

Attachment to Territory: Status or Achievement?

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Abstract

Theorists of territorial rights agree that such a theory must explain *attachment* or *particularity*: what can link a particular group to a particular territory? Broadly speaking, explanations of attachment can be divided between those that treat attachment as a *status* and those that treat it as an *achievement*. Each strategy faces its own difficulties. In this paper I raise a powerful challenge to achievement views. The difficulties I focus on arise from globalization and climate change – major changes in the world system over which most groups, by themselves, are relatively powerless. I argue that an achievement theory requires a social ontology that can ground ascriptions of responsibility for achievements as well as their loss and renewal. But several familiar views of territorial rights cannot provide such a social ontology and cannot ground adequate ascriptions of responsibility. I then sketch a social ontology that can meet these challenges and is therefore the most promising way forward for theories of attachment to territory.

Attachment to Territory: Status or Achievement?

Theorists of territorial rights agree that such a theory must explain *attachment* or *particularity*: what can link a particular group to a particular territory with the kind normative force necessary for a territorial right (Simmons 2001; Miller 2007; Kolers 2009; Stilz 2009)? In effect, attachment is the core of a theory of territorial rights. But the notion is not yet well understood.

Broadly speaking, explanations of attachment can be divided between those that treat attachment as a *status* and those that treat it as an *achievement*. While each has its merits, there are some initial reasons to support achievement views. But achievement views face serious objections arising from the possibility of innocent failure. In this paper I hope to meet those challenges head-on and argue that they do not require us to give up on achievement views. The objections

do, however, spur us to get clearer about the nature of the required achievement, and particularly about the social ontology underlying it. I will argue that the problem of innocent failures, and the most serious contexts in which such failures arise today, can best be met by one particular achievement account, namely, the ethnogeographic view that demands the achievement of plenitude (Kolars 2009).

1. Status Views and Achievement Views

A status view names the type of group that is eligible to lodge a territorial claim – for instance, nations or states – and then asserts that such groups are linked to their territories based on what they *are*, not on anything they might *do*. In other words, determining eligibility would settle the attachment problem. The classic status views are traditional nationalist views, as well as imperialist divine-rights views like Manifest Destiny and claims based on “autochthony.” But the status view is also presupposed in the Rawlsian tradition of political philosophy, where the question of the society’s, the state’s, or the People’s right to the particular territory on which they find themselves cannot even be raised.

Many liberal nationalist works on territory, and particularly those in the “first generation” of liberal nationalist views, embraced the status view. Liberal nationalists often treat the linkage to a particular homeland as an essential feature of each nation; the nation would not be a nation at all if it were not linked at least aspirationally to a homeland, and it would not be the particular nation it is if it were not linked to its particular homeland. Nothing more needs to be said, or indeed *can* be said, about the linkage to the land: it is built into the essence of the group in question (Walzer 1983; Miller 1995).

There are some initial attractions to status views. First of all, real-life nationalists talk as if the question of *where* is settled by their determination of *who*. The idea that there is anything that, say, the United States could do to lose its territorial claim to the Southwest is foreign to the national conversation and would be laughed down if suggested. Nationalists are often willing to fight for control of land so marginal to their daily lives that the saber-rattling would be farcical if it were not so deadly. So there is an initial fit with many people's intuitions and with politics as practiced in many corners today. Second, the status view seems to block Lockean efficiency arguments that purport to justify imperial expansion and neocolonialism. There is something attractive in the rejection of any performance criterion and in the concomitant demand for recognition of the claimant just as he or she or it appears before us (Maaka and Fleras 2000). This is an important touchstone also in the disability-rights literature, and it carries some weight. Any performance criterion risks being an imposition of one person's values on another, and an insulting denial of personhood or equal standing (Kittay 2009; Bérubé 2009).

In contrast, an achievement view is just such a performance criterion. It demands not, or not only, that someone *be* somewhere, but that they *do* something to justify their claim. The classic achievement view is the aforementioned Lockean efficiency argument. But there is nonetheless something to be said in defense of this approach. For one thing, status views put all the weight of territorial rights on the ontological question of who or what is speaking, and none of the weight on what they are saying or doing. If we are skeptical of the autochthonous view of nations, then we will regard the "who" question as inadequate to settle the "why these people rather than those people" question, or even, for that matter, the more basic "where" question.

I want to emphasize the significance of this problem for status views. A status view requires a powerful social ontology, one that can build into the very essence of the group its linkage to a particular place; and that can rely on this essence to resolve territorial disputes against other groups essentially linked to other places or the same place. It is hard to see exactly what the content of such a social ontology would be; or more accurately, it's hard to see that such a social ontology could be anything but illiberal. It might be based on a false or mystified creation story. It might be based on a supposedly Manifest Destiny or descent from a single progenitor who is somehow associated with the land in question. Or it might derive from the putatively shared understandings of the members of the nation. But whatever the account is, the social ontology in question is likely to have two fundamental flaws. First, it will be so specific that it cannot plausibly ground a *general* theory of attachment to territory, but at most justify an exemption from such a theory; and second, relatedly, the social ontology will be so thick that a performance criterion will have been smuggled back in. We are better off considering achievement views.

