

*How can a man or a people seize an immense territory and keep it from the rest of the world except by a punishable usurpation, since all other are being robbed, by such an act, of the place of habitation and the means of subsistence which nature gave them in common?*¹

Territorial rights seem at odds with justice. State resource rights are credited as the highest determining factor in an individual's well-being. Members of wealthy states expect higher levels of well-being than members of impoverished states, and, even more, the set of state resources seems to be entirely morally arbitrary (Caney 2005). War and injustice define the history of territory. Luck and contingency often describe the placement of territorial borders. The happenstance of adjacency to a resource is a morally irrelevant consideration that should not ground claims to that resource (Beitz 1979, 138; Pogge 2002). These injustices are passed through history; where one is born and to whom "are natural contingencies that are 'arbitrary from a moral point of view'" (Carens 1987, 261).

Still, state territories and their associated resource rights seem to be valuable. Radical or on-going border changes generate greater risk of war and domestic instability, as well as undermining the legitimate political authority of existing states (Buchanan 2004, 350–73). Also, territorial and resource rights seem to be intricately tied to a people's capacity for political self-determination. A group needs minimal powers of jurisdictional authority over the things around them in order to maintain a geographically-fixed authority over persons. To be independently self-determining, they need political authority over things and spaces, to be able to say what laws govern property and place.

This essay surveys only small part of the broad debate regarding territory and justice. It examines the most recent justifications for a people's (or state's) exclusive right to resources as part of a territorial right.

1. Natural Resources

Most philosophers agree that natural resources are non-human items that are or may be of use to humans. However, this construal of the concept is vague in many respects, including what counts

¹ (Rousseau 1920, 20), cited in (Gans 2008, 34).

as ‘non-human’ or ‘of use’.² Because the definition steers normative thinking, philosophers have tried to tighten it up.

For Hillel Steiner (1996), natural resources are raw goods, undeveloped by humans. This definition carries weighty metaphysical and epistemological baggage, to prove if a resource is truly ‘raw’ (Miller 2007, 60).

For Tim Hayward (2006), natural resources are essentially tied to ‘ecological space’. The human ecological niche is ‘space’ within which humans live and use the Earth’s resources. Because resources are subject to entropy and transformation, differentiating particular resources in a certain form—crude oil from its later form, CO₂ emissions—is not conceptually warranted. The benefit of this account is that resource rights necessarily include resource responsibilities for all forms of the resource.

In contrast, Chris Armstrong (2014) follows economics in defining a resource as extractable. Armstrong defines a natural resource by its removability from place, rather than by its role within the space. Both extreme definitions are difficult to fit with other ethical concerns, such as political rights to medium-scale places like national territories. For Hayward, the contemporary human ecological niche is global. This view cannot help explain a division of resource rights that coincides with political rights of self-determination. On the economic definition, the removability of the resource takes the resource out of a context that may be essential to understanding the resource itself and its value. Further, a geographical area may itself be a valuable natural resource. Natural parks and pristine lakes are often considered to be natural resources and not just the aggregation of their removable parts (Moore 2015, 163; Schrijver 2008, 19).

Avery Kolers and Margaret Moore each attempt to contextualize the definition of a resource without making that context too broad. Both authors object to the above definitions because they construe natural resources as natural kinds—conceptually distinct from the ways that humans use and value resources. Kolers proposes instead a claimant-relative account of natural resources under which intentional states determine what counts as a resource. On Kolers’ account, a thing is a resource if it is a *fungible means*, replaceable or convertible without loss of value for the agent (Kolers 2012a, 278). Petrol is a fungible means when I use it to fuel my car. If my car required diesel, then that would serve my ends just as well. Because resources are a means, they can be understood as affecting the environment, and as claimant-relative, since persons must employ the resource as a fungible means for it to count as a resource. Insofar as this view assigns a moral right to determine what counts as a resource only to the legitimate territorial rights holders, its application is difficult. ‘Claimants’ are only those who already hold resource rights. This exclusion precludes the recognition of some

² International law is similarly perplexed. No general definition of ‘natural resources’ exists in international law (Schrijver, 15).

common-sensical and practical uses of ‘natural resources’. The Bedouins may not recognize oil within the Arab desert as fungible means, but this does not mean that they cannot recognize that others see the oil as such (Moore 2015, 164).

Moore mostly agrees with Kolers’ definition, but suggests that claimant-relativity should be inclusive. This includes claims that outsiders may have to a resource (to fulfil their basic needs, for example) even though the territorial right holders do not recognize the object of the outsiders’ claims as a resource. She also stresses that a natural resource can include geographical areas, as well as their removable components (Moore 2015, 163).

