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Review Article: The environmental turn in territorial rights

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Recent theories of territorial rights could be characterized by their growing attention to environmental concerns and resource rights (understood as the rights of jurisdiction and/or ownership over natural resources). Here I examine two: Avery Kolers's theory of ethnogeographical plenitude, and Cara Nine's theory of legitimate political authority over people and resources. While Kolers is a pioneer in demanding ecological sustainability as a minimum requirement for any viable theory of territorial rights – building a bridge between environmental and political philosophy – Nine highlights a crucial distinction when looking at territorial rights from a global justice perspective, namely that between jurisdictional powers and ownership rights over resources. Daring and innovative at first glance, I claim that both theories present, however, deep ambiguities and retreat from their radical implications which, if taken seriously, would lead to a massive redrawing of current territorial borders.

Keywords: territorial rights; resource rights; global justice; sustainability; Avery Kolers; Cara Nine

Avery Kolers, *Land, conflict and justice*. Cambridge: Cambridge University Press, 2009. Pp. 238. ISBN 0521-184-126.

Cara Nine, *Global justice and territory*. Oxford: Oxford University Press, 2012. Pp. 192. ISBN 0199-580-219.

I seen hunderds of men come by on the road an' on the ranches, with their bindles on their back an' that same damn thing in their heads. Hunderds of them. They come an' they quit an' go on; an' every damn one of them got a little piece of land in his head. And never a God damn one of 'em ever gets it. Just like heaven. Ever'body wants a little piece of land. I read plenty of books out here. Nobody never gets to heaven, and nobody gets no land.

(Steinbeck 1969, p. 81)

A bit over a decade ago, John Simmons asked a question that up until then had been mostly overlooked by political philosophers – at least by those in the analytic tradition: what are the moral grounds that states have for claiming a

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particular geographical territory, and what are the moral grounds that states *in general* have for dividing almost the entire earth among them (Simmons 2001, p. 304)?

So far, territorial rights theorists had been particularly concerned with the claims of self-determining collectives to enact that self-determination politically, socially, culturally and economically in a given geographical space. With the focus on topics like restorative justice for indigenous groups (Waldron 1992, Dodds 1998) and secession (Wellman 1995, Buchanan 1997), the rights to the territory itself appeared only derivatively. Starting with Simmons (and regardless of whether his Lockean answer to the above questions was satisfactory or not; to wit, that states derive these rights indirectly from the individual consent of their citizens), a new wave of theorists emerged who addressed these more fundamental issues. Mainly two types of argument were used. One was connection-based, i.e. the claim made by the individual or collective agent was founded on some normatively relevant link with the territory. This link could emerge by initial appropriation or first occupancy; by improving the land and thus adding material value to it; or by forming a special attachment to the geographical space in question, e.g. through the gradual unfolding of a common history and culture in it, as liberal nationalists would put it (Meisels 2009, Miller 2012). The other type was a functionalist argument, whereby territorial claims were justified in terms of the functions fulfilled by the agent in the territory (paradigmatically states), like protecting basic human rights (Buchanan 2004), or establishing property laws that complied with certain basic legitimacy conditions (Stilz 2009). For functionalists, then, the link between the people and the territory was seen as a contingent fact.

Today, in a context where the threats of climate change, energy crises, food shortage, the pollution of water and air, desertification, and the massive loss of biodiversity have become daily news, the attention on territorial rights has become increasingly focused on one of the specific aspects that they encompass, namely what is broadly known as resource rights. Along these lines, Margaret Moore has suggested that jurisdictional authority over resources has to be consistent with (and therefore also limited by) the right to subsistence of all human beings; Lea Ypi has claimed that states should only be conditionally and provisionally entitled to the resources within their jurisdictions, while they strive for the establishment of a global political authority in charge of realizing just reciprocal relations; Chris Armstrong has questioned the international regime of permanent sovereignty over natural resources held by nation-states; and Steven Vanderheiden has proposed to distinguish between *flow* and *stock* resources when it comes to their distribution for the purposes of global justice (Moore 2012, Ypi 2012, Armstrong 2014, Vanderheiden, unpublished).

In this article, my aim is to examine two recent theories of territorial rights that pay special attention to resource rights and to environmental concerns: Avery Kolers's theory of ethnogeographical plenitude (Kolers 2009) and Cara

Nine's theory of legitimate political authority over people and resources (Nine 2012). I shall propose that both make an important contribution to the current debate by putting these topics centre stage. Kolers, on the one hand, is a pioneer in demanding ecological sustainability as a minimum requirement for any viable theory of territorial rights. By doing this, he builds a bridge between fields largely disconnected, i.e. environmental and political philosophy. Nine, on the other hand, points to a useful distinction so far overlooked in the debate: that between jurisdictional powers and ownership rights over resources. This distinction turns out to be especially important when looking at territorial rights from a global justice perspective. Novel and daring at first glance, both theories have, however, deep ambiguities, and retreat from the quite revolutionary conclusions that they would lead to if taken to the letter.

While John Steinbeck's quote at the beginning of this article refers to the property rights of individuals to a specific piece of land, in what follows I focus on arguments given to justify collective rights over a territory and over the natural resources within it. By the end it should become clear, though, how Steinbeck's quote bears on this topic too.

Regarding the terminology, hereinafter I understand *resource rights* as those jurisdictional powers and/or ownership rights that agents (mainly states, but not only them) may hold over the land and natural resources within a limited geographical area. I understand *natural resources*, in turn, as 'natural assets (raw materials) occurring in nature that can be used for economic production or consumption'.¹ Here I follow the convention in international law where the terms *natural resources* and *natural wealth* (the environment whence these resources are obtained) are used interchangeably.

