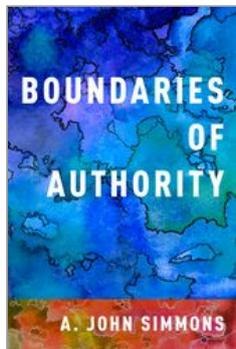


Territorial Rights

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Boundaries of Authority

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Justificatory Strategies

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Abstract and Keywords

Chapter 4 examines the possible strategies of moral justification for states' claims to jurisdictional and property-like authority over a particular geographical territory. It distinguishes nationalist, functionalist, and voluntarist strategies, dividing this last category into Lockean-individualist and plebiscitary (or majoritarian) voluntarism. All of these strategies are viewed as possible responses to cosmopolitan skepticism on these questions. Nationalism, functionalism, and plebiscitary voluntarism are criticized for their strongly counterintuitive implications. In particular, the chapter stresses their problems with "trapped minorities," where minority groups or individuals do not share the political interests and assumptions of the majority nation or people, and their implausible commitments concerning "rights

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supersession,” where rights are assumed to lapse or pass to wrongdoers.

Keywords: jurisdiction, property, territory, cosmopolitanism, nationalism, functionalism, voluntarism, Locke

Justifying Territorial Claims

Recall my earlier summary of the kinds of standard-case rights of control over particular geographical territories that modern states claim: (a) the right to coercively regulate the conduct of all within the territory by means of enforcing all legal rules and directives of the state; (b) the right to full control over the land and resources within the territory that are not privately owned; (c) the right to tax and regulate privately owned land and resources within the territory; (d) the right to control or prohibit movement across territorial boundaries; (e) the right to determine the standing of those within the territory (by, e.g., establishing rules governing residency, diplomatic status, or citizenship); and (f) the right to prohibit individual or group territorial secession or alienation of territory to nonmember persons or groups. These rights, remember, divide naturally into those that are primarily *jurisdictional*—in being claims primarily to regulate and *control* a particular territory—and those that are more *property-like*, exclusionary claims over a region: claims to choose who or what may pass over its boundaries and who may use (and how they may use) the land and resources located within those boundaries.¹

(p.94) While we typically take for granted the legitimacy of established states’ claims to these kinds of rights—at least where the claims are longstanding and unchallenged (or, at least, not widely or loudly challenged)—we mostly agree that at least *some* such claims by states surely cannot be morally justified. For instance, I write these words less than a year after the Crimean peninsula was annexed by Russia, in a political move regarded as legitimate by only a tiny handful of Russia’s staunchest allies and condemned as indefensible by most of the world’s nations. This annexation, of course, imposed Russian political authority over not only Crimean residents but (importantly, in terms of Russian motivation) over Crimean land and resources (including gas and oil reserves and strategic ports). But exactly what kind of *justification* for claims to territorial authority is it that we think

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Russia lacks (with respect to Crimea) but the United States enjoys (with respect to Hawaii, say)? That is the kind of justificatory question that I want to try to answer in the remainder of this work.

I should stress from the start, though, that this is only one kind of justificatory question that could be asked about states' territorial claims. This question concerns the *particular* claims made by *particular* states to *particular* territories. Another interesting question—that I will not systematically pursue here—asks what it is that could justify the *general* claims made by states together to the entire world (indeed, to the entire usable universe). How did states collectively acquire the right to divide among themselves all usable land and resources? It is surely on reflection a quite striking and remarkable feature of our political lives that the usable earth is entirely claimed by states, and that of the territory remaining in the usable universe that is claimed by no particular state (e.g., the high seas, Antarctica, the earth's moon, outer space²), nearly all is regarded in international law as *res communis* (i.e., as held in common by *all* states collectively). Virtually nothing usable is treated as *res nullius* and so as legally available for appropriation or settlement.³

But however little we may actually question such arrangements, it is unquestionable that they have profound effects on individual and group liberty—particularly where groups seek to establish new, autonomous polities on territories of their own, but find all land (within or without existing states) legally closed to them. Locke famously wrote that “any number of men may” (p.95) join together in political society, but only because their doing so “injures not the freedom of the rest” (II, 95). Where the territorial claims made by political societies (on behalf of their willing members) *do* injure the freedom of other (less willing) individuals, are those territorial claims indefensible? Further, of course, Locke famously argued that *individuals* may legitimately appropriate unowned land only where there is “enough and as good left in common for others” (II, 27, 33). We may not by our appropriations deny others similar opportunities to appropriate. But are *states* immune from this Lockean proviso, free to take all usable territory as their own, without regard for actual or potential rival claimants? The Lockean theory of territory that I defend below implies, as we will see, that such practices by states cannot in fact be justified, and that what is

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not actively used, developed, or stewarded by the willing subjects of some legitimate polity (or by unincorporated individuals or groups) must be left unclaimed as *res nullius*.⁴ But I will not pursue this issue in any systematic fashion.

And there are many other questions that touch on the territorial dimensions of the modern state that I will not try to answer here. For instance, it has been regularly argued both that certain kinds of groups of persons have by their natures a right to a territory on which to govern themselves—even when there is no particular piece of land to which they obviously have a valid claim—and that it is best in various ways for all or most of the land in the world to be controlled by states or societies, rather than to be simply open for all to use—even when there is no special reason why one state rather than another should control any particular portions of the earth. Groups' rights of self-determination might indeed imply rights to territory; and the need for societal stewardship, in the face of potential for "commons tragedies," might indeed show that the needs of all are best addressed by some system of state control over land and natural resources. But I set these arguments aside, to be addressed by others. My concern here, to repeat, will be with the possible justifications for particular states in the world to exercise exclusive control over those particular geographical domains they (p.96) claim as their territories.⁵ And that issue cannot be adequately addressed simply by showing that *some* system of state control over land is morally required, that groups' rights of self-determination imply their rights to control *some* land or other, or that states cannot perform their core functions adequately without control over *some* territory.⁶ It is only through exploring additional principles—principles that indicate *which* (of the many possible) systems and *which* (of the many possible) distributions of land and resources are morally favored—that we can evaluate the specific territorial claims made by actual states.