Arguably Jeremy Waldron has done the most to advance achievement views. Waldron rejects criteria such as indigeneity or culture *per se*, challenging their meaningfulness and normative import (Waldron 1992; 2003). In place of them he has argued that attachment to territory is founded on the fact that the claimant's daily life is wrapped up with the particular place (Waldron 1992a). This is an achievement view because it is grounded in a falsifiable empirical claim, and it is possible for someone to fail. That is why, in Waldron's view, historic injustice can be superseded.

The first generation of liberal nationalist writing on territory endorsed the status view, and that view has occasionally appeared more recently as well, but this prevented the authors from saying anything *liberal* about attachment. As a result both David Miller (1995) and Yael Tamir (1993) were silent on the question of territorial conflicts, and for Walzer (1983) the putative (and unquestionable-from-outside) “need” of the current claimants was decisive. More recently liberal nationalists have tended to shift in the direction of achievement views. Tamar Meisels (2005) has defended several achievement-based attachment criteria, such as the construction of infrastructure, efficiency, and the nation’s use of the land in serving its justifying functions such as shaping individual identity. Miller (2000; 2007) and Margaret Moore (2001) have argued that mutually formative interactions between nation and land constitute the right sorts of attachments. Miller (2007) has also defended a value-addition account.

I too have defended an achievement view (Kolers 2009). On my view the eligible group, which I call an ethnogeographic community, must “fill” the territory in question, which I call achieving plenitude. Plenitude entails a) internal diversity and b) external distinctness, each from the perspective of the claimants, and c) feasible plans for maintaining these in perpetuity.

Despite embracing performance criteria, and despite their history in service of imperialism, achievement views have some important marks in their favor. First is the intuitive plausibility of the idea, encapsulated in Locke’s Spoilage proviso, that if someone has not done something worthwhile with their claimed land, or at least prevented its despoliation, then they have no right to exclude others from it. Second is the obvious problem of territorial disputes. If a territorial claim is challenged then the claimant should be in position to say why he or she or it is the

appropriate holder of the territory, and this claim ought to be *significant*, in three senses of that term: important, meaningful, and falsifiable. The demand of significance favors – though it does not outright require – an achievement view. Even the very minimal achievement of *living there* is significant in all three senses, whereas statuses such as divine promises and essential aspirations miss at least two of the three. Third, achievement views are connected to the liberal idea that we are responsible for what we do. Mere liberty or immunity rights are appropriately attached to status, with no questions asked: a right to life is a right not to be killed in certain ways, and we can have this simply because we exist. But complex structures of liberties, powers, and claim-rights, which put others under forceful obligations, seem more plausibly to follow on performance in certain ways. If we have something as normatively powerful as a territorial right, then it is appropriate that our having it is based on something we do or could do, not some way we happen to be.¹

2. Do Innocent Failures Undermine Achievement Views?

The basic problem for achievement views – if we leave aside their imposition of a performance criterion – is that sometimes we are simply unable to bend the world to our liking; no matter how hard we work, how sincere and humane our efforts, we might fail. It is obvious that innocent failure is distributed unevenly across individuals, and social safety nets such as unemployment insurance are means of recognizing that fact. But innocent failure is also distributed unevenly across collectives. We do not currently have in the world system any means of moderating unevenly distributed innocent failure, other than haphazard, discretionary, and often

¹ I don't mean to deny the possibility of responsibility for traits, which I think is meaningful and important at both individual and collective levels. But typically the way responsibility for traits works is by determining a sense in which it was under one's control to have or not have that trait. This is, of course, Aristotle's approach in *Nicomachean Ethics* Book III. Thus responsibility for traits reduces to responsibility for actions and choices. For valuable discussion of moral responsibility without control, however, see Sher (2007) and (2009).

counterproductive instances of disaster relief and development aid. Of course, we could implement some kind of “failure insurance” globally, and cosmopolitan or international distributive justice considerations are one way of implementing them. But the problem is deeper for achievement-based theories of territorial rights. For if group G 's attachment to territory is predicated on G 's having achieved A ; and yet G fails to achieve A (or becomes such that it can *no longer* achieve A , or indeed if G ceases to exist as a distinct group), then G seems to have lost its territorial attachment and with it its territorial claim.

a) Sea-level and other effects of climate change

A number of countries lie so low that even smaller-than-expected sea-level rises will inundate them and render them uninhabitable. Such is the case for part or all of several island nations and arguably for significant parts of Bangladesh and India as well as the Netherlands and even England. England and to a lesser extent the Netherlands are partly culpable in this change, but Bangladesh, India, and the threatened island nations are much less so if at all. Thus in these latter cases the claimants will become innocently unable to achieve A .

While sea-level rise has the potential to make a few whole countries disappear, the problem is most widespread when it comes to parts of countries that are demographically or geopolitically significant. Many major population centers, of course, from Mumbai to Miami, are low-lying port cities, and those cities might become inundated and even uninhabitable. Displaced person estimates numbering in the hundreds of millions are not implausible. In addition, some vulnerable spots are outposts rather than major centers, but those outposts have been held precisely because of their geopolitical significance. For example, Cleo Paskal (2010: 228) points

out that if sea levels rise enough to engulf Key West and some other low-lying parts of Southern Florida – as they are likely to do – international law would shift territorial control of an important shipping channel from the US to Cuba. Territorial rights theories tend to focus on entire nations or peoples, but if they cannot say something about particular cities and outposts, their value may be limited when it comes to territorial disputes.

