

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)

Introduction

Of elephants and living rooms

For at least half a century, since the major early works of Rawls, Feinberg, and others, political philosophy has been an absolutely vital intellectual enterprise. It has incomparably deepened our thinking on the meaning and value of democracy, equality, justice, and freedom. It has taught us to see the nature and importance of social institutions. It has forced us to confront and assess the morality of war and other forms of violence. More recently, it has thrown into question our assumptions about the boundaries of our moral communities and the quality of relationships both within and across them. But for all this, the enterprise of political philosophy has also nursed a number of shocking blind spots. Of those blind spots two are perhaps most dangerous.

The first is territory. The international relations theorist John Vasquez argues that territorial disputes are the most common cause of war, and that this explains “why neighbors fight” (Vasquez 1995). Just war theory has blossomed – or perhaps exploded is the better word – in the decades since Walzer’s *Just and Unjust Wars*. But the territoriality of states and of the disputes that arise between them has been virtually absent from the work of political philosophers. Everyone knows that states are territorial, and most people agree that they are inevitably so. Yet theories of the state, of justice, and even of secession have traditionally had little or nothing to say about the relationship between states and territories, or the just resolution of the territorial disputes that arise between states, their neighbors, and their members.

Recent years have brought four classes of exceptions to this generalization. An *attachment* approach to territory, evinced by liberal nationalists such as David Miller (2000) and Tamar Meisels (2005), as well as proponents of indigenous peoples’ rights (e.g. Tully 1994;

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)

Iverson et al. 2000; Thompson 2002) holds that special linkages between groups and places can carry moral weight. A *conflict-resolution* approach (Levy 2000; Bose 2007) starts from the elements of territorial conflict and attempts to build a theory that can satisfy each claimant's most important demands. An *individualistic* approach treats territorial rights as more or less directly reducible to the interests and rights of individuals. Such accounts may foreground the territorial right in practice, but the justification itself nonetheless relies on individual interests that are themselves normatively individualistic, such as human rights or moral targets (e.g. Buchanan 2004), pre-political property rights (Simmons 2001), individual rights to resources (Steiner 1999), political association rights (Wellman 2005), or whatever. Finally, a *dissolution* approach (Pogge 2002) denies that territory poses any new problems, raising the issue only long enough to justify returning to domestic or global justice questions as before.

There is enough work now that it is no longer correct to say that territory is ignored; but what exists is, by and large, perfunctory and unsystematic insofar as it deals with territory and territorial rights as such. Indeed, the dominant approaches are dissolutionist or individualistic, and such approaches treat territory as generating no new ground-level problems for theories of global or domestic justice more generally. Thus, exceptions notwithstanding, territory remains a major blind spot of contemporary political philosophy, as marginalized now as ever.

The second major blind spot is the global climate emergency. There is perhaps no greater threat to the survival of human societies as we know them, other than the constant threat of nuclear annihilation. Yet – again with a few exceptions, such as Goodin (1992) and Dryzek (2000) – political philosophers have by and large proceeded as though climates did not exist. They have, at most, treated the climate emergency as a further issue to be dealt with after the core stuff was addressed. But in a real sense the core stuff doesn't matter as much as the climate emergency. As of the time of writing, the years since the original Rio Summit have been all but a total loss (Gardiner 2004). Already, some 150,000 deaths annually are attributable to climate change (Patz et al. 2005). Reports of melting permafrost, massive methane release, and a slowing Gulf Stream are the stuff of nightmare. Even if the Earth were to return to some climatic equilibrium, it would do so at a massive cost to human life and civilization. And we have no

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)*Introduction*

3

way of knowing how close we are to a tipping point that will take us into a new equilibrium that is much less favorable to human life.

It is not just that political philosophers ought to deal with territory and the environment, but that dealing with these things is crucial to getting good answers to the core questions on which political philosophers tend to focus. That is what makes these phenomena elephants in the living room, rather than, say, elephants in the zoo. The problem with having an elephant in the living room is that, if you don't take proactive steps to get it out while it's calm, it will eventually knock your house down. This book is an attempt to get the elephant out while it's calm. The book offers a theory of territorial rights that puts environmental sustainability – particularly stewardship of the climate and of ecosystem services that sustain civilization as we know it – at the core of legitimate state territorial claims.

