

Nations, States, and Territory

Annie Stilz
Princeton University
astilz@princeton.edu

It is tempting to view each legitimate state as having the right to exercise political authority within a given set of boundaries. But what gives a state the right to these boundaries? Consider the US: its original border encompassed only the Eastern half of the country up to the Mississippi River (excluding Florida). The Midwest was acquired in the Louisiana Purchase from France of 1803, Florida purchased from Spain in 1821, Texas annexed in 1845, the Southwest ceded after the Mexican-American War in 1848, and Alaska purchased from Russia in 1867. Then Hawaii was added in 1898 after a group of businessmen who had overthrown its government pleaded for annexation. Finally, Puerto Rico, Guam, the Philippines, and Cuba were ceded after the Spanish-American War. Given this (largely tainted) history, we might ask: does the US have a right to all the territory within its current boundaries? What, if anything, differentiates its current relation to the territory of Hawaii, say, from its current relation to the territory of the Philippines? (The Philippines became independent again in 1946). To ask these questions is to ask what grounds territorial rights.

Beyond answering our questions about the rights of states with relatively settled boundaries—like the US—an account of territorial rights could also help resolve the disputes involved in cases of settlement, secession, and decolonization. Many states have attempted to extend their boundaries by subsidizing settlers, as Israel has done in Palestine or Morocco in the Western Sahara. Is settlement a legitimate way to acquire new territory? Or consider secession: often, secessionist groups forcibly appropriate territory, as during the secession of Eritrea from Ethiopia in 1993, or of Bangladesh from

Pakistan in 1971. But if these groups had no right to the territory they seized, they may have committed an unlawful taking.¹ Finally, even when some population is freely granted independence, as in cases of consensual decolonization or secession, we still need a theory of territorial rights to determine the boundaries of the new jurisdiction. So a theory of territorial rights can aid in two important tasks: explaining the legitimacy of long-settled boundaries and demarcating new ones.

We should begin our investigation into territorial rights by looking at the claims to territory that states actually make. States claim a bundle of rights over territory, which we can divide into three basic elements.² First, they claim territorial jurisdiction, which entitles them to make and enforce law within their borders. Territorial jurisdiction is the right to establish or maintain a distinct system of law on part of the earth's surface. When a state has this right, outsiders ought not to interfere with its exercise of authority within its boundaries, or set up alternative institutions there. Second, a state claims resource rights in its territory: states attempt to use and control extractable minerals, oil, and other natural resources, and to profit from their sale. Finally, states claim the right to control borders and to regulate the movement of people and goods across the territory.

Of course, the fact that existing states claim these three rights doesn't mean their claims are valid: we must ask whether these claims can be justified. Here, I investigate the justification of the first, central element in this bundle, the right to territorial jurisdiction. Justifying the rights of resource and border control requires a more complex approach. These rights are parasitic on the prior right of territorial jurisdiction, and they

¹ See Lea Brilmayer, "Secession and self-determination: A territorial interpretation," 16 *Yale Journal of International Law*, 1991, 177-202.

² The distinctions I make here closely follow David Miller, "Territorial Rights: Concept and Justification," *Political Studies*, (forthcoming).

are also limited by *external legitimacy conditions* that constrain how the state should exercise these rights when their exercise affects foreigners. For that reason, this article considers only territorial jurisdiction, on the theory that we can then extend the view to control of borders and resources in a second step. I will not argue for or against international freedom of movement or resource privileges here.³

Instead, my main aim is to develop an alternative to the currently dominant account of territorial jurisdiction, the nationalist theory. The nationalist theory holds that the state derives its territorial rights from the prior collective right of a *nation* to that territory. A nation is a group defined by cultural characteristics that its members believe themselves to share, including language, traditions, or a common public culture, combined with an aspiration to political self-determination.⁴ On the nationalist view, a state has a right to a territory if: a) the nation it represents has a prior right to the land in these areas, and b) the state is properly authorized by that nation.⁵ One reason why the nationalist theory is attractive is that it seems to provide a good explanation of why a *particular* state should have rights over a *particular* territory. On the nationalist view, the French state has rights over the territory of France—and not, say, the territory of Norway—because it represents the French nation, to whom this territory already belongs.

In what follows, I argue that invoking nations is neither necessary nor sufficient to explain territorial rights. In Section 1, I show that the nationalist account is more problematic than it seems: it has trouble explaining how nations acquire territorial

³ From now on, I use the term “territorial rights” solely to describe rights of territorial jurisdiction, not rights to resource and border control.

⁴ For similar definitions, see Will Kymlicka, *Multicultural Citizenship*, (Oxford: Oxford University Press, 1995), 18; David Miller, *On Nationality*, (Oxford: Oxford University Press, 1995), 22-25; Yael Tamir, *Liberal Nationalism*, (Princeton: Princeton University Press, 1993), 66.

⁵ Multinational states can be acceptable on this view, if each nation consents to be governed by the overarching state. But the nation preserves a *prima facie* right to revoke its authorization and secede with its territory.

jurisdiction and has implications that fail to match our intuitions in particular cases. My arguments may not conclusively refute the nationalist theory, but I believe they point out enough difficulties to make it worth considering an alternative view. In Sections 2-4, I then develop a different account of territorial rights, the *legitimate state theory*. The legitimate state theory holds that a state has rights to a territory if and only if: (a) it effectively implements a system of law regulating property there, (b) its subjects have claims to occupy the territory, (c) its system of law “rules in the name of the people,” by protecting basic rights and providing for political participation, and (d) the state is not a usurper.

I conclude the paper in Section 5 by raising what I think is the most important objection to my legitimate state theory: the *annexation objection*. In addressing this objection, I make room for the territorial claims of “peoples” that have a past history of shared statehood. I allow for a residual claim of the people to reconstitute themselves as a legitimate state on their territory when their prior state fails, becomes illegitimate, or is usurped. The recognition of this claim distinguishes my legitimate state theory from other views in which peoplehood plays no role.⁶ Against nationalist theorists, however, I argue that “the people” is not a cultural group, but is simply the collective subject of a prior state. And I claim that the people’s territorial right is a very distinctive kind of claim: “the people” can exercise this right only in extraordinary circumstances. Once it is understood how the legitimate state theory incorporates a people’s residual rights, I believe its main competitor—the nationalist theory—loses some plausibility by comparison.

⁶ See Allen Buchanan, *Justice, Legitimacy, and Self-Determination*, (Oxford: Oxford University Press, 2004), 354.

1. The Nationalist Theory of Territory

Nationalist theories hold that territorial jurisdiction is a collective right of cultural nations, and that a nation bases its right on formative ties between the group and a particular territory. Different nationalist theorists emphasize different formative ties: I here consider an argument from identity and an argument from settlement.

The identity argument claims that the fact that a territory is central to the identity of a cultural nation provides a strong reason for granting that group rights over the territory.⁷ A group's identity tie might have been established because important events in the nation's history occurred on that territory, or because the territory features prominently in the group's myths or traditions. But when the identity tie is strong enough that the group considers a territory its "homeland," this gives it an interest in residence on and governance over that territory.⁸

The argument from settlement is slightly more complex. Settlement, as nationalists understand it, involves not just residence on a territory—simply "being present" there—but rather the construction of a physical infrastructure that reshapes the landscape. By creating this infrastructure, settlers add value to the land. Tamar Meisels and David Miller argue on Lockean grounds that settlers have an ownership claim to territories to which they have added value, since they have a prior claim to own their labor, and this labor has been fixed in the infrastructure they have built.⁹

⁷ Chaim Gans, *The Limits of Nationalism*, (Cambridge: Cambridge University Press, 2003), 100.

⁸ *Ibid*, 109.

⁹ Tamar Meisels, *Territorial Rights*, (Dordrecht: Springer, 2005), 75-96; David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), 218-9.