Climate changes also are likely to render numerous currently viable ways of life obsolete, and thus, endanger or obliterate the achievements that ground territorial rights. People whose tundra turns to taiga or whose farmland turns to desert will lack skills for the new climate and may be unable to achieve much of anything in it. Again, if the people who suffer these changes are the ones responsible for climate change – for instance, if drought in the Great Plains destroys the corn and soy factory farms there – then we might just let the chips fall where they may. But when such changes generate *innocent* failures of achievement, the territorial rights theory had better not make the victims suffer again with the loss of the territorial rights that were based on that achievement.

b) Skill-loss and other effects of globalization

In other cases, globalization-related economic shifts have altered the economy and geography of whole countries. In certain parts of Latin America, for instance, peasants and particularly indigenous populations forced into large-scale cash-crop production, export processing, and other low-wage dependent work favored by the Washington Consensus are losing the skills that have linked them to their land for longer than anyone can remember. In Nicaragua and Paraguay, for instance, communities have lost basic skills regarding growing food to feed themselves and

their families. In some of the hemisphere's most fertile land, vegetables are no longer a part of the diet.² The landscape is utterly transformed by corporate export-driven agriculture and export-processing zones that are in some cases as large as whole countries. In many cases indigenous populations remain where they "always" were only in terms of geographic coordinates. There is no plausible achievement, other than simply being there, that indigenous people can appeal to in defense of their territorial right. To the contrary, such achievements as are to be found – shaping the land over time, construction of infrastructure, and so on – seem increasingly to be down to the transnational agribusiness corporations and absentee landlords rather than the traditional inhabitants.

Let me emphasize that what is in question in the first instance is not the claim for some population of persons to *be* somewhere, but rather for some entity to have a territorial right somewhere, or (depending on the theory) to be sovereign there. Moreover, I should also emphasize that what worries me is not the question of how to ensure adequate independence on the part of the local population to assert its rights as against the absentee landlords or the neoliberal economists or the other countries who have caused sea levels to rise; the question is whether the local population has any such rights in the first place. Can an achievement view of attachment to territory recognize this?

3. Some Pragmatic and Minimally Morally Tolerable Responses to these Problems

Before assessing the capacity of various achievement views to respond to the objection, it is worth pausing to ask what, on an intuitive level, we would want our response to be. What is "the right answer" to which an account of attachment to territory should approximate?

² I am grateful to John Borders and Justin Mog for the examples and for discussion of them.

A familiar response to sea-level rise is for the nearest or most appropriate rich country to accept the refugees *en masse* so that, even though they can no longer live autonomously in their own country, they can at least form a cohesive immigrant community in their new home. Moving to a rich country will give the refugees access to highly developed political, economic, and public health institutions. It perhaps also holds the right people responsible: climate change is not plausibly blamed on the developing world. In addition to this consensus, Paskal (2010) suggests freezing boundaries where they are now as a basis for negotiations going forward. The value of freezing boundaries is that climate refugees would at least bring with them their territorial waters as well as their mineral and airspace rights, giving them a bargaining chip against others and a resource to offer the country that accepts them. This is particularly appropriate given that territory is more than land; it goes down to the center of the Earth and up to the atmosphere. A state that loses only its land need not lose everything else along with it.

But this consensus policy response does not adequately ascribe accountability. If climate change causes the seas to take Micronesia, then whoever causes climate change will have caused the seas to take Micronesia. Climate-equity activists are particularly strong on this point (e.g., Baer et al. 2008). Immigration is often already a form of development assistance from the sending country to the receiving country (Gilbert 1999: 139), and so it is particularly galling that, say, the Australian owning class will benefit coming and going – both from the emissions that generate climate change, and from the availability of this new cheap labor pool.

We may then add two further “bare-minimum” accommodations, this time repairing the

territorial loss in particular rather than merely rescuing the individuals from the loss of their homes. The refugees should receive not merely a right to immigrate but a piece of land most comparable, by their own lights, to what they have lost, removed from the territorial rights of one or more of the responsible parties. Second, the resettled peoples should have the genuine option to maintain their political status afterwards, so that even if they have a new *country*, they can still have the same *state*.

These suggested “bare minimum” policy responses would be directed toward the territorial loss alone, not to any other resources for mitigation of or adaptation to climate change. These suggestions are independent of any account of the fair distribution of climate obligations.

What about policy responses to the problem of skill-loss due to globalization? One possibility is to ensure mere Pareto-efficiency: anyone who is made worse off due to structural changes in the economy, including land use, should be compensated, for instance with a safety net and retraining. This would again be a bare minimum. But when whole communities suffer this fate, the prospect of retraining is closer to a bad joke. They need reinvestment in their community so that the shift in land-use does not generate depopulation or a diaspora. The problem is what form that reinvestment takes. If it is top-down, structural investment that shifts them to an altogether new way of life, then this seems to risk adding to the harm already done. Instead people should be recognized as the appropriate holders of their territory, and have resources put at their disposal, both individually and collectively, to reimagine and rebuild their livelihoods together.

