

## **New Territorial Rights for Sinking Island States**

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**Abstract** Anthropogenic climate change is an existential threat to the people of sinking island states. When their territories inevitably disappear, what, if anything, do the world’s remaining territorial states owe them? According to a prominent ‘nationalist’ approach to territorial rights – which distributes such rights according to the patterns of attachment resulting from people’s incorporation of particular territories into their ways of life – the islanders are merely entitled to immigrate, not to reestablish territorial sovereignty. Even GHG-emitting collectives have no reparative duty to cede territory, as the costs of upsetting their territorial attachments are unreasonable to impose, even on wrongdoers. As long as they allow climate refugees to immigrate, receiving countries have done their duty, or so the nationalist argues. In this article, I demonstrate that the nationalist’s alleged distributive equilibrium is unstable. When the islanders lay claim to new territory, responsible collectives have a duty to modify their way of life – gradually downsizing their territorial attachments – such that the islanders, in time, may receive a new suitable territory. Importantly, by deriving this duty from the nationalist’s own moral commitments, I discard the traditional assumption that nationalist premises imply a restrictive view on what we owe climate refugees.

**Keywords** Attachment, climate refugees, nationalism, reparative duties, sinking island states, supersession, territorial rights

## Introduction

Climate refugees<sup>1</sup> from sinking island states will soon be a (sadly) familiar phenomenon. Engulfed by rising sea levels, the people of states like Kiribati and the Maldives will be compelled to move sometime during this century. What, if anything, do the people of the world's remaining territorial states – especially the industrialized ones – owe them? As a minimum, I shall take it, the climate refugees are entitled to a safe haven (and eventually citizenship) somewhere on dry land (Risse, 2009; Miller, 2007). But are they also entitled to something further? When the inevitable happens, should the islanders be granted some degree of intra-state political autonomy? Or do they perhaps have even more demanding claims, to reestablish themselves as a fully sovereign group in control of a new territory?

In this article, I will explore these questions from the perspective of a class of theories that have become prominent in the ongoing debate on the justification of territorial rights. For present purposes, territorial rights refer to rights of jurisdiction (to make and enforce law) on a territory, to control its natural resources, and to control movements of persons and goods across its borders (Miller, 2012: 253). When justifying (one or more of) these rights, what I shall call *nationalist attachment-theories*, appeal to how the particular geographical space over which a collective's territorial rights are claimed has become incorporated into the shared ways of life and identity of its members (see e.g. Miller, 2007: 201-30; and 2012; Meisels, 2009: 126-30; and Gans, 2008: 25-51). This incorporation process is typically a mutually formative experience. People may change the territory to conform to their preferred ways of life and identity.<sup>2</sup> But their preferences may also adapt to the opportunities offered in their geographical surroundings (Miller, 2007: 217-218). At any rate, the result is the development of a distinct territorial attachment shared by the collective's members. Insofar as people have a significant interest in

being left free to determine the shape of their own lives, there is moral reason for non-interference with existing attachments (Waldron, 1992: 16-20).<sup>3</sup> It is worth emphasizing that individual members of a collective will typically have various personal, or *non-shared*, attachments to (parts of) the claimed territory.<sup>4</sup> On the kind of attachment-theories I consider here, however, what matters for grounding a collective's territorial rights is people's interests *as members of the collective* in sustaining their *shared* attachment.<sup>5</sup>

Although the attachment-based claim to territory has significant weight, it is not absolute. According to David Miller, a prominent and typical representative of nationalist attachment-theories, the state's territorial right of border control, for example, may be overridden in cases where outsiders must enter the state in order to secure their basic human rights (Miller, 2007: 221). (Due to its prominence in the debate, I will refer especially to Miller's work when developing my thesis; I expect my analysis to have import, however, for nationalist attachment-theories more generally.)<sup>6</sup> There is a positive duty of justice, which falls on any capable agent, to provide others with the basic human rights they need to live what Miller calls 'a minimally decent life' (2007: 181). But as long as the basic human rights-proviso is satisfied, territorial justice demands no further adjustments. People's existing attachments carry enough weight to override *non-urgent* third-party claims (which, of course, include claims to reestablish territorial sovereignty).