Core ideas

This book develops what I earlier called an attachment approach to territory. In this respect it is cognate with certain liberal-nationalist and indigenous-rights views. But the ideas here are mostly unfamiliar to writers in both camps, as well as other philosophers and social scientists. This is, in other words, a bit of a strange book. I want briefly to lay out the main ideas, focusing particularly on the unfamiliar ones.

The first idea is that of an *ethnogeography*. This term is appropriated from a subdiscipline of geography that deals with describing the geographical beliefs of various cultures (Blaut 1979). I use the term to name, not the field of study, but its subject-matter – culturally specific conceptions of land. By conceptions of land I mean ontologies of land and our relationship to it; what land is, what about it is valuable, how humans interact with it. One particular point worth foreshadowing is that liberal writers such as Locke, Dworkin, and virtually everyone in between presuppose one particular ethnogeography, which I call the Anglo-American ethnogeography. Territorial egalitarianism, which is defended in various forms by Charles Beitz (1999) and Hillel Steiner (1999), as well as in Dworkin's (2000) broader egalitarianism about land, seeks to impose the Anglo-American ethnogeography on others who may not share it.

A related notion is that of the *ethnogeographic community*: a group of people who share an ethnogeography and whose land-use practices

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)

densely and pervasively interact. Territorial rights accrue, as I shall argue in Chapter Three, to ethnogeographic communities rather than to other sorts of groups such as nations or cultures.

A third core idea is that of *territory* itself, and of state territory or the idea of a *country*. As far as I can tell not a single other work in political philosophy pauses at any length to consider what territory is. Territoriality is in the first instance a strategy of bounding and controlling, and thereby making, geographic places. A territory is a geographic place that is bounded and controlled in part through geographical means such as the establishment of physical boundaries or other means of demarcation. To control a territory is to be able to make and enforce what the geographer Robert Sack calls the in/out of place rules, and the flows of people across the border and within the place itself. But not every territory is of concern here. The theory covers only *juridical* territories – territories that are bounded and controlled through rules of law. Roughly, a territorial right is a right to make viable one's ethnogeography by controlling a juridical territory, particularly through legal, political, and economic institutions.

Among juridical territories, only countries are appropriate candidates for statehood. A country is a juridical territory that has achieved a certain level of *resilience*. Resilience is an ecological concept denoting the capacity of a system to bounce back to an equilibrium. That is, a system is resilient insofar as it can absorb shocks and continue (or return to) doing the same thing as before (Walker and Salt 2006). The resilience of a territory is at a second level – it is achieved when a territory includes enough, or resilient-enough, systems that the human society in the territory can bounce back from the loss of a given system within that territory. For instance, the social-ecological system of the Goulburn-Broken Catchment in Australia is not resilient because, even as it suffers an epochal drought, it is also at risk of becoming waterlogged and hence infertile if even two consecutive wet years ensue, due to the rise of water tables and the salination of fields (Walker and Salt 2006). But Australia as a whole may nonetheless be resilient, provided it has a wide-enough array of systems to absorb the loss of any one. A territorial claim may be valid, but if the territory thereby claimed is not resilient then it is not a country; and if the territory is not a country, then the validity of the territorial claim cannot ground independent statehood. While any ethnogeographic community may be eligible for territorial rights, then, only valid claims to countries support claims to statehood or sovereignty.

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)*Introduction*

5

Any attachment approach to territory reduces fundamentally to the criterion of attachment. The criterion derived here is *plenitude*, or fullness. Plenitude is in some respects cognate with other, better-known, attachment criteria such as *settlement* and *use*, but plenitude has the virtue of not presupposing any particular ethnogeography. The central challenge of Chapters Four and Five is to first specify the meaning of plenitude in the abstract, and then apply it meaningfully to territorial dispute-types. Plenitude has two aspects: empirical and intentional. A place is *empirically* full when it is internally diverse and distinct from other places. Think of the difference between a city and the rubble it may become in wartime. A place reduced to rubble is *empty*, rather than full, because, although there is no dearth of medium-sized physical objects, it is not internally diverse. The pre-war city, in contrast, is full insofar as it has distinct streets and buildings, economic and cultural activity, and so on. *Intentional* plenitude is a forward-looking notion, involving plans to achieve, maintain, or enhance empirical plenitude in perpetuity. Again, crucially, this need not require filling the place with people; it may rather involve preventing or limiting human encroachment to ensure that fisheries, forests, or wildlife habitats remain intact. Together with resilience, intentional plenitude puts the environment, and particularly long-term climate-related variables, at the center of the theory.