4. Achievement Views Respond to the Objection

Can achievement views match or improve upon these bare minimum policy responses? Initially it seems not. Consider first Waldron's view that attachment is achieved by having a form of life that is intertwined with a particular place on a quotidian basis. It seems clear that sea-level rise can and will undermine such intertwining for very many people. Waldron can treat these people as having suffered an injustice, but cannot offer a *territorial* solution to that injustice, since there is no other place to which they have a territorial right. Moreover, everyone who has wronged them (i.e. the residents of industrialized countries) presumably *meets* Waldron's attachment criterion with respect to their own territory, and so there could be no justification for territorial reparations from the perpetrators. The injustice in this case is *immediately* superseded or at worst, superseded as soon as the victims have successfully immigrated and been assimilated into a new society. A current-occupancy view like Waldron's is therefore unable to deal with sea-level rise as a territorial injustice.

Waldron would seem doomed to the same result for climate changes that render a way of life obsolete. The people who live in a desertified rainforest, or a tundra that becomes a taiga, may fail to maintain their linkage with the land because they need to go elsewhere to survive. Waldron must then say they lose their land, at least if someone else comes in in their place. Waldron may, however, do better on skill-loss, depending on what the skill in question is. If people are no longer able to interact productively with the land on which they live, then by his daily-interaction criterion he seems to have to deny that the people in question have a right to the land, at least in the way they would have to for a territorial right. But if they are still living there and gathering there for civil-society functions, then perhaps they would have such a right, even if the population survives only on remittances from migrants working abroad.

Nationalist achievement accounts such as those of Moore, Meisels, and Miller have the same problems as Waldron's. Moore defends a right of democratic ethnic-majority self-determination based on popular sovereignty, but where people have been forced off their land due to sea-level rise or structural adjustments, popular sovereignty will get no results or the wrong results. Like Waldron, she can perhaps do better with skill-loss: people who do not know how to use their land anymore may at least still be living there, and hence, may have no less of a territorial right than they had before.

Meisels defends a number of criteria, but each of them seems to have trouble with the objection. Her defense of efficiency and of settlements that are *faits accomplis* implies that her answer on skill loss and structural adjustment is exactly backwards: the corporate farmers and export-processors who take over from indigenous peoples and peasants have new territorial rights as soon as they have built their infrastructure. If the corporate landlords are of a different nationality than the prior inhabitants then she seems to have to accept a shift in territorial rights. Her built-infrastructure account might do better here, but only if the corporate landlords are of a different nationality. If they are of the same nationality, then the existence of built infrastructure does not count in favor of either side against the other. And all these criteria are silent in the face of sea-level rise and other climate changes. If desertification causes people to leave, then they have simply left; if it does not cause them to leave, then it has taken nothing from them. And if their territory disappears underwater, they have no special claim to be anywhere else.

Finally, Miller's (2007) defense of longstanding settlement plus value-addition faces the same

sorts of problems. People who lose their skills or whose land is underwater can no longer add universal or cultural value to that land. If their land is underwater then they are no longer its longstanding occupants. The same goes for people who leave due to structural adjustment programs. In contrast, the corporate landlords are not only making their mark on the land but using it in valuable ways.³ And if they are of the same nationality as the peasants they evicted, then there is no territorial problem here at all.

5. Social Ontology: Problems of Agency and Individuation

What has gone wrong in these cases? One might suppose that the problem is the achievement view itself: the achievement can be obliterated, and these theories cannot distinguish between innocent failures and failures for which the claimants are responsible. That is a serious flaw, and if it generalizes to all achievement views then it would be reasonable to fall back on a status view or to a rejection of territorial rights altogether. But the charge also suggests an alternative diagnosis: instead of a status view, we need a social ontology that can ascribe responsibility for the relevant failures. What might that social ontology be?

At a minimum, the social ontology in question must be compatible with an account of agency on the level at which the territorial right is ascribed. It has to make sense to treat eligible territorial claimants as accountable agents, both for good and for ill: for their efforts, successful or

³ This raises an ambiguity in Miller's account. He argues that adding "universal value" to a territory is a way of earning a territorial right in it. But when a market actor *extracts* value by, say, harvesting crops in a soil-depleting way, or mining, does that "add" value? It seems rather to reduce the value. But Miller does not suggest that unsustainable farming presents a challenge for territorial rights. The view is ambiguous between *adding* value and *realizing* value. Miller seems to want to use the *realization* of value as evidence of having added value, but industrial agriculture, mining, fossil-fuel production, and so on realize value not by adding it but by extracting it. In the text I have assumed Miller intends to fix on the realization of value as the criterion, since this is the only view compatible with unproblematic continued sovereignty for industrialized nations, which he seems to endorse. If, however, he would switch to actually demanding *addition* of value – for instance, *sustainable* development or development that improves the land even as it realizes value from it on an ongoing basis – then his view may be immune to the challenge I have raised.

otherwise, to achieve whatever the relevant attachment criterion demands; and for their actions that make such achievements, their own or others', more or less likely. The social ontology must also be compatible with distinctions among persons or populations that are fine-grained enough to diagnose the distinctively territorial injustice when, for instance, peasants are displaced by corporate actors holding the same citizenship (or incorporated in the same jurisdiction). Call these, respectively, the *agency* requirement and the *individuation* requirement.

