

Territory and Self-Determination

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Keywords

territory, self-determination, colonialism, climate change, sovereignty

Abstract

This article focuses on discussions of territorial rights and self-determination in the last 15–20 years. Theories of territorial jurisdiction typically combine two elements. First, they offer an account of foundational title: What gives a particular set of people a claim to be located in an area, including the right to form political institutions to govern that space? Second, they offer an account of legitimate jurisdiction: What is the moral basis of a state's right to govern the area and its population? This article begins by reconstructing prominent accounts of foundational title and legitimate jurisdiction. After canvassing these views, I highlight three areas where further work is needed, particularly as the territorial states system begins to be challenged by climate change: the appropriate balance of sovereignty and international authority in a world of global interdependence, how to rectify imperial and colonial legacies in the states system, and the just distribution of territory.

INTRODUCTION

Territory is a new topic in contemporary political philosophy, having emerged only in the last 15–20 years. As recently as 2003, Allen Buchanan could write that “systematic liberal thinking about the making and unmaking of boundaries is in its infancy” (Buchanan 2003, p. 232). Rawls’s theory of justice had little to say on the topic. The point of territorial boundaries, for Rawls, was to ensure that a people is “given responsibility for maintaining [its] asset and bears the loss for not doing so” (Rawls 1996, p. 39). But Rawls provided no account of which territory should be assigned to which people and on what grounds.

Theorizing states’ territorial rights acquired greater urgency as cosmopolitan theorists began to offer systemic critiques of states’ claims to borders and resources, and of the territorial states system as a whole. Cosmopolitans prefer to treat the world’s resources as a global commons with respect to which every human being is symmetrically situated, reallocating their control and benefits in line with fair distributive principles (Barry 1982, Beitz 1999, Steiner 2005). Most are skeptical of the state’s claims to control immigration (Abizadeh 2008, Carens 2013, Oberman 2016). Some political cosmopolitans argue that the states system itself is radically unjust and, ideally, should be replaced by a different institutional arrangement (Caney 2005, pp. 161–62; Goodin 2007; Held 1995; Lu 2006).

Contemporary theories of territorial jurisdiction typically combine two elements. First, they offer an account of foundational title: What, if anything, gives a particular set of people a claim to be located in an area, including the right to form political institutions to govern that space? Second, they offer an account of legitimate jurisdiction: What is the moral basis of a state’s right to govern the area and its population?

This article begins by reconstructing prominent accounts of foundational title and legitimate jurisdiction. After canvassing these views, I highlight three areas where further work is needed, particularly as the territorial states system begins to be challenged by climate change: the appropriate balance of sovereignty and international authority in a world of global interdependence, how best to rectify imperial and colonial legacies in the states system, and the just distribution of territory.

I offer some conceptual clarifications before beginning. First, “territory” refers to the geographical domain of a state’s legal jurisdiction. Second, by “state,” I do not necessarily mean a centralized, Weberian, bureaucratic institution. Any institution that engages in binding collective rule-setting and can enforce its determinations counts as a state, even if it looks different from the nation-states we are familiar with. Third, states generally claim three rights over territory: (a) the right to exercise jurisdiction over a particular geographical space, free from foreign interference; (b) the right to regulate the natural resources in that space; and (c) the right to control its borders. Some of these claimed territorial rights are jurisdictional (e.g., the state’s right to noninterference in making law), while others are exclusionary (e.g., the state’s putative right to control immigration and resources) (Simmons 2016, p. 93). We should investigate the states’ jurisdictional and exclusionary claims separately, since states can wield territorial jurisdiction without the right to exclude foreigners. It may be that states have a legitimate moral justification for some territorial rights but not others.

FOUNDATIONAL TITLE

Most theories of territory begin with an account of the state’s foundational title to land. Foundational title is the right of individuals or groups to locate themselves permanently in an area, a right that permits them to establish political institutions that govern the space. To see why some foundational title is necessary, consider a case of forced removal (Stilz 2019, p. 33). Suppose settlers

overthrow an existing state and drive out all the inhabitants, who become refugees in neighboring territories. Even if the settlers go on to set up a perfectly just state in the area, we will still want to say that this perfect state has no right to its territory, since the settlers lacked any right to construct a state there in the first place: They lacked foundational title. This section canvasses three ways of construing foundational title: (a) as a property right, (b) as an occupancy right, and (c) as a right to use ecological or resource systems. These are not mutually exclusive; there may be more than one source of foundational title.

Foundational Title as a Property Right

A traditional way of construing foundational title is as an individual or collective property right. Inspired by Locke's [1990 (1690)] political philosophy, some theorists argue that individuals can acquire private property rights through first labor in the state of nature and can transfer aspects of these rights to the state. The state's territory, on this view, is "a patchwork composition from the holdings of its members," who come together to establish a state (Simmons 2016, p. 117). A more collectivist proprietary view is also possible, on which property rights are held by a group (e.g., a nation or state) that jointly appropriates the territory [Nine 2008, von Pufendorf 1934 (1704)]. Proprietary views can easily explain the state's putative exclusionary claims to control borders and resources, since property owners are thought to have strong rights to exclude others from goods they own. But proprietary views also have weaknesses. They depend on the existence of strong preinstitutional property rights, which many theorists have found questionable (Murphy & Nagel 2002).

Foundational Title as an Occupancy Right

A second way of conceiving foundational title is as a right of occupancy. Occupancy is a robust, temporally extended right to use a place, but it does not confer claims associated with property, like rights to alienate or to exclude others at discretion. Occupancy is therefore compatible with the view that the earth is humanity's common property or that it is no one's property (Stilz 2019, pp. 60–64).