Ethnogeographical (and sustainable) plenitude

In *Land, Conflict and Justice*, Kolers claims that he will present a theory of territorial rights that – as opposed to its predecessors – is able to account satisfactorily for the wildly divergent territorial claims that are actually made in the world today, where purportedly incommensurable world-views are pitted against each other. The default procedure followed by political philosophers in the analytic tradition, according to the author, has been to translate and reduce all claims to the common language of Anglo-American ethnogeography (by ethnogeography, Kolers understands the beliefs about the geography and specific conceptions of land and natural resources of different communities). Rather, he proposes, each should be judged by their own parameters. Instead of endorsing territorial statism or cosmopolitanism (where a univocal understanding of justice regarding territory is implanted, respectively, within or across borders), Kolers thus endorses what may be called *territorial pluralism*, i.e. the idea that a theory of territorial rights ought to leave space for the coexistence of different ethnogeographies side by side at the domestic and/or global level.

It is usually the case that authors take their theories to account for certain facts and yield certain results that in the end they are unable to obtain, while overlooking that they do account for certain facts and yield certain results that they did not expect. This is the case with Kolers in a double sense. On the one hand, there are some key problems with his proposal that prevent him from building a successful theory of territorial pluralism. On the other hand, he fails to acknowledge that his real contribution to the debate boils down to the central role he assigns to ecological sustainability, enabling him to connect political and environmental philosophy in a promising manner. To be sure, Kolers does stress the importance of including sustainability as a key consideration in any contemporary theory of territorial rights. But he never explicitly acknowledges that it is this element which ends up being the ultimate measure to evaluate claims and adjudicate between them.

I address three aspects of his theory that deserve closer inspection. First, the key role he assigns to the concepts of resilience, sustainability and plenitude. Second, the problematic nature of ethnogeography. And third, the epistemological assumptions that the author ends up imposing over any eligible territorial claimant, thus defeating his alleged pluralism.

Resilience, sustainability, plenitude

Kolers's thesis is that 'a territorial right exists if and only if an ethnogeographic community demonstrably achieves plenitude in a juridical territory; this right grounds independent statehood only if there is no competing right and the territory is a country' (p. 5).

The heavy use of neologisms and of a number of concepts to which he attaches a *sui generis* meaning makes reading Kolers's book somewhat of a challenge. To put it into everyday words: Kolers is interested in delimiting the relevant agent of territorial rights, the relevant unit of territorial rights and the necessary conditions under which the latter may be legitimately claimed.

Regarding the agent, Kolers affirms that only *ethnogeographic communities* may hold territorial rights. This is neither an ascriptive group (like gender or race), nor a freely chosen association (like a rowing club or a political party), but something in between: a group whose membership is 'usually, and at least initially, unchosen, and often feels natural' (p. 91), because all its members share, explicitly or implicitly, both a common ontology of the land and its natural resources, and a common pattern of land-use. By *ontology of land*, Kolers means the conceptions of land that different cultures have: how they define land, in what sense they think it is valuable, and how they interact with it.²

Plenitude, in turn, is the necessary condition for an ethnogeographic community to hold a territorial right: 'Plenitude is both an empirical property of places and a project upon which one or more persons may embark' (p. 114). It is achieved when a place is internally and externally diverse from other places (*empirical plenitude*), and when its inhabitants are engaged in maintaining and

improving that diversity over time (*intentional plenitude*). Because the way in which diversity is defined depends on each ethnogeography, the criteria to judge them are internal and never imposed from outside.

The relevant units of territorial rights are *countries*, i.e. resilient juridical territories with more or less stable and permeable boundaries. A term borrowed from ecology, *resilience* refers to a property of systems that allows them to absorb external shocks and recover from them, bouncing back to their state of equilibrium. In the case of countries, resilience amounts to being able to absorb foreseeable and not wholly improbable environmental and social crises, without losing the ability to perform their basic functions. For example, recovering after an earthquake or confronting the challenges posed by climate change successfully. Resilience is inextricably linked with *sustainability*, defined as ‘the scope, quality, richness and benignity of human culture, the biosphere and the economic life we make from them, and the distribution of those benefits, both now and over time’ (p. 76). In short, ethnogeographic communities may only make territorial claims over countries (which is not the same as claiming statehood) if they have achieved plenitude in them. At the same time, a built-in condition for any viable ethnogeography is to guarantee the resilience and sustainability of the country where it is enacted.

So far, so good, if it were not for the ambiguous scope that Kolers assigns to resilience, and for the ambiguous relationship that he establishes between resilience and sustainability.

Although at first sight it seems that Kolers understands resilience as linked mainly to the ecology of the system (in this case, the country), he says in passing that resilience ‘need not be understood solely in ecological terms’ (p. 75). Thus, it may also be predicated of a system able to absorb a sudden and massive loss of jobs in a region, or to survive a certain amount of social and political upheaval. This is, indeed, how the term is used in fields like social anthropology and human geography. The problem is that Kolers does not make explicit what kind of resilience should be privileged when granting territorial rights and, more importantly, when adjudicating between competing claims. It may well happen, for example, that an ethnogeographic community has failed to achieve ecological resilience in its juridical territory, while attaining high levels of political, social and/or economic resilience. And what shall we do, then, when their claims are confronted against a different ethnogeographic community which, though not so economically, socially and/or politically resilient, is highly resilient in ecological terms?³

This is further complicated by the ambiguous relationship between resilience and sustainability. Affirming that ‘resilience matters to statehood because resilience provides an analysis of the concept of sustainability’ (p. 76) does not help to clarify whether both concepts are dependent on one another, interdependent, correlated or merely connected in some looser way; whether we are to understand both concepts mainly in ecological terms or also in political,

social and/or economic ones; and whether the scope where these concepts is applied is local or global.