Meisels and Miller also claim that settlement involves an expressive element that ties it to national identity. Settlement efforts are undertaken by national groups who make decisions about the use of territory that reflect their culture: “they must, for instance, choose between various modes of architecture...decide whether to build huts or high rises, and what style to build in.” They may “build churches or synagogues or mosques” or erect monuments with historical and cultural significance.¹⁰ Since national culture forms part of members’ identities, and this culture imprints itself on the settled territory, “those territories are of unarguable significance to the personal identity of the individuals composing that nation.”¹¹ By settling land, a nation imbues it with cultural significance, which is embodied in its public spaces and physical infrastructure. Since this cultural value cannot be detached from the territory, the nation has a strong interest in jurisdiction over it.¹²

The appeal to homeland identities or to patterns of cultural settlement may seem to be a strength of nationalist theories, since these considerations provide a standard for demarcating territorial boundaries. Such a standard is lacking in more conventional liberal theories of jurisdiction, which often rely on a purely functionalist account of state authority. A functionalist account can establish that there are benefits involved in state control of territory, because states are necessary to enforce justice, define property rights, and provide public goods. But the functionalist has a more difficult time establishing why France should control the particular territory of France and not the territory of Norway, since the Norwegian and French states are both capable of enforcing justice and providing public goods on these territories. Bringing in homeland identities or patterns of

¹⁰ Meisels, *Territorial Rights*, 87; Miller, “Territorial Rights: Concept and Justification,” 14.

¹¹ Meisels, *Territorial Rights*, 90.

¹² Miller, *National Responsibility*, 218.

cultural settlement thus provides a supplement to the liberal theory that may allow us to better connect particular states to particular pieces of land. This explains the current dominance of the nationalist account of territorial rights. On closer inspection, however, I believe the nationalist theory is less effective than it promises to be. To see why, let us consider four difficulties with this view.

First, settlement theorists do not adequately explain how a Lockean labor-mixing account grounds rights of *collective* ownership. Much of the improvement of land that goes on within a national territory—the construction of houses, churches, and the like—is not carried out by the nation, but by individuals or private associations. “The nation” does not mix its labor with these objects in any sense except metaphorically. So why shouldn’t the individuals who actually labored on the objects in question gain private property rights in them? What generates a collective right?

Second, settlement theorists do not explain how labor-mixing confers jurisdictional rights over an *entire territory*. Imagine the Peruvians build houses, churches, a sewer system, and a power grid on the land that is now Peru. On a traditional Lockean account, that would mean the Peruvians now own the homes, churches, sewer system, and power grid and the land on which they rest. But these particular plots of land, even aggregated together, do not add up to the territory of “Peru.” Some land within the administrative boundaries of what is now Peru will still be left unlabored, even in a thoroughly settled state, as for example parks or wilderness areas.

Suppose a group of outsiders raises a claim to this land: can they acquire jurisdiction over it? We normally think that vacant land within the borders of an existing state is not simply *terra nullius*, available for the founding of new sovereign states. But if

the only explanation for the acquisition of jurisdictional rights is that land has been labored, then the state cannot have jurisdiction over undeveloped areas. The settlement view thus seems to tacitly rely on a prior account of administrative boundaries—labor within which grounds a right to the entire territory—rather than explaining the genesis of these boundaries.

A third problem with the settlement view is that it seems to grant territorial jurisdiction to any group that constructs a culturally marked infrastructure, including immigrant groups. Consider the Cuban inhabitants of Little Havana in Miami. Have they acquired territorial rights? For Cubans have to a substantial degree recreated Cuban institutions there: there are Cuban cultural centers; Spanish-speaking schools; Cuban restaurants; and monuments reflecting Cuban history.¹³ But it seems the Cubans do not have territorial rights: instead they derived their right to settle Little Havana in the first place only by grant from the state that *already* had jurisdiction over the territory (the US).

Finally, while emphasizing formative ties like homeland identity and settlement purports to provide an apparatus for resolving territorial disputes, the implications of these ties for such disputes are often implausible. Consider Poland. As settlement theorists would emphasize, many Polish towns possess an infrastructure (architecture, public monuments, churches) reflecting the Germans who once lived there. And as identity theorists would notice, these towns figure heavily in German history and remain the homeland of many German citizens, who were forced out after 1945. But while they provoke nostalgia, these ties of identity and settlement are not sufficient to ground the

¹³ One might respond that only the *first* people to transform a territory through settlement can possess territorial rights. But the settlement account closes off such a response. Both Miller and Meisels claim that regardless of whether a group of settlers unjustly settle land owned by some other group, if they labor the territory in a way that reflects their culture and identity, they eventually acquire a claim to it. (See Meisels *Territorial Rights*, 94; Miller *National Responsibility*, 220).

current title of Germany to Western Poland. Why not? The Polish state has a present-day claim to Western Poland because the people that occupy these areas have a right to be there, and because Germany has forfeited any claim to sovereignty over them by the injustices it perpetrated under the Third Reich (including racial discrimination, conscripted slave labor, the prohibition of higher education for Poles, and the deportation and execution of Polish elites).

2. The Legitimate State Theory

Since the nationalist theory faces these problems, it pays to examine an alternative: the legitimate state theory. On the legitimate state theory, a state's claim to territory is rightful if and only if: (a) the state effectively implements a system of law defining and enforcing rights, especially property rights, on a territory; (b) its subjects have a legitimate claim to occupy that territory; (c) that system of law "rules in the name of the people," by protecting basic rights and granting the people a voice in defining them; and (d) the state is not a usurper. On this view, states have territorial rights because their jurisdiction serves the interests of their subjects. As I will explain in more detail below, individual property rights can be coordinated with others' rights and rendered interpersonally binding only when there is a state to define and enforce them.

We should highlight one area of agreement and two important contrasts between the legitimate state theory and the nationalist theory we examined above. First, the legitimate state theory *agrees* with the nationalist view that "states can only claim territorial rights...as representatives of the peoples that they govern."¹⁴ On the legitimate state theory, the state represents the people when it enacts legislation in the public interest

¹⁴ Miller, *National Responsibility*, 217.

and grants the people a voice in determining this legislation. The state's claims to territory are thus not independent of how well it does at representing its people: as we shall explain further below, a state only has a claim to territory if it meets a basic threshold for being a *legitimate* representative of its people. The state also has no claim to territory that its people have no prior right to occupy.¹⁵ But, despite the fact that a state gains territorial rights by representing the people, only states—and not any other actor, such as the nation—can claim territorial jurisdiction.

The first contrast with nationalist theories is that the legitimate state view does not generally require that the state be *authorized* or *consented to* by the people in order to have jurisdiction over territory. Instead, the state is like a guardian who represents a group of individuals, but is not directly appointed by them. Consider the analogous case of a child who has a guardian. The child has various rights, including perhaps rights to an estate, but he cannot exercise these rights in his own name. Instead, the guardian acts like a proxy for the child, representing his interests in court proceedings or exercising his rights in everyday decision-making (e.g. he decides how to manage the ward's property). What gives the guardian the right to represent his ward? Not the ward's consent. The guardian's right to represent derives from his ability to *act in his ward's name*. The legitimate state theory applies this model of representation to the state. The state's citizens possess basic rights in their territory. But—for reasons to be discussed below—these individuals cannot exercise their rights directly; instead, their rights must be exercised by a proxy (the state). In assuming this role as proxy, then, just like the ward's

¹⁵ As I will explain in Section 3, an occupancy right is a right of individuals to reside on a particular territory, and the right of a people to occupy the territory is an aggregated bundle of individual occupancy rights. A territorial right, on the other hand, is the state's right to jurisdiction over a particular piece of land. The two rights are connected, however: only if the individuals represented by a particular state have rights of occupancy in a particular territory does their state have legitimate jurisdiction over that territory.

guardian, the state speaks and makes decisions as though it were the people. But its title to perform these functions derives, not from the consent of its citizens, but from its capacity to act in their name.