Neither will I raise any basic questions about justifications for the modern state's territorial form. The Lockean theory I defend implies that it is perfectly permissible for political societies to take territorial form. But quite independent of that theory, of course, it is not especially difficult to think of good reasons, both explanatory and justificatory, for the evolution of political societies into territorial entities of the modern sort. States are in the business of delivering certain goods to their

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members, and their ability to do so more efficiently (than individuals can secure those goods for themselves) is an important part of the justification for *having* states. The most important of the goods states deliver are *public* goods, such as security (from domestic and foreign aggression), a monetary system, or clean air and water. And it is far more efficient to deliver such benefits to a discrete geographical area—and so to all members of the state within it—than it would be to deliver them to a set of members who were geographically dispersed or who were interspersed with nonmembers. More generally, one simply can't beat territorial concentration for administrative convenience.⁷

(p.97) Here, though, I focus on (what I take to be) the most basic *normative* question we can ask about states' territorial claims: namely, what kinds of moral justifications are available for particular states' claims to their particular claimed portions of the universe. We can make a start on exploring this issue by remembering (from the introduction) that states actually claim three different kinds of rights, of which territorial rights might at first appear to be but one. States claim not only rights to control specific geographical territories, but also rights with respect to both particular subject populations and alien persons and groups. Against their subject populations, states claim rights to coercively enforce legal requirements and rights to corresponding obedience from those subjects. And against aliens, states claim rights of nonaggression and noninterference (in their "domestic affairs"). But these three kinds of claimed rights, as we saw, overlap in various ways. The rights states claim over subjects are largely rights of *territorial* jurisdiction—that is, rights to make and enforce law for all those who are physically within the claimed territory; and the rights states claim against aliens are largely rights not to be harmed or interfered with in exercising their *territorial* control. So it seems extremely unlikely that the best justifications for the three kinds of rights claimed by states will turn out to be independent of one another. The obvious first question, then, is: how are they related, and which elements (if any) have justificatory priority?

Those writing about territorial rights uniformly proceed, either explicitly or implicitly, as if the primary moral relationship at issue in political philosophy is that of state to subject, with the contours of the other two relationships (i.e., of state to aliens

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and state to territory) having a derivative status. This seems to me correct. What gives each legitimate state its rights against aliens (rights to “external sovereignty”) seems clearly to be its need to limit interference by others in the assigned task of domestic governing, a task taken to be legitimated by the rightful association of the subjects that state comprises or represents. And what gives each legitimate state its rights to territorial control seems clearly to be the fact that the territory in question is either rightfully tied to the state’s subjects in some way or needs to be controlled in order for the state to perform its rightfully assigned tasks. The accounts of states’ territorial rights that will be discussed here all proceed on this understanding of the justificatory priority of the state-subject relationship, as will I.

We can call such accounts “hierarchical,” insofar as they regard one of the three categories of states’ claimed rights as primary or basic, with the others being derivative. But we could, in principle, defend an hierarchical account of territorial rights that did not, in this way, regard the state’s rights over its subjects as primary. We could, for instance, try to portray the state’s claims to territory as its most basic right and attempt to justify that kind of claim independently. We could then try to derive the state’s rights over subjects and the state’s rights against aliens by arguing that these are rights that are necessary to the state’s free (p.98) exercise of its more fundamental (and already justified) rights over territory. But such an account would be forced to regard the state as an independent agent, prior in moral standing to the citizens it serves, with claims to the earth that are more basic than those of individuals or nonpolitical groups. It is difficult (for me, at least) to see how the state’s claim to territory could be justified *except* through appealing to the claims or needs of the persons it rules, making it essential to begin any derivation with the state’s right to act on behalf of those subjects. So a “subject-based” hierarchical justification looks the most promising, a position confirmed by the structure of virtually all of the recent work (by philosophers and by political and legal theorists) on territorial rights.

But, of course, just as a theory of territorial rights *need not* be “subject-based” in its justificatory structure, it *need not* be hierarchical in any fashion at all. For instance, a utilitarian might try to justify the state’s rights over territory by direct or indirect appeal to the effects of such state control on human

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(or animal) happiness.⁸ But she could justify the state's rights over subjects and against aliens by precisely the same kind of direct appeal to utility, with none of the categories of right defended as primary and none derived from others regarded as more basic. How plausible one finds such suggestions will obviously depend on whether or not one believes that utilitarianism (or consequentialism more generally) is actually consistent with the defense of any theory of *rights*—either individual rights or state rights—as these rights are ordinarily understood. It is difficult on its face (for well-known reasons) to see how straightforwardly *act*-utilitarian reasoning could succeed in justifying much of anything in the way of enduring territorial rights for states. On such an approach, a state's particular territorial rights are to be determined at any moment by the extent to which those rights facilitate the promotion of ends like pleasure, happiness, or desire satisfaction (or, say, by the extent to which drawing the boundaries of the state in that particular place effectively internalizes externalities⁹). While there may, of course, be some tendency for such reasoning to yield as legitimate state territories those in fact currently effectively ruled by existing states—since utility tends to favor present settled possession (due to transaction costs)—it still seems likely that act-utilitarians will have to allow that state territories should change quite frequently, following the dramatic shifts in national or group needs produced by natural disasters, crop failures, droughts, exhaustion of natural resources, increases or decreases in population, and so on.¹⁰ And this result will probably not match many people's (p.99) intuitive sense of the morally justified territorial claims that states make—or, worse, it may strike us as failing to capture the idea of territorial *rights* at all.

Rule-centered consequentialist moral reasoning, of course, seems likely to come closer to justifying something like our intuitive view of enduring, stable states' rights over territories—due not only to the high transaction costs involved in less stable claims, but as well to the need for viable rules to both eliminate the necessity of complex calculation (so that the rules are relatively simple and memorable) and the need to look beyond utilities in the particular case to the general felicific tendencies of competing *policies*. But to defend such an approach, of course, we must first be prepared to defend some form of rule-consequentialism as our preferred moral

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theory—a genuinely daunting task in the opinion of most moral theorists. And even should we be prepared to go down that road, the results we reap might well turn out to be *more* conservative—with states’ justified territorial rights turning out to be *more* stable and enduring—than we should be prepared to accept. For rule-consequentialist reasoning must be consistently influenced by the weight of frustrated expectations and desires, however unjustified these might otherwise seem to be, and by considerations of simple convenience, thus biasing the theory against those who have “lost out” in the relevant context and against claims on behalf of alternative forms of social organization that fail to be instantiated. As an illustration of the likely result of such reasoning, notice that the *deeply* conservative body of the *international law* of territory often appears to be guided precisely by such rule-consequentialist reasoning about preferable policies.¹¹

(p.100) In any event, the real and most basic difficulty that I will stress here—that is, the real difficulty involved in defending any sort of consequentialist approach to the justification of states’ territorial rights—will be that the unremittingly “functionalist” orientation of such an approach yields theoretical commitments that are deeply counterintuitive (and that even functionalists themselves, in their most perceptive moments at least, seem eager to avoid). Consequentialism is, in this regard at least, a strange bedfellow with the kind of Kantian functionalism I have been examining throughout this book. There are, however, also a number of clearly nonfunctionalist approaches to justifying states’ territorial rights. I turn next to some broad organizational principles for discussing all of these approaches—and for discussing their responses to those who might be skeptical about the very possibility of justifying the kinds of territorial claims made by modern states.

Three Ways to Respond to the Skeptic

Plausible philosophical theories of states’ territorial rights seem to me to divide naturally into three (very) broad types, each of which identifies a different sort of collective as being entitled to the status of territorial rightholder. I’ll call these the “pure” types since, as we’ll see, many actual theories of territorial rights mix elements of more than one type. (I

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discuss some of the more obviously pluralistic approaches in chapter 6.)