To solve the individuation and agency requirements we need an account of group responsibility for sub-group (individual or collective) actions, such that it would be appropriate to grant, deny, or alter territorial rights on the basis of some aggregate of actions that can be ascribed to the group. For instance, we might want to infer, from the fact that persons S_1 through S_n have settled somewhere, that group G has settled there. This inference requires, first, an account of explanatory responsibility such that not only can we say that S_1 through S_n are members of G , but that their settlement of this land is G 's settlement of it.⁴ What they do to it must be ascribable to G . Second, the inference requires a linkage between agency and accountability. It must be plausible to grant or deny G 's rights-claim on the basis of these individuals' (i.e. its members') actions in this place. Take as a case of this something that might occur in the West Bank. If Ehud, Bibi, and Gili run up to a hilltop, plant an Israeli flag, and pitch tents, who should we say has done this, and what should we say they have done? What, if anything, can they do to assert and win a claim to that hilltop? And who would thereby have won that hilltop? (Does it matter if the three of them are US citizens who had only recently immigrated to Israel before making their excursion beyond its borders? Does it matter if their campsite is not regarded as a settlement by

⁴ In addition, we also need an ontology of land such that the individuals' *living on* that land constitutes the group's *settlement of* it.

the Israeli government, or is unauthorized as such? And so on.)

In other words, we cannot ascribe actions to groups unless we can reexplain individuals' actions as group actions. Among those who have written on territory, Miller (2007) has done the most to meet this demand. He tries to support such reexplanations by appeal to nations. He offers a 5-part account of nationality and links it to an account of national responsibility. For Miller, a nation is:

1. a group with a common identity – “belonging to the nation is partially constitutive of the identity of each member,”
2. sharing, among other things, a public culture – a “set of understandings about how their collective life should be led,”
3. “whose members recognize special obligations to one another,”
4. whose “continued existence ... is regarded by the members as a valuable good,” and
5. aspiring “to be politically self-determining” (2007: 124-126).

It is not my intention to dwell on the nationalism debate. But I want to mention two reasons to doubt the adequacy of Miller's account. First, some groups that are not, in Miller's view, “nations proper” are also, in his view, eligible for territorial rights and capable of the relevant achievements. He puts indigenous groups into this category (2007: 217). Thus if there is something about nations that permits the ascription of group responsibility and territorial rights, then whatever it is cannot be distinctive of nations but must be shared with certain other groups, and all the relevant social-ontological work has to be done for that larger category rather than for one instance of it – even if we grant that nations are the central case.

Second, Miller's account still has to link the actions of particular persons to particular nations. Some people are members of two nations at once – for instance, immigrants who live in enclaves but work within the broader society, temporary immigrants working and sending remittances to their families, members of internal nations, such as Quebecois or Scots or Welsh people who are members of both the smaller nation and the larger one. The possibility of dual nationality is not a problem in itself, but raises difficulties for the ascription of actions. What we needed to do was to read group actions off individual ones – to determine whether Ehud, Bibi, and Gili were acting only for themselves alone, for some movement, for Israel, for the Jewish People, for the United States, for “Western Civilization,” or what. We need, that is, to subsume individual actions under groups. But since people can be members of multiple nations, Miller has not yet shown how his account would achieve such a subsumption.

Miller's account of how to ascribe actions to nations rests on democratic authorization (2007: 126-34). But if the action in question has never come to a free and fair vote, what is the proxy for such authorization? Miller's answer could run as follows. i) An action taken by persons S_1, \dots, S_n is an action of nation N if the public culture (condition 2) of N endorses that action; and ii) N recognizes S_1, \dots, S_n as members; and iii) S_1, \dots, S_n jointly intend the action to be the action of members of N . If any one of these conditions is missing, then the action is not an action of N .

This account builds its assignment of collective agency out of joint intentions, collective endorsement, and mutual recognition. Joint or shared intentions are not a problem for Miller, or at least, not a problem particularly for him; they might plausibly be understood in a number of ways each of which is compatible with nationalism and with this reply (Bratman 1999; Kutz

2000). More significant here is collective endorsement by the public culture.

What, then, is a public culture, and when has it endorsed something? Miller describes it as, in effect, the space of public reason or overlapping consensus in a constitutional democracy. It is “a set of understandings ... including principles that ... guide, in broad terms, the making of political decisions,” but which are compatible with “quite radical” disagreements about particular issues (124). He seems to have in mind – at least under normal circumstances – both the limits of the sorts of arguments that can be given and policies supported in public, and ground rules about tactics for achieving those policies.

The difficulty here is that the public cultures of the potential candidate nations that Ehud and his comrades might be acting for are deeply divided on precisely this question of membership and agency. A perhaps dwindling minority of Israelis fiercely opposes the actions of these individuals and would see them as American interlopers or members of a distinct group of religious zealots whose interests are at loggerheads with those of Israelis. Even the settlers might see themselves more as avatars of the Jewish people than as Israelis per se. On the other hand, many Israelis would challenge the loyalty of the dovish opposition and particularly of its members who are Palestinian; and so there is arguably no settled position of the public culture on matters of mutual recognition. The disagreement goes not only to particular issues but to membership itself. Indeed, the actions of Ehud and his comrades are also widely repudiated assertions about how political decisions should be made – that is, by establishing “facts on the ground,” rather than by seeking agreement with Palestinians or even with Israeli citizens.

Miller might accept these claims and yet insist that, if neither endorsement nor recognition is achieved, then the nation has not acted. Ehud and his cohorts have acted for themselves only – at least until such time as the nation decides to send in the army. If at that stage the army dismantles the settlement then the nation has not settled the hilltop; if the army defends it, then the nation has. But now Miller has to fall back on the *state*, not the *nation*, as actor. The willingness of the Israeli government to use the military to defend settlement outposts is Exhibit B in the argument that, at least as far as the Occupation goes, Israel is not democratically governed. And for Miller, the degree to which a nation is democratically governed covaries with the degree to which the nation can be blamed for the government's actions – or perhaps, have actions ascribed to it at all.