Interestingly, this conclusion may stand even when a current holder of territorial rights is responsible for the third party's loss of its own territory (e.g. through contributing to sea-level rise). Miller's view, as we shall see, implies that upsetting the current territorial attachments shared by members of a wrongdoing collective has costs which may (and often do) exceed what

they can be reasonably required to bear. If so, wrongful territorial deprivations no longer require reparation. To use a widespread term, we may say that the wrong has been “superseded”.<sup>7</sup>

Let us assume, for a moment, that the nationalist attachment-theory is correct in all this. That is seemingly bad news for people from sinking island states – at least if they wish for more than rights of entry and occupancy. My present aim is to brighten their prospects. I intend to show that the refugees have a right to reestablish *full territorial sovereignty*, as reparation from those responsible for the harmful effects of anthropogenic greenhouse gas (GHG) emissions.<sup>8</sup> Importantly, I will do so without having to deny any of the nationalist attachment-theory’s core theoretical premises. What I shall challenge is the long-term stability of the distributive conclusion that the nationalist draws from them. I therefore assume that the islanders’ reparative claim to new territory, when first presented, is overridden by the (allegedly) unreasonably large costs of upsetting territorial attachments. However, that claim cannot be fended off over time. My thesis is that there exists *a collective (reparative) duty to modify one’s way of life*. The idea is that, when a sinking island state presses its claim for new territory, a collective responsible for GHG-emissions must reduce the current geographical reach of the territorial attachment shared by its members, such that it requires less territory for its future satisfaction. If we allow this process to happen gradually, the duty will not impose unreasonable costs on its holders. Future redistribution of territory to the islanders is thus justified, or so I shall argue.<sup>9</sup>

Although the nationalist attachment-theory has become prominent in the debate on territorial rights, it is not alone in having a view on the justified claims of climate refugees from sinking island states. In recent years, philosophers and political theorists have offered various defenses of various types of rights for such claimants (cf. Risse, 2009; Nine, 2010 and 2012; Kolers, 2012b; Dietrich and Wündisch, 2015). The present analysis justifies a right to reestablish

*territorial sovereignty* for the refugees. That sets it apart from some of the other contributions, but not all.<sup>10</sup> Instead, the novelty of my analysis is that it establishes such extensive rights while operating, for argument's sake, *fully within* the nationalist attachment-approach – an approach whose features have thus far been believed to produce much more “restrictive” upshots. By showing that proponents of the nationalist attachment-approach are instead (surprisingly) committed to offer the most extensive set of rights to refugees from sinking island states, my analysis aims to shake up a significant part of the ongoing philosophical debate on what we owe such claimants.<sup>11</sup>

The article unfolds as follows. Section 1 elaborates on the relevant core features of the nationalist attachment-theories, as I shall understand them for present purposes. In Sections 2-3, I explicate how a duty of modification is derivable from those core features. A crucial task is to explain (in Section 3) why the costs involved in modifying one's way of life do not exceed what the members of a wrongdoing collective are reasonably required to bear. After having established the existence of a duty of modification, Section 4 elaborates on why the wrongdoers are required to offer new *territory* to the refugees – why offering other reparative measures (alone) is not enough. In Section 5, I tackle a challenge that arises if a collective's duty of modification requires relocating some of its members. Relocated inhabitants may incur costs that exceed the relevant reasonableness-threshold. Section 5 therefore explicates how the duty of modification makes room for compensating them. Section 6 concludes with some remarks on the possible wider implications of my thesis.