The second contrast with nationalist views is that on the legitimate state theory, the “people” are made into one collective body by being subject to state institutions and by participating together in shaping these institutions. In order to account for territorial rights, we do not need to invoke a cultural nation that pre-exists the state. On my view, the state instead defines the citizenry that is subject to it. Over time, as we shall see, this initially unconnected group of citizens may be made into “a people” by cooperating together in shared institutions. But such peoples are *brought into being by states*; they need not pre-exist them. Consider again the analogous case in which a guardian has more than one ward. Nothing has to connect these wards other than the fact that the same person serves as guardian for all of them. Over time, these wards will likely come to share some connections through their history with the guardian. But the wards do not need any prior bond among themselves to be represented by the same person.

To unpack the legitimate state view, we should start by explaining why the people lacks the capacity to exercise their own rights directly. The reason why states are the proper possessors of territorial jurisdiction, in my view, is that they are necessary to provide a unitary and public interpretation of the rights of individuals and to enforce these rights in a way that is consistent with those individuals’ continued freedom and independence from one another. To understand why this is so, it will be helpful to borrow elements from Kant’s account of state authority.¹⁶ Kant argues that each person

¹⁶ Kant’s theory of state authority is contained in the first section of the *Metaphysics of Morals*, often called the *Rechtslehre*. I cite Kant’s writings by the standard German edition of Kant’s works, *Kant’s Gesammelte*

has an equal claim to freedom-as-independence, which requires that he not be forced to obey the will of another person. Each person is also under a basic moral duty to respect the freedom-as-independence of others. To fulfill his claim to independence, the individual must enjoy a set of guaranteed rights, including rights to body and property.

Kant argues that the state is a necessary intermediary for the interpretation and enforcement of rights because of two intractable problems involved in any exercise of jurisdiction by non-state actors: the problems of *unilateral interpretation* and *assurance*. Because of these problems, individuals' attempts to exercise jurisdiction over their own rights undermines their freedom-as-independence. These two problems are particularly severe when it comes to jurisdiction over property, since property rights are partly conventional, and people may reasonably disagree over the best method for defining them. Claiming the liberty to interpret and enforce one's own property rights is therefore inconsistent with one's basic moral duty to respect the independence of others.¹⁷

Unilateral interpretation undermines our independence because interpretations of partly conventional property rights may diverge, and other people's good-faith interpretation is just as authoritative for them as our own interpretation is for us. As an equally authoritative interpreter, another person has title to enforce his own view of property rights—not my view—which means that he may coerce me whenever he judges the claims to property that I make to be unjustified. The less generous his interpretation of my rights and the more powerful he is at enforcing it, the more threatened my

Schriften, edited by the Academy of Sciences (Berlin, Walter deGruyter & Co. 1900--). These numbers are widely noted in the margins of English translations.

¹⁷ I believe the state is a necessary intermediary for interpreting and enforcing all our rights, not just our rights to property. I focus on rights to property here for two reasons: first, rights to property are often rights over land, and the state's jurisdiction over a territory is connected to the need to establish clear definitions of our property; and second, the problems of interpretation and assurance that make state authority necessary in general are particularly clear in the case of property rights.

independence becomes.

But since the point of property rights is to coordinate our actions and avoid mutual interference, the goal of a property system is undermined so long as individuals exercise unilateral jurisdiction in this way. To really secure independence, we must construct one *univocal* interpretation of property rights and correlative duties to which everyone is subject. We require a unitary exercise of jurisdiction, not a slew of competing private interpretations. By promulgating binding and public legal definitions of our rights, the state eliminates this threat of divergent and conflicting interpretations, providing us the unity that is necessary to freedom-as-independence.

There is also a second problem of assurance involved in any private enforcement system. Even when you agree on the limits of my property rights, I am still dependent on your arbitrary will to sustain this agreement at every moment, and this is itself a form of insecurity that compromises my basic claim to independence. You might respect my rights now, but your will could change, and so you retain the *power* of interference with me and my rights, even if you do not in fact exercise that power. To be fully independent, though, I must have a mechanism to *assure* me that my rights will be guaranteed, no matter what the condition of your will. The proper mechanism of assurance is the state's framework of lawful coercion. Unlike private actors, the state as a public agency can enforce rights without undermining the relation of reciprocal independence in which its subjects stand.

Since we have a basic duty to respect others' independence, and since the state is a necessary instrument for fulfilling that duty, we do not have to consent to the state in order to be bound by it. Only states, with their authoritative legal systems and monopoly

of public force, have the capacity to provide the unitary jurisdiction and assurance that individuals require. If a state exists and enforces a legitimate system of property law, then, it *necessarily represents me*, since it is only through a state institution that I can fulfill my duty to respect the independence of others. On this view, our obligation to a legitimate state is rooted in a more basic Natural Duty of Justice. Since it is only through authoritative political institutions that we can do justice to others, we have a duty to support and comply with legitimate institutions where they exist.

Our argument up to now has established only the first of the four conditions that make up the legitimate state view, Condition (a). I have held that only states can claim territorial jurisdiction, because only they can promulgate and enforce a unitary, public, and objective criterion of rights, especially property rights, that binds everyone in a given area, thereby overcoming the problems of unilateral interpretation and assurance. But this argument does not yet show which *particular* states ought to have authority over which *particular* territories. This is what Conditions (b) and (c) are meant to do. Condition (d)—that the state must not be a usurper—will be discussed in the paper’s final section, through an examination of the problem of annexing territory.

3. Rights of Occupancy

Let us next consider Condition (b). How can we show that the people have a right to occupy their territory? We should first define a right to occupy a territory as a claim to be in *legal residence* on that territory: to be physically present, and to have one’s rights defined and enforced by whatever state has jurisdiction there. This right of occupancy is an important precondition for almost all other rights. If I can be displaced off a territory

at any moment, then my property, my other rights—even most of my goals and pursuits—mean little to me. The question of what gives a people the right to occupy their territory is difficult to solve, not least because appeals to history are insufficient to establish such a right. Even if the very first occupants of a particular territory could be established (through archaeology) and their descendants somehow identified (by genetic evidence), we should not reallocate rights of occupancy on the basis of these historical claims. Any such reallocation would create massive wrongs—involving the displacement of populations—and would leave many present-day persons with no place to live.

We have already seen, in our discussion of the nationalist theory, that the construction of a culturally marked infrastructure is insufficient to establish a group's right to occupy a territory (i.e. the Germans have no right to occupy Western Poland). And we have just noted that rights of occupancy are of crucial importance to *individuals*—since they provide the background framework for their goals and pursuits—and not only for national groups.¹⁸ That might prompt us to think the following: “Why not just base a people's right to occupy territory on the fact that the individuals who make it up currently reside there?” But this approach has problems too. Specifically, it does not rule out the following case:

Forced Removal. Suppose a group of mercenaries gets together, overthrows the state of Chad, and drives out all the inhabitants, who become refugees in neighboring states. This group of mercenaries then sets up an absolutely perfect state on the territory. It rules justly and

¹⁸ Recall that at footnote 5 I defined “a people's” occupancy rights as simply an aggregated bundle of individual rights to occupancy.

enjoys the unanimous consent of all its inhabitants.

We will still want to say that this perfect state does not have a right to the territory, at least not at the moment of its founding. This is because its *people* have no right to the territory at that moment: its members are displacing a group who have continued claims. In constructing a theory of occupancy rights, we want to avoid legitimizing wrongful acts like this one.