Stilz (2013, 2019) and Moore (2015) both interpret foundational title as a right of occupancy. Stilz holds that that occupancy is an individual right to reside permanently in a particular place, to participate in the social, cultural and economic practices ongoing there, to be immune from expropriation or removal, and to return to the place if one leaves temporarily (2013, 2019). Stilz argues that the right to occupancy of a particular place is justified by the importance of individuals' located life-plans. Geography and climate affect the economic and subsistence practices people take up, making it difficult for them to reconstitute their practices in some very different place. Religious, cultural, or recreational activities often have territorial components: sled-dog racing belongs in the Arctic and surfing in coastal areas, and religions incorporate specific places or natural formations into their rituals of observance. Finally, people form personal bonds and enter work, religious, and friendship relationships in part because they expect to remain spatially arranged in certain ways. On Stilz's view, occupancy rights are grounded in individuals' interests in the security of their located life-plans and in being the agent in charge of controlling and revising these plans. A state acquires jurisdiction over a territory when it legitimately represents its rightful occupants. Such a state can assert jurisdiction over the aggregate of places its members occupy.

Moore (2015) argues that occupancy should instead be conceived as a group right (though she grants individuals rights of residency as well, based on their personal projects and relationships). She emphasizes that individuals "think of themselves as members of groups who share a place-related connection, who see themselves as located within a specific geographical area, which is

properly theirs, and that the right in question is not simply a right held by individuals, but a right held by the collective” (Moore 2015, p. 39). The group has an interest in exercising some control over the character, shape, physical appearance, and governance of the locations to which they are attached (p. 45). Moore attributes occupancy rights not only to territorial peoples, but also to substate groups like indigenous peoples, and even communities or neighborhoods (p. 42). While these substate groups may enjoy occupancy rights without full territorial rights, only a “people” is the right kind of group to possess jurisdiction over territory (p. 45). A people, for Moore, is a group that (a) shares a conception of itself as engaged in a common political project, (b) has the capacity to establish and maintain political institutions through which to exercise self-determination, and (c) has a history of political cooperation (p. 50). A people “can be self-determining through political institutions only in the area in which the group enjoys occupancy rights” (p. 37).

Moore’s (2015) view shares some commonalities with the account of foundational title offered by liberal nationalists [though she emphasizes political rather than cultural identity and stresses that political identities do not always track cultural differences (p. 80)]. Nationalists likewise hold that occupancy rights are collective rights, but they argue that these rights are held by nations, whose members are united by a common culture. Miller (2012) argues that nations acquire rights to a territory by transforming the land in ways that add both material and symbolic value to it. Nations cultivate the soil, build roads and waterways, and imbue areas within the territory (e.g., battlefields) with cultural significance. Over time, the national culture imprints itself on the nation’s homeland. Since a nation’s members have an interest in the preservation of their culture, they also have an interest in controlling their homeland.

One worry about group-based accounts of occupancy is that it is rare that everyone settled on a territory belongs to the same culture or shares the same identity. Even if we recognize residency rights for nonmembers, as Moore (2015) does, group-based views create two classes of residents: those who have privileged claims on the land, including the right to organize its public spaces according to their cultural or identitarian preferences, and those who do not (Nine 2022, pp. 112–19; Ochoa Espejo 2020, pp. 46–47; Stilz 2019, pp. 53–54). This sends the message that some residents are not full members of the community.

Foundational Title as a Right to Resources

Nine (2022, p. 5) has recently argued for additional foundational titles to territory, including “rights to secure access to the objects of our basic needs, like fresh water, and rights to continue using resource domains or resource systems.” Nine holds that people who depend on the maintenance of ecosystems or global systemic resources—like the Antarctic ice sheet, carbon sinks, ocean systems, or the absorptive capacity of the atmosphere—have foundational titles to the resources on which their needs depend. This may include rights to establish political institutions governing these resource systems (p. 57).

Nine also argues that people who use resource systems for purposes beyond needs satisfaction have foundational titles to these areas. A fisherman who fishes in a lake or a community that irrigates their crops from a river have rights to continue to access and use those bodies of water, or to be compensated in a way that leaves their economic and social goals unimpaired (Nine 2022, p. 65). [In cases where people are using unfairly large amounts of water, contra Nine, one might find redistribution without compensation acceptable (Ypi 2017).]

Finally, along with Kolers (2009) and Mancilla (2016b), Nine (2022) imposes a sustainability proviso on the use of land and resources. “[A] system of rights over resources must ensure sustainable management of ecosystems and resources to support the capacity of current or future generations to live together sociably in the area” (Nine 2022, p. 77; see also Kolers 2009,

pp. 134–35). Current uses may need to change in cases where sustainability becomes impossible. For Nine, these additional foundational titles are a ground for “overlapping territories,” about which I say more below. Depending on how the sustainability proviso is interpreted, it may prove quite revolutionary. As Mancilla (2016b, p. 226) argues, countries like the United States and Canada, which endorse nonsustainable approaches to land, “would be left devoid of a territorial claim until reshaping them to meet those minimum requirements.” Further research on the sustainability proviso might specify what being “devoid of a territorial claim” amounts to. Does it mean the state is subject to proportionate interference by other states to force it to change its resource-use practices? Does it lose its right to control its borders or natural resources? Might it be subject to more forceful forms of intervention or regime change?

