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When affected interests demand joint self-determination: learning from rivers

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Introduction

The development and use of resources on one side of a border can unintentionally, yet predictably, affect resources on the other side. When one state affects another through externalities, negative results arise. To avoid conflict, inefficiency, and environmental harm, states may effectively use structures of international cooperation, raising the question: are states *normatively obliged* to consult other states about domestic resource decisions?

Iris Marion Young writes that, 'Intergovernmental relations ought to be structured such that, when self-governing entities stand in relationships of *contiguity or mutual effect*, there are settled procedures of discussion and negotiation about conflicts, side effects of their activities, and shared problems' (Young 2007, 56, emphasis added). However, the proposal's application and theoretical implications are not straightforward. First, what counts as 'mutual effect'? Under what conditions are states obliged to institute procedural discourse with other states? Second, how much power should each state have in the other's decision-making process? Could states be required to transfer jurisdictional authority to interstate governmental bodies?

This essay defends criteria for understanding when circumstances of affected collective interests call for robust international decision-making procedures. The discussion focuses on principles of inter- and trans-governmental relations, and so does not take up the issue of individual participation rights.[52] It asserts a strong claim that in certain cases of ongoing mutual or asymmetrical effect, the principle of state permanent sovereignty over national resources does not apply. Instead, key resource rights should be held by an interstate governmental body. For territorial rights theory, demanding that states share jurisdictional authority over resources is an exceptional conclusion. State territorial rights are constituted by jurisdictional authority over a territorial region. Sharing jurisdictional authority over resources entails sharing territory. Rather than thinking of territorial rights as bilaterally dividing states, on the proposal pursued here, political maps may represent targeted areas as cross-hatched – shared territory.

In this essay I grant that there is a strong case for national sovereignty over resources. The right of a people to self-determination includes, as a prerequisite, a claim to be self-determining over a particular territory and

[52] And so avoids much of the discussion in the literature on affected interests from the perspective of individual participation (Goodin 2007). I assume that the question of individual participation rights, or 'the boundary problem' can be solved by reference to principles other than enfranchising affected interests alone (Miller 2009; Saunders 2012).

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resources (Nine 2012). Nevertheless, strong state territorial rights do not rule out the need for shared jurisdictional authority under particular circumstances. In fact, because territorial rights depend on the state having the capacity to be self-determining, territorial rights theory should demand shared jurisdictions in certain cases of shared resources. The first section of the essay explains the state right of self-determination, and the second section explores the concept and possibility of self-determination when states share resources. In the following sections, the case of rivers is used to demonstrate the need for shared jurisdictional authority; when shared resources create ongoing circumstances under which one state threatens the resilience of another, then the threatening state has a duty to share jurisdictional authority over those resources. Final sections explain why territorial rights theory supports this result. Provided that permanent sovereignty over national resources requires that the particular resources within the state territory are clearly defined and that the state has the capacity for self-determination over those resources, then under conditions when these prerequisites cannot be met, joint, interstate governmental bodies should hold key powers of jurisdictional authority regarding those resources.

National resource sovereignty

Permanent sovereignty over national resources is a right of state self-determination, the right of a state freely to dispose of its natural wealth and resources in accordance with its national interests (UN 1962).

Self-determination over resources includes a set of jurisdictional powers to legislate, adjudicate, and enforce the rule of law regarding the development and use of those resources. While states are assumed to be capable of autonomous acts, they are also deeply engaged in interdependent relationships with foreign agents. Participation in global markets and in a global ecosystem creates circumstances of interdependence between all states, not to mention numerous other ways (cultural, political, etc.) that states depend upon each other. And these interdependent relationships are ubiquitous, unavoidable elements of global politics. Self-determination under these circumstances cannot be described as complete autonomy, because foreign factors inevitably influence domestic affairs. Nevertheless, groups can continue to be self-determining even while they are interdependently related.