Part of the appeal of using considerations like identity or settlement to establish occupancy rights is that they help rule out cases of wrongful displacement, without resorting to a full-blown theory of historical rights to territory. It takes a while—perhaps a few generations—to identify with the territory, and to transform it in accordance with a particular culture. This means we could say that the mercenaries do not yet have a claim to occupy the territory they have seized, because they aren't identified with it or haven't transformed it. A few generations down the line, though, perhaps the mercenaries' descendants *would* be identified with the territory and *would* have transformed it, so they would gain the right to occupy it. This is in line with our intuition that the claim to restitution for ancient wrongs weakens with time.¹⁹

Although supersession of ancient wrongs is important, I believe that settlement and identity do not properly identify the conditions under which supersession occurs. What really counts for supersession is the centrality of territorial occupancy for an individual's personal autonomy—his ability to form and pursue a conception of the good.²⁰ Occupancy of territory is connected to autonomy because it plays an important role in almost all of our plans. We build our lives on the assumption that our goals,

¹⁹ See George Sher, "Ancient Wrongs and Modern Rights," *Philosophy and Public Affairs*, 10:1, (1981), 3-17; and Jeremy Waldron, "Superseding Historic Injustice," *Ethics*, 103, (1992), 4-28.

²⁰ Waldron, "Superseding Historic Injustice," 17-18.

relationships, and pursuits will not be unexpectedly destroyed through forced displacement. If I structure my goals and choices against the background of continuing legal residence in a particular territory, and if I am there through no fault of my own, then respect for my autonomy tells in favor of allowing me to remain there, since it would be impossible to move me without damage to nearly all my life-plans.

Kant also recognizes a right of occupancy that takes something like this form: he says that “all human beings are originally (i.e. prior to any act of choice that established a right) in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them.”²¹ For Kant, each subject has an innate, though indefinite, claim to a fair scheme of property, a claim that must ultimately be given content by the laws of a legitimate state: it is a claim to a *stable legal residence*.²² The state’s territorial jurisdiction is tied to its citizens’ claim to a stable legal residence: only if its citizens have a right to be where they are does the state that represents them have legitimate jurisdiction over the territory they occupy. By enforcing a fair scheme of property in a particular place, the state serves its citizens by providing a background framework for their exercise of personal autonomy. It does so in two ways: first, it secures them a range of options and opportunities within which to form and pursue life-plans; and second, it allows them to stably structure these plans under the assumption that they can maintain their legal residence *here*.

Because territorial occupancy is so fundamental to autonomy, we have reason to

²¹ Kant, *Metaphysics of Morals*, 6:262.

²² A person’s stable legal residence is the state in which he permanently resides. A mere visitor or tourist is therefore not an occupant, in my sense, of the state he is visiting (since he resides somewhere else). If a person has been on a territory for a sufficiently long period of time, however, such that most of his goals, relationships, and life projects are contained within that territory, he may be owed a stable legal residence there.

restore occupancy to those who have been wrongly expelled in the recent past. But note that a certain balancing is called for here. Over time, the life-plans of the displaced and their descendants will change, and new persons will be born on the territory who also have autonomy claims that would be jeopardized by any attempt to forcibly remove them.

Reflection on the importance of territorial occupancy to autonomy, I think, shows us why we should avoid a historical rights account, and also why settlement and national identity are not the heart of the matter. What is truly the heart of the matter is individuals' need for a stable legal residence; their need to live under a legitimate state that allows them to exercise personal autonomy in a particular place. I might require occupancy of territory *in this sense* in order to sustain the integrity of my plans and pursuits even if I haven't settled it or identified with that territory in any more robustly cultural way. The morally significant feature of the situation is that I am present on the territory without wrongdoing (perhaps by having been born there) and continued legal residence on the territory is fundamental to me. So consider a more refined occupation principle:

Occupancy Rights. A person has a right to occupy a territory if (1) he resides there now or has previously done so, (2) legal residence within that territory is fundamental to the integrity of his structure of personal relationships, goals, and pursuits, and (3) his connection to that particular territory was formed through no fault of his own.²³

²³ Which territory a person has a right to occupy depends on objective facts about his interests and actual life experiences, not on subjective facts about his aspirations. I may have been brought up with the expectation that my tribe would reconquer lands from which our ancestors were expelled in the twelfth century, but that aspiration does not give me the right to occupy these lands today (See Alon Harel 2004, "Whose Home is It? Reflections on the Palestinians' Interest in Return," *Theoretical Inquiries in Law*, 5:2, (2004), 333-365). Respect for my autonomy requires that the integrity of my *actual* structure of goals,

How would this principle deal with cases of unjust displacement? In our mercenary case, it would call for the mercenaries to restore the territory to those they expelled, and would place a duty on other states not to recognize the mercenaries' state at the moment of its founding, since it does not have a right to its territory.²⁴ So the refined occupancy principle disallows any claims to occupancy on the part of wrongdoers.

But suppose that the mercenaries' injustice goes unrectified and now we are dealing with the second or third generation of mercenaries' descendants. On the above principle, these people *would* have a legitimate claim to the territory they currently occupy, since they are present there without fault, and displacing them would undermine their autonomy. But what about the descendants of the victimized population? Do they have a claim to come back? Whether or not they have a claim to reoccupy the territory depends on how well their autonomy is secured where they now are. Suppose that they are now incorporated as citizens in some other legitimate state, with an expectation of continuing to reside there. I believe the American and Israeli descendants of Jews expelled from Eastern Europe meet this criterion, as well as the Germans who were forced out of Western Poland in 1945. On my view, their claim to occupy lands that their ancestors once occupied has been superseded.

But suppose that the victims' descendants have not been incorporated as citizens in a legitimate state. They remain a stateless people, reside in an illegitimate state, or form a population of second-class citizens ruled by another people. If this is the case,

pursuits, and social relationships—as given by the life I now lead—be secured. It does *not* require that all my subjective aspirations be satisfied.

²⁴ The fact that a state lacks territorial rights does not automatically show that it can be invaded or occupied, any more than the fact that my neighbor lacks proper title to his house shows that I can kick him out of it. Conditions for invasion depend on a broader theory of just war that I have not offered here. Though territorial rights are enforceable claims, I take no position here as to the proper sanctioning mechanisms.

then they have an outstanding occupancy claim.²⁵ That does not give them the right to expel the descendants of settlers, but rather a right to be readmitted to the territory and granted equal citizenship there. This is an enforceable right, and other states could justly pressure the settler state to grant the expelled descendants readmission. After all, it was the wrong perpetrated by the settler state that caused the violation of that population's autonomy, and the state arguably bears a special responsibility for rectifying this ongoing wrong.²⁶ In many political conflicts, of course, the settler state may not be trusted to deal fairly with the victimized population, and therefore we may have to seek second-best solutions. But I believe that in these cases the victims' descendants continue to have a *prima facie* moral claim to occupy the territory, even if this claim cannot be made good.

The principle behind the refined view of occupancy, then, is that each person has a claim to stable legal residence in any state in whose territory he resides (for the long-term) through no fault of his own, and he ought to be treated by that state as an equal citizen, and provided the basic rights and opportunities necessary to framing and revising his life-plans. Where this claim is met, the wrong of displacement is superseded. Where it is not met, the right of return on the part of the displaced population continues in force. It should be emphasized here that a claim of *occupancy* can be superseded without a claim to *compensation* for harm or *reparation* for confiscated property also being superseded. If a group's property was taken, or if they suffered grievous harm as a result

²⁵ Given the structure of their relationships and pursuits, it may be that the victims' descendants' autonomy would be best guaranteed by granting them equal citizenship in the state to which they have been displaced. Still, given that their country of current residence is ignoring their claims, the responsibility to secure their occupancy must fall to other states. Here, there is a strong case that the settler state ought to be held principally responsible.

²⁶ I believe that states can be held responsible for wrongs that they commit, and that at least in *legitimate states*, citizens can also be required to do their part in discharging the state's collective responsibility. See Anna Stilz, "Collective Responsibility and the State," *Journal of Political Philosophy*, (early online edition 2010), 1-19.

of their displacement, then the settler state owes them compensation even if it does not owe them occupancy. A state that rests on past dispossession ought to make reparation to the dispossessed population (as Germany, for example, did to the Israeli Jews). This obligation to compensate is also enforceable. Other states and international organizations can justly demand that reparations be paid, and sanction the settler state if it refuses to do so.