## **1. The Nationalist Attachment-Theory: Its Relevant Core Features**

Proponents of nationalist attachment-theories are typically careful to highlight the ‘liberal’ foundations of their view. A central idea among them is that a collective’s shared culture may, as one writer puts it, ‘[manifest itself] in certain territories’ (Meisels, 2009: 129). Because the collective’s culture is a central source of personal identity and well-being for its members, and ‘the welfare of individuals is at the heart of liberalism’, there are ‘good liberal reasons’, these theorists contend, for granting collective rights over a territory to ‘individuals whose identity are so intertwined with it’ (Meisels, 2009: 129). As David Miller, puts it, a piece of land can become a ‘repository of value’ for a collective (2012: 258). When this happens, its members should have collective rights over the territory, because retaining of the value that it now holds is ‘essential if the group is to live a flourishing life’ (2012: 260). ‘[The] territory has been shaped to fit the needs and cultural values of the group in question’, writes Miller, ‘so if it is now taken from them, they will no longer be able to sustain their way of life’; ‘an internal relationship between the group’s culture and its territory’ has been established, such that ‘losing the territory would be to lose much that is [...] essential to its continuing identity as a people’ (2012: 259).<sup>12</sup> In short, *territorial attachments have significant moral weight*. This is the nationalist attachment-theory’s first relevant core feature. We cannot just chunk off and redistribute a piece of the territory that has come to reflect people’s shared ways of life and identity without disrespecting their weighty interest in authoring their own lives.<sup>13</sup> Such interference would impose ‘human costs’, writes Miller, which ‘one should not underestimate’ (2012: 261).

However, as already mentioned, although a collective’s attachment-based territorial rights have significant weight, the nationalist accepts that the most urgent interests of third parties may override them. As Miller puts it, territorial rights are ‘subject to certain limits, especially those imposed by the human rights of outsiders. Just as necessity may trump the right

to private property, so it may trump the right to territory. But with that important qualification, the idea that states may claim and exercise the full set of territorial rights [...] appears sound' (2012: 266). In Miller's view, there is a general positive duty to protect the basic human rights of others. That duty may befall any agent capable of discharging it. Yet there is a clear limit to what people are required to do for the sake of assisting others. An agent has no general duty to improve the situation of people who are relatively, but not urgently, deprived. This includes cases where what the deprived party requests is new territory. For Miller, there is not even a pro tanto duty to provide others with non-basic goods. Whether you enjoy territory yourself (perhaps in very large quantities) is irrelevant. In such cases, the moral weight of your existing territorial attachments overrides all non-urgent (assistance-based) competing claims.

The situation is different in cases of wrongful harm. If an agent is responsible for a claimant's wrongful deprivation, there is a pro tanto duty to 'return to a state of affairs that is as close as possible to the status quo ante, assuming that itself was not unjust' (Miller, 2016: 114; see also Meisels, 2009: 51-69). Whether the competing claim involves non-comparatively urgent interests is then irrelevant. As Miller puts it, 'responsibility can ground claims of redress even in cases where the injured party is not deprived in some absolute sense. If I deliberately or carelessly ruin one of your paintings, I owe you compensation even though, without the painting, you are still in a perfectly comfortable state overall' (2007: 106, see also 249-250). There is, in other words, a *duty of reparation* for wrongful harm, which befalls the (collective) agent responsible for the harm.<sup>14</sup>

It is important to underline, however, that this reparative duty is defeasible. Whenever it would be *unreasonably costly* for the responsible agent to discharge the duty, an appeal to cost can override it.<sup>15</sup> For one thing, such a qualification makes intuitive sense. To stay with Miller's

example, imagine that you are a wealthy art collector, and that the painting I ruined is very expensive (say, your new Anselm Kiefer or Willem de Kooning acquisition). I, the harm-doer, on the other hand, is a person of moderate means; I have no family fortune awaiting me, and my salary is average. Consequently, in order to pay you back (even a tiny fraction of) the painting's market value, I would have to sell all my belongings, give up all my future income, and live on the street for the rest of my life, barely above the basic needs-threshold. Here it might well seem unreasonable (or so I, the wrongdoer, would hope!) to require the responsible agent to fully absorb the reparation costs.