Self-determination over resources is eroded when another agent has a significant set of powers over the state's powers, such as the power to determine state entitlements to resources and the power to limit what a state may do with their resources. Since all states are subject to some erosion of their self-determination (by international human rights enforcement,

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for example), it is useful to draw a distinction between cases where a state is self-determining, but their self-determination is (inter)dependent upon relationships with other powers, and cases where a state lacks self-determination.

Lacking self-determination entails being dominated. Self-determination as non-domination pertains when a group is not subject to the arbitrary will of another (Pettit 1996). A state lacks self-determination if it stands in a relation with foreign actors, where at least one foreign actor has the power to interfere arbitrarily with the actions of the state. Understood as non-domination, self-determination defines autonomy in terms of the structuring of the interdependent relationships between groups (Young 2007, 47).

Dependent self-determination, by contrast, occurs when states are subject to the will of other agents, and this subjection is neither arbitrary nor unjustifiable. A non-arbitrary subjection includes both procedural and substantive elements. Dependent self-determination pertains when a state is subject to the rules of another legislative body, and the state is fairly represented in the legislative process of that body. Member states of the European Union (EU) stand in a relation of dependent self-determination with respect to the EU, because their domestic policies are subject to the constitution and legislative acts of the EU. Moreover, a relationship of dependent self-determination exists only when the group continues to maintain a large degree of independent jurisdictional powers. A city government, for example, exercises self-determination over the resources within its city limits. While the city is subject to the constitution and legislative constraints of the state, it maintains powers of jurisdiction to develop, manage, and use its resources within those constraints.

Dependence comes in degrees relative to the scope of the higher-level vs. lower-level authority. Cities exercise less self-determination compared to member states of the EU, for instance. Mutual dependence, or interdependence, occurs when groups affect each other's self-determination capacities. Ireland and France are interdependent – their mutual participation in the EU affects each power, respectively. Some relationships between powers are less symmetrical, such as the relationship between cities and their states.

In terms of respecting the self-determination of states, it is preferable for states to be dependently self-determining rather than to lack self-determination. In what follows I describe the conditions under which states (1) have an obligation to enter into relationships of interdependent self-determination in order to avoid dominating another state and (2) when a state should enter into relationships of interdependent self-determination in order to avoid lacking self-determination.

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Sharing resources

In this essay I assume that self-determination of legitimate states is valuable; it protects and promotes the interests of individual members better than currently available alternatives.[53] The state's capacity to control the development of land and resources is crucial for the advancement of members' deeply felt interests. For communities living adjacent to the resources in question, resource development decisions have especially grave implications for public health, social interplay, and political character. The way a community uses its surrounding environment extensively shapes how they eat, work, play, and participate in public life.

Without the right to determine the development and use of certain lands and resources, individuals will not be able to advance their collectively shared interests in these important ways. And without territorial rights over resources, the members of the state could not command the development and use of the land and resources within which they live. The consequence of this is that the members would also lose relevant control over the way that they conduct many other aspects of their lives (Kolers 2002, 35; Meisels 2003).

The atmosphere, its oceans, and its large ecosystems – we share them as residents on Earth. At some level, then, almost all of state decisions about resource use affect other states. To avoid dominating another state, must they consult other possibly affected states about every resource decision? If states did this, then state self-determination over resources would be severely eroded – states could not make independent decisions about the management of national resources.[54]

To preserve relative independence of state self-determination over resources, the 'affected interest' condition must be narrowed so that it does not capture every decision that has international effects. Given that the value of self-determination comes from the protection and promotion of collective interests, a response can be based on the effect's significance to these interests. A proposal, then, is that foreign states (or relevant collectives) should be included in decision-making processes when the outcome of the decision will significantly affect the foreign collective interests.[55] However, 'significant interests' can be interpreted in a variety of ways (as needs or desires, for instance). The principle requires more clarity.

[53] For theoretical arguments, see Moore (1997), Meisels (2003), Buchanan (2004), Miller (2007), Kolers (2009), Nine (2012).

[54] To see a defense of this position, see Goodin (2007) and Gould (2006).

[55] Kolers (2002) and Gould (2006) defend similar positions.