Voluntarist theories maintain that groups of persons that choose to be (and are capable of being) self-determining political societies in fact possess the moral right to be or to make themselves autonomous states. Those groups that make such a choice may have, in consequence, the right to be self-determining on the particular geographical territory that they occupy. Exercising (or having the right to exercise) jurisdictional and property-like rights over that territory, the argument goes, is necessary to their being genuinely self-determining. On “plebiscitary” or majoritarian versions of voluntarism, it is the majority (or, perhaps, a super-majority) of the persons living in some territory, acting on behalf of all residents, that is taken to be entitled to make this choice.¹² On Lockean-individualist versions of voluntarism (like the one I defend in chapter 5), the territorial rights of voluntarily incorporated groups derive not from the choices of the majority of residents in some territory, but only from the choices of individual persons to convey to their states certain of the rights they antecedently possessed over the specific land on which those individuals live and labor.

(p.101) Second, *functionalist theories*¹³ derive states’ rights to territorial control from the fact that controlling territory is necessary to states’ performances of their morally mandatory functions. Because those functions must be performed territorially, a state’s right to perform them implies a right to exclusive control over the particular territories within which they are in fact performed. The moral mandates in question are generally derived from either broadly Kantian or broadly consequentialist moral theories. Kantians, as we have seen, take the morally mandatory function of states to be that of “doing justice”—that is, making it possible (as in Kant) for there to be determinate, enforceable individual rights (“especially property rights”¹⁴) or guaranteeing (as in Rawls) that all persons are subject to a just structure for the distribution of basic goods. Consequentialists take the morally mandatory task of the state to be that of maximizing overall good results, such as happiness or wellbeing.¹⁵ In both cases, reasonably robust rights of control over the specific territories in which the state does its work are thought to be required for

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states to function effectively (or at all) in accomplishing what morality requires of them.

Finally, *nationalist theories*¹⁶ hold that only groups that have certain additional characteristics, beyond mere willingness to be a polity or effectiveness in administering justice, possess the right of self-determination. These characteristics are generally taken to include features like a shared history, shared language, shared religion, shared customs or lifestyle, or (more generally) shared culture (perhaps along with a capacity for and shared interest in political self-determination, a shared sense of special associative obligations, etc.). And on many versions of nationalism, a further characteristic that is required for a right of self-determination is the group's attachment to a particular geographical territory on which the right to be self-determining may be exercised. The territory in question might be the group's "national homeland," or it might in some other way be specially tied to the group through the group's history, its productive labor, or (p.102) locations that have acquired national symbolic value. But it is the specific, morally valuable relationship between a nation's history and identity and a particular portion of the earth that is thought to ground that nation's territorial rights.¹⁷

Thus, voluntarists argue that decent states' territorial rights derive from the moral importance of group or individual *choice*—controlling territory is necessary to the success of any choice to create or to continue as a political society.

Functionalists say states' rights to control certain territories are required for them to perform the morally imperative tasks that only states can perform—without such territorial rights for states, for instance, there can be no *justice*. And nationalists justify states' territorial rights through appeal to the moral value of participation in cultural nationhood and to the ways in which control over a particular territory is centrally implicated in what it is to be one people, one nation.¹⁸

While these three approaches to justifying states' territorial rights disagree with one another in reasonably fundamental ways, their defenders have often cast their views as in even more basic opposition to a common opponent: the *cosmopolitan*.¹⁹ Cosmopolitan critics of the international state system deny that the "robust" territorial rights conferred upon sovereign states by international law correspond to states'

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actual *moral* rights over their territories. States' boundaries, some cosmopolitans claim, ought to be "open" or very "soft" (with respect to immigrants and travelers, say), being legitimately subject to only quite limited control by states themselves. Similarly, most cosmopolitans have challenged states' claims over the natural resources within their territorial boundaries. Resource-rich countries, they argue, are morally required at least to share their good fortune with less fortunate states, and possibly to equalize access to or wealth deriving from their resources. Such arguments, of course, are primarily attacks on the *property-like* territorial rights claimed by states, leaving largely unchallenged states' claims to their particular *jurisdictional* authority. As a rule, even cosmopolitans have reservations about the possibility or the desirability of a world-state, leaving them relatively content with states separately performing their mundane jurisdictional tasks.²⁰

(p.103) Importantly, this cosmopolitan skepticism about strong territorial rights is intended to apply not only to bad states, but to good ones. Justice requires of even (otherwise) perfectly just states that they exercise only quite nonrobust rights over the territories within which they have jurisdictional authority. It is also important to notice that each of the three approaches used to *justify* states' strong territorial rights might *instead* be employed to defend skepticism about states' claimed robust rights (a skepticism that would be similar to that associated with cosmopolitanism).²¹ Voluntarists, functionalists, and nationalists might all defend a set of necessary and sufficient conditions for states to possess the *de jure* robust territorial rights that cosmopolitans think impossible, but then argue that no (or few) *existing* states in fact satisfy these conditions. The result would be a defense of a more *contingent* skepticism about the moral justifiability of states' territorial claims than the kind of skepticism typically expressed by cosmopolitans.²² That, of course, is not the intent of the familiar versions of these theories, which aim to vindicate the territorial claims of reasonably just states. So our question in part will be: how convincingly can theories of states' territorial rights respond to such skepticism?²³

(p.104) Many recent theories of states' territorial rights, of course, are not "pure" versions of any of these three types. Altman and Wellman's plebiscitary voluntarism, for instance, rides on a straightforwardly functionalist account of state

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legitimacy: what makes a polity legitimate is its willingness and ability to perform the essential functions of protecting and respecting human rights. But any group that is able to perform these functions can (within limits) *choose to make* itself the legitimate authority in its territory. Stiliz, similarly, embraces Kantian functionalism but recognizes as well that the wrongs involved in plainly illegitimate expulsions and annexations “cannot be explained by purely functionalist considerations.”²⁴ So she adds a number of historical principles that limit or exclude authority for even perfectly functional states, in effect producing a hybrid account of territorial rights. There are also theories of territorial rights that purport to be “Lockean” (such as Cara Nine’s²⁵) while incorporating significant functionalist elements, and theories that are clearly nationalist in basic orientation but that utilize certain aspects of a more Lockean-looking approach (such as those of Miller and Meisels²⁶). So much in the literature on territorial rights is not as neat and clean as my division of theories into three distinct groups might suggest.

But while few actual attempts to justify states’ territorial rights may thus fully exemplify one of the three pure forms identified above, it will still prove very useful, I think, to identify the virtues and limits of those forms. My treatment of them in the rest of this chapter will, admittedly, be brief and general, aimed primarily just at locating and assessing the argumentative “cores” of those approaches. My hope is that we will then be better able to see the directions in which the failures of the pure forms have pushed those attempts—and the directions in which those attempts may need to be further pushed in order to successfully justify strong territorial rights for actual states. It is to that task of briefly discussing the pure forms and their recent approximations that I turn next.