Throughout the book, though, Kolers does give several clues that lead one to think of these terms as mainly applied to the ecological realm. He says that 'resilience allows states to be sovereign over many decisions regarding the *environment* globally', making sustainability 'a question about resilience to be settled at the time of initial recognition of the state'. And he adds that '[ensuring the] sustainability of individual units within the larger system helps to ensure the sustainability of the whole. At the same time, the resilience of each helps to isolate *environmental* catastrophes when they do occur' (pp. 77–78; added emphases). These quotes point in the direction of resilience and sustainability above all as ecological terms and make one think that this is where Kolers's originality lies. At the end of the day, only those groups who both enact and intend to enact an ecologically sustainable and resilient ethnogeography may claim territory. Furthermore, if conflict arises between them, it seems that it is by these criteria that their ethnogeographies will be measured and their claims adjudicated.⁴

This raises, however, two issues. One is that Kolers's territorial pluralism turns out not to be so pluralist after all, insofar as it does impose one universal value that all territorial candidates have to meet even before sitting in the bargaining table. The clearest example is Kolers's rejection of Anglo-American ethnogeography on the grounds that it takes land and natural resources to be commodities with mere instrumental value, only allowing for a one-way relationship whereby humans intervene over them without being transformed by them in turn. To have a territorial right, he proposes instead, the agent must be legitimate not only in its relationship with the individual members, but also in the relationship with the geography where it is placed. While one can certainly be sympathetic to this claim, one may still remind the author that this does indeed set his tolerance above a purportedly objective threshold that will not be decided by the candidates, but will be external to them.

The second issue is whether there are any rights-holders today who comply with these conditions, especially if we demand that they promote global and not just local sustainability. Rather, one suspects that applying Kolers's theory would lead to a complete upheaval of borders as we know them. On the one hand, those who endorse non-sustainable ethnogeographies, like the United States and Canada, would be left devoid of a territorial claim until reshaping them to suit those minimum requirements. Moreover, big mergers would have to occur between those who share a common ethnogeography. On the other hand, continents like South America and Africa would probably end up pulverized into much smaller territorial units. Of course, this is an issue only because Kolers wants it to be. Denying that his theory is anything close to revolutionary, he is quick to claim that one may accommodate to non-ideal theory by keeping current states and borders as they are, while thinking of resilience, sustainability and plenitude as ideal targets we should aim for; asymptotically approachable

goals toward which real-world politics should be directed. Given the author's sombre diagnosis of our current state of affairs, especially in terms of the rapid depletion of resources, one wonders however whether this is enough, or whether it would not be more advisable to openly prescribe this theory as an urgent remedy admitting of no further delays in its implementation.

The problematic nature of ethnogeography

As was said above, ethnogeographic communities are the eligible holders of territorial rights, understood as the rights to realize one's ethnogeography in a certain space. A group is an ethnogeographic community if it has 'densely and pervasively interacting land-use patterns' and its members share an ontology of the land – or, as Kolers further specifies, they have an 'as-if shared ontology of land' (pp. 86, 88). Regarding the first aspect, for example, land-use patterns of people living in US cities densely interact, insofar as they share a common infrastructure in terms of type of housing, commuting from home to work, relying mainly on cars for transportation, etc. And this dense interaction is pervasive, since it determines to a high degree people's lives. Regarding the second aspect, it is enough to have an as-if shared ontology that people participate in it daily, even if they would rather have a different one or even if they rightly oppose it: 'it is logically possible that a particular ethnogeography be shared and dominant in a community even if every single person within the ethnogeographic community intellectually rejects it' (pp. 86–87).

But this way of delineating ethnogeographies is problematic for at least two reasons.

First, by affirming that it is enough for sharing an ontology of land that members of the collective live and act *as if* they shared it, Kolers only requires from them what could be called consent 'by default'. This echoes John Locke's contention that tacit consent is enough to legitimize government, and raises the same kind of worry. Just as it seems insufficient to derive the legitimacy of a government from citizens who endorse the rules imposed on them uncritically, it seems insufficient to say that a group of individuals who happen to live in the same geographical area hold territorial rights merely by virtue of complying with the existing laws regarding land and natural resources, and by using the infrastructure available – which is quite an inevitable fact anyway.

Second, by making material and intentional plenitude individually necessary and jointly sufficient conditions, Kolers practically excludes as claimants all those groups who may share a conscious and well-delineated ontology of land, but do not count as having materialized it. Among them, environmental refugees in search of a new territory and groups whose members, though geographically dispersed, share an ontology of land that they wish to enact together. To be fair, Kolers is not oblivious to these scenarios, but the way in which he addresses them is not fully convincing.

In the first case, Kolers does allow for the possibility that a collective with merely intentional plenitude may claim territory, but only if they already have a set of written proposals with implementation strategies, land assignments and job descriptions; a ‘paper trail or development through various stages of collective planning’ (p. 149)! Actually to fulfil these demands seems, however, both unrealizable and unrealistic, especially if one bears in mind that the claimants’ knowledge of their potential new territory will be – at that point – almost exclusively theoretical.

In the second case, while Kolers concedes that they may count as having a worthwhile political project, ethnogeographical groups whose individual members are dispersed do not yet count as territorial claimants. The author sees this in-built bias toward ‘conservative’ claims as a welcome restriction, as there is ‘no risk that the link to land will cause an inexorable shift toward ethno-nationalism’ (p. 92). The downside of it, however, is that in practice it ends up favouring the status quo and privileging those ethnogeographies that have already left their imprint on the land (regardless of whether their members are even aware of this fact), over those where members may have a much clearer picture and knowledge of the relationship they want to achieve with the land, but have not been able to realize it as a collective – due to war, forceful displacement, a past history of colonialism, etc. To these groups at least, Kolers’s proposal may sound like adding insult to injury.

‘Transparent’ empirical tests, and why accept them?

Kolers defines three different axes along which territorial claims may be located: the status quo axis, i.e. how far they are from the world as it is; the world-view axis, which refers to the importance of the specific geographical place for the claimants; and the epistemological axis, namely how easy it is for outsiders to make sense of the claims of a given ethnogeographic community. According to the latter, claims can be *transparent* (when they seem reasonable and understandable to everyone), *opaque* (when they are incomprehensible and seem unreasonable to non members), and *translucent* (somewhere in between). Kolers’s way of dealing with this third axis, I suggest, militates against his goal of building a truly pluralist theory of territorial rights.