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Rivers

One method to clarify normative principles is to find a case where the principle seems to clearly hold, and then to explain the relevant features of that case. In the remainder of the essay I employ this method using the case of shared rivers. Not only does the affected interest principle seem to hold in a discernible way over shared rivers, but also political practice around many shared rivers embrace limited domains of joint self-determination.

Sometimes called the 'Integrated Catchment Management' (ICM) approach, joint management of rivers includes the political cooperation between groups within the same catchment area (a catchment area is the land on either side of a river that is part of the river's immediate ecosystem). ICM is increasingly used internationally for domestic water management. In Ireland, for example, where the main sub-national political units are counties, catchment areas have become a supplementary political domain within which management, planning, and policy decisions are made about freshwater management within their domains. Internationally, similar arrangements are made between states. The Uruguay River serves as the border between Argentina and Uruguay. In 1975, they ratified a statute laying down general substantive rules for the protection of the river and a number of procedural requirements. The 1975 Statute also established the *Comisión Administradora del Río Uruguay* (CARU), a joint commission with independent legal identity charged with implementing bilateral decision making and administration on matters impacting river use (McIntyre 2011).

Why is the river a site of joint political domain? Generally, it is because natural features of the river create conditions of ongoing, high stakes mutual effects. Groups sharing the river realize that cooperating with other sharers is likely to yield more economic, health, and environmental benefits in creating opportunities and avoiding negative effects (Sadoff and Grey 2002). However, we should not turn this observation alone into a normative obligation that states should always maximize these kinds of benefits through joint self-determination. Even if joint international political structures can maximize objective goods, such as health and environmental integrity, states need not be obliged to create and participate in these structures. Self-determination protects the group's chosen value system – the basic values that they have chosen to guide their jurisdictional structures. If groups are obliged to make joint policy decisions about the management of a resource, then one group may not be able to bring its unique value system to bear on the political process. This creates a tension between self-rule and the maximization of objective benefits, and it is not clear that the latter should outweigh the former. In fact, the former may have more weight, given that

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self-determination is designed to allow people to rule themselves according to their own values that may weigh benefits differently.

I propose that many rivers should be sites of joint political structures, because without them groups are in jeopardy of losing their capacity to be self-determining. Self-determination involves trans-generational political rule within a territory; a self-determining group requires the capacity to plan for the sustainability of current and future generations. To be achievable, self-determination needs to be held over a *resilient* territory. Resilience is a society's ability to absorb not-wholly-improbable upheavals due to foreseeable social and ecological changes (Kolers 2009, 74). These changes include events like the depletion of potable water due to urban population growth and exclude events that no society could be expected to absorb, such as taking the impact from Russia's entire nuclear arsenal.

One region includes a variety of social, political, economic, and ecological systems. If one system abruptly changes, then, in a resilient society, the others should be able to absorb that change. State and local communities have an

> … interest in the resilience of their basic social organizations, especially their ways of interacting with the environment. Such systems include those devoted to producing or capturing economic staples such as particular natural resources, access to trade routes and waterways, and climate systems. In the event that these are disrupted, the social systems built on them are at risk of collapse.… Shocks that overwhelm resilience can cause not just ecosystems but arguably also societies to cross thresholds from one kind of system into another, such that it is difficult if not impossible to return (Kolers 2009, 78).

Even if the entire state is resilient to a loss of a river due to upstream damming, the local populations around the river are likely not to be resilient to this loss. The state's basic social organizations built around that resource are not resilient. Not many resources are so important that they undergird a basic social organization. The loss of an object of industry, such as coal, is a shock that can be absorbed, maybe with some strain, by the larger social system. Fresh water, however, is so integral to the basic structures of society that, if lost, the society itself could be lost.