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Nationalism

The most obvious strength of nationalist approaches to states' territorial rights is the ease with which they seem able to deal with the particularity of such rights. Because many nations have historical, cultural, and emotional ties to particular geographical territories, nationalists have a natural argumentative avenue for explaining why particular territories—and not just some territory (p.105) or other—ought to be subject to the exclusive control of particular states. The “central case” used to motivate David Miller’s account, for instance, is that of “a nation that over a long period occupies and transforms a piece of territory and continues to hold that territory in the present.” That nation, he claims, has a “quasi-Lockean basis” for a right to “the enhanced value that the territory now has,” both in the “economic sense” and in terms of “the symbolic significance” the national territory acquires.²⁷ Gans similarly takes the central roles that certain territories can play “in the formation of national identities” as an important determinant of the proper “location” for peoples to exercise their rights of self-determination.²⁸ The particular land and the particular people shape and transform one another, making them “belong” to one another.

An equally obvious first difficulty for such approaches, of course, is that even if we are persuaded of Miller’s conclusion in the idealized “central case,” “other cases may lack one or more of [these] features ... so the strength of the claim to territorial rights may vary.”²⁹ Nations may not have occupied their territory for very long, they may not have transformed it or enhanced its value significantly, or their identities may not have been shaped to their geographical locales in interesting ways. Worse, nations may not even be the current occupants of the territories to which they in fact have these sorts of connections. And still more important, most (if not all) of the states in the world that claim robust rights over particular territories are not single “nations” in any very strong sense, either because they are plainly multinational societies or because they simply lack the cultural cohesion or uniformity required for such an idealized notion of nationhood. These facts immediately suggest that nationalist accounts of what justifies territorial rights simply may not apply to many actual decent states, threatening to yield only skeptical conclusions,

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even should we embrace the argumentative paths nationalists advocate. And it gets worse.

Especially troubling are cases in which the state currently occupying (and claiming) the territory is not the one—or the only one—with the appropriate sorts of historical and cultural connections to the land to trigger nationalist-style reasoning about territorial rights. And, of course, even *more* troubling still are cases in which the current occupants took possession of the territory in question by plainly unjust or illegitimate means, but *do* (now) have these kinds of strong connections to “their” land. Such cases are unhappily commonplace, so any nationalist account that hopes to apply its arguments (nonskeptically) to the real world is obliged to address them. The standard argumentative move is to simply claim that the rights of innocent peoples (and persons) who are illegitimately (p.106) annexed, conquered, or expelled “fade out” with the passage of time, while new rights for those who have wrongly seized their territories (or for their descendants) “fade in.” While it is, of course, hard to be very precise about this process, it is a process that is assumed by many (including nonnationalist) writers on the subject to reflect the moral facts. Miller, for instance, maintains that while wrongful conquest or expulsion does not “immediately” give the wrongdoer territorial rights over the land illegitimately seized—so that his position does not amount to “a charter for thieves”—the question of who eventually “has the better title will be a matter of judgement.”³⁰ So while the wrongs states and groups do in achieving their territorial goals may initially call for restitution, for a restoration of the status quo ante, once those wrongs become older, the wrongs are “superseded” and there springs into being a new set of moral rights for a new set of people to control the unjustly acquired territory.³¹

Because virtually no modern states can make territorial claims that are not historically stained by such injustices, it may seem that a view like Miller’s is a necessary feature of any adequate theory of territorial rights. We should note two points, however. First, the devil here is surely in the details. Exactly *when and why* rights go away and appear, how soon and for what reason victims lose their claims to restitution or reparation, and wrongdoers (or their heirs) gradually acquire claims to ill-gotten gains, is a matter of significant theoretical and practical importance and great theoretical difficulty. And most of those who centrally rely on claims about rights

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supersession do little more than gesture at the phenomenon. Second, we will be required to accept a very dramatic and suspiciously self-serving account of the supersession of our states' territorial wrongs only if we think a standard of adequacy for theories of territorial rights is that they not be interestingly *revisionist* in their implications—that is, that they be able to explain why stable, reasonably just states in the world actually have legitimate territorial jurisdiction over all of the territory that they claim as theirs. If we are prepared to accept instead the possibility that even reasonably just states may not be morally entitled to all they claim, we can defend a more plausible account of the moral significance of the many relatively recent wrongs done by states in their quests for territory.

It may seem, of course, that a liberal nationalist who was made uncomfortable by a commitment to the vague “fading” of historical rights could simply abandon (p.107) that commitment,³² accepting that the historical claims of wrongly conquered or expelled people in fact persist through time, in competition with the newer claims of current (national) possessors. Something like this, for instance, appears (at first, at least) to be the stance taken by Meisels in her hybrid nationalist position (discussed at length in chapter 6). But while such a move appears to make it easier to reach the desired liberal nationalist conclusions, it is not a move we should accept. Those who have been wrongly driven from or concentrated on (portions of) their lands have often also been decimated in the process, making it shamefully simple for the current possessors' claims to the land to appear to easily outnumber or outweigh those of the dispossessed (an appearance Meisels in fact seems to accept at face value). Worse, of course, it is not at all obvious why laboring to build a life, a society, or a nation on land that one fully knows (or ought to know) was wrongly taken from others should ground any moral rights at all to the land in question, any more than my waxing or building my life around the car I stole from you gives me any competing moral claim to the car. At most, we might well think, newcomers, settlers, or conquerors are entitled to access to only *some* fair share of land and resources sufficient to their needs, not to (all or even a share of) those *particular* lands and resources they have succeeded in stealing and holding onto. But I will not here further pursue this problem confronting nationalist accounts, but simply flag it for

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later consideration—call it “the problem of rights supersession”—since it is, I think, both a serious problem and a problem that (as we saw above and will see again below) also confronts virtually all of the prominent nonnationalist accounts of states’ territorial rights. I devote chapter 7 to a careful exploration of the problem, and there I defend antisupersessionist conclusions that I believe call into question all of the theories of territorial rights discussed in this chapter.

Surely, though, the most severe hurdle faced by nationalist accounts of territorial rights is simply the absence of cultural or national uniformity within the marked boundaries of the political world.³³ Nationalists tend to locate the relevant territorial rights in the cultural or national *majorities* within pluralistic political units, leaving the preferences, interests, and goals of those not included in the majority national group disturbingly to one side. Miller acknowledges that one might complain that his position “seems to assume a homogeneous national culture in which all participants share the same goals.” His response is that while all residents of a national territory may not share all of the same goals, they all (p.108) do have “a common interest in being able to set those goals through democratic debate”—where, of course, “majority decisions” rule—and in belonging “to a community with a shared sense of national identity.”³⁴

But this response, using the idea of a shared “public political culture,” seems only to push the relevant difficulty one step back. Minority groups and individuals may well have a version of the political interests described by Miller. But they might well have no interest at all in a shared setting of goals, engaging in democratic debate, and achieving a shared national identity in *the particular* political setting in which they find themselves—a setting in which they will be systematically outvoted on matters of central concern to them by the majority national group. Call this difficulty “the problem of trapped minorities.”³⁵ It is again, however, as we will see, a difficulty shared by a variety of nonnationalist approaches. And as I show below (in my treatment of plebiscitary voluntarism), it is a problem that cannot be solved—as one might initially suppose—by simply appealing to a right of *secession* for trapped minorities.