For our purposes, however, the independent intuitive appeal of a reasonableness-threshold is not crucial. It is more important to note that the attachment-theories do operate with such a threshold. They recognize what we can call

*The Reparation-principle:* An agent responsible for wrongful harm has a duty to restore the victim as close as possible to the status quo ante, unless doing so has unreasonable (moral) costs for the agent.

This is the second relevant feature of the nationalist attachment-theories. Their recognition of the Reparation-principle is evident in what they write about how we should respond here and now to wrongful takings of territory in the past. A case in point is colonialism. The European annexation of indigenous lands (e.g. in the Americas) was a clear injustice. Today, however, vast numbers of colonist-descendants now populate the wrongfully taken territories, and the (moral) costs of giving back the stolen lands, and ejecting those descendants, may now be prohibitive (Waldron, 1992). Despite the allure of 'the simple conviction that, if something



was wrongly taken, it must be right to give it back' (Waldron, 1992: 27), the nationalist attachment-theories, as Simmons notes, widely believe in the possibility of *supersession* (Simmons, 2016: 104-108). As Miller puts it, '[w]e must surely allow that occupying and transforming land over a sufficiently long period gives a people rights to that land that if not absolute are at least superior to those of other claimants, even if their ancestors in the distant past were invaders or conquerors' (2007: 220).<sup>16</sup> Elsewhere he writes that, although '[t]his might sound uncomfortably like a version of 'might makes right', [...] I cannot see any reasonable alternative' (1998: 77, n. 14).

These remarks, about supersession of wrongful territorial deprivations, lead naturally to the third core feature of the attachment-theories. In order for Miller and other nationalist attachment-theorists to reject reversion of present-day territorial holdings, they must believe that *upsetting territorial attachments may have unreasonable costs* – even when those costs are borne by members of the wrongdoing collective.<sup>17</sup> If not, the reparative duty to restore the status quo ante would invariably have required colonist-descendants to return wrongfully taken territory.

With the nationalist attachment-theory's three relevant core features before us, let us now clarify its position on the rights of climate refugees from sinking island states. The nationalist accepts that GHG-emitting collectives bear responsibility for the coming territorial deprivation. Nevertheless, those collectives are not required to restore the status quo ante by offering the islanders new territory. In a recent statement, Miller explicitly claims that 'any state that has contributed significantly to global warming' may fulfill their reparative duties by granting a mere right of immigration to the islanders (Miller, 2015: 402).<sup>18</sup> In light of the nationalist's core features, that distributive conclusion should not surprise us. Given that the people of GHG-emitting collectives are attached to the territories they currently control, and the costs of

upsetting those attachments exceed what people (including wrongdoers) can be reasonably required to bear, redistribution of territory is ruled out.

To give a more vivid illustration of what the nationalist attachment-theory implies for the climate refugee case, consider:

*Sinking Island:* Due to rising sea levels, the people of an island state will become climate refugees in the foreseeable future. The world contains an industrialized mainland state, whose members have developed shared attachment to all the territory it controls. No further territory exists. Due to its GHG-emissions, the mainland state is responsible for the islanders' plight. Aware of this, the islanders decide to lay (a reparative) claim to parts of the mainland state's territory, in order to reestablish territorial sovereignty when their island sinks. Although the mainlanders recognize a duty of reparation, the costs of upsetting their territorial attachments are found to be unreasonably high. Instead of ceding territory, they therefore offer the islanders a mere right of immigration.<sup>19</sup>

In the eyes of the nationalist, the mainlanders are on safe moral ground: the islanders receive their due. However, as I shall now show, we should reject the distribution of territorial rights in Sinking Island, even when we accept the nationalist attachment-theory's core features. In fact, such rejection is not only compatible with those features; it follows from them.