One could object that the destruction of a river ecosystem is only a shock to a sub-section of the territory, the river's catchment area. The society as a whole could absorb the loss of one river, provided that the local population from that catchment area could relocate successfully somewhere else within the territory. Thus, sharing one river may not be a case of threatened resilience of the whole territory. Allowing that not all shared rivers are cases of a resilience deficit, this theory will not apply to all rivers. Still, even if a large territorial society has the capacity to absorb the dismantling and

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relocation of entire local river communities, the large territorial society is not resilient. Resilience requires absorption without loss of legitimacy. If a state can absorb a shock only by means of large-scale violation of basic human rights, then the state is not resilient. Because forced relocation, especially of entire communities, is a violation of basic human rights (UN 1960), then the capacity to absorb by this means does not count as resilience.

If this resilience deficit is due to probable actions that could be committed by any state who shares the resource, then the states are in a state of relevant *mutual effect* regarding that resource. (Mutual effect is illustrated by cross-stream states.) By contrast, if the resilience deficit is due to probable actions that could be committed by only a subset of states, then the states sharing the resource are in a state of *asymmetrical effect* regarding that resource (illustrated by upstream states vs. downstream states). Further, if the resilience deficit is due to a large variety of probable actions (as opposed to one big whammy, like dumping tons of nuclear waste on the border), then the states are in a state of *ongoing* mutual effect regarding that resource.

To be self-determining over a territory and its resources, a state must not be subject to the arbitrary will of another power regarding these resources. As previously discussed, independent group actions ubiquitously affect others' resources, and the affected group continues to exercise self-determining agency as dependent agency. In the case of a resilience deficit, by contrast, the affected group is dominated, because its basic social organizations are threatened by others' arbitrary will. Our principle can be articulated using these concepts: *When self-determining groups stand in a relationship of on-going mutual or asymmetrical effect regarding a resource, and this relationship causes a resilience deficit in one or more of the groups, then the groups should form joint political structures to achieve joint self-determination over that resource.*

Joint self-determination can eliminate manmade resilience deficit by giving the threatened group a say in how the resources will be used. The normative force of this principle draws from the value of self-determination. Because the resilience deficit threatens the capacity of the group to exercise self-determination, each affecting state has an obligation to enter into joint decision-making structures over the resource. Likewise, the affected state has an overriding interest in engaging these joint structures in order to avoid domination. These joint political structures should include representatives from all relevant sides and should have sufficient authority, binding on the state legislative bodies, to determine policies of management, planning, and development of the relevant resources to avoid resilience deficits. With these features, domination is avoided because state decisions regarding the resource are no longer arbitrary. Rather, they are determined by legitimate, inclusive procedures.

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Why not separate domains with constraints?

The Uruguay River serves as the border between Uruguay and Argentina. In the past decade Uruguay built large pulp mills on the river with the capacity to threaten the river's ecological systems and Argentinean uses. They brought the case before the International Court of Justice, and it held that each state retains unilateral rights of national self-determination over its fair share of the river, subject to the constraint to not use the resource in a way that unduly harms the other state. The ruling also strongly supported a joint Argentinean–Uruguayan agency, CARU, with its own independent powers of legislation over the use and management of the Uruguay River.

As written, the ruling seems to endorse two competing principles. The first is that states have national resource sovereignty as long as they do not engage in activities that unduly harm the other. The second is that key jurisdictional powers over the resource are not held by either Argentina or by Uruguay, but instead are shared; they are placed in the hands of the independent, joint legal entity, CARU. CARU holds key jurisdictional powers over the river: it has the authority to determine the measurement and size of each state's share of the river's resources and legislative powers to determine the management, planning, and uses of the river resources. Moreover, these jurisdictional powers are binding on the Argentinean and Uruguayan governments. Transferring key jurisdictional powers to CARU is, in some ways, incompatible with the option of division and separate rule. The two states cannot exercise independent jurisdictional authority over separate shares of the resource while another agency, CARU, holds key jurisdictional powers over those same resources (McIntyre 2011).

The case raises the question: is CARU merely a redundant measure? Suppose it is possible to articulate the relevant acts on river resources that would threaten the basic structures of the other group's society. It seems that states could avoid creating resilience deficits as long as they avoided these threatening acts. Consequently, the principle obliging joint self-determination over the resource would be unwarranted.