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Functionalism (Again, but This Time Briefly)

The strongest point of nationalist approaches—namely, their ability to explain and justify the particularity of territorial rights—seems a significant weakness of functionalist approaches. Legitimate states for the functionalist, remember, are simply functional political units: that is, institutionally structured collections of persons, of whatever size or location, that successfully perform their morally mandated functions (such as administering justice, establishing social equality, or adequately promoting social utility). The clearest strength of functionalist theories of territorial rights seems to me to lie in their plausible claims that states must advance important moral goods in order to legitimate their use of coercion, and that certain kinds of territorial control are essential for achieving those moral goals.

Why is particularity a special difficulty for functionalism? It is the institutional structure of the state—and the way that structure operates in the lives of its citizens—that matters from the functionalist viewpoint, not the location or (p.109) the history of the state. The fact that functional states happen to arise in one place or another need not reflect any special relationship between those states' citizens and the land they occupy. If those states could function effectively elsewhere or function effectively with altered boundaries, simple considerations of their morally mandated functions would present no principled bar to such changes. Without additional, nonfunctionalist principles in play, it is hard to see why our relocating, adding to, or subtracting from a legitimate state's territory would constitute a wrong. Further, of course, currently functional states can plainly rest on a sordid history of wrongdoing. What matters for the functionalist is that the state in question *here and now* successfully administers justice or successfully promotes social happiness.

This means, of course, that functionalist theories will not only have problems with the particularity of territorial claims, they will also face the same problems of trapped minorities and rights supersession that face nationalist theories. States can perform their morally required functions even with unwilling parties and groups subjected to political authority within their borders; and the functionalist, like the nationalist, owes us a convincing account of when and why the rights of wronged parties just fade away as they are opposed by the interests of

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established, adequately functioning states. These difficulties for functionalism add up to what I called in chapter 3 “the boundary problem.” Pure functionalism simply cannot guarantee that the lands and persons counted by the theory as rightfully subject to the state’s political authority do not include territory and people that have plainly been subjected illegitimately. Because functionalism grounds states’ territorial rights in their current provision to areas of the services that states are morally required to provide, states can acquire justified territorial rights, according to the logic of the functionalist approach, simply by *making themselves* the provider to a territory of those services.

Remember our example from chapters 2 and 3: the United States one night secretly moves its southern border barriers a few miles further south into Mexico, claiming the newly enclosed Mexican territory and the surprised Mexican subjects living on it as its own. There would appear to be nothing wrong with this according to functionalist reasoning—provided only that the United States extended its effective administration of justice to this new territory as well. It is a state’s effective administration of justice over a territory and people, not the *history* of the state’s acquisition of territories and subjects, which functionalism identifies as the source of its legitimate territorial rights. My example in chapters 2 and 3, of course, was specifically targeting the Kantian version of functionalism. But many of these same points tell as well against consequentialist functionalism. Consequentialism is purely forward-looking, so the history of states’ acquisitions of (claimed) territorial authority can matter only so far as it matters for its future consequential implications. And settled possession by (p.110) states (as we have seen) will generally be sufficient, in consequentialist terms, to mandate continued state possession (along with the trapped minorities and automatic supersession of rights that this implies). Worse, even where settled possession is *not* in this way sufficient to dictate the conservative conclusion, the *reasons* why it is not seem potentially to be of dubious moral relevance—such as that some other group simply *wants* the territory more or could use it more efficiently than do its current residents.

These kinds of problems for functionalist theories of territorial rights are not faced (at least as immediately or directly) by the alternatives to functionalism. Nationalism, for instance, grounds states’ territorial rights in national groups’ historical

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“attachments” to particular territories. While national groups (and their territorial attachments) may, of course, extend across existing political boundaries, national groups at least cannot simply “make themselves” attached to some territory outside their current domain.³⁶ Similarly, political societies cannot, on the Lockean model, simply take control of—and on that basis purport to rule legitimately over—any land beyond that which is lived and labored on by those societies’ willing members. Functionalism, however, seems unable to avoid licensing plainly illegitimate acquisitions of territorial jurisdiction. I consider at length in chapter 6 the question of whether a largely functionalist theory can plausibly address these problems through the addition of various nonfunctionalist principles. And I will consider more fully there as well both the general motivations for functionalist approaches to the problem of states’ territorial rights and what I take to be the limits on hybrid, pluralistic approaches to this subject.

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Voluntarism (Plebiscitary)

The majoritarian, plebiscitary version of voluntarism, though apparently designed to avoid them, can in fact be seen to share many of the same problems faced by the nationalist and functionalist approaches to territorial rights. Plebiscitary voluntarism, as we've seen, approaches territorial rights voluntaristically, but using a strongly functionalist account of state legitimacy. A state's legitimacy (that is, what justifies its use of coercive power) "rests on the ability (p.111) and willingness of a state to protect the human rights of its constituents [i.e., to protect them from " 'substantial and recurrent threats' to a decent human life"] and to respect the rights of all others."³⁷ A legitimate state, according to Altman and Wellman, for instance, is a "territorially based," "nonconsensual form of association" that enjoys a group "right of self-determination."³⁸ Any group that is "sufficiently large, wealthy, politically organized, and territorially contiguous so that it can secure for all individuals in the territory the essential benefits of political association," has the right to form or sustain its own state on (and exercise robust control over) the territory it occupies.³⁹

Why even describe as "voluntarist" an account on which legitimate states are characterized as "nonconsensual associations"? This account makes legitimacy and territorial jurisdiction a matter of the *choice* of the relevant (politically capable) group to exercise the core functions of the state. But the "choice" at issue, of course, is the choice of the group conceived as a territorially organized whole. "States must be sufficiently territorially contiguous in order to perform their requisite functions, and achieving contiguity requires them to nonconsensually coerce all those within their territorial borders." While "individuals and legitimate states both have rights to self-determination," one cannot hold that the individual's right of self-determination takes "precedence over state sovereignty ... without implicitly endorsing anarchism."⁴⁰ The structure of this position naturally suggests the question of whether it can plausibly solve "the problem of trapped minorities."

