *Sovereign Wealth Funds Generally Accepted Principle and Practices "Santiago Principles"* (Washington DC: IMF), at: www.iwg-swf.org

Jackson, J. (2008) 'Foreign Ownership Of U.S. Financial Assets: Implications Of A Withdrawal' *U.S. Congressional Research Service* Rl34319 14 January 2008 (Washington DC: Congressional Publishing)

Jansen, H. (2010) 'The Logic of Qualitative Survey Research and its Position in the Field of Social Research Methods' *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* 11(2), Art. 11, at: nbn-resolving.de/urn:nbn:de:0114-fqs1002110

Johnson, K. and F. de Graaf (2009) 'Modernizing Pension Fund Legal Standards for the Twenty-First Century' *Rotman International Journal of Pension Management* 2(1): 44–51

Keenan, P. (2009) 'Sovereign Wealth Funds and Social Arrears: Should Debts to Citizens be Treated Differently than Debts to Other Creditors?' *Virginia Journal of International Law,* 49(2): 431-472

Keenan, P., and C. Ochoa (2009) 'The Human Rights Potential of Sovereign Wealth Funds' *Georgetown Journal of International Law,* 40(4): 1151-1180

Keller, A. (2009) 'Sovereign Wealth Funds: Trustworthy Investors or Vehicles of Strategic Ambition?' *Georgetown Journal of Law and Public Policy* 7(1): 333–72

Kelly, G., and R. Lissaeur (2000) *Ownership For All* (London: IPPR)

Kimmitt, R. (2008) 'Public Footprints in Private Markets: Sovereign Wealth Funds and the World Economy' *Foreign Affairs*, January-February 2008

Kotter, J. and U. Lel (2011) 'Friends or Foes? Target Selection Decisions of Sovereign Wealth Funds and Their Consequences' *Journal of Financial Economics* 101(2):381-411

Krueger, R.A and M. Casey (2009) *Focus Groups: A Practical Guide for Applied Research,* 4th Edition (California: SAGE Publications)

Kukathas, C. (2003) 'Responsibility for Past Injustice: How to Shift the Burden' *Politics, Philosophy and Economics* 2: 165–90

Kuttner, R. (1998) 'Rampant Bull' *American Prospect* 39, Jul-Aug 1998, pp.30-36

Kutz, C. (2011) 'Responsibility Beyond the Law' in G. Nystuen, A. Follesdal and O. Mestad (eds.) *Human Rights, Corporate Complicity and Disinvestment* (Cambridge: Cambridge University Press)

Lamb, G. (2011) *Technical Note on the Report of Bill Gates to the G20 on financing for Development,* 16 September 2011, at: www.steuergegenarmut.org/fileadmin/Bildgalerie/KampagnenSeite/Unterstuetzung_Ausland/Global/G20/110922_Gates_Technical_Notes.pdf

Langbein, J. (2005) 'Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest' *Yale Law Journal* 114(5): 929–990

Laslett, P. (ed.) (1988) *Locke's Two Treatises of Government* (Cambridge, UK: Cambridge University Press)

Lequiller, F. and D. Blades (2006) 'Understanding National Accounts' *OECD* (Paris: Economica)

Leydet, D. (2011) 'Citizenship' in E. Zalta (ed.) *The Stanford Encyclopaedia of Philosophy* (Fall 2011 Edition), at: http://plato.stanford.edu/archives/fall2011/entries/citizenship

Lewis, T. (2004) 'Devoted to the Dividend: Budget Crisis or Not, Alaskans Love Getting Their Share of Oil Wealth' *Alaska Magazine.com.* Sept. 2004, at: www.alaskamagazine.com/stories/0904/feature_pdf.shtml

Linaburg, C. and A. Maduell (2010) *Linaburg-Maduell Transparency Index* 2010 (Las Vegas: SWF Institute) at www.swfinstitute.org/research/transparencyindex.php

Macpherson, C. (1962) *The Political Theory of Possessive Individualism* (Oxford: Clarendon Press)

Maitland, F. (1911) in H. Fischer (ed) *The Collected Papers of F.W. Maitland* Volume III (Cambridge UK: Cambridge University Press)

Maitland, F. (1913) 'Introduction and Translator's Notes' in O. van Gierke (ed.) *Political Theories of the Middle Ages* (Cambridge, UK: Cambridge University Press)