The objection relies on rights – a state's resource right includes the power to legislate certain kinds of development and use, so long as the actions do not violate the rights of other states to do the same regarding their resources (Saunders 2012). The response to this objection centres on determining what constitutes undue harm and a fair division of shares. In cases of *ongoing* mutual effect or asymmetry, the identification of activities that constitute an *undue harm* will involve recurrent interstate negotiation and discussion. A river is as a compound object; its constitutive materials and supporting structures are, by their nature, mutually affecting, and also in their variety they are used expansively to multiple ends. Fishing affects the

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river flora; water use affects fish populations; and riparian soil content changes water quality. Each river affords robust, various use (fishing, riparian farming, mining, energy creation, drinking, navigating, crossing, milling, irrigating, etc.), and each use affects the others. In addition, society's needs and practices change over time. A kind of pollution that did not affect river uses in the past may, given changing ends, become a considerable harm. If states are to understand which activities are unduly harmful to others, then they must communicate regularly with each other. Further, state development of its resources requires planning, and planning requires knowledge of the possible future uses of the entire relevant object. A state cannot alone successfully plan for the development of river resources without knowing the plans of the states whose actions may make those plans impossible. Consequently, constant interstate discourse, negotiation, and binding decision making must occur. Effectively, this joint decision-making body is a minor territorial authority – it has limited jurisdictional authority over the catchment area. The important point is that the states cannot fulfil their obligations not to dominate, if they do not know which actions will unduly harm the other states. Fulfilling this obligation requires joint self-determination regarding the development and uses of the relevant resource.

In order to rule over their resources, the state must know which resources are theirs. Regarding a river, how can states know which exact resources belong to them? Although a river naturally divides the land on either side, a division of the river itself is not readily apparent. One option is to divide the river along territorial lines. This option is untenable because it fails to acknowledge how resources are ultimately shared. China would be able to claim all of the upstream river resources, including anything that would normally flow into India. And consequently, China could keep all of those resources in China (by damming the river) without violating any of India's rights.

Another option is to divide the resources into shares according to the length of river bank within each state's territory. If the river runs 1000 miles through one state and then 10 miles through another, then a share of the river resources may be divided between the respective states according to a ratio of 1:100. This division, however, denies the multitude of alternative ways of dividing resources. Suppose that downstream has a large city with industrial and energy bases on the river, and upstream does not have any settlements or substantial activities built around the river. Restricting downstream to only 1/100th of the river resources would threaten the basic social structures of the downstream city. If upstream polluted 99/100th of the water, this would devastate downstream.

Instead of restricting the division of shares to a ration of territorial size, a better way may be to divide the resources according interests. Indeed, international law subjects claims to river resources to an equitable and

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reasonable use principle – each state should recognize the claim of other states to their fair share of river resources (UN 1997, Art 5, Part 2). The 'divide and rule' account seems to rely on an analogy between river water and water in buckets. When an agent owns a bucket (or territorial rights in the river basin), the water in the bucket is the agent's, because it is inside of that bucket. Suppose that the water in India's bucket comes directly from the overflow of water from China's bucket. It is possible for China to use up all of its water, eliminating overflow, and drying up India's bucket. Given that China's water use affects India's, China's water rights are legitimately constrained: China can do whatever it wants with its water when it is in China's bucket, as long as their use does not eliminate overflow into India's bucket (or cause similar significant harm).[56] The size of each share (the size of the bucket) can be determined by each state's respective interests in the resource. Because downstream has greater interest in the river resources, its share is at least larger than 1/100th of upstream's.

Recognized problems with the water bucket understanding concern the measure of state interests; states raise incomparable cultural or invaluable security interests in river resources, meant to demonstrate that their interests outweigh those of other states. The presumption that states may unilaterally use their river resources without any constraint ensues. Further, even if the states are compliant with the equitable division of water between states, this principle calls for a genuine account of 'equitable'. Since 'equitable' is defined as dependent on interests, and because interests in river resources vary widely across societies and time, then what constitutes a fair share will vary alongside these changing interests. As before with the determination of 'undue harm', the determination of relevant interests, and hence of relevant shares, requires recurrent interstate negotiation and discussion within legitimate and binding procedures. That is, it would require some form of joint governmental body with jurisdictional domain over the entire river, for it to have the authority to divide up rights over the river.