As the author points out, one of the main challenges is to evaluate claims of different degrees of opaqueness and adjudicate between them. So far, this has been done in two ways: assertions have simply been taken at face-value, using sincerity as the criterion of truth (Levy 2000); or they have been translated into a lowest common denominator, like Tamar Meisels’s criterion of *use* of the land understood in opposition to *neglect* or abandonment (Meisels 2009). Kolers rejects these strategies and proposes a third: ‘to require that all claims entail specific, falsifiable, empirical propositions. The strategy is not to translate claims into transparent language, but to make them susceptible of empirical tests that are transparent’ (p. 165).

Thus, although the internal and external diversity of each ethnogeography is relative to the observer and variable, Kolers intimates, this is not subjectivism. Rather, it requires that each ethnogeography makes clear by which standards of evidence they want to be evaluated – standards of evidence that are nonetheless those of Western science: objective, observable and quantitative facts. The external observer, then, will be able to judge whether or not and to what extent a given ethnogeography complies with its own criteria of diversity. Kolers uses the analogy of a high-jump athlete who tells the judge which pair of uprights is to be used, but does not have control over how high the horizontal bar will be set. Whether she manages to jump the bar or not will be an objective fact, just as it will be an objective fact whether the actual practices of a given ethnogeography reflect its own parameters.

There are two problems with this move. For one thing, the analogy does not work, because while jumping/not jumping the horizontal bar is a binary criterion, diversity comes in degrees. Kolers could, of course, simply change the analogy from high-jump athletes to violinists who use different scalar values to define what it means to play Bach's *Chaconne in D minor* like a virtuoso. But this leads to a second, deeper problem to which Kolers seems oblivious throughout the book. This is the assumption that other violinists, to carry on with the analogy, will be willing to subject themselves to a final common verdict that judges between them, even if they wholly disagree with the standards of success of their contenders. For, why would someone who thinks that the technical aspects of the *Chaconne* are the most relevant surrender to some other who focuses instead on the expressive emotion underlying it?

It thus turns out that the success of Kolers's theory is built upon the belief that competitors in the race for territorial rights will accept his procedure of judging each ethnogeography by its own proposed standards, to then get the verdict of which one comes closer to their own goal and therefore gets the prize. But the problem with territorial disputes is precisely that different ethnogeographies mutually dismiss and reject each other. Moreover, one could even argue that this procedure ends up being unfair for those whose ethnogeographies are more demanding in concrete terms. Think of one group whose ontology of land is centred on resource extraction and marketing of the land, with an idea of linear infinite development in the background (a modified Anglo-American ethnogeography). And think of some other group that is not against economic development, but seeks to do it in a way that does not deplete the environment and balances 'natural' with 'human' landscapes. The goal of the latter, being much more difficult to achieve than the goal of the former, presumably will have few chances of winning the contest if their claims are confronted against each other and measured from within each ontology. And there is no reason to think that, opposed as they are, they would abide by the resulting judgment.

This upshot brings to mind the proposal of the Colombian anthropologist Arturo Escobar in his *Territories of Difference* (2008). As a critical and

post-colonial theorist with extensive fieldwork experience among Afro-descendent communities in his native country, Escobar suggests that the one-fits-all formula that Western political philosophers keep looking for is the result of a set of implicit questionable assumptions shared by imperialism and globalization (which he takes to be imperialism in new clothes). Instead of trying to turn the whole world into one, following the belief in ‘One Truth accessible for all’, Escobar defends the coexistence of a multiplicity of worlds, a *pluriverse* of region-territories (Escobar 2008, p. 59, Escobar 2013).⁵

Seemingly unaware of Escobar’s existence and of post-colonial and decolonial literature in general, Kolers criticizes this occupier attitude to a certain extent: he is right to point out the parochial bias of both statist and cosmopolitan theorists, who have assumed the Anglo-American ontology of land uncritically and tried to convert every single territorial dispute into their language. But at the same time he fails to put a check on his own implicit assumptions about there being true facts by which to judge the pluriverse of ethnogeographies that he – like Escobar – wishes to keep. At the end of the day, Kolers is a grandson of the Enlightenment who respects the verdicts of Western science, especially ecology. In this sense, a better strategy would be to give up on his quest for territorial pluralism and embrace sustainability as the parameter by which every valid territorial claim ought to be measured. This, of course, would require openly acknowledging that one trusts scientists and ecological economists, and that one does believe that humans are having an objective impact over the Earth’s other beings and resources, to the extent that our ways have to be changed dramatically if we want to keep permanent residence in this planet. Given that any theoretical proposal will have its built-in assumptions and biases, and given how sensible it seems to take this ‘environmental turn’, this looks though like a fair price to pay.

Legitimate political authority over people and resources

While Kolers is aware and suspicious of the standard procedure of Anglo-American political philosophy, Cara Nine endorses it wholeheartedly, by declaring herself in the quest for a normative framework that will enable her to make sense of diverging territorial claims, translating them to a common denominator. By explicitly stressing the key place of resource rights in any theory of territorial rights, however, she shows awareness of the new challenges and demands that any such theory will have to face. Thus, without particularly focusing on environmental considerations, Nine’s approach could nonetheless be seen as going one step forward in this direction, by taking natural wealth and resources no longer as contingent, but as fundamental elements when thinking about the global distribution of territory.

In brief, Nine’s is a Lockean theory of territorial rights in that it seeks to ground these rights on a specific connection between the agent and the land. But pace Locke, Nine does not derive territorial rights from individual property

rights, and takes the relevant agent to be a self-determining collective, not necessarily democratic (more on this later), who demonstrates the capacity to meet minimal standards of justice over a territory and whose members share a common conception of justice.⁶

General claims to territory arise when a collective needs the territory to satisfy the basic needs of its members, *or* when the territory is not spoiled through use and does not prevent others from meeting their basic needs (a rephrasing of the two Lockean provisos of non-spoilage and ‘leaving enough and as good for others’), *or* when all persons (in the world!) agree to this exclusive acquisition. Specific claims to territory, meanwhile, depend on the collective being capable of changing the land creating a relationship with it, and on this relationship being morally valuable.