Manin, B. (1997) *The Principles of Representative Government* (New York: Cambridge University Press)

Maskin, E. and J. Tirole (2004) 'The Politician and the Judge: Accountability in Government' *The American Economic Review* 94(4): 1034– 1054

McMahon, C. (2009) *Reasonable Disagreement: A Theory of Political Morality* (Cambridge, MA: Cambridge University Press)

Meade, J. (1964) *Efficiency, Equality and Ownership of Property* (London: Allen & Unwin)

Meade, J. (1989) *Agathotopia: The Economics of Partnership* (Aberdeen: Aberdeen University Press)

Meade, J. (1993) "Can We Learn a 'Third Way' from the Agathotopians?" in A. Atkinson (ed.) 'Alternatives to Capitalism: The Economics of Partnership' *Proceeding of a Conference held in Honour of James E. Meade* by the International Economics Association at Windsor, England (London: St. Martin's Press)

Mehrpouya, A. (2013) 'Sovereign Wealth Funds, The IMF And Transparency: Are They All Talking About the Same Thing?' *Working Paper Accounting and Management Control Department HEC Paris* (February 2013)

Mercer (2009) *Review of the Guardians of New Zealand Superannuation,* 28 October 2009 (New Zealand: Mercer)

Meyer, L. (2010) 'Intergenerational Justice' *The Stanford Encyclopedia of Philosophy* (Spring 2010 Edition) in E. Zalta (ed.), at: plato.stanford.edu/archives/spr2010/entries/justice-intergenerational

Miller, D. (1994) 'Complex Equality' in D. Miller and M. Walzer (eds) *Pluralism, Justice and Equality* (Oxford: Oxford University Press) pp. 197-225

Miller, D. (1995) *On Nationality* (Oxford: Clarendon Press)

Miller, D. (2000) *Citizenship and National Identity* (Cambridge: Polity Press)

Miller, D. (2007) *National Responsibility and Global Justice* (Oxford: Oxford University Press)

Miller, D. (2008) 'National Responsibility and Global Justice' *Critical Review of International Social and Political Philosophy*, 11(4), pp. 383-399

Miracky, W. (2008) *Assessing the Risks: The Behaviours of Sovereign Wealth Funds in the Global Economy* (Boston MA: Monitor Group)

Moller Okin, S. (1998) 'Gender, the Public, and the Private', in A. Phillips (ed.) *Feminism and Politics* (Oxford and New York: Oxford University Press)

Monk, A.H.B. (2008) *Recasting the Sovereign Wealth Fund Debate: Trust, Legitimacy, and Governance* (unpublished manuscript) at: papers.ssrn.com/sol3/papers.cfm?abstract_id=1134862

Monk, A.H.B. (2010a) *Sovereignty in the Era of Global Capitalism: The Rise of Sovereign Wealth Funds and the Power of Finance*, at www.papers.ssrn.com/sol3/papers.cfm?abstract_id=1587327

Monk, A.H.B. (2010b) 'The Coming Rise of Citizen Wealth Funds' *Oxford SWF Project Blog*, 11 November 2010, at: oxfordswfproject.com/2010/11/11/the-coming-rise-of-'citizenwealthfunds'/#comments

Monk, A. (2011a) 'Did Nigeria's Governor's read the Fine Print' *Oxford SWF Project Blog*, 22 August 2011, at: oxfordswfproject.com/2011/08/22/did-nigeria's-governors-read-the-fine-print/

Monk, A. (2011b) '"Insourcers" Score One Against "Outsourcers"' *Oxford SWF Project Blog*, 28 May 2011, at: oxfordswfproject.com/2011/03/28/'insourcers'-score-one-against-'outsourcers/

Morgan, D. (1988) *Focus Groups as Qualitative Research* (London: Sage)

Mubadala (2011) 'Vision, Mission and Values', *Mubadala Website* at: http://mubadala.ae/about/our-culture/

Mubadala (2012a) 'Fund Mission', *Mubadala Website* at http://mubadala.ae/about/history/

Mubadala (2012b) *Mubadala Consolidated Financial Statements 2012*, at http://mubadala.ae/images/upload_images/Half_Year_Results_Mubadala_Development_Company_2012.pdf [accessed 1 December 2012]