4. Conditions of State Legitimacy

Let us now consider Condition (c), which stipulates that a state has territorial rights only if it adequately represents the people who occupy that territory. Recall that our main argument for why states should have jurisdiction over territory is that their exercise of such jurisdiction is of benefit to individuals. We require a *stable legal residence*, and that means we need a state to legislate and enforce a set of rules that define our rights. But there are many possible rules the state could put into place. Since our reason for granting states territorial rights is that state jurisdiction is of benefit to individuals, we will want to grant territorial rights only to states that *actually protect freedom-as-independence to a sufficient degree*. We need some more precise criterion by which to judge whether the laws meet this standard.

We can begin to develop a criterion by returning to our guardian/ward analogy. A good guardian is a guardian that does more-or-less what his ward would have done were his ward able to act for himself: he acts in the ward's interests. In many cases, of course, it may be difficult to know exactly what the ward would have done, especially in cases where the ward can't tell us, or in cases (like the political one) where he does not speak

with one voice. But we can know with confidence what the ward surely would *not* have done, had he any reasonable regard for his interests. No legitimate guardian will take actions in his ward's name that the ward would not reasonably have undertaken for himself. A guardian who steals his ward's estate, for example, will not be acting in the interests of his ward, on any reasonable definition. He fails to pass the threshold for being a *legitimate guardian*, and it would not be reasonable for others to take him as representing the ward. A legitimate guardian may still fall far short of being an ideal guardian: there may be better interpretations of his ward's interests and more effective ways to pursue them. But a legitimate guardian will be engaged in an activity that we can call "representing his ward's interests," in a minimal sense.

In the case of the state, we are also looking for a standard of legitimate, not perfect, representation. A state coercively imposes a set of rules that define its subjects' rights. It claims that these rules are based on the public interest, i.e. that they protect an interest each member can share. But interpretations of the public interest will vary, and which rules best instantiate it will be subject to reasonable disagreement. What we wish to know is whether the state is reasonably viewed as acting in the public interest *at all*. (This interest should be understood in a distributive, not an aggregative sense—i.e. securing the public interest requires securing an interest shared by each-and-every member). To reflect this condition, we must demand that a legitimate state give at least *minimal consideration* to each member's interests, by delineating a set of basic rights as a standard for state legitimacy. Since speaking in its people's name is a condition on the state's possession of territorial rights, any state that fails to provide these basic rights to its members lacks title to its territory.

The list of basic guarantees that states ought to provide each member is properly subject to debate, and ideally would be rendered authoritative by international institutions. There is also reason to believe that these standards may change over time, as our understanding changes (for example, with a better understanding of the interests of hitherto excluded groups) and as institutional capacity grows (a right to basic health care could not have been provided in the nineteenth century). But such a minimal standard will include most of the core rights set down in the UN Declaration of Human Rights, including rights to life, liberty, and security; rights against slavery, torture and arbitrary imprisonment; rights to equal protection of the law and a fair trial; to freedom of conscience and freedom of association; and rights to some form of political participation.²⁷

Human rights are designed to ensure that states are like legitimate guardians in two different ways. First, these rights show that the state's laws are not forcible

²⁷ My legitimate state theory is similar in this respect to Allen Buchanan's, who argues that a state's right to territory depends on its protecting human rights (Buchanan, *Justice, Legitimacy, and Self-Determination*, 354). Of course, these standard liberal rights are not protected in many states today—in Egypt, Zimbabwe, Iran, Sudan, China, and North Korea, to name a few—which means that my view implies that these states lack territorial rights. I do not wish to deny this implication, but I should add a few qualifications. First, as already noted, the fact that a state *lacks* territorial rights does not show that it can justly invaded and subjected to military occupation by foreigners. It is important to resist this inference. The conditions for just invasion and occupation—which are dependent on a broader theory of just war that I have not provided here—may be quite stringent: it may be that the only just wars are wars of self-defense and *in extremis* humanitarian intervention. The absence of territorial rights simply shows that *if* the state is justly subject to military occupation, then there is no further obstacle to more permanent rule over its territory. So the fact that Egypt or China lacks territorial rights does not automatically show it can justly be invaded or occupied. Second, the liberal rights outlined above need not be given *perfect* protection in order for a state to count as legitimate; indeed, no state protects them perfectly. Instead, they must be formally enacted into law and enforcement mechanisms must exist (even if these institutions are only partly effective). A quasi-democratic state like Venezuela would thus count as meeting these conditions, because basic rights are enshrined in the constitution and partly protected, though some governmental manipulation of them also exists. Third, as I develop further in Section 5, an existing *state* might lack territorial rights consistently with there being a *people* on the territory with the organizational capacity to support a legitimate state. Though the states of China and Iran lack territorial rights on the above criteria, there are currently powerful civil society movements in both of these countries that oppose the existing regimes. If such movements step forward and prove their political capacity, then they could gain territorial rights, say, in the aftermath of a future just military occupation of one of these countries, or of a domestic revolution.

impositions on the state's subjects, but regulations that these subjects could endorse, on a reasonable conception of their interests. If the system of law grants each member these minimal guarantees, then it gives them moral reasons for their compliance, since it secures a degree of freedom-as-independence for herself and her fellow-citizens, and each citizen has a natural duty to cooperate in securing such independence.

Second, rights of free association, free speech, and political participation allow the people collective input into what the state does. When the public interest, as they see it, is contravened, they can do something about it: they can contest the laws, and sanction the government that imposes them. This gives us an additional reason to believe that the state represents the people. If the state grants these participation rights, its laws and institutions must be responsive to the values of the people and come to reflect these values over time.²⁸

If a state exists and meets conditions 1-3, then according to the legitimate state theory, other states ought to respect its territorial jurisdiction. Where a legitimate state is unjustly annexed by foreigners or dismembered by rebellious domestic forces, it should be restored. To refrain from doing so would give incentives to wrongdoers not to respect territorial rights.

²⁸ This raises the question of whether there are forms of political participation other than democracy that suffice to render a state legitimate. I think there are. I believe that democracy is both instrumentally valuable (because democratic regimes are more likely to do better at protecting rights than autocratic regimes) and also intrinsically valuable (because democracy reflects a commitment to the equal moral status of individuals). Nevertheless, I recognize that successful democratic institutions are dependent on a supportive political culture and are often the product of a long process of political evolution. For that reason, I would support extending *provisional territorial rights* to non-democratic regimes that (a) protect basic rights and institute the rule of law, (b) provide meaningful non-democratic forms of political consultation and contestation, and (c) are *reformist regimes*, i.e. they aim at reforming the political culture in the long term, in a manner that is supportive of democracy. The minimal standards of political consultation and contestation require more codification than I can give them here, but they would include rights of free speech and political protest, as well as rights for ordinary citizens to contest political decisions and receive some public justification for those decisions. My view differs here from Buchanan's, who argues that to be recognized as legitimate, states must be democratic (Ibid, 278).

To sum up the argument thus far, I briefly outline how the legitimate state theory helps us to demarcate the extent of a state's rightful jurisdiction. It is useful to think of the state's right to its territory as verified in a two-stage process: first, we show that the state is in fact legitimate and that its legal system defines property rights over a particular area of land. This gives it a *prima facie* claim to territorial jurisdiction there. Then, in a second step, we check to see whether there exist any defeating challenges to this state's *prima facie* claim. Such "defeaters" show that another group holds prior rights over (parts of) the territory. There are two kinds of "defeater claims": 1) the prior occupancy rights of a wrongfully displaced group (as in cases of wrongful settlement) and 2) the prior territorial rights of a wrongly annexed people, which we consider in the next section. If a displaced group or a wrongly annexed people hold prior rights in an area, then this shows state lacks a moral claim to that portion of its territory. These groups ought to have occupancy or jurisdiction restored to them, and other states could justly sanction the usurper state in order to force it to return territory to the rightful claimants. Unjustly annexed peoples may additionally have a right to secede, and other states could rightfully extend support to their efforts.