## **2. Deriving the Duty of Modification**

For the nationalist, the mainlanders are justified in holding firm against the islanders' claim to reestablish territorial sovereignty. Being responsible for the islanders' plight does not sway that

conclusion. The mainlanders' warrant is the cost of simply giving up territory to which they are attached. By hypothesis, that cost exceeds what they are reasonably required to bear. However, although this appeal to costs is enough to push back calls for *immediate* cession of territory, I believe it cannot deny such cession *over time*. My thesis is that when the wrongfully deprived islanders first present their reparative claim to new territory, a duty to modify one's way of life kicks in for the mainlanders.<sup>20</sup> That duty does not demand immediate cession of territory. Instead, it requires the mainlanders to start withdrawing their shared attachment from parts of the territory they currently control.<sup>21</sup> Crucially, the duty allows the mainlanders to carry out this process over time. This shall ensure that the costs they incur when doing their duty do not exceed what the Reparation-principle justifiably imposes upon them. If this containment of costs is possible, the duty of modification is not only compatible with the Reparation-principle; it follows from it.

The key to deriving the duty of modification – from the nationalist attachment-theory's own features – is thus to show that *the costs incurred during the modification process* do not exceed what a collective responsible for wrongdoing is reasonably required to bear. If those costs exceed the reasonableness-limit, the attachment-theories' distributive conclusion stands. If not, the duty of modification is established, and territorial rights must in time change hands.

At this stage, one might wonder whether my thesis depends upon a certain account of *reasonable* costs. Could the nationalist reject the duty of modification by setting the reasonableness-threshold quite *low*? In response, note first that while the nationalist attachment-theories do not reveal much about how to understand the threshold, they do indicate that a wrongdoing collective's shared territorial attachment will typically become quite comprehensive and deep before supersession kicks in. In the few passages where Miller touches upon the issue,

he writes that ‘simply taking possession of territory (e.g. by conquest) is not sufficient’, and that ‘long occupation’ is required (2012: 258). Presumably, this means that the costs of upsetting territorial attachments must be significant before they exceed what wrongdoers are reasonably required to bear (assuming, of course, that comprehensive/deep attachments are costlier to upset than non-comprehensive/shallow ones, all else equal). However, for argument’s sake, let us put this complication aside and instead assume that the nationalist attachment-theories could (plausibly) operate with a low reasonableness-threshold.<sup>22</sup> Would that be problematic for my thesis?

No. As I shall now demonstrate, modification costs are *flexible*. We can spread those costs out over time, such that, at some point, they necessarily fall below whatever (above-zero) threshold the nationalist may favor. For present purposes, we can therefore do without a more specific definition of reasonable costs.

### **3. The Flexibility of Modification Costs**

To appreciate why the costs of discharging the duty of modification are flexible, we shall ask two questions. First: what are the types of costs? Second: who incurs them? An answer to the latter is found by considering the nationalist attachment-theories’ conception of collective rights. Territorial rights, although *held* by collectives, are *grounded upon* the interests of *individuals* as members of those collectives. A collective holds rights over a territory because doing so is necessary for satisfying the shared territorial attachment of (a sufficiently large number of) its members. The cumulative weight of their individually held interest in sustaining that attachment, grounds the collective’s rights (see e.g. Miller, 2002: 184-5 and 2012: 257-9; and Meisels, 2009: 11, 17-27).<sup>23</sup> This focus on individuals’ interests in the grounding of collective rights is an

important part of what makes the nationalist attachment-theories liberal in kind. A basic tenet of liberalism is the rejection of the idea that collective entities as such may have morally significant interests (which override those of individuals). On this view, ‘groups have no moral standing that is not wholly reducible to the moral status of the individual persons who make them up’ (Jones, 1999: 366). The nationalist attachment-theory’s liberal nature helps answer the question of who will incur the modification costs. It does not make sense to say that the collective as such incurs costs. The costs are incurred by *the individuals who make up the collective* at any given time.