Munzer, S. (1990) *A Theory of Property* (New York: Cambridge University Press)

Murphy, L. and T. Nagel (2002*) The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press)

Murray, S. (2011) 'SWFs: Myths and Realities' *Keynote Presentation at Global Sovereign Funds Roundtable*, London, 5 May 2011, at: www.ifswf.org/pst/london11.pdf

Musgrave, R. (1959) *The Theory of Public Finance* (New York: McGraw Hill)

Nagel, T. (2002) *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press)

Nagel, T. (2005) 'The Problem of Global Justice' *Philosophy & Public Affairs* 33(2): 113–147

Ndanusa, S. (2012) 'The Take-Off of the Nigeria Sovereign Wealth Fund: Things to Watch Out For', 4 September 2012, at: www.articlesbase.com/wealth-building-articles/the-take-off-of-the-nigeria-sovereign-wealth-fund-things-to-watch-out-for-6164732.html

Norwegian Ministry of Finance (2008) 'The Government Pension Fund Divests its Holdings in Mining Company', *Press Release No 43/2008* (9 Sept 2008) at www.regjeringen.no/en/dep/fin/press-center/press-releases/2008/the-government-pension-fund-divests-its-.html?id=526030

Norwegian Ministry of Finance (2010) *GPFG Responsible Investment*, at: www.regjeringen.no/upload/FIN/brosjyre/2010/spu/english_2010/SPU_hefte_eng_ebook.pdf

Norwegian Ministry of Finance (2011a), *The Government Pension Fund Global Factsheet*, September 2011, at: www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/GPFG2Q_2011.pdf

Norwegian Ministry of Finance (2011b) *The Management of the Government Pension Fund in 2011, Report to the Storting*, at: www.regjeringen.no/en/dep/fin/Documents-and-publications/propositions-and-reports/Reports-to-the-Storting/2011-2012/meld-st-17-20112012-2/4/4/4.html?id=680576

Norwegian Ministry of Finance (2012) 'History' *GPFG Website* at www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/History.html?id=434896

Norwegian Ministry of Finance (2013) 'The Management of the Government Pension Fund in 2012' *Report No. 27 to the Storting* (Oslo: Norwegian Ministry of Finance) at http://www.regjeringen.no/pages/7772/chapter1_2.pdf,

NPRF (2013) 'Home Page' *National Pension Reserve Fund Website* at http://www.nprf.ie/home.html.

Nystuen, G. (2006) 'Investment Policies and Arms Production – Experiences from the Norwegian Pension-Fund Global' in J. Borrie and V. Randin (eds.) *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations,* (Geneva: United Nations Institute for Disarmament Research)

Nystuen, G., and A. Føllesdal, O. Mestad (eds.) (2011) *Human Rights, Corporate Complicity and Disinvestment* (Cambridge: Cambridge University Press)

NZSF (2009) *Responsible Investment in Practice Report*, June 2009, at: www.nzsuperfund.co.nz/files/Responsible%20Investment%20in%20Practice%20Report%20-%20%20July%202009.pdf

NZSF (2010a) *How we Invest*, June 2010, at: www.nzsuperfund.co.nz/files/FINAL%20HOW%20WE%20INVEST.pdf

NZSF (2010b) *Guardians Response to Independent Review*, June 2010 at: www.nzsuperfund.co.nz/files/Full_Updated_Response_to_Mercer_Review_at_June_2010.pdf

NZSF (2011a) *Guardians Respond to Metro Magazine Story, December 2011*, 28 November 2011, at: www.nzsuperfund.co.nz/files/FINAL%20VERSION%20Media_release_about_Metro_story.pdf

NZSF (2011b) *Statement of Investment Policies, Standards and Procedures*, 1 July 2011, at: www.nzsuperfund.co.nz/files/SUPERDOCS_n255533_v1_Statement_of_Investment_Policies__Standards_and_Procedures.pdf

NZSF (2012a) *Annual Report 2012*, (New Zealand: NZSF) at: www.nzsuperfund.co.nz/files/Annual%20Reports/NZ_Super_Fund_-_2011_12_Annual_Report_-_website.pdf

NZSF (2012b) 'Legislation and Mandate', *NZSF Website* at: www.nzsuperfund.co.nz/index.asp?pageID=2145879269