The Kolers/Moore conception has an advantage within territorial rights theory, in that it can take context directly into account. Kolers (2012b) uses the case of a vacant lot. What one sees as empty actually contains a multitude of items, including weeds, rocks, sunshine, etc. These items affect each other and our perception of the whole space. Acts to transform the lot affect the component resources, their effects on each other, and, more to the point, the space as a whole. Or in other words, we usually pull weeds because we have a plan for the space, and not because we have a plan for the weeds. On the Kolers/Moore conception, this space is a resource. This conception is more friendly for use in territorial rights theory, because it captures the collective interaction and interdependence inherent in territory. Theories of justice can benefit from this kind of conception, because it directly references the internal complexity of the way that we value items within a territory.

2. Resource rights

In international law, ‘peoples and nations’ hold permanent sovereignty over natural resources. Interpreting this resolution as something like the state’s exclusive claim to arbitrarily control, use, and reap the benefits of all resources with the territory sets up resource rights as a straw man. As a matter of international law and custom, state resource rights are constrained in three ways. First, there is an internal constraint. The *people’s* resource rights must be exercised by the *state* only in the “interest of their national development and of the well-being of the people of the State concerned” (UN General Assembly 1962). The state is understood either as a trustee or as a mechanism through which the people exercise resource rights. The right cannot be arbitrarily exercised, but rather is legitimate only when used in the people’s interests.

Second, resource rights come with an external limitation on the scope of *objects* the people may claim. The people do not have property in resources held privately. In Texas, the land owner owns the oil beneath the land, not the state. It is permissible for a state to seize private property, but only under strictly defined conditions, and then the state must compensate the former owner (UN General Assembly 1962). But this seems odd. States regularly exercise all sorts of rights over private property; Texas collects taxes on the value of the oil well. To explain, it is useful to understand the

third limitation on the *type of rights* over resources. Systems of common property, private property, collective property, and jurisdictional authority each play a role in resource rights. A resource held as *common property* is open for all to access and freely use, like in a public park. *Private property*, by contrast, assigns resources to particular agents, and each agent has the right to use this resource however the agent wants. Resources held as *collective property* determine the assignment of objects to agents by reference to the collective will and the interests of society as a whole. Under collective property, the people form a kind of board of management over the resources. This system includes things like the collective ownership of public goods, like roads, as well as nationalized oil reserves (Waldron 2002, 38–41). Another set of rights involves *jurisdictional authority*; this includes the authority to change rights over a resource from one category to another, to change ANWR from a nature preserve to a collectively owned mining site, for example (Buchanan 2003, 233). Jurisdictional authority also allows the state to regulate and manage private property by setting taxes and zoning laws. While most peoples hold collective property rights over only a relatively small set of resources within their territory, they hold (limited) jurisdictional authority over all resources, including those held in private property. In the following discussion, I use ‘resource rights’ to denote a people’s:

constrained rights to jurisdictional authority over all resources, and limited collective property over a portion of natural resources within their territory.

3. Justification

Cosmopolitans claim that the natural division of resources between states is unfair; the division arbitrarily affects how well a person’s life will go. However, we need not accept that differences in state resource holdings directly lead to different levels of well-being. In fact there is a large body of evidence that the latter does not directly follow from the former, because the stability and quality of institutions are greater indicators of well-being (Mehlum, Moene, and Torvik 2006). The limited set of a people’s resource rights, especially the relatively small set collective property, are not likely to play a significant role in the well-being of people’s lives. From the perspective of resource holdings, it is more likely that institutions of private property affect the well-being of persons than state collective property or jurisdictional authority. Still, there are two intuitive cosmopolitan objections to exclusive resource rights. First, it may be *prima facie* better to control a territory rich in valuable resources than to control a territory with meagre resources, because secondary benefits may be expected to flow from resources, such as the power to tax and to attract investment (Moore 2015, 176). Second, outsiders may have legitimate claims, based on need or necessity, to the resources of a foreign state (Tan 2004).

Following most liberal approaches in justifying exclusive claims to goods, territorial rights theorists respond to global egalitarians by deriving special rights from considerations of universal moral concern. The more successful theories are multi-faceted, starting with resource rights as part of the people's right of self-determination and then appealing to additional moral theory to justify exclusive claims to particular resources.

4. Self-Determination

The right of self-determination includes two necessary components of liberal political theory: that the people rule themselves, and that they have the opportunity for self-rule without arbitrary external domination (Young 2007, 56). The right of self-determination is argued to entail resource rights for one or more of the following reasons: resource rights, (a) are instrumental in the exercise of political authority, (b) are necessary for autonomous collective decision-making, or (c) secure individual autonomy.

