

## Philos 117AC, Fall 2017

### Setting the Stage:

Ronald Takaki, *A Different Mirror*, Ch. 7, ““Foreigners in Their Native Land’: The War Against Mexico”  
Main Text: John Simmons, *Boundaries of Authority*, Ch. 4, “Territorial Rights”

Modern states claim many sorts of rights over territories. What justifies these rights?

- (a) to coercively enforce the law over everyone within a territory;
- (b) to control land and resources within the territory that are not privately owned;
- (c) to tax and regulate privately owned land and resources within the territory;
- (d) to control movement across territorial boundaries;
- (e) to determine the standing of those within the territory (e.g., citizenship); and
- (f) to control secession or alienation of territory.

#### *Lockean Voluntarist/Individual Voluntarist:*

Individuals have natural rights to determine their own affairs, including property rights. Individuals *consent* to certain limits to these rights, especially ownership of land. These limits give the *state* its territorial rights.

#### *Majoritarian Voluntarist/Plebiscitary Voluntarist:*

*Groups* have rights to determine their own affairs. The group’s choice is the *majority’s* choice. The state’s territorial rights arise from these group rights. (Compare Wellman.)

##### *Problems:*

- How do we specify who belongs to the group? Everyone who lives on a certain territory? But then how do we specify the relevant territory?
- Trapped minorities: Why should the majority have the right to make choices for a dissenting minority?
- Wrongful conquest (e.g., California): What if a group invades and then constitutes a majority?

#### *Nationalist:*

Like the Majoritarian Voluntarist, but (1) tells us how to specify the group with a right of self-determination: a “nation” defined by shared history, language, religion, culture, etc. (The right of self-determination may exist to protect this culture.) Also (2) tells us how to specify the relevant territory: “nations” are often specially attached to certain territories, e.g., where their ancestors are buried, holy sites are located.

##### *Problems:*

- Trapped minorities: Most modern states are too diverse to count as a single linguistic, cultural, etc. “nation.” Smaller “nations” will be trapped inside them.
- Wrongful conquest: What if one nation wrongly seized the territory of another, and in the meantime the seizing nation develops an attachment to the occupied land?

#### *Functionalist:*

The state needs to perform certain functions: e.g., to realize a just basic structure, satisfying Rawls’s two principles. The state has territorial rights in order to perform those functions.

##### *Problems:*

- Particularity: Can’t explain why the state rights should have rights over any specific territory. A state might function even better if boundaries were redrawn. So, it’s no violation of rights, for example, for a state to seize the territory of another so long as it can perform the relevant functions there.
- Wrongful conquest: The *past* doesn’t matter. It doesn’t matter whether the state wrongly acquired a given territory, so long as fulfills the functions well *going forward*. Trapped minorities: Minorities wishing to secede have no complaint, so long as the state fulfills its functions.

#### *Cosmopolitan:*

States cannot, in principle, have the territorial rights that they claim. (Compare Carens on open borders.)

- *Note:* Voluntarists, functionalists, etc. can agree with cosmopolitans *about existing states*. We might call them “contingent” cosmopolitans. While a state could, in principle, have territorial rights, if it met the right conditions, no existing states, in fact, do meet those conditions.