It may seem that the answer is obviously "yes," since "trapped minorities" can (according to Altman and Wellman's theory) escape their traps by opting for secession, choosing to create legitimate states of their own on their own territory. While this

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will be of no help to “trapped” individuals or to trapped small, dispersed, or disorganized groups,⁴¹ any substantial, nonimpoverished group appears to have a reasonable route out from the trap of permanent minority status. Any group that is “willing and able” to perform as a legitimate state may do so (at least provided existing legitimate states are not disabled or unfairly impoverished by this choice). But consider for a moment what “willing and able” actually means here. “Willing,” of course, refers to the will of the majority of residents. Suppose, however, that you are untroubled by how this simply pushes one level “downward” the problem of trapped minorities (for example (p.112) the problem of Union sympathizers trapped in the seceding Confederate States of America). Focus instead on what it means for a group to be “able” to function as a legitimate state. As Altman and Wellman understand it, this means, first, that the group in question must be territorially concentrated. Second, it means that the group must be “sufficiently large, wealthy, and politically organized” to act as a state.

But notice that groups can be *made or kept* small, poor, politically disorganized, and territorially dispersed by the (wrongful?) coercive actions of *other parties* (such as other states or groups that oppose their political independence). The will to act as a legitimate state amounts to nothing if it is defeated by force at every point. So the “trap” in question will certainly look more dire and unavoidable if others can legitimately simply use coercion to guarantee that it will not be escaped. Indeed, even groups that *are* territorially concentrated, large, rich, and organized can still be *stopped* from acting as legitimate states if *other* states or groups are “willing and able” to forcibly intervene to *stop* them from doing so. Does a group fail to count as relevantly “able”—and so fail to have a right to self-determination as an autonomous state—if some other state will simply use force to prevent any attempt by the group to function as a state?⁴²

Altman and Wellman, I assume, want to answer “no” to this question.⁴³ So suppose that we count as “able” to function as a legitimate state all those groups that could do so if others did not coercively intervene to prevent their doing so? Then, however, we must ask several questions: first, how far back in history is coercive intervention by others going to “count” in determining this? Consider a group that *could* have satisfied the requirements for being “willing and able” to act as a state,

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but that was forcibly expelled and dispersed by a militarily superior power—such as the Acadians expelled from Nova Scotia by Great Britain (during its conquest and resettlement of French Canada). Once they were dispersed (or fled) to Louisiana, France, and other parts of Canada, the Acadians were no longer a territorially concentrated or politically organized group. Indeed, they (p.113) lacked any territory at all, since their original territory was rapidly settled by others. Did the Acadians still possess the right to be a state? If so, on what territory did they have a right to establish their state? If they did not have a right, then Altman and Wellman’s theory simply privileges the existing territorial concentrations of persons, for no good moral reason and regardless of how those concentrations were achieved.

But if such wrongs must be righted—and if the Acadians still possessed the right of self-determination at issue, even though “unable” to exercise it—when (if at all) did those wrongs and rights “fade away”? This, of course, is just “the problem of rights supersession” again, and Altman and Wellman must solve it before their position can be satisfactorily defended. The success or failure of a group to acquire the characteristics that give it the right to be a state and to control the territory it occupies (according to plebiscitary voluntarism) in each case has a *history*, and that history may be filled, even quite recently, with palpable wrongs. Unless the theory can convincingly address that fact, it will continue to appear simply without argument to privilege the status quo.

Indeed, the plebiscitary voluntarist theory builds into its basic logic an obvious privileging of the territorial status quo. If a territorially concentrated group derives its right to be self-determining on that territory from majoritarian voting within the group, the theory simply *must* be assuming that existing territorial concentrations of persons constitute prelegitimated groups.⁴⁴ Otherwise, there is no reason to suppose that the will of the majority has any right to determine the lives or constrain the choices available to all persons within that group. As we saw in chapter 3, majority voting within the group of six-foot-tall men, say—a group in which I happen to be included—surely (and happily) doesn’t establish the right of the majority of six-footers in the world to impose their preferred arrangements on me. Neither can majority voting within the group consisting of me and my students legitimately establish the requirements for receiving a passing grade in my

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classes. Why, then, should we suppose, with the plebiscitary voluntarist, that the majority of persons who just happen to live in some arbitrarily defined geographical territory have the right to create a self-determining political society with territorial jurisdiction and political authority over the minority of residents? We should suppose this only if we believe that persons come presorted into prelegitimated groups, groups identified only by their members' geographical proximity to one another and bounded only by whatever arbitrary outer geographical boundaries we might choose to identify. But relying on that belief at the theory's foundations plainly just begs all of the important questions about what justifies states' claims to territory.

(p.114) This result, of course, should be unsurprising in any theory that transforms so smoothly majority will into majority right. Wherever mere majority will is allowed to dominate the determination of state territorial boundaries, the manner of composition of the body of which that majority is the majority should be our primary moral concern. Just as my (populous) neighborhood may not legitimately incorporate the adjoining (less populous, less affluent, less organized) neighborhood without its consent and then control it by majority rule, political bodies may not legitimately subject to their authority all the unwilling people that they are able to surround and outvote. Nor should it matter that those so subjected were incapable of themselves functioning as a political society, especially if this incapacity is simply accepted as such without consideration of its causes. If a group's "inability" to function as a state is understood independently of the history and source of that inability, plebiscitary voluntarism will simply face the same kind of "boundary problem" that is faced by pure functionalism.

Altman and Wellman's only apparent attempt to counter such concerns occurs in their response to (what they call) the "regress argument." That argument maintains, against their view, that one can't use the principle of self-determination "to determine political boundaries, unless one first decides what the boundaries are within which voting is to take place. But the determination of the boundaries within which voting is to take place is itself a determination of political boundaries."⁴⁵ They consider this problem specifically in connection with the issue of secessionist movements; but I think the problem is one that confronts their view throughout. Unless we

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antecedently assume that existing occupations of territories by groups are legitimate and uncontroversial, how can we possibly proceed to argue that voting *within* those current “group boundaries”—that is, within the bounded territories simply *claimed* by or occupied by groups—will ground genuine moral rights to self-determination?

Altman and Wellman’s response to the argument is that it is “possible to stop the regress in a nonarbitrary way ... ‘Let the separatist movement specify the area within which the plebiscite is to be held.’” In other words: how can groups desiring political autonomy complain if they are themselves permitted to identify the boundaries of the territory within which a vote on independence will be conducted? Altman and Wellman allow that “of course the precise contours of the territory picked out by the separatists is arbitrary in some respects.”⁴⁶ But they appear to regard that problem as, relatively speaking, just a minor matter of detail.

(p.115) This seems to me, however, a far deeper and more serious problem than their response acknowledges. Both the boundaries of the original states and the boundaries picked out by those forming new states may be morally arbitrary (or deeply illegitimate) in very important ways. For instance, “the separatists” discussed by Altman and Wellman might easily include in their “specified” territory not just the land occupied by their supporters, but also land occupied by others (who will be easily outvoted by those supporters), possibly because that land contains valuable resources or other desirable geographical features—just as the territory from which they desire to separate may itself have been formed by “trapping” unwilling minorities in various ways. Provided only that this “specification” does not incapacitate their original state (or take an unjust share of the state’s resources, say), there appears to be no bar in the theory to such majority choices by secessionists.