5. The Annexation Objection

With all this in place, let us consider what I think is the most important objection to the legitimate state theory as we have developed it so far:

Annexation. In 1945 the Allies occupied Germany in a legitimate use of force. Suppose that instead of restoring the territory to the German people, the US had simply annexed their zone of occupation, turning it

into an additional state of the union. After annexation, the US governed legitimately, protecting the Germans' human rights and granting them rights of democratic participation in the now-unified polity. Could the annexed people of Germany rightly have attempted to recover their territory?

I think it is a widely shared intuition that for annexation to be legitimate, there must be some expression of collective consent on the part of the annexed group. Nationalist theories have an advantage in explaining this intuition. Germany is a nation, and the consent of a nation is required for a state to rule that nation's territory. But our theory does not invoke a pre-political nation independent of the state. So can it accommodate this intuition?

Even if states are the only actor that can possess rights of *jurisdiction* over territory, what our example shows is that another party—the people—possesses a kind of right over territory too. This is the residual claim, vested in the people, to reconstitute legitimate political institutions on their territory when their prior state fails, becomes illegitimate, or is usurped. *Annexation* is wrong because it violates this residual claim. The wrong involved cannot be explained by purely functionalist considerations like the need to avoid violations of human rights or to deter aggression in the international system.²⁹ No major violations of human rights occurred in our example and indeed, the use of military force actually seems *justified* in this case. The war against Nazi Germany was a just war, not an aggressive one, and the invasion and occupation of German territory did not infringe any rights held by the Nazi state. But it still seems that the US could not *unilaterally* have claimed permanent jurisdiction over German territory. Why

²⁹ Ibid, 356.

not? The best answer seems to me to be the following: unilateral annexation would infringe the residual right of the German *people* in their territory. This gives the German people a claim against annexing states even when their own state fails or becomes illegitimate. A legitimate state theory must make room for these rights.

How are we to explain these residual rights to territory? My argument can be outlined as follows:

- (1) When a state disappears, often a people persists.
- (2) There is a claim to collective autonomy that attaches to a people so understood.
- (3) This claim to collective autonomy justifies granting the people the right to reconstitute a state on their territory, as long as they can meet the legitimacy conditions we outlined in Section 4.

What does it mean to say that when a state disappears, a people persists? Individuals are not dissolved into a disconnected multitude when their state is overthrown; instead, they retain important bonds to one another. Recall that on our account, it is the state brings the people into being; we do not rely on a prepolitical “nation” that exists before state institutions are put into place. Nevertheless, the people’s history of political cooperation through their state creates morally salient bonds between them that will persist even when their state temporarily falls away. I define “the people” as a group satisfying two individually necessary and jointly sufficient conditions:

(a) *Political History Condition*: the group has established a history of political cooperation together by sharing a state (legitimate or otherwise) in the recent past; and

(b) *Political Capacity Condition*: the group possesses the ability to reconstitute and sustain a *legitimate* state on their territory today.

A people's history of political cooperation gives rise to a valuable political relationship which is a reason for certain responses on the part of insiders—to sustain and value their association; and of outsiders—to refrain from dissolving it. Respecting a people's residual claim in their territory is a way of honoring this relationship, and the reasons it gives to those involved.³⁰

How does the relationship of peoplehood get established? Recall that on the legitimate state theory the people are made into one body by being subject to common institutions and by participating together in shaping those institutions. Peoples undertake two important shared activities together. First, peoples sustain the political authority that defines and enforces their rights. It is their cooperative activity, by obeying the law and paying taxes, that creates their state institutions. Laws are not just enforced through directly coercive acts on the part of the authorities; they depend much more pervasively on large-scale patterns of behavior on the part of the people, who orient their actions to these laws. By paying taxes, the people also uphold the institutions that enforce their rights against those who refuse to respect them. So it is “the people's” shared activity that makes their system of public legislation and coercion—the state—possible.³¹

Second, when their state is a democracy, the people not only sustain an apparatus of legislation and coercion, they also have a voice in the particular scheme of rights

³⁰ On the importance of shared history, see Thomas Hurka, “The Justification of National Partiality,” in Robert McKim and Jeff McMahan, ed. *The Morality of Nationalism*, (Oxford: Oxford University Press, 1997), 139-157; Niko Kolodny, “Love as Valuing a Relationship,” *Philosophical Review* 112:2 (2003), 135–89, and “Which Relationships Justify Partiality? The Case of Parents and Children” *Philosophy and Public Affairs* 38:1 (2010), 37–75. Their view is that relationships are constituted by patterns of shared interaction that create objective ethical reasons for those involved.

³¹ Even if a group has only shared an illegitimate state in the past, they may qualify as a people if that shared history has been combined with other joint activities that have created the political capacity for them to sustain a legitimate state today. Liberation movements targeting severely repressive governments, for example, may give a group the organization and experience necessary to support legitimate political institutions going forward.

protected by their state. By voting, debating political issues, associating in political parties and interest groups, and taking part in social movements, *democratic peoples* produce the laws they live under. Though peoples share political bonds even when their history is undemocratic, in a democracy these bonds are especially robust. The role of the people's shared activity in sustaining the state and—in a democracy—in producing law helps explain why, over time, political cooperation can constitute a group of citizens into a collective agent with important ties binding them together.³² Indeed, following Kant, we might say that the result of these shared activities is to make the people into a “moral person.”³³

A people's history of statehood matters, then, because it engenders a pattern of coordinated social behavior that supports organized political authority. Moreover, if our argument in Section 2 was correct, we have a natural duty to constitute and sustain such political authorities, because only through them can we respect one another's freedom-as-independence. Absent the state, individuals would remain subject to others' conflicting interpretations about the bounds of their rights; and they would lack assurance that these rights would be respected in practice, exposed as they are to one another's arbitrary wills. In order to establish justice, we have to first coordinate people into patterns of rule-

³² See Philip Pettit, “Rawls's Political Ontology,” *Politics, Philosophy, and Economics*, 4, (2005), 157-174; and “Rawls's Peoples,” in Rex Martin and David Reidy, eds, *Rawls's Law of Peoples: A Realistic Utopia*, (Blackwell: Oxford, 2006), 38-56.

³³ “For a state is not (like the land on which it resides) a belonging (*patrimonium*). It is a society of human beings that no one other than itself can command or dispose of. Like a trunk, it has its own roots, and to annex it to another state as a graft is to do away with its existence as a *moral person* and to make a moral person into a thing, and so to contradict the idea of the original contract, apart from which no right over a people can be thought” (Kant, *Perpetual Peace*, 8:344). Emphasis added. It has been objected to me that a people could be annexed without ceasing to exist as a people. But it is hard to see how a group could be politically incorporated while still continuing to engage in the constitutive activities of creating and sustaining its own laws. The objector may have in mind something like the status of US Indian tribes, which preserve a limited sphere of jurisdiction within a wider state. But as the history of US Indian policy shows, this status is extremely precarious: the federal government has repeatedly initiated efforts to break up the tribes and terminate their jurisdiction. At the very least, then, annexation makes the relation of peoplehood extremely insecure.

following that support state institutions. Moreover, we have to engage them in these patterns of support not just by the threat of naked force, but through their willing cooperation together. When a group has successfully sustained a political authority on their territory in the past—one that is held together not through force, but because individuals support it—then they have shown that they can fulfill an important precondition for justice. They have constituted themselves as a collective political agent.

But we might wonder: why does the history that creates a people with territorial rights have to be a history of cooperation together in a *state*? After all, there are other ties a group might share—for example, a common culture or a common ideology. Why don't these other ties suffice to create a people? What privileges statehood?