NZSF (2012c) *Responsible Investment Framework*, September 2012 at: www.nzsuperfund.co.nz/files/Responsible%20Investment%20documents/Responsible_Investment_Framework.pdf

NZSF (2012d), 'New Zealand Superannuation Fund Excludes Four Companies on Responsible Investment Grounds', *Press Release*, 26 September 2012, at: www.nzsuperfund.co.nz/news.asp?pageID=2145831983&RefID=2141742302

NZSF (2013a) 'Why We Exist', *NZSF Website* at www.nzsuperfund.co.nz/index.asp?pageID=2145875538

NZSF (2013b) *Companies Excluded from the New Zealand Superannuation Fund as at 31 February 2013*, 31 February 2013, at: www.nzsuperfund.co.nz/files/Responsible%20Investment%20documents/Exclusion%20List%2031%20February%202013%20for%20web.pdf

Ochoa, C. and P. Keenan (2011) 'The IFC's New Africa, Latin America, and Caribbean Fund: Its Worrisome Start, and How to Fix it' *Indiana Legal Studies Research Paper* No. 194, 12 May 2011, at: ssrn.com/abstract=1839725

OECD (2008a) 'Sovereign Wealth Funds and Recipient Country Policies' *OECD Investment Committee Report* April 4 (Paris: OECD)

OECD (2008b), 'OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies' *Ministerial Council Meeting* 4-5 June (Paris: OECD)

OECD (2008c) 'OECD Guidelines for Recipient Country Investment Policies Relating to National Security' *OECD Investment Committee Report* October 8 (Paris: OECD)

OECD (2009a) *SOEs Operating Abroad* (Paris: OECD)

OECD (2009b) *Accountability and Transparency: A Guide for State Ownership* 2010 (Paris: OECD)

Olson, D. (2006) 'Fair Exchange: Providing Citizens with Equity Managed by a Community Trust in Return for Government Subsidies or Tax Breaks to Businesses' *Cornell Journal of Law and Public Policy* 15(2): 102-243

O'Neill, M. (2008) 'What Should Egalitarians Believe?', *Philosophy and Public Affairs* 36 (2): 119-155

OMachonu, J. (2011) 'Analysts Condemn Governors over Sovereign Wealth Fund' *Business Day*, 26 August 2011, at: www.businessdayonline.com/NG/index.php/news/76-hot-topic/26496-analysts-condemn-governors-over-sovereign-wealth-fund
Otsuka, M. (1998) 'Self-Ownership and Equality: A Lockean Reconcilation' *Philosophy and Public Affairs,* 27(1): 65-92

Overton, R. and W. Walwyn (1646) *A Remonstrant of Many Thousand Citizens*, reprinted in A. Sharp (ed.) (1998) *The English Levellers* 33 (Cambridge: Cambridge University Press)

Oyola, J. and M. Sudreau (2013) 'Fiduciary Relations: Legal Framework and Implications for Responsible Sovereign Debt Management' in C. Esposito, Y. Li and J. Bohoslavsky (eds.) *Sovereign Financing and International Law* (Oxford: Oxford University Press)

Papua New Guinea (2011) 'Organic Law on the Sovereign Wealth Fund', *Papua New Guinea National Gazette*, No.G306, 2 November 2011

Parfit, D. (1984) *Reasons and Persons* (Oxford: Oxford University Press)

Park, D. and G. Estrada (2011) 'Developing Asia's Sovereign Wealth Funds: The Santiago Principles and the Case for Self-Regulation' *Asian Journal of International Law,* 1(2): 383-403

Pateman, C. (1989) *The Disorder of Women*: *Democracy, Feminism and Political Theory* (Cambridge: Polity Press)

Peterson Perspectives (2011) *Interviews on Current Topics with Edwin Truman: Freezing Libyan Assets: It's Complicated*, 3 March 2011 (Washington D.C.: Peterson Institute for International Economics), at: www.petersoninstitute.org/publications/interviews/pp20110303truman.pdf

Pettit (1997) *Republicanism: A Theory of Freedom and Governmen*t (Oxford: Clarendon Press)

Pettit , P. (1999) 'Republican Freedom and Contestatory Democratization' in I. Shapiro and C. Hacker-Cordon (eds.) *Democracy's Value* (Cambridge: Cambridge University Press)