While Altman and Wellman do condemn the annexation of less populous by more populous states,⁴⁷ they do so only where the less populous groups are already organized as states. Those people and groups who are “unable” to function as states (for whatever reason?) are simply left as grist for the statist mill.⁴⁸ Altman and Wellman seem primarily concerned to affirm that unwilling individuals, sprinkled here and there throughout an otherwise willing and territorially contiguous group, may be

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legitimately subjected to political authority without their consents. But the wrongs their position permits—both in terms of trapped minorities of significant sizes and rights superseded in an instant in the interest of the present possessor of territory—seem vastly more significant than those they seem principally concerned to deny. If a group’s “inability” to function as a state is understood independently of the history and source of that inability, plebiscitary voluntarism will face the same kind of “boundary problem” faced by pure functionalism; and if it is not so understood, plebiscitary voluntarism will be pushed in the direction of a more fully voluntarist theory, an individualist voluntarism that is capable of greater sensitivity to historical wrongs against peoples and persons.

Notes:

(1) Others seem to prefer instead a threefold categorization of territorial rights, the categories being jurisdictional rights, resource rights, and rights to control movement over borders (or to control immigration) (e.g., Miller [2011], 92-3; Ypi [2013], 242; Van der Vossen [2014], 714 [online, 2]). I take rights to control movement across borders, like resource rights, to be closely analogous to the property rights claimed by individual landowners (see chapter 9). And rights to control immigration *combine* these property-like border control rights with various jurisdictional rights (involving, e.g., rights to determine the legal status of immigrants, to make and enforce laws governing those who cross borders illegally, etc.). This division that I make here—between states’ jurisdictional and property-like claims—is intended only as a clear *analytical* division. Many of the specific rights states name as their own are in fact best conceived as “composites” of the two kinds of claims. Part II of this work will deal (primarily) with the jurisdictional aspects of states’ claims to territory. Part III considers primarily the property-like claims that states make over particular geographical spaces.

(2) The latter two as per the international *Outer Space Treaty*. There is some disagreement about whether that 1967 treaty makes objects like asteroids *res communis* or *res nullius*.

(3) More precisely, international law recognizes four types of territory: that which is subject to the sovereignty of some state

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(or states); that which is not so subject, but which has its own legal status (e.g., trust territories); the *res communis*; and the *res nullius* (Brownlie [1998], 105).

(4) Harry Beran has argued that political societies need to set aside ungoverned “dissenters’ territories” in order to create the genuine options that would make free consent fully possible for persons living within political societies (Beran [1987], 59, 67, 104, 125). The maintenance of *res nullius* territory of this sort seems to me unlikely by itself to solve any real problems for the consent theorist, since the high costs of relocation to such territory simply mirror the high costs of emigration generally, generating similar (and familiar) worries about the voluntariness of remaining (and consenting). But the rather different problem of *territorial* legitimacy that I am addressing in the text seems to me to push us by a different argumentative route toward practical recommendations similar to those made by Beran. The requirement that states leave enough and as good land for rival (i.e., nonstate or new-state) claimants may oblige states to downsize and make new spaces available for appropriation by individuals or groups.

(5) I take this to be the harder of the two sorts of questions. It is (relatively) easy, I think, to show that state stewardship of land and resources is likely to better serve long-term human interests than would the use of land and resources by large numbers of private individuals. It is (comparatively) harder to show why any particular state should get to control any particular chunk of the world. By analogy, we can also (relatively) easily explain why *individuals* ought to have personal *property*: without enduring control over external goods it is far more difficult for persons to secure essential interests and exercise self-government. But it has proved (comparatively) far more difficult for theorists to explain how individuals can be justified in claiming *particular* external goods as their property.

(6) E.g., “If we consider the range of functions that modern states perform, it quickly becomes obvious that these functions cannot be carried out effectively unless the state has authority over a determinate territory” (Miller [2007], 214). In Chaim Gans’s nationalist theory of territorial rights, the distinction I make here—between what might ground a general right to territory and what could justify a *particular*

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territorial claim—is identified as the distinction between “the right to territorial sovereignty” and “the location of territorial sovereignty” (Gans [2003], 103).

(7) Political scientists have offered a variety of reasons why the bounded territorial state triumphed over its competitors and became the norm in political life. One interesting one is that bounded states, in acknowledging *limits* to their claims over land, were less threatening to their neighbors and so were the objects of fewer preemptive wars launched against them (e.g., Spruyt [1994], 169–70). For the importance of cartography in the emergence of the territorial state, see Branch (2014).

(8) As when Sidgwick vaguely gestures in this direction: “the main justification for the appropriation of territory to governments is that the prevention of mutual mischief among the human beings using it cannot otherwise be adequately secured” (Sidgwick [1897], 252 [15, 4]).

(9) Barry (1999a), 254.

(10) See, e.g., Moore (1998), 149.

(11) The international law of territory, while confusing at times, is unquestionably strongly biased in favor of settled possession and the power to defend a territorial claim—both of which strongly support the claims of the winners in the land game, regardless of the apparent moral merits of their claims: “It is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time should be changed as little as possible” (Scott [1916], 121, 130). Many of the traditionally recognized bases for legitimate territorial acquisition (e.g., accretion, cession, occupation [of *terra nullius*], prescription) are still widely acknowledged. But in many cases the proper mode of application of these rules to contemporary circumstances is obscure, while in others the rules are either largely irrelevant (as in rules governing occupation) or clearly morally suspect (as in the rules of acquisitive prescription). Further, of course, actual rulings by international courts are muddied by their appeal to a huge variety of additional historical, cultural, economic, and geographical factors (e.g., contiguity, continuity, and geographical unity) that also tend to support settled possession. As a result, and as Martti Koskenniemi observes,

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“late modern practice of solving sovereignty disputes pays hardly more than lip-service to the traditional bases of territorial entitlement” (Koskenniemi [1999], 505). Finally, as previously noted, international acceptance and recognition confers eventual effective title on all manner of acquisitions; despite the law’s contemporary condemnation of (e.g.) conquest as a source of territorial title, “conquest ripened by prescription” (as Sidgwick calls it [1897], 254 [15, 4]) will generally do the trick.

(12) See, e.g., Altman and Wellman (2009).

(13) See, e.g., Buchanan (2004), 370–71; Christiano (2006); Ypi (2014).

(14) Stilz (2011), 581–2. Stilz’s basic position is Kantian (with a dose of Rousseau), with her central defense of legitimate states’ territorial jurisdiction resting on the idea that a legitimate state is one that “effectively implements a system of law regulating property” and in which the “system of law rules ‘in the name of the people’ ” (574) (see also Stilz [2009a]). But her final account of states’ territorial rights, as we will see, is actually a more of a hybrid.

(15) As previously noted, the first defense of a utilitarian theory of territorial rights (that I’ve been able to discover) is in Sidgwick (1897), 252 (15, 4).