Similar considerations challenge Miller's account for the core cases raised earlier as objections to the achievement view of attachment. The landlords and corporations whose economic power forces peasants into sharecropping or off the land altogether are analogous to Ehud, Bibi, and Gili. Whether they act for the nation as a whole cannot even be determined by whether the army is called out to quell an uprising, since that will just call into question the democratic character of the state, rendering indeterminate the question of whether the state acts for the nation. If the territory of a whole nation sinks underwater due to anthropogenic climate change, can anyone be blamed? It seems obvious that the residents of industrialized countries, in the aggregate, can be blamed; but not because of their nationality. Rather, they are blameworthy because of their high-carbon lifestyle, which they share with rich people everywhere. Adding nationalities to the explanation seems to gain nothing.

States might seem to be the obvious alternative: being legal structures with specified criteria of

incorporation, states can both act and ascribe membership. This explains why nationalists fall back on states or pseudo-states to determine membership criteria, and why some Lockean and Kantian have foregrounded states in theories of territorial rights (Nine 2008; Stilz 2009). But states also get the wrong answer on both agency and individuation. This can be seen whenever the dispossessors and the dispossessed are citizens of the same state. The landlords and the peasants are all citizens of Nicaragua. It can also be seen when an entire country sinks under water. Anna Stilz (2009) holds that the state is linked to the territory via the individuals. But then what is left for them, except their refugee status wherever they happen to be?

If we are to ascribe the requisite achievement that grounds attachment to territory, we need a social ontology that can individuate groups at a resolution more precise than statehood since some territorial disputes, such as that between landlords and Nicaraguan peasants, pit citizens of the same state against one another. For the same reason it will have to be possible for such groups to act without being legally incorporated. Moreover, it will have to be possible to ascribe actions to the collective without imputing them to every (or perhaps *any*) individual member.

6. The Social Ontology of Ethnogeographic Communities

I have defended a view of territory on which those eligible for territorial rights are *ethnogeographic communities*, and in order to lodge a valid territorial claim they need to achieve plenitude. In this section I shall try to show that ethnogeographic communities can meet the social-ontological requirements needed to reply to the objection without falling back on a status view of attachment.

An ethnogeographic community is a population of persons unified by an as-if shared ontology of land and deeply interacting pervasive patterns of land use. An ontology of land is an account of what land is and how people relate to it. For instance, an Anglo-American (or liberal) ontology of land treats land as nothing more than a bundle of resources, except when it is of symbolic value. This ontology characterizes the mainstream liberal tradition from Locke to Dworkin (2000) and pretty much everyone in between. It is crucial to emphasize first that this is in fact an ontology of land – a set of metaphysical commitments about the nature of land and our relationship to it – rather than a mere description of what is around us; and second, that it is culturally specific. For these reasons I refer to such views as *ethnogeographies* – *geographies* because they are accounts of the nature of land, and *ethno-* because they are culturally specific.⁵

An ethnogeography is an intellectual construct, but it does not actually have to be shared on an intellectual level for an ethnogeographic community to exist. It has merely to be *as-if* shared. For instance, I am part of the Anglo-American ethnogeography not because I endorse it, which I don't, or even because I have ever thought about it, but because it structures my life: it is presupposed by the way I bought my house, how I get most of my food, the way I work, and so on. The basic difference between an ethnogeographic community and a nationality is that whereas a nationality is fundamentally a way of understanding who we are and what matters to us, an ethnogeographic community is fundamentally a material way of life. The ideal or intellectual elements of an ethnogeographic community are known by their effects; they may be understood as theoretic constructs that explain behavior.

The Anglo-American ethnogeography encompasses everyone or nearly everyone in the city

⁵ The word is borrowed from Blaut (1979).

where I live, no matter what they personally believe, because they, like me, live in ways that presuppose that ethnogeography. But why are we an ethnogeographic *community*? I don't mean anything metaphysically loaded by the term "community." All I mean is that we are members of a population unified by shared or deeply interacting pervasive land-use practices. But in order to solve the individuation and agency problems, more needs to be said. I shall develop the account further by building upon David Copp's conception of a society.⁶

Copp understands a society as

a temporally extended, multigenerational population of persons, embracing a relatively closed network of relationships of friendship, affection, kinship, and cooperation in reproduction, and limited by the widest boundary of a distinctive system of instrumental interaction. Simplifying greatly, a society's borders are to be found where the borders of a social network coincide with the borders of a system of interaction that appears salient to the people embraced by the network.⁷

⁶ See Copp (1995); Kolers (2009): 94. I do not suggest that Copp would accept my account.