Pettit, P. (2008) 'Three Conceptions of Democratic Control', *Constellations* 15(1): 46-55

Pettit, P. (2012) *On the People's Terms* (Cambridge: Cambridge University Press)

Pierson, C. (2004) *The Modern State,* 2nd Edition (London: Routledge)

PNG Post Courier (2012) 'Parlt Passes Sovereign Wealth Fund Bill' *Post Courier Online,* 23 February 2012 at: www.postcourier.com.pg/20120223/news09.htm

Pogge, T. (2002) *World Poverty and Human Rights* (Cambridge: Polity Press)

Pogge, T. (1994) 'An Egalitarian Law of Peoples' *Philosophy and Public Affairs* 23(3): 195-224

Preqin Equity (2010) 'Sovereign Wealth Funds: SWFs Total Assets Continue to Grow' *Prequin Special Report May 2010* (New York: Prequin)

Purdy, J. and K. Fielding (2007) 'Sovereigns, Trustees and Guardians: Private Law Concepts and the Limits of Legitimate State Powers' *Law and Contemporary Problems*, 70(2): 165-201

Raphaeli, N. and B. Gersten (2008) 'Sovereign Wealth Funds: Investment Vehicles for the Persian Gulf Countries' *Middle East Quarterly,* Spring 2008: 45-53

Rasheed, O. (2011) 'Sovereign Wealth Fund: Of Governor's Grouse and Jonathan's Lecture' *Nigerian Tribune,* 30 August 2011, at: www.tribune.com.ng/index.php/politics/27374-sovereign-wealth-fund-of-governorsgrouse-and-jonathans-lecture
Rau, S (2013) 'Sovereign Wealth Funds to Hit Record $5.6 Trln by Year-end Study' *Reuters Business News*, 12 March 2013, at: www.uk.reuters.com/article/2013/03/12/financial-funds-sovereign-idUKL6N0C45T220130312

Rawls, J. (1999a) *A Theory of Justice: Revised Edition* (Cambridge MA: Harvard University Press)

Rawls, J. (1999b) *The Law of Peoples* (Cambridge, MA.: Harvard University Press)

Rawls, J. (2001) *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press)

Raz, Joseph (1986) *The Morality of Freedom* (Oxford: Clarendon Press)

Reed, B. (2009) 'Sovereign Wealth Funds: The New Barbarians at the Gate? An Analysis of the Legal and Business Implications of their Ascendancy' *Virginia Law and Business Review* 4(97): 106-117

Reeve, A. (1986) *Property* (Atlantic Highlands, NJ: Humanities Press)

Reeves, P. (2010) 'In Ireland, the Death of the "Celtic Tiger" leads to Anger, Populist Uproar' *National Public Radio*, 2 October 2010, at: www.npr.org/blogs/thetwo-way/2010/10/02/130288328/in-ireland-the-death-of-the-celtic-tiger-leads-to-populist-anger-uproar

Reiche, D. (2008) 'Sovereign Wealth Funds as a New Instrument of Climate Protection Policy?' *Wuppertal Institut* No 173e

Richardson, B. (2008) *Socially Responsible Investment Law* (Oxford: Oxford University Press)

Richardson, B. (2009) 'Keeping Ethical Investment Ethical: Regulatory Issues for Investing for Sustainability' *Journal of Business Ethics* 87(4): 555–572

Richardson, B. (2011) 'Sovereign Wealth Funds and the Quest for Sustainability: Insights from New Zealand and Norway' *Nordic Journal of Commercial Law* 2: 1-18

Risse, M. (2005) 'How Does the Global Order Harm the Poor', *Philosophy and Public Affairs* 33(4): 349-376

Rose, D. and C. Wohlforth (2008) *Saving for the Future: My Life and the Alaska Permanent Fund* (Canada: Kent Sturgiss)

Rose, P. (2008) 'Sovereign Wealth Funds: Active or Passive Investors?' *Yale Law Journal Pocket Part* 118: 104-108

Rose, P. (2011) 'American Sovereign Wealth' *Moritz College of Law Working Paper Series* 161, 16 November 2011

Rozanov, A. (2005) 'Who Holds the Wealth of Nations' *Central Banking Journal* 15(4): 52-57