Jurisdiction over resources and jurisdiction over people, finally, are necessary components of territorial rights, while property rights over resources and border control are contingent.

There are three points of Nine’s theory to be unpacked. First, the distinctions she draws between ownership rights and jurisdictional powers over resources, and between legitimate political authority over resources and over people. Second, as with Kolers, the gap between what her theory actually entails and what she wishes it to entail, downplaying its quite radical implications. Third, an ambiguity in Nine’s definition of the relevant territorial agent, that makes her theory liable to the same kind of criticism that she poses against those who found territorial rights on the self-determination of democratic collectives.

Two distinctions

Nine starts by criticizing David Miller’s conceptual division of territorial rights into rights of jurisdiction over persons, control over resources, and border control over persons and things (Miller 2012). Regarding control over resources, Nine argues, this division overlooks that there are two very different types of rights that work at different levels and have different functions. On the one hand, there can be *jurisdictional powers over resources*, which comprise

the power to legislate, adjudicate and enforce property rights in a region, including rules of taxation and the (limited) power to determine, through rule of law, the use of goods in that region; the power to legislate, adjudicate and enforce rules regarding un-owned goods in a region, including the power to determine that ‘the people’ have property rights over such goods; and the power to enter into treaties that alienate or transfer powers to another collective. (p. 8)

On the other hand, resource rights may refer to *ownership rights over resources*, which include some or all of these incidents: access, withdrawal, management, alienation and value-retention.⁷ Jurisdictional as opposed to

property rights over resources are higher-order rights or meta-rights because they can determine and modify the contours of the latter. Moreover, their function is to realize a shared conception of justice over a geographical area, while the function of ownership rights over resources is to help realize a given conception of the good, individual or collective. What jurisdictional powers over resources give to collectives that mere ownership rights do not is the possibility of self-determination regarding matters of resource use and development. Although both rights concern exclusivity over goods, then, they ought to be kept separate when developing a theory of territorial rights. To have a territorial right, Nine continues, it is enough that a collective holds jurisdictional powers over persons and resources, while ownership over resources and border control are not necessary.

However promising this minimalistic approach may sound, there are problems with it. First, Nine does not provide a single example where territorial rights are actually exercised in complete absence of at least some of the incidents of ownership rights over resources, and/or border control of things and persons.⁸ Of course, she can reply to this charge that her point is merely that it is theoretically possible to think of territorial rights in this way, not that any actual cases fit that description. But that will not do, given that Nine herself later affirms that ‘ownership rights *can be necessary* for the exercise of jurisdictional authority in several ways’ (p. 142; added emphasis). If one examines the way that Nine unpacks it, this *can* looks more like a *must*: in order to exercise jurisdictional authority effectively, she admits that a collective needs the rights of access and withdrawal of resources over a geographical area, as well as the rights of management, alienation and value-retention, at least to a certain extent. It seems, then, that all the incidents of ownership rights are needed to make sense of jurisdictional rights over resources. Nine, unfortunately, does neither specify how much each of them is needed, nor whether one should stipulate a fixed universal threshold for each or whether the answer should be contextual.

To be clear on this point is particularly important for connecting her theory to a wider theory of global justice, which is one of her main goals. As Nine herself points out, for example, Thomas Pogge’s proposal of a Global Resource Dividend, to be collected among resource rich countries and to be divided among the world’s poor (Pogge 2008, pp. 202–203), relies on the idea that jurisdictional and property rights are indeed separable: a country may have control over the territory without having the right to retain the full profit derived from resource extraction, which might then be redistributed. But it remains to be answered to what extent the country will still need to retain some of that profit in order to exercise its jurisdictional powers. The minimal components needed to hold territorial rights, clear at first glance, are not so clear after all.

Another problematic aspect is a second distinction over which Nine places a lot of weight, namely, that between *legitimate political authority over*

resources and *persons*. For Nine, a big misunderstanding of political philosophers has been simply to derive the former from the latter – as a corollary of self-determination rights democratically understood (Christiano 2006, Wenar 2008, Altman and Wellman 2009), legitimate sovereignty over individuals (Pogge 2008), etc. On the contrary, she asserts, it is important to keep both separate if one wishes to give a coherent normative justification for collective resource rights that can also account for their geographical specificity and exclusive nature. While jurisdiction over persons means that authority is exercised over actions that directly concern people, jurisdiction over resources means that authority is exercised over actions that directly concern resources. One can thus have the first without having the second.

None of the above theorists, however, would disagree with this last claim: one may govern over people without governing over resources. But what about the opposite? If I claim jurisdiction over a deserted island and all its natural riches, what does it mean for me to have jurisdiction over those resources other than that, if others make a similar claim over the area, or try to enter and/or withdraw some of those resources without my permission, I have a claim against them so doing? Unless Nine thinks that humans can govern over rocks, plants and non-human animals (which she surely does not), jurisdictional rights over resources do boil down sooner or later to jurisdictional rights over human individuals. Maybe a useful conceptual distinction, at the end of the day jurisdictional powers over resources still fall under the broader umbrella of jurisdictional powers over persons.

A radical redrawing of borders

As was said above, Nine offers both a general and a specific justification for territorial rights: the first is founded on the administration of justice and the fulfilment of the basic rights of the people, while the second is based on the special connection between the people and the geographical area which they happen to transform. At the same time, Nine is intent to show that hers is a sensible, down-to-earth theory which is compatible, for the most part, with current borders. Applying it to the letter, however, would require redrawing most states' boundaries as they currently stand, invalidating claims to certain areas that have been taken for granted, and limiting the scope of territorial jurisdictions in a way that would make the resulting world map quite unrecognizable. Like Kolers's, Nine's theory is thus much more revisionary than what she is willing to grant.