⁷ Copp (1995): 128. This is Copp's rough restatement of the precise definition. His precise definition is as follows:

- (S1) P is a *societal population* if and only if P is a group of people characterized by a quasi-closed, multigenerational, temporally extended network of social relationships, including relationship of friendship, affection, and kinship (as appropriate), and relationships productive of new generations of members.
- (S2) P is a *society* if and only if
- (1) P is a societal population within which there is interaction in behavior directed to securing the material necessities or priorities of life, or to securing priorities identified by a culture characterizing P , where this interaction is governed by a set of behavioral standards that is generally followed and shared by the members of P and used by them as a standard for criticizing behavior, and
 - (2) There is no P^* such that
 - a. P is a proper part of P^* , and
 - b. P^* is a societal population that satisfies clause (1), and
 - c. The kinds of interaction in P , in virtue of which P satisfies clause (1) also occur with roughly comparable frequency within P^*-P and between the members of P^*-P and the members of P , and
 - d. From the point of view of the members of P , there are no alienating differences between (i) the most salient behavioral standards governing such interaction in P , (ii) the most salient standards governing such interaction between the members of P^*-P and the members of P , and (iii) the most salient standards believed by the members of P to govern such interaction in P^*-P , salience in each case being assessed relative to the members of P .

An ethnogeographic community may be understood as a particular kind of society: one whose distinctiveness and perceived salience are explained by the difference in ethnogeography between that society and another. The boundaries of ethnogeographic community EC_I are marked by instrumental interactions whose value to the people who engage in them is explained by ethnogeography E_I . A person is a member of EC_I when these instrumental interactions rely on or presuppose skills that are shared with others who have the same skills, and implicate land in accordance with E_I which is partly definitive of EC_I .

But the concept of a society is vague. Copp thinks the vagueness is inevitable because the defining features of a societal population are on a continuum: groups may be more or less closed under the main social relationships because closure is not a binary notion. These continua generate a further problem for us: we want to be able to link the actions of particular individuals, such as Ehud, Bibi, and Gili in the example above, to particular ethnogeographic communities.

We thus have three problems to solve: individuation at a time; individuation over time; and agency. I propose to solve the synchronic individuation and agency problems together, by adding a conception of *acting as a member*.

In performing action a at t , S acts as a member of ethnogeographic community EC_I iff

- i) *Membership*: At t , S recognizes as authoritative laws or social norms that most members of EC_I would also recognize under the circumstances; and
- ii) *Compatibility*: At t , a is compatible with ethnogeography E_I ; and

- iii) *Skill*: At t , most other members of EC_1 either could have done a or knew whom to call to get a done; and
- iv) *Agreement*: At t , very many other members of EC_1 would have done a or had it done under the circumstances; and
- v) *Distinctiveness*: There is no EC_1' such that 1) S meets the membership condition of EC_1' , and 2) a meets the compatibility, skill, and agreement conditions with respect to members of EC_1' who are not also members of EC_1 .

In other words, S acts as a member of EC_1 iff S is a member of EC_1 at the time of the action, S 's action embodies ethnogeography E_1 , and there is no larger or overlapping group and ethnogeography of which the same can be said. If there were such a larger or overlapping group, and ethnogeography, then S 's action would be better characterized as the action of that larger group.

If successful, this definition of acting as a member solves the synchronic individuation and agency problems. For any simple or complex action a taken by persons S_1, \dots, S_n , a is an action of ethnogeographic community EC_1 iff most of S_1, \dots, S_n perform their part of the action as members of EC_1 . The definition of acting as a member suffices to ensure that when S_1, \dots, S_n act as members of EC_1 they do not act as members of EC_1' or EC_2 .

Copp purports to solve the problem of change over time first by building reproduction into the concept of a societal population, and second by appealing to the counterfactual time-travel of a person from one temporal stage of that societal population to another. He writes, "Perhaps, then, two temporal stages of a temporally extended population linked by the social relations are parts

of the same society only if a member of one would have been able to fit into the other without serious psychological disorientation” (Copp 1995: 142). For ethnogeographic communities, however, skills and the underlying ethnogeography should remain in the foreground. On my account, then, two temporal stages of a temporally extended population linked by the social relations are parts of the same ethnogeographic community only if person *S* could routinely act as a member of either stage.

We have solved the synchronic and diachronic individuation problems, as well as the agency problem. This leaves one more problem to solve: intention. An ethnogeographic community may act whenever its members act as members, but it does not follow that the ethnogeographic community intends whatever its members intend. I propose the following account of collective intention for ethnogeographic communities. EC_t intends to *A* iff

- (1) *A* is a complex action or achievement requiring the coordination of many individual actions $a_1 \& \dots \& a_n$; and
- (2) Most of the a_i are either i) actions of EC_t , or ii) past actions that some persons, acting as members of EC_t , take advantage of in performing other a_i , or iii) future actions that some persons intend to perform as members; and
- (3) There is no *A'* such that $\sim(A' \& A)$ and $a_1 \& \dots \& a_n$ are plausibly understood as undertaken for the purposes of either *A* or *A'*

On this account *A* may be a past, present, or future achievement. We now have accounts of the individuation, both synchronic and diachronic, of ethnogeographic communities. We also have accounts of agency and intention. If these accounts succeed, they should flesh out the social ontology of ethnogeographic communities adequately for our purposes.