Rozanov, A. (2011) 'Definitional Challenges of Dealing with Sovereign Wealth Funds' *Asian Journal of International Law* 1(1): 249-265

Runciman, D., and M. Ryan (eds.) (2003) *Maitland: State, Trust and Corporation* (Cambridge: Cambridge University Press)

Saxon, M. (2009) 'It's Just Business, Or is It?: How Business and Politics Collide with Sovereign Wealth Funds' *Hastings International and Comparative Law Review* 32(2): 693-710

Santiso, J. (2008) 'Sovereign Development Fund: Financial Actors in the Shifting Wealth of Nations', in M. Rietveld (ed.) *New Perspectives on Sovereign Asset Management* (London: Central Banking Publications)

Scheffler, S. (2007) 'Immigration and the Significance of Culture', *Philosophy and Public Affairs* 35(2): 93-125

Scanlon, T. (1979) 'Equality' in his *Mortal Questions* (Cambridge: Cambridge University Press) pp.106-27

Segal, P. (2012) 'Alaska's Permanent Fund Dividend as a Model for Reducing Global Poverty' in K. Widerquist and M. W. Howard (eds.) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform around the World* (New York: Palgrave Macmillan) pp.109-122

Selfin, Y., R. Snook and H. Gupta (2011) *Sovereign Wealth Funds – the Key to Economic Success*, October 2011 (London: PwC)

Sen, A. (1999) 'Democracy as a Universal Value' *Journal of Democracy*, 10(3): 3-17

Singapore Ministry of Finance (2013) 'Our Nation's Reserves', at: http://app.mof.gov.sg/reserves.aspx

Skancke, M. (2003) 'Fiscal Policy and Petroleum Fund Management in Norway' in J. Davis (ed.) *Fiscal Policy Formulation and Implementation in Oil Producing Countries* (Washington DC: IMF)

Skancke, M. (2008) 'Foreign Government Investment in the U.S. Economy and Financial Sector' *Submission to the Committee on Financial Services, U.S. House of Representatives,* 5 March 2008

Slattery, L. (2010) 'The National Pensions Reserve Fund: An Obituary' *Irish Times*, 30 November 2011 at: www.irishtimes.com/blogs/theindex/2010/11/30/the-national-pensions-reserve-fund-an-obituary/

Snare, F. (1972) 'The Concept of Property' *American Philosophical Quarterly* April 1972: 200-206

Solomon, J. (2010) *Corporate Governance and Accountability* 3rd Edition (Chichester: Wiley)

Statman, M. (2000) 'Socially Responsible Mutual Funds' *Financial Analysts Journal* 56: 30–39

Stears, M. (2006) 'The Vocation of Political Theory: Principles, Empirical Inquiry and the Politics of Opportunity' *European Journal of Political Theory* 4(4): 325-350

Stein, B. (1976) 'Collective Ownership, Property Rights, and Control of the Corporation' *Journal of Economic Issues*, 10(2): 298-313

Steinberger, P. (2004) *The Idea of the State* (Cambridge, UK: Cambridge University Press)

Sunstein, C.R. (2002) *Risk and Reason: Safety, Law and the Environment* (Cambridge UK: Cambridge University Press)

Sunstein, C.R. (2005) *Laws of Fear: Beyond the Precautionary Principle* (Cambridge UK: Cambridge University Press)

Swift, A. (2006) *Political Philosophy: A Beginner's Guide* (Cambridge UK: Polity Press)

Swift, A. and S. White (2008) 'Political Theory, Social Science and Real Politics' in M. Stears and D. Leopold (eds.) *Political Theory: Methods and Approaches* (Oxford: Oxford University Press)

SWF Institute (2012) 'What is a Sovereign Fund', *Sovereign Wealth Fund Institute Website* at www.swfinstitute.org/what-is-a-swf/

SWF Institute (2013) *Sovereign Wealth Fund Rankings* at www.swfinstitute.org/fund-rankings/

Tamir, Y. (1993) *Liberal Nationalism* (Princeton: Princeton University Press)

Tan, K. (2004) *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press)

Tang, E. (2009) 'Mongolia Fund to Manage $30 Billion Mining Jackpot' *Bloomberg News,* 11 September 2009, at: www.bloomberg.com/apps/news?pid=newsarchive&sid=aWm8u8kb0R5E