Resource rights are an instrumental means to self-determination. First, the state needs control and use of resources to meet the basic needs of its citizens. Nine argues that the provision of basic goods such as clean water, sanitation, security, and adequate shelter, demands large-scale coordination of a variety of resources. Jurisdictional authority over urban populations, for example, requires coordinated authority over a dense knot of private property entangled with collective property, such as roads, entryways, and public utilities (Nine 2012, 33–35). Second, jurisdictional rights over resources within a territory help avoid the tragedy of the commons. With rules governing access to, extraction of, and use of natural resources in the commons, a people achieves coordinated, sustainable use of those resources (Moore 2015, 165). Finally, John Locke notes that political authority cannot perform its functions if it cannot exercise jurisdictional authority over private property and the spaces between private properties held by its members (Locke 2003, 120–122). A relatively continuous geographical space must be under territorial authority in order for state institutions to provide adequate defence and stability to its members (Simmons 2001, 313).

Jurisdictional authority over resources is necessary for autonomous collective decision-making; if a people cannot independently make laws governing the property of its members, then its ability to rule is severely curtailed. Further, a people requires sufficient resources to be relatively self-sufficient and resilient (Kolers 2009, 74). Nationalists argue that control of historical lands forms an identity-relationship between the nation's members and its territory (Meisels 2005, 108). On nationalism, it would be difficult for the culture to continue if it did not have resource rights. David Miller argues that the shared responsibility for resource-affecting decisions helps to constitute national membership (Miller 2007, 117). Without resource rights, the nation could not be autonomous, because it would not be able to preserve its distinctive identity.

Resource rights are also argued to secure individual autonomy. For Kant, freedom requires the social guarantee that one can expect to use certain goods for various ends. Individuals hold legitimate property rights only when those rights are under state jurisdictional control. Thus, individual freedom requires state jurisdictional control over private property (Stilz 2011). In a complementary argument, democratic theory holds that for individuals to be autonomous, they must have the capacity to shape politics (Philpott 1995, 357). Within democratic theory, borders of jurisdictional authority can be drawn around persons who share a ‘common world’, a “world in which all or nearly all the individuals’ fundamental interests are intertwined with each other.” (Christiano 2006, 97). Because members’ autonomous pursuits and values depend on the authority to use resources for their own ends, group jurisdictional authority over resources is justified (Angeli 2015, 126).

5. Objections to the Arguments from Self-Determination

Apiece, each above justification for resource rights from the people’s right of self-determination is insufficient to ground resource rights in a form that corresponds roughly with contemporary territorial rights. They suffer one or more of these criticisms from: particularity, circularity, or scope.

The problem of particularity asks for a moral connection between a particular set of resources and a particular people. Instrumental justifications, for example, explain the rights of a sufficiently just set of political institutions to govern resources, but it does not on its own justify the right of any particular political institution to a determinate territorial region. If a neighbouring government could do a better job than the current state at providing for the people, then on the instrumentalist view alone, the alternative political powers could claim resource rights.

The problem of circularity points to the historical arbitrariness of a people’s claim. The worry is that a people acquire a moral claim to resources simply because the people are there. This criticism includes a concern for historical injustice—that conquered or displaced peoples may not have continued claims to places that they no longer control, merely because they do not control it.

The objection from scope has two versions. The first focuses on which resources are *objects* of a particular right. The above arguments from self-determination may justify some set of rights over a limited set of resources, but these rights and resources may not add up to a full territory. The second scope-based objection focuses on incidents of *rights*. Even if jurisdictional authority is required to be self-determining, other resource rights normally claimed by states are not required. The most frequent objection criticizes state claims to the full profit from the exploitation of collectively owned resources.

In short, justifications from self-determination are left with two tasks: particularity-- to explain the particular location of a claim to territory in a non-circular way, and scope-- to explain which rights the people have over which things within their territory.

6. Residence

The theory from rights of residency responds to the particularity worry by grounding location-specific rights in what these theories regard as a foundational right of residence. On this account, individuals have rights to continue to reside in the locations where they currently live. Political collectives form from geographical communities, and these collectives acquire rights of self-determination.