Plenitude is always from a perspective. As I drive through rural Kentucky, or walk through the City of the Dead in Cairo, I do not see much internal diversity. But others do. The place is full relative to their ethnogeography, but not relative to mine. This explains why they could, but I cannot, plausibly lay a territorial claim to it. All the same, the plenitude remains empirical because they would be able to use their knowledge of it in ways that could be third-party verified. They would, for instance, be able to mix their labor with the land in a way that would yield certain sorts of crops; they would be able to draw maps and solve drainage problems. We could begin to resolve territorial disputes not by asking who believes the place to be sacred, but by asking what is there, and seeing who knows.

It is now possible to state the core thesis of the book:

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.

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)

The thesis is really quite simple; the complexity comes from explicating the core concepts and applying them to a variety of contexts. I believe this book is significant not only because it is the first work of political philosophy to offer a general and systematic theory of territorial rights, but because it goes far beyond most philosophical works in the extent to which it applies the theory. A rigorous focus on territory generates some novel ideas about world order. Moreover, the detailed and empirically informed application to the Israeli–Palestinian dispute (Chapter Six) includes powerful critiques of the standard solutions and offers two new proposals for the just resolution of the territorial conflict.

A note on terminology

As should be clear from the conceptual neologisms laid out above, the current theory departs in important ways from the main schools of liberal political thought. These schools, then, come in for what I take to be compelling critiques. Nonetheless, I have no stake in insisting that this theory is not itself on some level a version of liberalism, cosmopolitanism, nationalism, neo-Lockeanism, or whatever. The theory here may be read as a corrective rather than an alternative to any of these orientations. I do not purport to have discovered fatal flaws with the very idea of cosmopolitanism or liberal nationalism. Nationalists, for instance, may regard an ethnogeographic community as a particular sort of nation; provided that other aspects of nationalism are modified as required by the theory, I need not protest. Similarly, the attention to global problems and the attempt to discover a language for territorial claims that is universally applicable without requiring imposition on unwilling others, may be taken for hallmarks of cosmopolitanism. Again, I would take incorporation as a compliment.

There are doubtless errors of argumentation and articulation in the book. But, although the theory is an integral whole, I believe that it is also severable: if one part is rejected, the rest of the theory may still survive. For instance, if there is really no such thing as an ethnogeographic community – and this is a testable question of empirical theory, as is, for instance, the (now quite dubious) existence of cultures (Kuper 1999) – the remainder of the theory may still provide a useful basis for resolving territorial disputes between nations, states,

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)*Introduction*

7

peoples, or whatever type of collective (or even individual) is shown to be eligible to assert territorial claims instead. Similarly, if plenitude is rejected, the theoretic structure and the strategy for resolving disputes may still be helpful to those who posit settlement, efficiency, sacredness, or other criteria. The theory is, then, ambitious; but in the likely event that it proves importantly flawed, it may provide a service by advancing the theory of territorial rights and providing some of the elements of an eventual solution to the problem. In doing so it may also help coax some dangerous elephants out of our collective living room.

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)

1 *Everything you always wanted to know about taking other people's land (but were afraid to ask)*

1.1 Territorial goods

Land is valuable in three basic ways. When stated, they are obvious, but they are so rarely stated in political theory as to require reaffirmation. First, we live on land – we, our homes, our belongings, and things we build individually and collectively, take up space. Hence the physical extension of *terra firma* is a good whose distribution matters to everyone. Second, land is composed of resources that we need in order to survive, prosper, and express ourselves; literally, the land constitutes both our physical bodies and virtually every material good we can find or fashion. Hence secure access to good land, land we can use to do the things we care about, is essential to our capacity to make our way in the world. Third, land and its properties – its location, its material composition, who or what lives on it – are essential to a vast array of world systems, such as nitrogen and carbon cycles, water purification and storage, ecosystems, and the production of oxygen, without which we would not exist. All the value of territory is built on these three foundations.