When compared to these other ties, only a history of sharing a state demonstrates the existence of the moral bonds that support political authority. Even if this political authority is not yet a legitimate one, it is still an important institutional precondition for justice. Because authoritative legal institutions are so difficult to establish, and because justice depends upon them, a group's political tradition therefore has significant value. Ties of culture or language may also give rise to important bonds, but these bonds do not necessarily show that a group can sustain a political authority in common. Since territorial jurisdiction is granted to recognize the role played by legitimate political authorities in securing individuals' freedom-as-independence, we will want to extend these rights only to groups that have demonstrated they can support such an authority.³⁴

³⁴ Some groups that share a national culture may plausibly claim that they *could* support a distinct political authority, though they haven't had the opportunity to do so yet. In case of total institutional collapse, such cultural bonds may indeed provide a useful foundation for building a new state. But as long as a people's prior state can be reconstituted in a legitimate fashion, I believe there is reason to prioritize the group's established traditions of political agency. Where a group has a history of shared statehood, their compatriots will have legitimate claims and expectations whose fulfillment depends on their continued political collaboration together. Peoples with legitimate constitutional traditions—while all protecting core

Having explained why a history of political cooperation might give rise to a morally valuable relationship, let me turn to the second condition on peoplehood: to qualify as a people, a group must also demonstrate the *political capacity* for supporting legitimate institutions today. It is not enough to point to a shared political tradition in the recent past. At a minimum, a group must also possess the organizational knowledge and the political agency necessary to sustain legitimate institutions *now*. Building a governmental structure is a difficult undertaking: groups must have the ability to tax, maintain order, establish the rule of law, and govern effectively. And since a legitimate state must credibly protect basic rights, a group needs to formally enact these rights into a constitution and establish impartial and independent mechanisms for their enforcement. Regardless of the strength and thickness of the ties they share, if a group cannot meet these conditions, they do not count as a people and lack territorial rights.

Now that we have defined the people, let us turn to the second premise of my argument, which is that a people so understood has a claim to collective autonomy. We grant collective autonomy to the people in order to recognize the relational value for participants of their shared histories of political cooperation.

Because of the value of shared political histories, the significance of state institutions goes beyond the legitimating functions such institutions perform, such as

liberal values—often produce schemes of rights that differ a great deal in their particularities. These differences reflect patterns of entitlement that matter to people and around which they have structured their lives. For example, German citizens had provided one another with a social welfare system by the late nineteenth century, which was expanded in the Weimar years. But what it means for a German citizen to have a social welfare right is simply for her to depend on her consociates' continued performance of their political obligations. Relying on this right means relying on the existence of a system of social behavior coordinated around her possession of it. Citizens' entitlements thus depend on their compatriots' continuing to do their part in a political scheme. To allow groups that share a distinct national culture to redraw the boundaries of political cooperation at will would disregard this interdependence. Important ties of political obligation will thus tell in favor of a people's reestablishing their state, as long as that is possible, rather than destroying it.

protecting individuals' basic rights and providing essential public goods. If this were all that mattered to the state's value, there would be no objection to *Annexation*, since *ex hypothesi*, the Germans' private rights and interests can be equally well protected if they are annexed by the US. Indeed, if this account were correct, then we ought to allow annexation anytime the proposed annexers could do even slightly better at providing these services.³⁵

But this ignores the political histories that would be destroyed by such mergers. Annexation is wrong because where a people's institutions can be legitimate, they have a claim, not just to *any* legitimate institutions, but to the ones they have together created through their political history. There are many different ways of organizing a state that could equally serve as a basis for justice: many sets of rules about property, taxation, electoral systems, environmental stewardship, and organization of social benefits that, taken together, could secure citizens' freedom-as-independence. Even if a state like China, for example, were to liberalize, it would maintain many of its pre-existing legal traditions. But it is because *this particular* scheme of rules is the one that a people has produced together that it has a special value for them. This value would be destroyed by imposing a foreign system of law, even if that system of law also performed essential legitimating functions. So the fact that a legitimate scheme of law is the product of a people's own cooperation gives them a special claim to it, and that means outsiders will also have reason to respect a people's efforts to reconstitute their state. State institutions, in other words, not only protect rights and provide public goods; they are also the public manifestation of a people's collective cooperation together. If that people's joint

³⁵ This point is also made in Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice*, (Oxford: Oxford University Press, 2009), 17.

project—sustaining their social union through a state—is (or can be) a legitimate one, then they have a claim to continue it.³⁶

Like peoplehood, many other human relationships have relational value that goes beyond the nonrelational interests they guarantee. Consider a friendship. If I am asked to give reasons why Alex is my best friend, I may point to his many qualities—his intelligence, wittiness, and athleticism. But that does not mean that I am committed to accepting the next person I meet who is smarter, wittier, and more athletic than Alex as a replacement for him. For my friendship with Alex is only partly reducible to the functions his qualities enable him to serve. It is also the history that I have shared with Alex—the movies we’ve seen, the times we’ve studied or travelled together, the teams we’ve played on together—that grounds a commitment to my sustaining this friendship with him in particular. Another person might share many of Alex’s qualities, but he would not share the particular history that Alex and I have together produced.

Since claims in general are based on moral interests, if the people has a claim to collective autonomy because of their shared institutional history, it must be because they have an interest in sustaining that history. Is the relevant interest an interest of individuals, or of the group as a whole? I believe it is an individual interest. I also think that individuals can have an interest in their people’s continued existence even though peoplehood is not a voluntary association. But there is a popular voluntarist view that

³⁶ For a group to have reason to reconstitute a state together, their history of political cooperation must have been relatively recent. If the members of a prior state have been fully incorporated into a wider people in which they cooperate on fair terms, then they lose the right to reclaim territory and separate institutions. This statute of limitations may seem *ad hoc*, but I do not think it is. Our reasons for valuing many types of human relationship may wane in this manner when a history of shared activity is broken off for a long period. While I may once have had reason to share my living space and leisure time with my college boyfriend, I do not have the same reason to do so today, now that our lives have taken different paths and I am married to someone else. Though shared history can create reasons to value a relationship, these reasons can also dissipate when that history is broken off.

argues that if our respect for a collective's autonomy is to demonstrate respect for the interests of individuals in it, we must show that each individual has made an intentional choice to associate himself with this group. If each member had joined "the people," then we might say that when we respect "the people's" autonomy, we are simply respecting each individual's right of free association, and thus each person's individual autonomy. But this strategy won't work in the case of peoples. The problem is that we are born into a political community, and whatever options we may have to leave, these are usually far too onerous to render membership an act of free association. Indeed, following Kant, we may even argue that membership in a state is a moral imperative rather than a choice, since living under a common system of law is the only way to respect others' freedom-as-independence.

The voluntarist objection to collective autonomy is powerful, but I think it is misguided. Even though individuals have not chosen to "join" their people, its claim to collective autonomy can still be grounded in their interests. To see why, consider an analogous involuntary relationship: the parent-child relation. From the perspective of the child, this bond is always unchosen: he is merely born into it. But that does not mean that his relationship with the parent is a forcible imposition on him or that we can depose the old parent and replace him with a new one without doing the child any wrong. For over time, the child is likely to have developed a bond with the parent he originally had, and that bond will be of significance to him. A bad parent should be removed; but a good parent should not be, even if a slightly better one is waiting in the wings. For there may be a wide range of good parenting styles, and a significant part of what is valuable in the parent-child bond is the way it is shaped by the history of interaction among the parties

involved. Respecting the integrity of the parent-child relationship, if the parent is a decent one, is something that is in the child's interest even though the child did not choose to join that relationship.

Our bond with our fellow-citizens—the other members of “the people”—is equally unchosen. But as in the previous case, that does not mean that this relationship is forcibly imposed on us, or that an outsider can amalgamate one people with another without doing them any wrong. Over time, we shape our institutions together with our fellow-citizens in accordance with shared values and principles of justice, even though we did not choose *these* institutions or *these* compatriots. For that reason, the forcible merger of two peoples disrespects the interests of citizens in much the same way that replacing the parent disrespects the interests of the child.³⁷

To sum up, then, if a “people”—the collective subject of a prior state—demonstrates the political capacity to recreate and sustain legitimate political institutions on their territory, they ought to be allowed to do so in the absence of interference from outsiders or potential secessionist movements. Our respect for their residual claim to their territory is a way of honoring their valuable history of political association, and the reasons it creates for those involved. Though by granting them collective autonomy we confer a claim on the group, our respect for this claim is grounded in the interests of individuals, since individuals can have important interests in the continuance of a valuable relationship even when they did not voluntarily join it.