Ethnogeographic communities can be individuated in a way that is more fine-grained than states or nations. The peasants and the landlords are all citizens of Nicaragua, perhaps, and often conationals, but – prior to the structural adjustment that undermines the peasants’ livelihood – they are members of distinct ethnogeographic communities, since they live in ways that require different skills and presuppose distinct ethnogeographies. Moreover, ethnogeographic communities, being characterized by their materially observable interactions with land rather than by ideal criteria of mutual recognition or public dialogue, can empirically ground ascriptions of agency more effectively for our purposes than nations or even states. Thus we know the Anglo-American ethnogeography destroys small towns not because it is part of the national ethos that small towns should be destroyed, and not because the governments of the US and Australia promulgate laws destroying small towns, but because no matter what those governments do they cannot save such towns from the instrumentally rational actions of their members, acting as members (Forth 2000; Keneley 2004). We know that the Anglo-American ethnogeography consumes huge quantities of fossil fuels and intends to keep them cheap because if we imagine away those fossil fuels, or imagine their price being much higher, we cannot imagine life going on as it does, and because its members, acting as members, consume massive quantities of fossil fuels and support wars and other catastrophic policies in order to ensure the availability of cheap fossil fuels.

Using our definitions of ethnogeographic communities’ actions and intentions, we can solve the problem of Ehud, Bibi, and Gili. If they grab the land with the popular approval of most people who are members of the Zionist ethnogeographic community of Israel, then that ethnogeographic

community grabs the land even if it does not intend to do so.⁸ If they grab the land without that approval, but then the ethnogeographic community takes advantage of their grabbing to expand its bargaining power, its zone of control, or its territorial claims (by intending to achieve plenitude there), then that expansion is an intentional action of the ethnogeographic community even though the initial land-grab was not. Finally, if such land-grabs, though individually not actions of the ethnogeographic community, become run of the mill, and the lands thus grabbed then typically become incorporated into the community's intentions, then the nonrepudiation of the land-grabs itself becomes an act of the ethnogeographic community.

By the same token I believe we can solve the problems raised in the objection to achievement views. The problem of sea-level rise and climate-zone shifts raises a key question: how to lay blame for the loss of whatever achievement grounded the territorial claim. My response is that large, wealthy, industrialized ethnogeographic communities such as the Anglo-American ethnogeographic community of the United States intend to contribute to climate change, and that, because of their size and their carbon footprint, climate change is an action of theirs. To make this case I rely on the notions of collective action and intention I proposed before, plus the commonplace idea that one is morally responsible for one's nonnegligible intentional contributions to undesirable results. In contrast, if the residents of Micronesia interact with land in a way that is sustainable, *or* if their interactions are negligible, then they are not morally responsible for climate change. They have, then, not lost their territorial right; they have only been robbed of the territory on which they exercised that right. One solution would be to find them the most appropriate alternative territory that is not at risk of suffering the same fate – taking, if need be, such territory from ethnogeographic communities that are to blame for their

⁸ In this context my account gels with Copp's (1995: chap. 8) consensus criterion of societal choice.

situation. The ethnogeographic account can support the minimally plausible response outlined earlier.

An ethnogeographic solution may have a harder time with skill-loss, though. If peasants, forced off their land or into share-cropping relationships, lose the skills that made their land-use practices sustainable, then the ethnogeographic community can no longer act and the ethnogeography itself may disappear. Then not only is the achievement lost but the people are made unable to achieve it again even if control of their land were restored. The first stage, then, is to assign blame for the skill-loss. It seems clear that blame falls on whoever caused or set in motion the skill-loss – the free traders, international financiers, and government officials who initiated these land-use shifts. And so it seems clear that repair has to come from them. But what sort of repair would that be? My account seems to imply that the repair cannot be territorial in nature, since the ethnogeographic community has dissolved. And yet if the repair is not territorial in nature then I seem to have no better answer than the nationalist who cannot even see a territorial harm.

I think that skills are indeed of the essence. In the first generation or two after the shift in land-use, the victims of the territorial loss itself – those who still have the relevant skills, but are prevented from exercising them – are still good candidates for a territorial remedy, provided at least that they have a plan for applying those skills to their regained land. People should be aided in regaining control of their land and rebuilding what was taken. To be sure, there is no requirement that they recreate exactly what they have lost, since land-use practices are never set in stone. But the people have a claim to be able to regenerate the broad form of land-use

practices combined with the application of their own ingenuity.

Beyond these first generations the descendants of the victims who have lost the skills in question are no longer a distinct ethnogeographic community and so have no special standing to make a countervailing territorial claim. They have a right to press for land reforms that would make the property system more just; and having gained control of more land they have every right to try to recreate a land-use system like that of their dispossessed ancestors; and if they manage this, and become relatively delinked from the land-use practices of the broader community, then they will eventually be in position to assert a territorial claim. But in the absence of such skills, their claims against the state and the large landowners are claims of standard distributive justice, not territorial rights.⁹

7. Conclusion

I argued initially that achievement views of attachment are preferable to status views such as those associated with “autochthony,” ethnonationalisms, and some versions of liberal nationalism, as well as with liberal political philosophy in the Rawlsian vein. But achievement views face a major objection from innocent failures, and such failures look to be more likely and severe than ever given climate change and globalization. I argued that several available achievement views are unable to respond appropriately to such innocent failures. Achievement views are impeded in their response by the lack of an adequate social ontology for the task, and so, building on David Copp’s conception of a society, I offered a social ontology of ethnogeographic communities that can explain collective achievements and assign responsibility

⁹ I have dealt at some length elsewhere (Kolars 2009: 121-3) with the problems of statutes of limitations and moral hazard.

for failures. If successful, these results support my contention that the ethnogeographic theory, on which attachment requires the achievement of plenitude, is the most promising account of territory and territorial rights.¹⁰

¹⁰ I am grateful to Burke Hendrix for comments on an earlier draft of this paper.

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