These three foundations have implications both for why anyone has a special interest in a particular place, and for how the world's land ought to be distributed among all potential claimants. Everyone has an interest in the sorts of places to which they have access. The universality of this interest is obvious in cases where everyone shares an interest in a single thing – access to freshwater, for instance. But even highly particular interests may be instances of the universal interest in place. People have an interest in access to land that supports the sort of life that they lead, whether that be a life of desert nomadism, of sedentary farming, or of suburban homesteading. These lives are integrated with their geographic and ecological underpinnings to a far greater degree than political theorists typically recognize. Territory

Cambridge University Press

978-0-521-51677-8 - Land, Conflict, and Justice: A Political Theory of Territory

Avery Kolers

Excerpt

[More information](#)*Taking other people's land*

9

both allows individuals and polities to foster the things they value and helps to shape what it is that they value.

Access to, and intelligent management of, territory is also valuable, not least for the capacity to absorb ecosystem shocks such as storms and droughts, as well as for attaining economic and other instrumental goods. For all the constitutive elements of territory, it remains the case that land contains natural resources that people need in order to survive, and the distribution of which may be assessed from the standpoint of justice. While a theory of territorial rights must give due respect to the constitutive goods and their local expressions, it must also recognize that stomachs must be filled. That stomachs are filled, bones grown, muscles manufactured, with highly particular forms of cuisine, speaks to the ways we make ourselves by making places. But everyone's stomach must be filled somehow, and a theory of territory that ignored this fact would be perverse. A theory of territory therefore must accommodate both the universal and the particular.

Extant discussions of state territoriality typically have little to say about most of the ways in which territory is a good. Contemporary liberal theories of the state focus on particular justifying functions, typically the procurement of public goods such as domestic tranquility and national defense. These theories have inherited a worldview in which people can be imagined to spring forth fully formed, like mushrooms (Hobbes 1998: 102), to set up their political institutions according to rational principles. In the most prominent recent case, that of John Rawls (Rawls 1999a), the character of the land on which the parties to the "original position" are to make their lives plays no role at all in the development of the theory. Indeed, it cannot do so, since the society is assumed to be closed, the boundaries fixed, and the relationship to land not in question beyond the matter of public versus private ownership of the means of production, which anyway is not decided in the original position. Those who purport to apply Rawls's theory to the globe as a whole have gone one further, treating territory as a good only because of the valuable natural resources that constitute it (Barry 1973; Beitz 1999; Pogge 1994). Rawls himself demurs, emphasizing that he takes his theory to be applicable only, or primarily, to modern constitutional democracies (Rawls 1999a: xi). That limitation may explain why the residents of Kazanistan (Rawls 1999b: 75–8), his imaginary Islamic hierarchical society, do not reach agreement on the comprehensive liberalism of *A Theory of Justice*, but

it fails to explain why it is difficult to imagine nomadic, tribal, or even agrarian societies emerging from the original position with anything like Rawlsian social democracy.

Recently, some political theorists have begun to address the question of what kind of good territory is. Some of these have been liberal nationalists, who regard the national territory as a canvas on which the nation paints a picture of itself, or better, a lump of clay that it molds in its image (Miller 2000: 116; Moore 2001: 191; Meisels 2005: 86–90). This is indeed a relevant territorial good, at least if nations exist, but it seems to me to misplace the primary emphasis. The three fundamental ways in which territory is a good include this element of using territory for self-expression, but we must avoid focusing on this one to the exclusion, or even to the detriment, of the others. Other political theorists have focused on the role of territoriality in providing some of the state's essential public goods, such as security (Nozick 1974: 113–14; Simmons 2001; Wellman 2005, chap. 1), democratic deliberation (Kymlicka 2001), and efficiency (Kofman 2000). Here, territory is mere delimited physical extension. States so conceived are indeed, as Wellman puts it, inevitably territorial. But even more so than the nationalist view, this public-goods approach to territory ignores the fundamental ways that territory is a good.

Territory is both a highly particular good and a universal good. A theory of territorial rights must, therefore, look in two directions. It must be sensitive to the role of particular lands and territories in constituting identities, but it must also limit territorial claims, in both spatial extension and in the types of behavior they permit, in light of the ways that territory is a universal good.

1.2 The problem

A *territorial right* is a right of a group to control, or possibly to share with other groups in controlling, the legal system of a territory.¹ Not every territorial right is a right to an independent state. This is crucial, because not all valid assertions of territorial rights are valid assertions

¹ Obviously, not every territory is the territory of a state. I shall define territory in Chapter Three below; for now, I shall just stipulate that we are discussing juridical or political territory – the kind of relationship to land that states have.