Moore (2015) and Stilz (2013) have each defended a theory of residency rights under which the importance of place is described in terms of one's ability to realize his or her plans. A plan is contextual; it involves an executable action. One may have an abstract goal, such as obtaining financial security. Reaching this goal requires real-world planning, such as training for and maintaining a job. These plans involve attending school, completing assignments, applying for jobs, going to work and performing job tasks, etc. Each of these activities happens in a place, and completing them often requires continued access to those places. We structure our lives to be meaningful, and this structure grows around having continued access to the places where our plans can be carried out.

Rights of residence locate rights of self-determination—the people have a right to be self-determining where the members have a right of residence. This account responds to worries of scope by integrating an individual's interest in achieving life plans with the conception of resources, and by limiting resource rights to what is required to achieve self-determination. One's life plans are specific to the person. As such they take on idiosyncrasies of the person's values and beliefs. Personal goals and desires may include access to certain resources for reasons that stem from those idiosyncrasies. The claimant-relative conception of a resource can ground resource rights even if the people do not exploit the resource for material use (Kolers 2012a). For example, the Bedouins can articulate their claim to control desert lands even if they do not recognize oil under the sand as a resource within their culture. These claims are limited, however, to resources that are necessary for the people to exercise self-determination (Moore 2015, 170). If a means were developed to extract the oil without affecting the desert above, another agent could claim the oil. Within populated areas, jurisdictional authority will extend over all resources (within reasonable distance above and below ground), because controlling these resources significantly affects the lives of members (Moore 2015, 175). Collective property is justified where necessary to secure self-determination, but rights to the benefits flowing from collective property are limited. These benefits may be redistributed from wealthy states to poor

states when redistribution is needed to secure subsistence rights for all persons globally (Moore 2015, 182).

Despite its virtues, this account has difficulty explaining the particularity of territorial borders. The first problem comes from its geographical ambiguity. On a theory that places moral priority on the achievement of individual plans, rights of residency are set within large-scale regions where one is likely to have located plans. Unfortunately, these moral regions don't match political territories. The plan-based theory is too narrow because objects of life plans are often not restricted to a region. One may desire to move beyond one's region to pursue economic, educative, or religious goals. Relevant geographical lines should be drawn around the objects of individual life plans, regardless of whether the objects lie within one political region. The theory is also too broad, because life plans don't require access to most areas within the region. Residence within most areas of the United States would not fit with one's supposed life-plans. One's goal to be a software engineer would be frustrated within the middle of a national park. Even city-dwellers do not require access to most parts of their city to act on their located life plans; some can go their whole lives without visiting the 'west side'.

A similar objection is posed by an alternative plan-based account. Kolers (2012a) argues that a group can acquire territorial rights in a place even if they have never lived there. Kolers grounds territorial claims in plenitude, the internal diversity and external distinctness of a place. If a group achieves intentional plenitude, "feasible and operational plans to realize or maintain empirical plenitude" (Kolers 2012a, 113), then they may have a territorial claim to that place. Intentional plenitude can be achieved even if persons do not reside in or near the place (115). This account poses an obstacle for the residency account, to weigh residence-specific plans against alternatives, such as absentee intentional plenitude.

Relatedly, the plan-based account needs to address cases where persons, such as expatriots, flourish in new places. In the case of a good adapter, the theory is susceptible to two criticisms: (1) that the flourishing adapter no longer has any meaningful attachment to the place that she left, which is presumably not accurate, and (2) that if humans are good adapters, then the reliance of stability of place is not a weighty interest. If we can adapt well to new places, then it simply isn't true that remaining in this particular place significantly affects one's well-being (Barry 2001). One could be just as well off somewhere else. Good adaptation presents a counter-example to the theory that individuals have a strong interest in remaining in their current regions.

7. Improvement

The argument for resource rights from improvement draws on John Locke's theory of property rights. Locke argued that agents could acquire rights over goods by interacting with those

goods in a way that produces value. The agent deserves the product of her labor, because it is her labor that made the product valuable (Locke 2003, 29–34). Applied to resources, a people makes a resource more valuable, then they have a claim to it. People acquire resource rights by mixing their labor with particular resources, including agricultural land, aquifers, mountains, valleys and minerals. The geographical location of these resources fixes the resource right on the map; the people claims territory over those specific lands, aquifers, and minerals, and not over similar resources in a different location (Nine 2008).

Of central concern in the evaluation of this principle is the definition of value. Which values give rise to resource rights? Three options are defended: material value, symbolic value, and the value of justice.

Miller defends territorial rights as based on material and symbolic values. A people can be a unique author of resources' material value in several ways (Miller 2012, 258). The governance of land use creates stable systems of mining and other forms of production, producing value from resources. Much of the value is due to the coordinated efforts under the guidance of social and political institutions, such as cross-generational technological advances and conservation efforts. These actions engender beneficial material results ranging from real estate value to the fundamental values of providing energy, food, clothing and shelter to individuals.