LEGITIMATE JURISDICTION

Most territorial rights theories pair their accounts of foundational title with an account of legitimate jurisdiction, which explains how a particular state or political institution gains a right to govern a specific population and their territory. I define “legitimacy” as an institution’s possession of an exclusive moral right both to make laws on behalf of its members and to use coercion to implement these laws. Theories of legitimate territorial jurisdiction can be divided into (a) functionalist views and (b) views that additionally emphasize self-determination.

Functionalist Theories of Legitimate Jurisdiction

Pure functionalist theories of jurisdiction hold that a state’s successful performance of morally required functions—such as protecting human rights, defining property, enforcing justice, managing ecological systems, or providing public goods—suffices to ground its right to govern a population and territory. Functionalist considerations are surely an important ingredient of a plausible theory of territorial rights: Good governance matters. But are functionalist considerations sufficient to ground a right to territorial jurisdiction?

Many liberal theories hold that they are. Buchanan (2007, p. 247) argues that a state is morally justified in exercising political power over a population and territory if it “(1) does a credible job of protecting at least the most basic human rights of all those over whom it wields power and (2) it provides this protection through processes, policies, and actions that themselves respect human rights.” Functionalist accounts of state legitimacy often appeal to a natural duty of justice that requires us to comply with just institutions (Rawls 1999, p. 99).

But Buchanan’s (2007) functionalist theory of state legitimacy is retrospective. It tells us that if a sufficiently just state exerts control, then it has a right to rule the territory it rules, but it cannot explain which areas and populations the state should govern (Moore 2015, p. 5). So long as a state protects human rights, why can’t it extend its boundaries simply by extending its effective control? This exposes functionalism to the charge that it may license benign colonialism (Stilz 2019, pp. 91–92). Could a just state annex the territory of a neighboring state, gaining jurisdictional rights over that area (Simmons 2016, p. 75)? Such an “ideal takeover” (Taylor 2024) might occur in the aftermath of a just war or humanitarian intervention. Yet many people believe that occupying forces have a responsibility to restore self-determination to an occupied people, if the people can establish a decent regime. (For arguments that functionalists can successfully explain the wrongfulness of involuntary annexation, see Quong 2019, Koch Mikalsen 2020, Taylor 2024; for critique, see Hill 2023).

Another functionalist is Waldron (2011, p. 3), who criticizes approaches to state formation based on a “principle of affinity.” Waldron instead appeals to a “proximity principle,” associated with Immanuel Kant. According to Kant, people who are “unavoidably side-by-side” are likely

to come into conflict with one another about which scheme of property and other rules should regulate their interactions. In this situation, Kant (1999) argues that they must submit to a common jurisdictional authority to regulate their disputes. As Waldron (2011, p. 8) puts it, “states should be formed among people who occupy the same territory, whether they have any affinity with one another or not, because they are the ones who are most likely to be in conflict with one another.”

Yet, Waldron’s view lacks any principled criteria by which to determine appropriate boundaries. His account does not tell us why we are required to form a state together with these people rather than those (Miller 2016a). Disputes arise among people who live in neighboring border towns in different nations and between people who live at a distance (Nine 2022, pp. 146–47). Even if physical proximity might once have been a good proxy for those whose interactions required coordination, in a globalized world, we partake in conflicts with those far away. Waldron’s (2011) proximity principle would seem to justify a world state, rather than a state among those who live in a particular locality. Some embrace that implication, holding that the proximity principle, rightly interpreted, calls for us to transcend existing boundaries (Goodin 2022, Huber 2020, Ypi 2014). But others worry that even if cosmopolitan cooperation is morally mandatory, global authority should not erase institutions through which peoples exercise a right of self-determination (Laborde & Ronzoni 2016; Young 2007, p. 5).

Ochoa Espejo (2016) and Nine (2022) argue that our duties of political cooperation are geographically delimited. Schemes of place-specific coordination often develop around ecosystems, or locations with distinctive physical surroundings and climate. Our presence in a given place can generate a duty to cooperate in located conventions, if they exist, or to establish them if they do not. Ochoa Espejo and Nine argue that territorial jurisdictions ought therefore to be drawn around places: We should establish jurisdictional boundaries so as to successfully manage ecosystems and enable local coordination around shared resources (Ochoa Espejo 2016; Ochoa Espejo 2020, pp. 19, 151; Nine 2022, p. 158). Nine (2022) argues that cities and river catchments are foundational territories—places where people densely share space and resources in ways that oblige them to form systems of rules that coordinate their place-specific behavior. [Though he offers a somewhat different account of territorial rights, Kolers (2009) also emphasizes that holders of territorial rights, which he terms *ethnogeographic groups*, can be distinguished by their shared land-use patterns and understandings of land.]

Ochoa Espejo (2016) and Nine (2022) offer an important theory of morally mandatory duties of cooperation around shared resources. Yet if read as a general account of how to draw territorial boundaries, their view faces objections similar to those pressed against other functionalists. Nine (2022, p. 8) argues that “people in relevant proximity to each other have a collective obligation to coordinate their activities according to minimally just sets of rules.” But what counts as “relevant proximity?” Places bleed into one another. Which of many possible geographical units counts as a context in which individuals’ activities “physically coexist, overlap, and inevitably undermine each other” (Nine 2022, p. 164)? Insofar as they embrace “overlapping” and “nested” jurisdictions with “muddy” boundaries (Nine 2022, p. 153; Ochoa Espejo 2020, pp. 192, 195), Ochoa Espejo and Nine may welcome these indeterminate implications, an issue I come back to later. But if places bleed into each other, making it difficult to distinguish them, why not draw boundaries at the level of the globe?