This obsession to align one's theory with the current state of affairs is founded on what could be labelled as the 'status quo fallacy'. In moral philosophy, one big question is to what extent normative theories should be shaped by human nature as it is. If we are regarded as inherently selfish, for example, a good theory will have to acknowledge this instead of pretending that we can behave as fully altruistic beings. Because ought implies can, to put it in

Kantian jargon, no one may be required to perform the impossible. Analogously, but erroneously, most contemporary theorists of territorial rights (and here Kolers and Nine are no exception) seem to take the view that their theories need to map, as much as possible, territorial borders as they stand today. This may be due to an insufficient attention to history and to non-Western societies: it suffices to look at the Feudal Ages to realize the altogether different sorts of political allegiances and territorial arrangements formed during that time (Bloch 1989); and it suffices to look at the present claims of many indigenous groups around the world to realize that the Western obsession with mapping and fencing the territory is not an inevitable, 'natural' need of human societies. If the reason is not this, but the fear of seeming too utopian, then if it is not political philosophers who wonder and speculate and dream of different ways of arranging societies, who is to take their job?

Because the general justification for territorial rights depends on the relevant collective satisfying the basic needs of its individual members (through the creation of a stable system of property rights, the delivery of basic goods and social justice, and large-scale resource management), it follows in Nine's theory that it makes no sense to make such claims over uninhabited areas or areas 'where the establishment of territorial rights is excessively tangential to the establishment of jurisdictional authority' (p. 42). Current claims to places like Antarctica, the Arctic, and to underground and undersea resources are therefore invalid. Using the distinction between jurisdiction and property rights over resources, Nine suggests that countries may at best own these resources under the jurisdiction of an international body. After admitting these quite striking implications, however, she immediately puts them aside on the grounds that they constitute 'a radical departure from current understandings and evaluations of territorial rights' (p. 44). In the case of underground resources, for example, she assumes thereafter that they do in fact belong under their current jurisdictions. This is not an endorsement of the status quo, she adds, but shows a willingness to engage with interlocutors that take those rights for granted. If it is political philosophy rather than policy-making that Nine is interested in, it is difficult to accept this as a disclaimer, though. It also leaves one with the impression that what could have been one of the most promising features of her proposal – and one that clearly points in the direction of an environmental turn – is left undeveloped.

Regarding the specific justification of rights to a given territory, meanwhile, the application of Nine's theory would require redrawing our maps in a way that would leave huge areas under no one's jurisdiction – or at least not under current states' jurisdictions. Nine's reading of Locke is that to acquire a property right over land and natural resources individuals must mix their labour with it, creating a special relationship that is morally valuable, in that it accords with the liberal principles of desert, efficiency and autonomy. Analogously, to acquire a territorial right over land and natural resources collectives must change these in a way that creates this special relationship and

respects these three principles. This transformation is done through the enforcement of land-use, resource-use and property laws and, more generally, through the establishment of a system of social, political and economic norms that ends up shaping the people, the environment and the ways in which they interact. If one takes this seriously, though, it is an open question whether any boundaries today could be justified. As Simmons has pointed out, while under a Lockean theory ‘*modest common holdings of land can be legitimated by the exclusive use of the commons by society’s members for gathering, recreation, or shared activities*’ (Simmons 2001, p. 314; original emphasis), the control of vast, uninhabited and unused extensions that states exercise today seems altogether indefensible. This should be a tolerable implication for Nine if she were willing to offer her theory as a bold model that we should strive to adopt no matter how much it shook the current state of affairs. Because she seems so concerned with building a normative framework as non-disruptive as possible, however, these implications do become a challenge for her account.

The ‘self’ in ‘self-determining collectives geographically situated’

After discarding Lockean individualistic accounts, Nine goes on to reject functionalist defences of territorial rights which take states as the relevant holders. Among them, Allen Buchanan’s self-determination rights over territory granted to the wielders of legitimate political power, and Anna Stilz’s Kantian theory, whereby the state holds primitive rights to territory so long as it establishes property laws while meeting certain basic conditions of legitimacy (Buchanan 2004, Stilz 2009). Nine criticizes these theories, correctly in my view, because they are unable to account for any specific link between the people and the geographical area over which they exercise their self-determination, and cannot justify the rights to self-determination that we normally think a people may have against a state – as in secessionist claims – or in the absence of one – as in countries wrought by civil war.

The next target are functionalist theories that found territorial rights directly on the self-determination of democratic peoples (Christiano 2006, Altman and Wellman 2009). If democracy is the value that we are looking for in collectives with a right to territory, Nine objects, then we will have a theory with insufficient coverage, and that will have trouble both accounting for territorial borders and setting a criterion of membership. By *coverage*, Nine means that a plausible theory needs to justify why non-democratic peoples are nonetheless self-determining when it comes to the exercise of territorial rights. Otherwise, the theory has counter-intuitive implications (no ‘decent hierarchical society’ à la John Rawls fits the bill); it goes against what international law currently understands by self-determination; and it is too limiting as a tool of analysis in the present world. Regarding the justification of territorial borders and the criterion to determine who does and does not belong in the polity, the problem is that all democratic theories either have to presuppose the relevant group

boundaries or beg the question. Regardless of whether we take consent, majority rule, member identification with the collective or collective decision-making as what defines a democracy, the question remains as to who belongs to it in the first place. If who belongs to it is determined by the territorial boundaries that already exist, then any attempt to change these through democratic means would create a circularity problem. If the criterion to delimit democratic membership is not geographic, on the other hand, what it is remains a mystery.

Finally, Nine discusses and rejects liberal nationalism, where the relevant collective is the nation, defined as a mutually self-identifying political *and* cultural group (Moore 2001). For Nine, it is this last bit that is problematic, insofar as belonging to the same culture is neither a necessary nor a sufficient condition to ground self-determination rights: multicultural countries with just public institutions show it is not necessary, while nationalist groups who exercise power in violation of the rights of minorities show it is not sufficient. It is the political nature of the community that does the work, and this is the line Nine takes to found her own theory.