Applying territorial rights theory to rivers

A theory of territorial rights explains who has claims of jurisdictional authority over which territory and its inclusive resources. Territorial rights theory, then, is a possible option for determining a state's share of

[56] This is an articulation of the Lockean 'enough and as good' proviso (Locke 2003 [1690]). The water bucket conception is common; it is used in international law and to articulate domestic property rights in rivers. The Colorado River Compact, for example, divides the Colorado River into two divisions (upper and lower) within the United States, and each division has a the right to control independently a 7.5 million acre feet (maf) of river water annually – a large 'bucket' share of water (US Department of the Interior 2011).

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resources. If a state can claim, on the basis of territorial rights theory, a particular share of a river, then there is a method for determining legitimate state resource shares without establishing a separate jurisdictional authority for this purpose.

Territorial rights theories that utilize John Locke's philosophy have the strongest potential to explain exclusionary resource rights. John Locke argued that persons could acquire rights over goods by having certain interactions with those goods. Not just any interaction will do – the interaction has to be value generating. When a person invests her labour in the land, the land becomes more valuable. The owner of the labour deserves the product of her labour, because it is her labour that made the product valuable (Locke 2003 [1690]). When an agent acquires a right over a good, that right is exclusionary; that good belongs to her and to nobody else. Applied to territory: if a territory is made more valuable by a group, then that group has an exclusionary claim to the territory.[57] A group acquires a territorial right by mixing itself with particular resources, including agricultural land, aquifers, mountains, valleys, and minerals. The geographical location of these resources fixes the territorial right on the map; the group claims territory over those specific lands, aquifers, and minerals, and not over similar resources in a different location.

Territorial rights theories defend three relevant values a group may use to establish territorial claims: material value, symbolic value, and the value of justice. David Miller convincingly defends territorial rights as based on material and symbolic values. A group can be a unique author of territory's material value in several ways. Much of the value of the land is due to the coordinated efforts under the guidance of social and political institutions, such as cross-generational technological advances and conservation efforts coordinated by communities and enforced by rule of law. These actions engender beneficial material results ranging from real estate value to the fundamental values of providing food, clothing, and shelter to individuals. Symbolic value, by contrast, picks out the cultural, religious, or social meanings that a group attributes to certain places or features. The site of a historical battle, the sacred river, and the mythological skyline illustrate the symbolic meaning of territory (Miller 2012).[58] Symbolic value emerges out of deep connections – the group's values and ways of life are shaped by the

[57] I here focus on collectivistic Lockean theories of territory. While traditional interpretation holds that individual property owners create state territory by transferring their powers over property to the state, recent theorists have defended a collectivistic version of Lockean theory. The collectivistic version does not rely on a transfer of rights from individual property owners. Instead, groups can acquire territorial rights directly.

[58] Similar arguments in Meisels (2009) and Gans (2008).

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territory, and the territory, in concord, reflects them. Through these connections, the territory becomes an emblem of the group itself, representing their identity and culture. On Miller's theory, territorial rights can be justified indirectly over particular resources, because jurisdictional authority is necessary to secure group claims to the material and symbolic values embodied there.

The third conception of value, the value of justice, directly justifies territorial rights. On this view, territorial rights are functional rights; a group acquires a territorial right if and only if they demonstrate the capacity to achieve just rule of law. When the group uses the resources within that territory to achieve the value of justice, a right is acquired over a particular territory. Because the function of a territorial right is the establishment of the legitimate rule of law, when a group interacts with territorial resources to create just institutions, it comes to deserve a territorial right over those resources (Nine 2008).