Ochoa Espejo’s (2016) and Nine’s (2022) place-based proposal also takes little account of people’s judgments as to how, and by whom, they wish to be governed. Nine (2022, p. 172) argues that the cities of Windsor in Canada and Detroit in the United States ought to be “merged into one metropolitan unit,” seemingly regardless of the wishes of their inhabitants, because they share deeply interdependent networks of resource use and transport. Both authors also cite with approval the “bioregionalist” proposal to create an independent state of “Cascadia” encompassing

parts of the west coasts of the United States and Canada (Nine 2022, p. 133; Ochoa Espejo 2020, p. 178). Currently, this region is inhabited by citizens of the United States and Canada, as well as many Native American tribes and First Nations peoples. Many would like to maintain their current political communities rather than subsuming them into Cascadia. Do their preferences have any weight in the boundary-drawing process? If not, then the place-based view seems to face a benign-colonialism objection. If so, then place-based functionalism seems insufficient, by itself, to determine territorial jurisdiction rights. Instead, it must be combined with an additional principle of self-determination.

Theories of Legitimate Jurisdiction Requiring Self-Determination

If we accept a principle of self-determination, we view state legitimacy as having two distinct dimensions. Our most basic natural duties of justice require us not only to coordinate together in institutions that can perform morally mandatory functions but also to impose political order in a manner that treats people as self-determining agents who should be governed in a way that reflects their values and priorities. Many theories that emphasize collective self-determination also give weight to functionalist concerns. A common view is that a group must be capable of minimally just performance of state functions in order to have a right to collective self-determination, and that its self-determination must also be compatible with the performance of these functions for others (Altman & Wellman 2009, Stilz 2019). Satisfying this condition requires that the group claiming self-determination be capable of territorial organization, since state functions are difficult to perform within a dismembered, wholly discontinuous area (Nine 2022, p. 141).

Still, on a self-determination view, people are not required to coordinate with the most extensive possible groupings, or in the most just possible arrangements. Instead, we should adopt the minimally just institutional configuration that ensures the best fit between people's views about how and by whom they should be governed, and the political institutions that rule them (see Taylor 2024 for a similar argument advocating "coordination compatible discretion"). Where alienated minority groups (e.g., indigenous peoples and other substate minorities) have shared political commitments consistent with the provision of basic justice for all, and they can coordinate in territorially organized representative institutions, they may have claims to secession or internal autonomy. Next, I outline three accounts of self-determination.

The voluntarist theory of self-determination. The voluntarist theory holds that collectives' rights of self-determination are constructed on the basis of free consent of the governed. Voluntarists argue that subjecting people to political coercion without their consent objectionably infringes their "natural freedom," their ability to determine their lives by their own actions and decisions. A particular state has a right to rule a particular population only where its subjects have actually historically consented to that state (Simmons 2016). To be morally justified, the state's territorial and membership boundaries must be constructed on the basis of the choices of individuals "to submit both themselves and the land on which they live and work to the state's authority" (Simmons 2016, p. 117). Other voluntarist theories are "plebiscitary," holding that the majority of residents within a politically viable territory, acting on behalf of all, can make the choice to become a state (Altman & Wellman 2009). Altman & Wellman (2009, pp. 9, 13) argue that the moral right of self-determination is an "irreducibly collective" right held by any group "willing and able to respect human rights" and exercised by majority vote.

The nationalist theory of self-determination. The nationalist theory holds that cultural nations are bearers of rights to collective self-determination. A nation, on this view, is a group marked out by prepolitical characteristics that specially suit it for self-rule, like a shared history, language, religion, customs, or way of life, or a common public culture (Gans 2003; Kymlicka 1996; Margalit

& Raz 1990; Meisels 2009; Miller 2007, 2016a). Liberal nationalists argue that it is important to individual well-being to be able to live within the framework of one's culture and to transmit the culture to one's children. When cultural nations are granted a territorial unit of their own, their members can speak their language in public life, honor their traditions, and format that territory's institutions in ways that reflect their cultural preferences. On the nationalist view, political self-determination is valuable as a vehicle for preserving national cultures. A state has a right to rule a particular population and territory if (a) the majority of that territory's population forms a nation, (b) the state's institutions reflect that nation's shared culture, and (c) the state acts to reproduce the nation's culture over time, by granting it privileged status in state symbols, ceremonies, and the public education system.

The political autonomy theory of self-determination. Finally, the political autonomy theory holds that rights to collective self-determination are held by groups jointly committed to political association on minimally just terms (Moore 2015, Stilz 2019). Collective self-determination, on the political autonomy account, is a group right. But it is valuable because it serves important individual interests in avoiding alien coercion.

While the state is necessary to protect and secure individual autonomy—by protecting individuals' basic liberties, ensuring a fair distribution of income and wealth, and providing key public goods—state coercion at the same time poses a presumptive threat to its members' autonomy because it subjects them to an overwhelming and superior power that governs their lives. Individual autonomy is particularly threatened by alien coercion: coercion that bears no relation to the judgments, priorities, and values of those subjected to it. Life under an alien coercive institution will be experienced as though a hostile, threatening force controlled many of one's choices and activities. Individuals have a weighty interest in avoiding subjection to alien coercion (Stilz 2019, ch. 4).