³⁷ I should emphasize here that I do not mean to suggest any further similarity between the relationship of parent to child and the relation of state to citizen than the fact that both are unchosen relationships. In particular, I do not conceive of the state as having a paternalistic relationship to its citizens, nor do I conceive of it as an agency separate from the body of citizens as a whole.

We should note that this account of peoplehood will not rule out all territorial annexations, and I am not certain that it should. Consider severe failed state cases, such as present-day Somalia. My interpretation of the “facts on the ground” in Somalia may be contestable: but let us assume for the purposes of the argument that there is now no collective agent in Somalia capable of organizing and sustaining a legitimate political authority.³⁸ Then it may not be wrong for another state to annex the territory, if their invasion was just and they can commit to ruling legitimately.³⁹ The purpose behind a people’s self-determination is the provision of justice for its members: where there is no collective agent on the territory capable of sustaining a legitimate institution, this purpose must be fulfilled in some other way.

Of course, it is likely that the Somalis will object that they already are “a people.” They share cultural bonds, and these bonds make them into more than an occasional group of individuals with no relation to one another.⁴⁰ I concede that sharing these cultural bonds may have important normative consequences: it would be wrong to force the Somalis to stop speaking their language, for example, or to give up their customs and

³⁸ This interpretation is most contestable in the case of Somaliland, a region in the Northeast of Somalia that has an effective police force, coinage, and government, and held a 2001 referendum on independence from Somalia. Although Somaliland has not been recognized internationally, it may have the political capacity to sustain an independent state.

³⁹ Conditions for annexation in severe failed state cases raise a number of issues that I cannot fully consider here. First, as stated earlier, the fact that a state or unorganized group *lacks* territorial rights does not show that it can justly be invaded and subjected to military occupation. An outsider’s invasion and occupancy of the territory must still be justified, even if the occupants lack territorial rights. Second, permitting annexation, even in these sharply delimited cases, raises problems of unilateralism: even if annexation is not always unjust, there may be reasons to prohibit states’ unilaterally judging when annexation is permissible (because they may judge in a biased or self-interested way). But it is not clear to me that at least an *internationally authorized* annexation would be wrong. Something like an improved version of the international mandate system that was briefly tried in the Interwar period under the League of Nations might be the best way to handle these situations.

⁴⁰ It is worth noting that the boundaries of the Somali culture do not overlap with the boundaries of the state of Somalia that existed until 1991: ethnic Somalis reside in parts of Ethiopia, Kenya, and Djibouti, as well as in Somalia. Non-Somali minority groups also make up about 6% of the population on the territory of Somalia.

traditions, when these are not harmful to others. Forcing national groups to assimilate to an alien culture is oppressive and wrong. Yet national groups can be governed as part of a multinational state without being oppressed and forced to assimilate. And the mere presence of cultural bonds does nothing to show that the Somalis possess the *political capacity* required to support legitimate institutions.

One might ask, though: what would happen to the territorial rights of the Somalis if they are annexed from outside? If the account I have offered is correct, at present the Somalis *have no rights over their territory*, because they do not yet form a people in the sense that demonstrates they can support a legitimate political authority. If the Somalis' territory were to be annexed, then there are two options for how the story might play out. First, the annexing state might rule the territory as a separate dependency until such time as it became capable of independence. In that case, once the Somali population became capable of constituting itself as a legitimate state, it would gain rights over its territory. A second option is that the Somali population might be incorporated, as equal citizens, into the wider annexing state and granted the same rights and prerogatives enjoyed by that state's other citizens. In that case, the Somali population would become part of a wider "people": its territorial right would be contained in the right of that wider people, and be exercised through the larger state.⁴¹

⁴¹ This second possibility is perhaps unlikely to occur, since external rulers seldom treat the populations of newly acquired territory equally. But granting equal citizenship has—often over a long period of time—served to legitimize other territorial acquisitions. Consider the case of Hawaii. If you believe, as I do, that the United States currently has territorial rights over Hawaii, one must ask oneself where those territorial rights come from. They do not come from historical title: Hawaii was unjustly annexed in 1898 after a group of American sugar plantation owners had overthrown its government. Nor do these rights come from mere prescription: the US granted the Philippines independence in 1946, having held it for 50 years. Perhaps it should have granted Hawaii independence then too, since Hawaii was not an official state and its citizens therefore did not yet enjoy equal rights. One of the main considerations in delaying Hawaiian statehood was racial prejudice against its population, a mix of descendants of native Hawaiians and Japanese and Chinese laborers. But I do not believe that the US is morally required to grant Hawaii

To conclude, I briefly distinguish my theory from other accounts of territorial rights on offer in the recent literature. Unlike the *plebiscitary view* put forward by Andrew Altman and Christopher Wellman, my view does not grant territorial rights to any domestic subgroup that can perform the political functions of a legitimate state and wishes to establish separate institutions. Instead, my view confers territorial rights only on those groups that are organized as states now, or have been organized as states in the recent past. In my view, the plebiscitary position is an unstable hybrid between a natural duty theory and a consent theory of political legitimacy. States are not voluntary associations, and it is not possible to allow everyone the freedom to choose which state they would ideally like to belong to. But if we believe that we have a natural duty, independent of our consent, to uphold legitimate institutions, then it is not clear why subgroup preferences to secede should void a state's territorial claim, so long as that state is reasonably just. On the plebiscitary view, subgroups could threaten secession to obtain their preferred policy outcomes, they could unilaterally appropriate valuable resources, and they could undermine the scheme of law on which their compatriots' rights depend. But if we have a natural duty to uphold just institutions, then it seems we should also have reason not to destabilize them.

Second, as already emphasized, my account differs from the nationalist view that nations acquire territorial rights by imprinting their culture on a particular territory. On

independence *now*, despite the tainted acquisition and the history of oppression. Why not? Because, after many hurdles, Hawaiians are now treated as equal citizens. If this fact can legitimize Hawaiian incorporation today, one must assume that it could legitimize other incorporations from the get-go, as long as the initial annexation of the territory was legitimate. Lest this view seem like a mere legitimization of the *status quo*, we might contrast the case of Hawaii with that of Puerto Rico, which remains an unincorporated U.S. territory. Puerto Rico is essentially a US colony, albeit one that is partly self-governing, since its residents cannot vote in US elections. In my opinion, this compromises the US claim to that territory and means that the Puerto Rico may have a claim in justice to secede, because they are not being treated as equal citizens.

my view, a group need not share objective cultural characteristics to qualify as a people. As I have argued, cultural distinctiveness is neither necessary nor sufficient to establish rights to territory. It is not necessary, because even groups that do not share cultural distinctiveness may possess a shared political history and present-day political capacity: multinational states like India, Canada, or Belgium meet these conditions. And sharing a national culture is also not sufficient to confer territorial rights. If a culturally distinct group is part of a wider people who sustain a legitimate state together, then that group has no right to unilaterally appropriate a section of that state's territory. Their relation with that wider people will be one they have reason to value and sustain, and their state will have a claim—exercised in the name of the whole people—to its entire territory.

Finally, though my view comes closest to Allen Buchanan's statist position, it also differs from his purely functionalist theory in significant respects. I agree with his premise that states properly possess jurisdiction over their territory in virtue of their performance of certain legitimating functions (especially by protecting basic rights). I also agree with his view that subgroups ought not to unilaterally appropriate territory to which a legitimate state has a prior claim. But I believe my view offers a more convincing account of why annexation is wrong, and why existing states and peoples ought not to be unilaterally abolished by outsiders. On my view, annexation is not merely *indirectly* wrong (because it is likely to result in violations of human rights or increased aggression in the international system). Instead, it is *inherently* wrong, because it violates the people's rights in their territory.