Symbolic value, by contrast, picks out the cultural, religious, or social meanings that a people attribute to certain places. The site of an historical battle, the sacred river, and the mythological skyline illustrate the symbolic meaning of territory. Symbolic value emerges out of deep connections—the people's values and ways of life are shaped by the territory, and the territory, in concord, reflects them.

The third conception of value, the value of justice, people acquire resource rights if and only if they demonstrate the capacity to achieve just rule of law. Nine argues that when the people use resources to institute justice, they acquire rights over those resources to continue to use them to create just institutions. Because the function of a territorial right is the establishment of the legitimate rule of law, when a people interacts with territorial resources to create just institutions, it comes to deserve a territorial right over those resources (Nine 2012, 85–87). Additionally, other kinds of value derived from resources are significantly dependent on the way that items are used to realize the value of justice. This is true both of material and culturally symbolic values. Property values are dependent on a stable system of property rights created by jurisdictional authority over resources. Further, the preservation of culturally symbolic value is dependent on the people having a voice in the rule of law regarding those items, and this value is more effectively realized when it is located within a region under a just rule of law. This suggests that improvement claims from the creation of justice may be weightier than claims from other values (Nine 2013).

While agreeing that improvement grounds special rights to particular resources, Miller and Nine diverge on issues of scope. Miller argues that nations hold the full extent of jurisdictional and collective property rights over resources within their territory. All value attributed to resources, raw or otherwise, should be attributed to the national community, because resource value is inexorably tied to independent political decisions about their future (Miller 2007, 56) The more weight one assigns to national self-determination, the stronger Miller's argument becomes. If we are to respect the collective self-determination of peoples, then we should also respect the economic result of their policies (Miller 2007, 70).

The first criticism against this strong position contests the agent to whom value is assigned. Stiliz, (2011) argues that nations are constituted by individuals, and so it seems that the individuals should acquire rights before the nation. Alternatively, value can be attributed to foreign actors. China pursues land development in many foreign countries, for example. The second criticism questions the scope of the objects that can be claimed by the nation. Resources that are not acted on, like rain or undiscovered mineral deposits, seem to be untouched by national improvement (Armstrong 2014, 134). The third criticism questions the nation's right to exclusive jurisdictional authority over resources. Other institutional arrangements may be responsible for the development of resources, such as international or regional property-supporting institutions (Armstrong 2015, 136), and thus deserve jurisdictional control of those resources. Nationalists respond by arguing that autonomous national self-determination is essential for the creation and protection of functioning democratic communities (Miller 1995, 90–98; Moore 2001, 85–99). However, this view entails problematic conclusions for resource rights, given that the majority of nations are not democratic. Either *only* democratic nations hold resource rights, or aspiring democratic nations may also hold resource rights. Both views are unworkable. The first leaves half of the world's population without a way to articulate collective rights over their lands, territories, and resources. The second option seems to resolve into the first. Internal economic, political and cultural conditions create serious obstacles to the democratization process in close to half of the world's states, and a significant portion of new democracies are threatened by similar unstable domestic conditions. If vulnerable states' resource rights were put into question, the state's capacity to use its resources to develop and stabilize its democratic institutions would be undermined.

Unlike Miller, Nine draws modest conclusions about the scope of resource rights. Rights are acquired over things and by agents who deserve to hold those rights. A qualifying collective may claim a resource right when it uses its control over resources in that region to establish justice. On this view, the people acquire jurisdictional rights over all resources within a territory that are managed in ways that efficiently contribute to the establishment of justice within that region. The objects of the right are constrained to geographical sites of justice—areas that are managed by a political authority for the creation of a system of justice between persons. This includes things like national parks and

other modestly-sized unoccupied spaces. It does not include undiscovered or distant resources. Distant resources, such as resources below the ocean floor, are not part of the geographical site of justice. While these resources may contribute to the people's income, do not need to be managed in ways that promote just interactions between persons (Nine 2012, 39–43).

However, Nine's account seems to suffer some of the same problems as Miller's. It is difficult to point to the exact agent that mixes its labor with resources, creating resource rights. Not only are there individual and state agents, but there are also city and regional governments creating systems of justice through resources. Additionally, the view doesn't seem to ground rights over 'manna from heaven' like rain or sunshine. And most significantly, Nine's account does not respond to circularity worries. She does not address issues of historical injustice. Rather, states that create geographical sites of justice seem to acquire rights even over areas that they unjustly colonized.

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