The Economist (2012) *Democracy Index* 2012 at at: https://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex12

Thomas, L. (2011) 'Libya's Hidden Wealth May be Next Battle' *New York Times,* 3 March 2011

Thornton, R (2008) 'Ethical Investments: A Case of Disjointed Thinking' *Cambridge Law Journal* 67(2): 396–422

Truman, E. (2007) 'Sovereign Wealth Funds: The Need for Greater Transparency and Accountability' *Policy Brief in International Economics* 6 August 2007 (Washington: Peterson Institute for International Economics)

Truman, E. (2008) 'A Blueprint for SWF Best Practices' *Policy Briefs in International Economics* 3 April 2008 (Washington: Peterson Institute for International Economics)

Truman, E. (2010) *Sovereign Wealth Funds: Threat of Salvation* (Washington DC: Peterson Institute for International Economics)

Truman, E. (2011) 'Freezing Libya's Assets: It's Complicated', *Peterson Institute for International Economics, Interviews on Current Issues*, 3 March 2011, at: http://www.iie.com/publications/interviews/interview.cfm?ResearchID=1779

Tsani, S., I. Ahmadov and K. Aslanli (2011) *Governance, Transparency and Accountability in Sovereign Wealth Funds: Remarks on the Assessment, Ranking and Benchmarks to Date* (London: Public Finance Monitoring Centre)

Ujah, E. (2012) 'Nigeria: Sovereign Wealth Investment Becomes Operational' *AllAfrica.Com,* 21 December 2012, at: allafrica.com/stories/201212210262.html

Ulmer, F. (1979) 'Permanent Fund Policy: Memorandum from the Director of Policy Development and Planning' *Office of the Governor of Alaska*, 23 February 1979 [hardcopy provided to Author]

Uren, D. (2011a) 'Wealth Fund will Help the Australian Bond Market' *The Australian*, 18 April 2011

Uren, D. (2011b) 'Don't Waste the Mining Boom: IMF' *The Australian*, 29 April 2011

US House of Representatives Committee on Foreign Relations (2008) *The Rise of Sovereign Wealth Funds: Impacts on U.S. Foreign Policy and Economic Interests*, 21 May (Washington DC: US Government Printing Office)

Vanderborght, Y. and P. Van Parijs (2005) *L'Allocation Universelle* (Paris: La Decouverte)

Velculescu, D. (2008) 'Norway's Oil Fund Shows the Way for Wealth Funds', *IMF Survey Magazine* 9 July 2008, at www.imf.org/external/pubs/ft/survey/so/2008/POL070908A.htm

Waldron, J. (1990) *The Right to Private Property* (Oxford: Oxford University Press)

Waldron, J. (1994) 'Vagueness in Law and Language: Some Philosophical issues' *California Law Review* 82(3): 509-540

Waldron, J. (2004) 'Property and Ownership' *The Stanford Encyclopaedia of Philosophy* (Spring 2012 Edition) in E. Zalta (ed.), at: plato.stanford.edu/archives/spr2012/entries/property

Waldron, J. (2012) 'Political Political Theory', *Inaugural Lecture of the Chichele Professor of Social and Political Theory at Oxford University*, 3 May 2012

Walzer, M. (1983) *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books)

Walzer, M. (1989) 'Citizenship' in T. Ball, J. Farr and R. Hanson (eds.) *Political Innovation and Conceptual Change* (Cambridge UK: Cambridge University Press)

White, S. (2003) *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press)

White, S. (2007) *Equality* (Cambridge UK: Polity Press)

White, S. (2011) 'Basic Income versus Basic Capital: Can We Resolve the Disagreement?' *Policy and Politics* 39(1): 67-81

Widerquist, K.(2011) 'A Day-Long Discussion of "the Alaska Model" at the University of Alaska-Anchorage', *Alaska Dividend Blog* 10 May 2011, at: http://usbig.net/alaskablog/2011/05/a-day-long-discussion-of-"the-alaska-model"-at-the-university-of-alaska-anchorage/

Widerquist, K. (2012) 'Citizen's Capital Accounts: A Proposal' in K. Widerquist and M. W. Howard (eds.) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform Around the World* (New York: Palgrave Macmillan)