The relevant collectives to hold territorial rights, Nine then proposes, are ‘unique territorial groups that unite individuals with pluralistic views across generations’ (p. 66). Drawing inspiration from Rawls’s *Law of Peoples* (1999), Nine underlines that such a collective need not be democratic or liberal, but has to comply with at least two conditions: the members must share a moral nature and common political sympathies. To bring the geographical factor into the picture, Nine further requires an overlapping consensus concerning ‘the just use of lands and resources within the region’ (p. 66). Her theory could thus be labelled as a politically and geographically defined nationalism. Maybe because of the connotations that this term can bring to mind (homogeneous ethnicity and culture, one language, one common history, suspicious attitudes toward ‘the Other’, and so on), Nine prefers to disentangle herself completely from this tradition and present hers as a neutral, fully politically based alternative. But if one wants to avoid multiplying the entities unnecessarily, it is under this category where her theory best fits.

It is important to note the emphasis that Nine places on the idea that the key value to hold a right to self-determination and, therefore, territorial rights is justice and not democracy. If one examines her critique of democratic theories more closely, however, it turns out that her own account presents similar problems.

Regarding coverage, it is true that by leaving out all collectives who are not democratically organized, a big chunk of the world’s boundaries become unjustifiable, presenting a serious challenge to the legitimacy of current states and international law. Yet, Nine’s contention that putting the territorial rights of these groups on hold is counter-intuitive only shows how counter-intuitive intuitions can be. Her own claim that only groups who share a conception of justice and exercise it in a geographical area should be regarded as self-determining would also leave big chunks of the world’s map in need of

justification. Nine may reply here that her theory sets an ideal and that though no countries in the world today fulfil it completely, they may use it as a heuristic tool. But this response could also be given by democracy theorists: while in principle only democratic collectives should be regarded as self-determining, in practice they could still accept the claims of non-democratic groups, in the hope that by respecting them and showing them the advantages of their own way of political organization they will be subtly nudged toward the democratic path.

As for the problems confronted by democratic theories when it comes to justifying territorial borders and finding a criterion of membership, Nine's diagnosis seems fair, but then again her own theory faces a similar challenge. Because the self-determining collective is defined geographically, Nine argues that her theory does provide a straightforward way for delimiting both the group of members and the boundaries within which they govern: the aggregate of individuals feel part and identify with that enduring trans-generational entity, and the limits of the latter's jurisdiction are those over which it has demonstrated the capacity to implement just institutions that satisfy the basic needs of everyone: 'The message of self-determination is not only that individuals should be justly governed but also that they should be justly governed by their *own* government' (p. 50; original emphasis).

Unfortunately, Nine does not specify any further what it takes to be a member as opposed to a non-member. Some quotes give the impression that members are necessarily residents. For instance, she rejects global redistribution of the world's resources if this is to be done by 'putting control over local resources into *foreign* hands, that is, *non-residents* have authority over resources', and claims that 'assuming that *resident qualifying peoples* have a prima facie claim to jurisdictional authority over their territory and resources helps provide for the basic needs of individuals (pp. 108, 114; added emphases). But then, who are the *resident qualifying peoples*? And who decides whether they are *qualifying*? If the deciding authority is external, this would violate the people's right to self-determination. And if it is internal, then Nine falls into the same circular quandary faced by democracy theorists: those who already belong in the group will decide the group's boundaries.

Who the *self* is in self-determining collectives geographically located thus remains a mystery in Nine's account too.

Conclusions

To conclude, I would like to make some brief remarks highlighting the commonalities between these theories and how they give us hints as to the future direction of theorizing territorial rights.

As the title of this article suggests, underlying both Kolers's and Nine's quests is the realization that environmental considerations (and within them, the use and control of natural resources, including land) need to be at the

forefront of any viable theory of territorial rights. By virtue of its importance in the fulfilment of basic human needs and interests, and of the mutually informing relationship that collectives establish with it, the physical, concrete territory is no longer depicted as an inert body over which humans leave their imprint, a mere accidental feature which could easily be changed and exchanged while leaving intact the territorial rights of a people. This ‘environmental turn’, I suggested, is very much attuned to the growing consciousness that our attitudes and actions toward the natural world need urgent rethinking in light of the global challenges we are facing. Moreover, as Kolers’s theory especially manifests, it builds a promising bridge between environmental and political philosophy.

While being attachment-based theories that seek to justify not only general, but also specific claims of peoples to specific territories, Nine’s and Kolers’s accounts also share a cosmopolitan outlook that further distinguishes them from their predecessors. When critically discussing cosmopolitan discourses on territorial rights, thus, their point is not to discard cosmopolitanism as incoherent or inapplicable in this debate, but rather to rescue some of its key insights and integrate them into their theories: in Nine’s case, a concern for the fair distribution of resources globally; in Kolers’s case, an acknowledgment that ethnogeographies owe resilience and sustainability not only to their members, but also to humanity as one unified total system.

Finally, the two theories here examined evidence a structural feature that all theories of this kind share, but few are candid to admit: whichever justification one ends up giving for territorial rights, vast tracts of the Earth (most of them already under someone’s jurisdiction) fall outside the framework. Instead of retreating from this implication on the fear that one’s theory will appear too daring or ideal, this should rather serve to shake that self-imposed censure and impel us to look afresh into old questions in need of new answers. It is now time to go back to Steinbeck’s quote: maybe it is true, after all, that nobody gets no land ... at least not in the standard sense that we have understood it. The next step for theories of territorial rights might have to do a lot with responsible stewardship and administration, and very little with that entrenched sense of entitlement to full ownership and control so far assumed by the literature and by our institutional system.