If people are jointly committed to the political order that governs them, then even when they disagree with particular government decisions, they will not view the implementation of these decisions as the hostile impositions of an alien power. When an individual participates in the shared commitments of a self-determining group, and when the government imposes laws and policies on the basis of those shared commitments, its use of political coercion is not alien to the individual members of that group. Instead, individuals are governed by institutions they accept and support. Of course, since all political communities feature deep disagreements, one might question whether groups can in fact share common political commitments. But while it is unlikely in modern societies that a group would share a commitment to enact certain laws or to promote shared ethical or cultural values, it is more common that most members of a political community will share a commitment to associate together in institutions that they accept as a legitimate way to define and enforce justice among themselves (e.g., to accept Parliament or to accept the Constitution as a source of valid law). For that reason, where feasible and consistent with the minimally just performance of state functions, groups with common political commitments ought to be allowed to govern themselves. This arrangement promotes the political autonomy of those groups' members.

EXCLUSIONARY CLAIMS

These arguments for foundational title and legitimate jurisdiction seek to explain why a particular state has the right to govern a specific territory. But there is considerable controversy about whether states' exclusionary claims over borders and resources are justified. Proprietary theories, which hold that the state's territorial rights derive from the property rights of its people, typically argue in favor of exclusionary rights (Simmons 2016, p. 248). Cultural nationalists also endorse a right to exclude migrants; since the jurisdictional authority of the state is a vehicle for preserving

a nation's culture, states are thought to be entitled to control the flow of immigrants who might differ in their cultural preferences (Miller 2016b, p. 63; Moore 2015, p. 189).

But some authors are more skeptical about exclusionary rights. Stilz (2019, p. 187) argues that migrants can permissibly be excluded only if their settlement would significantly harm the state's inhabitants. Others argue that since the state's authority to police its borders subjects nonmembers to its laws, authority over border control must be conferred by global institutions or conventions (Abizadeh 2008; Brock 2020; Ochoa Espejo 2020, p. 214). This skepticism extends to states' claims over valuable natural resources. Moore (2015, pp. 162–85) holds that claims to the ocean, seabed, air, and many underground deposits cannot plausibly be justified on the basis of the values that justify the state's territorial jurisdiction (see also Stilz 2019, ch. 8). While debate about the extent of the state's exclusionary rights is ongoing, recent work suggests that those exclusionary rights are more limited than has traditionally been thought.

I now turn to three areas where further work on territorial rights is needed: the role of sovereignty in an interdependent world, the imperial and colonial legacies in the states system, and a theory of territorial justice. In each case, I highlight how progress on these issues could help theorize the just policy responses required of a territorial states system increasingly challenged by climate change, including the risk of climate displacement and the large-scale changes in land use and global governance that may be necessary to adapt to a warming world.

SOVEREIGNTY AND INTERDEPENDENCE

One crucial issue is how committed we should be to a principle of territorial sovereignty, understood as a community's right to supreme authority within its territory (Philpott 2010, p. 16). Territorial sovereignty in this sense need not be attributed only to nation-states but can be possessed by substate peoples with inherent rights of self-determination, including indigenous peoples and other substate minorities. Just as the value of individual autonomy gives rise to claims to liberty, the value of collective autonomy has traditionally been held to give rise to claims to territorial sovereignty (Beitz 1999). As individuals should be free to pursue their own ends within a personal sphere of choice, so too, it is argued, political communities should be free to pursue their own ends within some collective sphere of choice.

Yet, it is doubtful that there is any right to absolute Westphalian sovereignty, construed as a right of a people to make whatever decisions it wishes within its territory (Armstrong 2015; Blomfield 2019, p. 112; Mancilla 2021). States currently claim permanent sovereignty over their natural resources (Nine 2012, Wenar 2015), but a principle that would allow political communities to exploit their natural resources without any regard for outsiders jeopardizes urgent needs. If the Amazon rainforest is destroyed, or if nations insist on extracting all the oil and gas beneath their territories, many people who live at a distance will be exposed to serious harm, e.g., the loss of their homes because of sea-level rise or the loss of their livelihoods due to desertification. While most territorial rights theorists agree in rejecting absolute Westphalian sovereignty, they divide over whether sovereignty should be reconceived or abandoned. Some argue in favor of postsovereign arrangements, such as international "guardianship" of land or resources (Blomfield 2021, Mancilla 2021), or a system of overlapping territorial authorities (Nine 2022). Others argue that the concept of sovereignty should be retained but limited (Blomfield 2019, Stilz 2019), since it is "possible for an authority to be sovereign over some matters within a territory, but not all" (Philpott 2020).

Postsovereignty

Critics hold that sovereignty unduly neglects global interdependence (Nine 2022, Ochoa Espejo 2020, Young 2007). Ochoa Espejo (2020) and Nine (2022) argue that dominant theories of

collective self-determination adopt a “desert island model,” which implies a unified people who own a distinct land, clearly separated from all others, and who have “a unilateral right to control everything that happens inside it and at its edges” (Ochoa Espejo 2020, p. 5). But that model is false to the world we live in; decisions made within one group’s territory frequently affect the self-determination of other groups.

Young (2007, p. 7) calls for abandoning views that conceive self-determination on the model of sovereignty or noninterference, which involves “final authority over a unified and bounded jurisdiction in which outsiders have no say.” Rather, “insofar as outsiders are affected by the activities of a self-determining people,” they have a right to “make claims on the group, negotiate the terms of their relationships, and mutually adjust their effects” (Young 2007, p. 51). Young prefers a model of self-determination as nondomination, in which outsiders are given a say in the decisions of a self-governing group when those decisions affect them. [See Beitz 2012, Miller 2009, Wilson 2022 for related discussions of the “all-affected interests principle” (Goodin 2007).]