Widerquist, K and M. W. Howard (2012) 'Introduction: Success in Alaska' in Widerquist, K. and M. W. Howard (eds.) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model* (New York: Palgrave Macmillan)

Widerquist, K., and M. W. Howard (eds.) (2012a) *Alaska's Permanent Fund Dividend: Examining its Suitability as a Model* (New York: Palgrave Macmillan

Widerquist, K., and M. W. Howard (eds.) (2012b) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform Around the World* (New York: Palgrave Macmillan)

Wilson, E. (2012) 'Nigeria's Sovereign Wealth Fund Steps Forward', *Institutional Investor*, September 2012, at: www.euromoney.com/Article/3090052/Africa-Nigerias-sovereign-wealth-fund-steps-forward.html

Wiggins, D. (2000) 'Nature, Respect for Nature, and the Human Scale of Values' *Proceedings of the Aristotelian Society* 100 (1):1-32.

Wolf, C. (2010) 'Intergenerational Justice and Saving' in C. Favour, G. Gaus and J. Lamont (eds.) *Essays on Philosophy, Politics & Economics* (Stanford, CA: Stanford University Press)

Woods, C. (2011) 'Funding Climate Change: How Pension Fund Fiduciary Duty Masks Trustee Inertia and Short-Termism', in J. Hawley, S. Kamath and A. Williams (eds.) *Corporate Governance Failures: The Role of Institutional Investors in the Global Financial Crisis* (University of Pennsylvania Press, Philadelphia)

Woods, C. and R. Urwin (2010) 'Putting Sustainable Investing into Practice: A Governance Framework for Pension Funds' *Journal of Business Ethics* 92, pp. 1–19

Yeates, C. (2012) 'Heat on Labor over Tobacco Investments' *Sydney Morning Herald*, 9 January 2012

Yi-Chong, X. (2010) 'The Political Economy of Sovereign Wealth Funds' in X. Yi-Chong and G. Bahgat (eds.) (2010) *The Political Economy of Sovereign Wealth Funds* (New York: Palgrave MacMillan)

Zelleke, A. (2012) 'Basic Income and the Alaska Model: Limits of the Resource Dividend Model for the Implementation of the Unconditional Basic Income' in Widerquist, K., and M. Howard (eds) *Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform Around the World* (New York: Palgrave Macmillan)

Zoellick, R. (2010) *The End of the Third World? Modernizing Multilateralism for a Multipolar World* (Washington: World Bank)

AUTHOR INTERVIEWS

Council of Ethics, Norway (2010), Oslo, Norway, (3 August 2010)

David Murray, Head of the IFSWF (2010), Sydney, Australia (2 Feb 2010)

David Rae, NZSF Head of Investment Analysis (2012), Phone Interview (Dec 2012)

Future Fund Official (2012), Phone Interview (9 Dec 2012)

Martin Skancke, Director of the Norwegian Ministry of Finance (2010) Oslo, Norway (3 Aug 2010)

Mike Burns, CEO of APFC (2011), APFC Offices, Juneau (28 April 2011)

Mubadala Investment Manager (2011) Mubadala, Abu Dhabi UAE (Oct 2011)

UAE SWF Officials (2011) Abu Dhabi, UAE, Oct-Nov 2011 [7 confidential interviews]

SWF Officials (2010) IFSWF Sydney Meeting, 9-10 May 2010 [10 confidential interviews conducted]

LEGISLATION, CASES AND RESOLUTIONS

Act of the Government Petroleum Fund (1990) [Norway]

Act of the Government Pension Fund (2005) [Norway]

Credit Institutions (Stabilisation) Act 2010 [Ireland]

Future Fund Act 2006 [Australia]

Government Investment Funds Amendment (Ethical Investments) Bill 2011 [Australia]

Greisen v United States [1987] 831F.2d916 (9th Cir)

Nations Building Act 2008 [Australia]

National Pensions Reserve Fund and Miscellaneous Provisions Act 2009 [Ireland]

National Sovereign Investment Authority Bill (2010) [Nigeria]

New Zealand Superannuation and Retirement Income Act 2001 [NZ]

Organic Law on the Sovereign Wealth Fund 2011 [PNG]

The Constitution of the State of Alaska 1956

United Nations Security Council Resolution 1973 (2011)