Note on contributor

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Notes

1. I take this definition from the Organization for Economic Co-operation and Development (OECD). Available from: <http://stats.oecd.org/glossary/search.asp> [Accessed 4 July 2013].
2. In later work, Kolers has further developed the idea of an ontology of resources. One aspect of territorial rights, he claims, are rights of resourcehood, i.e., 'the power to determine [by the community's actual behaviour and actions] which things within the rightly held territory are resources' (Kolers 2012a, p. 279). For a critique, see Simmons (2012) and Armstrong (2013).
3. Or take the case of some Latin American countries today, where the states fight against indigenous communities living within them for control over land and natural resources. While the latter have normally achieved ecological and social resilience (however politically and economically underdeveloped), the former have a stronger political and economic institutional apparatus, but have usually failed grossly regarding care and protection of the environment. Which one has then a better claim?
4. This is indeed what Kolers has emphasized in later writings. See, for example: 'The quantity of territory in the world can [...] be expressed by a measure of justice relative to ecological footprint; territory would expand if the same "quantity" of justice were achieved given a shrinking footprint, or the footprint held constant while the quantity of justice expanded. [...] Whatever its other achievements [...] the current states system, requires continually more land to achieve increasingly unsustainable returns. The results are not only sinking islands and desertification, but also a world less hospitable overall to human habitation and certainly to the provision of justice to a growing population' (Kolers 2012b, pp. 338, 339).
5. Whether Escobar's proposal is practically viable is a much debated question and it would be the topic of a different enquiry.
6. The minimal standards of justice are 'adequate protection and respect for human rights of both members and non-members, where human rights are understood in terms of securing access to the objects of basic individual needs'. They also include 'standards of non-aggressive behavior towards other self-determining groups, and similar good standards of conduct in the international sphere' (p. 49).
7. Nine takes this from Armstrong (forthcoming). The original source of this distinction is Elinor Ostrom's work, from which Armstrong slightly adapts it (Schlager and Ostrom 1992).

8. Because the focus of this article is on the connection between territorial and resource rights, I do not discuss Nine's contentious claim that the right to control borders, i.e. to determine residence, citizenship and migration, is only contingent to territorial rights. The fact that she devotes only a couple of paragraphs to it and omits to discuss key issues like mass migration entirely, however, deserves closer inspection.

References

- Altman, A., and Wellman, C., 2009. *A liberal theory of international justice*. Oxford: Oxford University Press.
- Armstrong, C., 2013. Resources, rights and global justice: a response to Kolers. *Political studies*, doi:10.1111/1467-9248.12027.
- Armstrong, C., 2014. Against "permanent sovereignty" over natural resources. *Politics, philosophy and economics* (in press).
- Armstrong, C., Forthcoming. Justice and attachment to natural resources. *Journal of political philosophy*.
- Bloch, M., 1989. *Feudal society*. 2nd edition. London: Routledge.
- Buchanan, A., 1997. Theories of secession. *Philosophy & public affairs*, 26, 31–61.
- Buchanan, A., 2004. *Justice, legitimacy and self-determination: moral foundations for international law*. Oxford: Oxford University Press.
- Christiano, T., 2006. A democratic theory of territory and some puzzles about global democracy. *Journal of social philosophy*, 37, 81–107.
- Dodds, S., 1998. Justice and indigenous land rights. *Inquiry*, 41, 187–205.
- Escobar, A., 2008. *Territories of difference: place, movement, life, redes*. Durham and London: Duke University Press.
- Escobar, A., 2013. Territorios de diferencia: la ontología política de los 'derechos al territorio'. Keynote address. Workshop, contested territory: assessing claims over land and natural resources in Latin America, 23–25 September, Center for the Study of Mind in Nature (CSMN), University of Oslo.
- Kolers, A., 2009. *Land, conflict, and justice*. Cambridge: Cambridge University Press (All quotes from this article are reproduced by permission of Cambridge University Press.).
- Kolers, A., 2012a. Justice, territory and natural resources, *Political studies*, 60 (2), 269–286.
- Kolers, A., 2012b. Floating provisos and sinking islands. *Journal of applied philosophy*, 29 (4), 333–343.
- Levy, J.T., 2000. *The Multiculturalism of fear*. Oxford: Oxford University Press.
- Meisels, T., 2009. *Territorial rights*. Dordrecht: Springer Law and Philosophy Library.
- Miller, D., 2012. Territorial rights: concept and justification. *Political studies*, 60 (2), 252–268.
- Moore, M., 2001. *The ethics of nationalism*. Oxford: Oxford University Press.
- Moore, M., 2012. Natural resources, territorial right, and global distributive justice. *Political theory*, 40, 84–107.
- Nine, C., 2012. *Global justice and territory*. Oxford: Oxford University Press (All material from this article is reproduced by permission of Oxford University Press, <http://www.oup.com/> (234 words from pp.8, 42, 44, 49–50, 66, 108, 114 and 142)).
- Rawls, J., 1999. *The law of peoples*. Cambridge, MA.: Harvard University Press.
- Pogge, T., 2008. *World poverty and human rights: cosmopolitan responsibilities and reforms*. 2nd edition. Malden, MA.: Polity Press.
- Schlager, E., and Ostrom, E., 1992. Property-Rights regimes and natural resources: a conceptual analysis. *Land economics*, 68 (3), 249–262.

- Simmons, A.J., 2001. On the territorial rights of states. *Philosophical issues*, 11, 300–326.
- Simmons, A.J., 2012. States' resource rights: locating the limits. *Territory and justice symposia 1*, Cara Nine (ed.), available at <http://eis.bris.ac.uk/~plcdib/territory.html>
- Steinbeck, J., 1969. *Of mice and men*. New York: Viking Press.
- Stilz, A., 2009. Why do states have territorial rights? *International theory*, 1, 185–213.
- Vanderheiden, S., Global justice and natural resources: three potential appeals. Unpublished manuscript.
- Waldron, J., 1992. Superseding historic injustice. *Ethics*, 103, 4–28.
- Wellman, C.H., 1995. A defense of secession and political Self-Determination. *Philosophy & public affairs*, 24, 142–171.
- Wenar, L., 2008. Property rights and the resource curse. *Philosophy and public affairs*, 36, 2–32.
- Ypi, Lea, 2012. A permissive theory of territorial rights. *European journal of philosophy*, doi:10.1111/j.1468-0378.2011.00506.x.