In place of sovereignty, critics often propose “dispersing political authority over nested territorial units” (Pogge 1992, p. 48); see also Held 2004). Nine (2022, p. 167) endorses a postsovereign model involving “overlapping groups with rights of self-determination over shared territories.” She argues for legal pluralism, a scenario in which the laws of many different entities apply within the same space. Alongside the foundational territories necessary to coordinate place-specific behavior, Nine allows that there will be a variety of other groups with rights to self-determination, such as indigenous peoples, federal units, and states. Conflict between their different systems of law “is to be expected” (Nine 2022, p. 213).

Nine (2022) does not offer definitive guidance for how to resolve these jurisdictional conflicts. She does say that “presumptive” authority over “place-specific” issues should rest with “foundational territorial units” (p. 196). But she also holds that higher-level entities—e.g., the state of Michigan, the United States, or global governance institutions—may override foundational units’ jurisdiction when those higher-level institutions can ensure greater “comparative efficiency or effectiveness” (Nine 2022, p. 208). For Nine, a particular institution can claim a right to govern an area if—compared with its rivals—it can do best at fulfilling necessary governance functions. This may license state, federal, and global authorities to strip indigenous tribes and local authorities of their jurisdiction, on grounds that higher-level authorities are better at competent rule.

Limited Sovereignty

An alternative approach is to reconceive territorial sovereignty rights as limited (Blomfield 2019, p. 126; Stilz 2019, ch. 9). On this view, a political community has supreme authority over decision making “within certain domains” and “subject to certain constraints” (Levy 2008, p. 68). The bounds of a people’s sovereignty are not spatially defined by the borders of its territory; rather, what counts as an internal sovereign matter is defined by the allocation of authority that is consistent with maintaining a system of collectively autonomous communities. A group’s right to live as it chooses on its territory is limited by a negative duty not to violate the personal and political autonomy rights of foreigners, and by a positive duty to safeguard occupancy and self-determination for all earth dwellers. Global governance bodies are necessary to define and enforce these constraints on state behavior.

This means the choice to sustain a high-emitting economy does not plausibly count as an internal sovereign matter justifiably insulated against interference. Small Pacific Island states like Kiribati, Tuvalu, the Maldives, and the Marshall Islands are forecasted to become uninhabitable by midcentury due to the high emissions of industrialized countries. It is no disrespect to the collective self-determination of the high-emitting states to interfere with them to ensure that

other groups can sustain their territory. A group's right to self-determination is not a right to do whatever the group wants; it is limited by the duty to respect the occupancy and self-determination rights of others.

Limited sovereignty may also require supranational regulation of state decisions in certain areas, for example, with respect to transboundary or global systemic resources that provide key water or ecosystem services, or that help to regulate the climate system, such that their loss or misuse would jeopardize human lives worldwide (Mancilla 2016a). Peoples whose territories contain global systemic resources have a duty to take into account the interests of other peoples and future generations in managing them. In complex cases of mutual dependence on a resource, the actions required by the duty to respect the personal and political autonomy of all will not always be obvious or transparent upon reflection; discerning them requires continual institutional specification (Nine 2014). In these cases, peoples have a duty to cooperate in establishing multilateral or supranational agencies that might impartially interpret, specify, and apply their environmental justice duties.

Still, according to the limited sovereignty approach, groups should preserve supreme authority over some areas of their collective life, particularly choices about central aspects of their political system. Just as an individual cannot be self-determining unless there are some central decisions about the shape of her life that are hers alone to make, so too there should be some range of political decisions that are a people's alone to make. So long as a people's jurisdiction over a given domain is consistent with the personal and collective autonomy of others, the group should be afforded a right to make decisions in this domain for itself. The claim to (limited) political sovereignty should protect a people's choice of relatively comprehensive aspects of its political system: for example, constitutional choices, choices about the basic structure of its economy, or about the design and use of its public spaces. These choices are a central part of group self-determination, and we see wide variation in how societies choose to structure these aspects of their social world.

Since both views acknowledge the need for international authority, the postsovereignty and limited sovereignty approaches converge to some degree. But the latter suggests that the authority of international institutions should be limited to adjudicating the requirements for maintaining a system of nondominated, collectively self-determining communities. Higher-level institutions should not be able to claim jurisdiction simply because they deem themselves more efficient or effective at decision making. When international interference is exercised on paternalistic grounds—e.g., to impose some countries' preferred constitutional arrangements or economic policies on other peoples—it wrongs the group subjected to it by failing to acknowledge that group's claim to independent self-determination. Within the scope of the constraints necessary to respect the autonomy of all, self-determining communities should have the right to decide their affairs for themselves.

IMPERIAL AND COLONIAL LEGACIES

Many scholars of empire have noted that deep-seated imperial legacies continue to structure the system of states. The states system itself was formed in an imperial context and continues to exhibit imperial features (Getachew 2021). While the post–World War II international order purports to be founded on respect for the sovereign equality of all states, the sovereignty of many postcolonial countries remains largely formal. Global South countries' sovereignty continues to be limited by relations of dependency built up during the colonial period (Getachew 2019, p. 32; Lu 2017, p. 93; Tully 2008), and is not equal in substance to that of states in the Global North. Nominally sovereign postcolonial states are often constrained to continue informal imperial economic and political relationships with great powers and their transnational corporations. International

institutions such as the International Monetary Fund, World Bank, and International Criminal Court, as well as practices of humanitarian intervention, are used to discipline states in the post-colonial world in a way they are not for hegemonic former colonizers (Anghie 2007, p. 191; Lu 2017, p. 95; Pitts 2013). Despite its ideology, then, our current international system is not actually a system of sovereign equality, but rather a system in which hegemonic states dominate and exploit subaltern states. The sovereignty of the Global South has historically been, and continues to be, uniquely vulnerable and dependent (Anghie 2007, p. 6; Grovogui 1996; Valdez 2023).