(16) See, e.g., Gans (2003), Miller (2007), Meisels (2009). Miller defines a “nation” as “a group of people who recognize one another as belonging to the same community, who acknowledge special obligations to one another, and who aspire to political autonomy—this by virtue of characteristics that they believe they share, typically a common history, attachment to a geographical space, and a public culture that differentiates them from their neighbors” (Miller [1998], 65).

(17) Territory forms “a principal aspect of national culture and consequently of individuals’ cultural identity” (Meisels [2009], 5).

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(18) Lea Ypi prefers a related division of theories of territorial rights, also dividing them into three classes—what she calls acquisition-based, attachment-based, and legitimacy-based theories (Ypi [2013], 242). That division seems to me to capture far less clearly the distinguishing orientations of the salient theories, since (e.g.) voluntarist theories, like functionalist ones, begin with a notion of “legitimacy,” and Lockean theories, like nationalist ones, are oriented by a notion of “attachment.”

(19) See, e.g., Pogge (1992, 1994). Left-libertarians are also generally skeptical about the territorial claims made by most actual states; but I will not here discuss their position (for summaries of a left-libertarian view of territorial rights, see Steiner [1996] and [2005], 34–6).

(20) Notice, however, that it is precisely this acceptance of the legitimacy of multiple sovereign states that necessitates the cosmopolitan skepticism about legitimate states’ rights of border and resource control. If a world-state were the only legitimate political option, the resulting absence of any legitimate state borders and separate territories would eliminate these purported limits on the sovereignty of legitimate states.

(21) Some skepticism about robust territorial rights, of course, is much more “targeted” than this—for instance, maintaining that states lack the rights they claim in only one particular area (say, in the rights they claim to natural resources), while possessing them in the other salient areas.

(22) As an example, take my own (voluntarist) Lockean skepticism about actual states’ territorial rights (as defended in chapter 5 below).

(23) It should be unsurprising—though it has not been much noted—that the three pure types of theories of territorial rights correspond to (what I have claimed are) the three principal kinds of theories of political obligation and authority. They, as it were, naturally fill out the more traditional theories of political obligation—theories that deal primarily with states’ claimed rights over their subjects—by attempting to justify a different category of the rights that states claim. The fact that the theoretical projects concerning territorial rights so often take the form of “filling out” or “completing” a theory of

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political authority over persons reemphasizes the *normative priority* of claims to authority over persons that I stressed in Part I of this work. I have elsewhere divided theories of political obligation and authority into: transactional theories—that locate the source of political obligation and authority in specific “transactions” between persons and societies, such as contracts, consent, or the receipt or acceptance of benefits; natural duty theories—which locate this source in our more general moral duties to do or promote justice, or to advance other impartial goods (such as utility); and associative theories—which identify political obligation and authority with the kinds of duties and rights that are thought to arise within (and to partly constitute) relationships like families or friendships (see Simmons [2002]). The three types of accounts of states’ territorial rights constitute natural extensions of these three approaches to political obligation and authority, with voluntarist approaches naturally “extending” transactional theories, functionalist approaches naturally extending natural duty theories, and nationalist approaches naturally extending associative accounts.

(24) Stilz (2011), 591. I discuss Stilz’s theory in chapter 6.

(25) I consider Nine’s approach more carefully below in chapter 6.

(26) Meisel’s position is also examined in chapter 6.

(27) Miller (2007), 217–18.

(28) Gans (2003), 116.

(29) Miller (2007), 219.

(30) *Ibid.*, 220, 219. Elsewhere, Miller makes it clear that the claim to land made by (national) present possessors virtually always “trumps” the claim of any “rival group” (Miller [1998], 68), despite the fact that “this may sound uncomfortably like a version of ‘might makes right’ ” (77).

(31) Miller (1998), 77. See also, e.g., Moore (2014), 127n22: “place-related rights ... are subject to something like Waldron’s ... supersession thesis.” She fills out her views on this subject in Moore (2015), chap. 7. I respond to such claims below in chapter 7.

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(32) Miller himself, however, “cannot see any reasonable alternative to the view” (Miller [1998], 77).

(33) Unless he is prepared to defend radically revisionist conclusions concerning territorial rights, the same kind of problem faces Avery Kolers’s account of land rights held by “ethnogeographic” communities (Kolers [2009], 3–4). Indeed, I think the same problem of real-world nonuniformity faces other nonnationalist appeals to the rights of “peoples” (as in Nine and Moore).

(34) Miller (2007), 224.

(35) Moore tries to address this problem—which she, tellingly, refers to as the problem of “the individual dissenter”—by suggesting that it is only a “libertarian or anarchist worry” and by stating that it “is a problem only if we believe that for a political authority to be justified it must achieve unanimous consent” (Moore [2015], 62). These claims seem false. Virtually all modern political societies contain not just isolated, cranky dissenting individuals, but also substantial associated groups of persons who do not share the same interests, identity, and aspirations as the “large majority” (35) that is collectively committed to (their own) political self-determination.

(36) Nationalist theories do not generally appear to take *mere* sentimental attachment to (or desire for) particular lands to be sufficient for the morally relevant “attachment” of nations to lands. There is, of course, no very obvious reason why nations could not form bizarre attachments to (or, indeed, build their national identities around) territories or landmarks with which they had little or no actual history of physical interaction. But most nationalist theorists insist on some history of productive use (of land by a nation) as a condition for national territorial rights.

(37) Altman and Wellman (2009), 3–4.

(38) *Ibid.*, 4–5.

(39) *Ibid.*, 46–7.

(40) *Ibid.*, 162, 176.

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(41) All are free to exit, of course, but only by abandoning their lands and subjecting themselves to the dominion of whatever other society (if any) is willing to take them in.

(42) Margaret Moore, like Altman and Wellman, also requires that for groups to have territorial rights they must be territorially concentrated and have the capacity to “establish and sustain institutions of political self-determination” (Moore [2015], 35). But, again like them, she does not address the problem at issue here, beyond noting that incapacity to exercise jurisdictional authority should sometimes be addressed by assistance from other countries (50-52, 105). This response ignores those (quite common) cases in which territorial dispersal or lack of capacity are the results of outside coercion. (Nor does it even tell us how to deal with the equally common cases of deserving but impoverished peoples who do *not in fact receive* the [morally required] outside aid that would permit them to be self-determining.)

(43) They answer “no” to a similar question about whether a group loses its “right to political self-determination” if it is “unable to perform the requisite functions because its economic resources have been unjustly exploited or depleted by a foreign power” (Altman and Wellman [2009], 13).

(44) See Nine (2012), 58. The same is again true of Moore’s “self-determination” theory.

(45) Altman and Wellman (2009), 49.

(46) Ibid.

(47) Ibid., 52.

(48) Wellman does elsewhere insist that “willing and able” political groups “who occupy a territory enjoy jurisdictional rights over this land” only “other things being equal.” But the only example he gives of a case where other things are *not* equal is again that of the forcible annexation of one state by another (Wellman and Cole [2011], 102-3).