A possible account of the division of resources between states can be established, potentially, by this kind of theory. If a group interacts with the resources in relevantly value-creating ways, then they acquire exclusionary territorial rights over those particular resources. However, a significant difficulty remains in applying these territorial rights theories to the division of resources similar to river resources: the exact object of territorial rights remains under defined. Specifically, two immediate, interconnected problems arise: geographical dispersion and overlap. Geographical dispersion occurs when a group interacts with more and less than what is marked between lines on a map. National forest cultivation projects, for example, purify air that spreads beyond national borders. Overlap occurs when two or more groups simultaneously create value in the same object. Border towns, for example, create areas of dense multi-group interaction with their environment. A combination of dispersion and overlap is found in rivers. Rivers disperse the objects of labour through flow and erosion, and they also as mix the objects of down and cross-stream labour.

However, a territorial region can refer to something more than merely the set of resources, namely the mutual and affective relationships that agents have with those resources. A territorial region on this account refers to the complex relationship that agents have with each other within a certain place as well as to the stuff that one finds in that place (such as land, air, oil, roads, houses, ecosystems, etc.). So understood, a 'region' is a compound object, not an aggregation. The region is identifiable as a site where interactions with resources are dense and mutually affecting. For example, the extraction of a valuable mineral resource influences the adjacent employment structure, political institutions, location of settlements, use of land (away from agriculture towards mining), and overall

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environmental quality. On this compound object understanding, a group's way of using a resource can include its subjective, non-instrumental use, including symbolic use as a national symbol or sacred religious site (Kolers 2012; Moore 2012).

By interweaving these resources and created values, group interactions reveal a whole – a territory – with characteristics and values that are not reducible to its individual parts. Through the creation of value in the whole region, a group acquires territorial rights over a compound territorial region.

Despite the benefits of this account of territorial and resource entitlement, it further complicates the division of resources between states. When multiple groups interact with the same compound region, then these groups share claims to the same region. Dividing the region between the groups is not explained. The concept of a river as a compound object complicates a traditional account of territory in two ways. First, it brings to the fore the problem of territorial overlap; multiple states may acquire territorial rights over the same whole river. Consequently, claimants must produce reasons for bilaterally dividing the river into territorial segments. This places the debate back at the beginning – territorial rights theory alone does not provide a mechanism for determining exact shares of resources like river resources.

Second, the nature of a river produces a new puzzle for the division of rights. Since a river is more like a compound object than a divisible mass, the interconnected functions of disparate parts of the river resist artificial division. On the water bucket conception, agents assume that they can exercise control over the water in their bucket, as long as it is there. But this is not the case. Down or cross-stream states cannot exercise unilateral jurisdictional control over their river segments. Jurisdictional control over a territory includes the powers to legislate property rights in that region, including the power to designate zoning rights and to mark certain resources for special use (or preservation). A state may, for example, legislate the zoning of a section of riparian lands for agricultural development. Because crops depend on specific chemical and water quantity and quality in the riparian soil, up and cross stream use of the riparian region could make this agricultural development impossible. Successfully legislating property rights and zoning will depend on constant cooperation with other up and cross-stream states.

Moreover, the nature of a river makes numerous unilateral state powers *incoherent*. The articulation of property rights in resources frequently depends on environmental factors. Property rights in land are often designated into different categories, including lands with river access and those without. Each category of property is subject to different legislation, such as conditions on sale and on use. If river use by other states changes the direction or flow of a river, for example, then a category of property may be

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made incoherent. Similarly, a state's environmental protection legislation may allow for a one-time pollution 'dumping' into the river as long as the pollutant materials do not exceed a certain amount. If this amount of pollutant is already present in the water when it travels into the state, then the legislation is nullified. Similar examples can be found in legislation over fishing and other resource use. Fishing rights may be articulated in terms of equity – a commercial vessel has rights to no more than X amount of fish and no less than Y amount. The Y, minimal condition is to prevent other vessels from taking more than a fair share during times of scarcity. Obviously, the coherency of this legislation depends on the fish population not falling below the equitable threshold. The point is that down and cross-stream states cannot exercise vital unilateral jurisdictional authority over the riparian region without constant cooperation from up and cross-stream states.