Many argue that these international hierarchies are forms of structural injustice, produced through taken-for-granted institutions, norms, and practices that reliably produce certain patterned outcomes of vulnerability (Lu 2017, Young 2010). The unjust colonial past has shaped long-term global social structures through which people continue to interact, and these structures are reproduced through the activities of contemporary agents, who contribute to enduring patterns of marginalization and subordination. Such historical patterns are especially salient in the face of climate change, since vulnerability to future climate impacts—such as displacement risk and the loss of life or livelihood due to natural disasters—is pervasively shaped by these historical legacies (Táíwò 2022, p. 161). It is often noted that those who are most exposed to climate change are those who have done least to contribute to it. In crafting a just response to climate change, the patterns of unequal vulnerability created by inherited social structures must therefore be taken into account. Because climate vulnerability intersects with other background injustices, absent remedial measures, the burdens of climate catastrophe will fall disproportionately on the poor, on racial minorities, and on the postcolonial world, while wealthy, often white members of well-functioning Global North states will be able to finance their own adaptation and protection.

Scholars divide on whether it is possible to construct a new and more equal world order on the basis of our inherited international system. Some hold that collective self-determination should be reconceived as a positive and not merely a formal freedom: a freedom that is effectively resourced to secure real, nondominated opportunities for collective decision making. Getachew (2019) shows that anticolonial nationalists demanded both sovereignty for their newly independent nation-states and a transformed international political and economic order that could underwrite those states' genuine control over their political and economic destiny. Anti-colonial movements were concerned to construct a global order that could overcome imperial configurations of hierarchy and unequal integration. The most ambitious visions attempted to eradicate economic dependency, through international redistribution to ensure material equality and through equal participation in formulating economic law (Getachew 2019, p. 12). Collective self-determination, on this view, must be paired with global background institutions that secure nondomination by ensuring each people an equitable share of wealth and political power (Laborde & Ronzoni 2016). An autonomy-protecting international order should include measures to limit dependency-inducing inequalities, such as global economic rules that moderate tendencies toward the accumulation of wealth, property, and power by dominant groups.

Others are more pessimistic that colonial elements can be excised from the sovereign state and the international order (Anghie 2007). They emphasize that our modern interstate system and the configuration of states within it, as well as the modern capitalist economy, are in large part the product of European colonialism. The universalization of the sovereign nation-state forced non-Western societies to live by European standards, which erased their traditional practices and forms of political organization and deprived colonized peoples of authenticity and cultural continuity. Coulthard (2014) challenges the idea that a politics of recognition can create a just legal and political relationship between indigenous nations and sovereign settler-states. Instead, he argues that indigenous emancipation requires resisting inclusion within modern capitalist nation-states

and cultivating a politics of resurgence (including struggles to regain land, discussed in the next section) that can revive alternative forms of polity and economy rooted in precolonial indigenous traditions. Since representative democracy in a constitutional nation-state is an imposed social form (Tully 2008, p. 157), some argue that postcolonial justice may require pluralizing the social and political structures through which self-determination is exercised (Lu 2017, p. 277).

TERRITORIAL JUSTICE

A final important question concerns territorial justice. When is a distribution of the earth's spaces just? This question is becoming more salient as climate change causes increasing land degradation. When might people whose land's habitability has been compromised justifiably raise claims to settle in and/or govern over new areas, or to be compensated by other communities? When should such claims be rejected because the affected persons' share of territory is already an equitable one? A related question is whether territorial justice applies only to human beings or whether there might also be duties toward nonhuman animals who rely on certain habitats, or toward the earth itself (Armstrong 2022, ch.7; Donaldson & Kymlicka 2011).

Distributive Egalitarian Theories of Territorial Justice

Most authors agree that a just distribution of territory must at least guarantee all individuals' basic needs (Moore 2015, p. 181; Risse 2012, p. 111). Some theorists additionally argue that each individual is owed an equal share of land and natural resources (Armstrong 2017, Barry 1982, Beitz 1999, Steiner 2005). Steiner (2005, p. 35) argues that "everyone everywhere" has a right to an equal share of the value of the earth's land and natural resources. To guarantee this right, countries should be required to pay taxes on the market value of their land to a "Global Fund," which would be redistributed on an equal global per-capita basis. Armstrong (2017, ch. 2) adopts a welfare-egalitarian metric, arguing that the benefits and burdens flowing from land and resources should be distributed to promote equality of well-being among all persons, whenever and wherever they exist. Though Steiner and Armstrong differ about the currency to be equalized—resources or opportunity for welfare—they converge in holding that territorial justice consists in an egalitarian distributive pattern.

Distributive egalitarians tend to view land instrumentally, as an important source of human wealth, well-being, and advantage. While this view is appropriate in some cases, there are also noninstrumental ways of valuing land (e.g., Mecca's religious value for Muslims) (Kolers 2012b, Moore 2019). Some theorists also criticize the instrumental attitude itself, which sees the natural world as at the disposal of humans (Moore 2019, p. 26).

One problem for distributive egalitarians is to articulate a metric for comparing and equalizing landholdings that does not privilege a particular way of life, conception of nature, or standard of property in a way that some groups could reasonably reject (Blomfield 2019, p. 68). Steiner (2005) imagines a hypothetical auction procedure in which societies bid competitively for the land they occupy. Countries whose land is of above-average market value are required to pay higher taxes to compensate those living in less-valuable places. But any auction device needs some prior definition of property rights in order to be carried out, and Steiner's (2005) proposal adopts full liberal ownership as the background against which hypothetical market values are to be assessed. This neglects the fact that different societies often have different conceptions of property: Many indigenous peoples hold goods in common ownership; societies reserve certain areas for preservation; and socialist societies impose significant restrictions on private ownership (Kolers 2009, Miller 2007, Stilz 2019). Armstrong's (2017, p. 125) view would allow some people to appropriate more than an equal share of space, so long as their appropriation contributes to an overall equality

of access to well-being. But one might be equally skeptical that we can arrive at an account of well-being that could reasonably be accepted by all members of a diverse global community.

Steiner's (2005) view also disadvantages societies that happen to occupy territories with economically valuable land, particularly if they do not wish to exploit it (Blomfield 2019, p. 73). If the Navajos' lands sit atop mineral deposits that mining companies are eager to exploit, then the value of their lands is to be determined by what the mining companies are willing to pay to access those deposits. Since their land has above-average market value, the indigenous inhabitants will have to either resign themselves to territorial dispossession or pay very high taxes to retain title to their homeland. Because of this, they will have to develop an economy that affords them a sufficient income stream to be able to pay, making them unlikely to be able to use their lands to pursue the (noncapitalist) lives they themselves see as valuable. Thus, Steiner's (2005) metric in effect forces other societies to adopt capitalist modes of land use (Blomfield 2019, Kolers 2009, Miller 2007, Stilz 2019).

Relational Theories of Territorial Justice

Other theorists favor a relational approach to territorial justice. Whereas the distributive egalitarian sees two people as equal when they have the same amount of some currency (resources, welfare, capabilities, etc.), the relational egalitarian sees two people as equal insofar as they occupy a valuable egalitarian relationship (e.g., of mutual justification, mutual nondomination, or equal social status). The goal of a relational account of territorial justice is to create a global community in which people stand in relations of equality. Often, distributing goods is instrumental to ensuring that people stand in relations of equality, but the key aim is to ensure the relationship, not to make sure everyone has the same amount of something.

What specific distributive criteria might be derived from a relational approach? Blomfield (2019) argues that territory should be distributed so that everyone's basic needs are satisfied, and every political community is "granted entitlements to resources for the legitimate exercise of collective self-determination" (p. 129). Stilz (2019, ch. 6) argues that a just distribution of territory must ensure that every earth dweller's fundamental territorial interests in occupancy, basic justice, and self-determination are fulfilled. On the basis of a relational approach, one might also argue that where an unequal distribution of territory facilitates intergroup relations of domination, exploitation, and control, there are important relational duties to redistribute holdings of territory, income, or wealth to mitigate these dependent social relations (Getachew 2019, Laborde & Ronzoni 2016). Relational approaches to territorial justice, while promising, are very much in their infancy, so much further work remains to be done.

Reparative Claims and Future Research

Both distributive and relational egalitarian accounts are forward-looking theories of territorial justice: They focus on the measures required to distribute territory justly in the future, rather than the measures required to rectify the wrongs of the past. This may make it difficult for them to accommodate indigenous claims to win back lands historically dispossessed by settler colonial states. While proprietary theories that rely on historic property entitlements may appear better placed to argue for land restitution (Simmons 2016, ch. 7), many indigenous peoples eschew seeing the earth as property held in ownership (Nichols 2020, p. 6). Theories of occupancy often suggest that the case for restitution of land may diminish over time, as the descendants of wrongful settlers form located life-plans or attachments in a place (Moore 2015, p. 147; Stilz 2019, p. 81; Waldron 1992). But there may be other forward-looking arguments for restitution of indigenous lands that do not rely on historic property entitlements. Stilz (2019, p. 83) argues that indigenous

communities have special claims on their former homelands when those lands are central to present generations' cultural and religious projects. We might also understand claims to land restitution as grounded in the ongoing denial of indigenous peoples' claims to self-determination, the need to build just institutions that would accommodate indigenous self-governance, and of their claim to a land base that could support genuine control over their political and economic future. Further work needs to be done on the normative bases for indigenous land claims and their role in an overall theory of territorial justice.

Theories of territorial justice are still nascent, and their further development is crucial. They should inform a just policy response to challenges associated with climate change, including the risk of displacement, the funding of climate adaptation measures, and the distribution of nonsubstitutable resources (e.g., the earth's supply of habitable land, clean air, and fresh water). Should a just policy response to the risk of climate displacement focus on taking measures so that people can adapt in place, or instead prioritize relocation (Draper 2022a,b)? Are individualized migration rights sufficient to ensure territorial justice, or should communities be afforded the right to relocate together and to reconstitute their citizenship in a new place (Angell 2021, Kolers 2012a, Nine 2014)? What reparative measures are required to ensure that climate impacts do not further exacerbate entrenched legacies of injustice and oppression?

CONCLUSION

This article has canvassed recent work on territory and self-determination in contemporary political philosophy, reconstructing several prominent theories of foundational title; legitimate jurisdiction; and the basis, if any, for states' exclusionary claims over borders and resources. This survey also pointed out three key areas where further research is needed. First, what is the proper balance between sovereignty and international authority, and are postsovereign arrangements preferable to limited sovereignty? Second, how might international society address the persistence of imperial and colonial legacies and reform the states system toward a more equal world order? And third, what is the best account of territorial justice? Should we prefer a distributive or relational egalitarian approach, and how might we integrate reparative claims alongside measures to distribute territory justly in the future? Since territory is a relatively new topic in political philosophy, work on these issues could move the field in new directions, particularly as the territorial states system begins to be challenged by climate change.

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