In many circumstances, states sharing a river cannot securely exercise their right of self-determination over the river resources without constant cooperation of other states. Without this cooperation, states are subject to the will of other states. When this threatens the resilience of a region, then it threatens the capacity of the state to be self-determining. If in a position where it threatens the resilience of another state regarding river resources, a state should, to avoid dominating the other, engage in joint jurisdictional authority over those resources. The joint authority can determine through legitimate decision-making procedures, the appropriate shares of river resources to be held by each state. Each state then has dependent rights of self-determination to rule over their share of the river within and following from the legislative guidelines provided by the joint authority.

Conclusion

For territorial rights theory, endorsing a principle of shared jurisdictional authority is a unique conclusion. Because territorial rights are constituted by jurisdictional authority over a territorial region, when an independent authority has a set of key rights over a major resource, then the state territory itself is affected. Rather than thinking of territorial rights as bilateral between states, on the proposal pursued here, relevant areas will not hold key bilateral borders. Political maps may represent the area as crosshatched – shared territory.

Still, certain bilateral boundaries between states can be maintained. The proposal for shared resource jurisdiction entails joint decision making over the articulation of distribution, zoning, development, etc. It does not include, however, any claims about immigration or rights of access. That is, there can be a distinction between shared and unshared powers over a

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certain domain. States may retain current policies and bilateral borders for immigration purposes, for example. Distinguishing between shared and unshared powers may avoid potential cultural, nationalist, or ethnic conflict between citizenry. It may also avoid worries about massive mobilization of individuals from one state to another.

The thesis of shared sovereignty demands a re-imagining of the territorial object in territorial rights theory. Especially, given that joint jurisdictional authority over catchment areas exists in practice, the relationships of dependence in self-determination over resources may be one of the best tools for clarifying the normative features of territorial claims.

For example, this theory can help explain the obligations of states regarding geo-engineering. Geo-engineering is the integration of science and technology to change the environment. It has been recently used to refer to large-scale plans to shape the atmosphere to avoid some of the causes and harms of climate change. While the ethics of some geo-engineering methods are debated (Gardiner 2010; Svoboda 2012), many geo-engineering practices are already in place: water and air purification technologies are examples. Assuming that the mechanisms for geo-engineering will become more widespread and effective in the future, agents employing geo-engineering could dictate weather patterns stretching over large sections of the globe. Given that relatively settled weather patterns are fundamental to social basic structures, the legislation of development, use, and regulations regarding geo-engineering would threaten the resilience of many states. Regulating these activities will become a central concern. The theory defended in this essay can help to guide the assignment of appropriate judiciary domains for decisions about geo-engineering. On this view, states have authority over the actions committed within their territory, as long as a set of state actions does not pose an ongoing threat to another group's resilience. Many geo-engineering activities will fall into this category. However, if, for example, Mexico changes its weather to the effect that the south-eastern US receives an increase in quantity and severity of hurricanes, then the set of activities involving geo-engineering of the Mexican atmosphere should fall to a joint Mexican–American authority.

In sum, the nature of our shared world should be represented in our norms, guiding the scope of territorial domains for the self-determination over resources.

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Territorial rights and demographic change

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Introduction

The tremendous growth of the world population is one of the most alarming developments of our time. The enormous increase in numbers will most probably aggravate other problems, such as environmental degradation, hunger, and armed conflicts. Given the extent of these phenomena it seems surprising that demographic issues have not attracted much interest in political philosophy. To my knowledge, population growth has played, at best, a marginal role in recent discussions on global justice. Moreover, the philosophical debate on the moral foundation of territorial rights has largely neglected demographic questions. My paper is motivated by the assumption that this is a serious shortcoming; I start out from the intuition that the size of a population is a matter of relevance for the justification of territorial claims.

In the next section I will begin by stating some basic facts about the demographic change we are currently experiencing. Thereafter, I will make some preliminary remarks on the concept of a territorial right that serve as a basis for my further analysis. In the subsequent section I will distinguish two normative claims – independence claims and cession claims – to which an increase in a population's size may give rise. On the basis of this differentiation I will briefly refer to the most prominent theories of territorial rights and explain how they respond to both claims. In the following I will

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