Turning now to the question of cost-types, I shall first distinguish between two types of territories. The costs people incur during the modification process will vary according to the prospectively ceded territory’s *population density* and its *significance* in reflecting the collective’s shared way of life and identity. These variables are continuous; but to keep things simple, it is sufficient for our purposes to focus on two broad territory-categories. The first refers to significant but uninhabited territory. Examples range from historic battle fields, to national parks, and ‘distinctive landscapes’ (cf. Miller, 2016: 28). The second contains territories that reflect the collective’s shared attachment, and are also inhabited by some of its members. Everything from the US-town of Lost Springs, Wyoming (2010-population: 4), via The Falkland Islands (2012-population: 2932), to Tokyo, might serve as examples. In the remainder of this section, I shall focus on the costs incurred when people modify their shared attachment to significant but *uninhabited* territories. This represents the theoretically “purest” case. As emphasized, the nationalist attachment-theory grounds a collective’s rights in (the cumulative weight of) its members’ individually held interest in sustaining their shared territorial attachment. Different portions of the collective’s territory might play a role in the non-shared attachments of individual members, and those attachments may ground various individual rights.

On the nationalist attachment-theories, however, such individual rights are not part of the justification. As Miller (2012: 258) underlines, ‘we are trying to establish collective rights proper rather than an aggregate of individual rights’. (In Section 5, I consider “non-pure” cases, where the duty of modification requires relocating inhabitants and may consequently upset their non-shared attachments.)

In the case of significant but uninhabited territories, we can distinguish between two types of modification costs. The first refers to the costs people incur when they change their own territorial attachment. Call these *attachment-costs*. The other refers to the costs incurred when the collective’s members inculcate a different attachment in the next generation, while keeping their own. Call these *inculcation-costs*. Why can we draw this distinction? The duty of modification is held by the collective. The duty demands that the shared attachment found among the collective’s members is modified over a certain period. If we allow that period to span one or more generations, we may leave attachment-costs out of the picture altogether. To appreciate why, consider how the content of a shared attachment may be influenced over time. As Miller points out, attachments are ‘not cast in stone’; they are ‘always in flux’ (1995: 127, 128). If we take ‘a cool empirical look’, he says, we realize that ‘collective identities of all kinds emerge and change over time’ (1995: 135). It is the role of ‘public education’ (and other ‘social policies’) to ‘consciously’ induce the development of the requisite attachment in coming generations; ‘[w]hat is taught in schools’, Miller writes, ‘reflects the priorities of a particular culture and tends to instil those priorities in the rising generation’ (1995: 101; see also 2016: 63). To use Miller’s own examples, imagine that the school curriculum deliberately changes its appraisal of a certain ‘place where a battle was fought or a building [...] where a historic document was signed’ (2012: 258). If so, for the new pupils, the battle site and the building may

obtain a different significance than the one they had (and may still have) for earlier generations. Conversely, by sustaining the collective's current appraisal of these objects in the curriculum, the education will serve to reproduce the status quo-attachment. Either way, in order to ensure that coming generations develop a certain attachment, the collective must typically make efforts to *inculcate* that particular target. Because the content of a collective's shared attachment is malleable in this way, future generations may be inculcated into developing a less territory-consuming attachment.<sup>24</sup> This shows why the modification costs incurred by members of the collective may be strictly confined to inculcation-costs. The *collective's* duty of modification may be discharged without having *individual members* modify the attachment they endorse at any given time, as long as they ensure that coming generations acquire less territory-consuming ones.

Now, although attachment-costs can be put aside, having to involuntarily inculcate a territorial attachment that differs from one's own seems far from costless. How can we keep inculcation-costs below the Reparation-principle's reasonableness-threshold? Assume that, for any generation of inculcators, there is a preference for inculcating the *status quo*-attachment in the coming generation. Inculcation-costs can be expected to vary (roughly) in proportion to the difference in territory-consumption between the status quo-attachment and the *less-territory-consuming* target attachment. When that difference approaches zero, the costs also approach zero. Because the Reparation-principle justifies imposing at least *some* costs (i.e. those below the reasonableness-threshold), the inculcation of *some* less-territory-consuming attachment will be required. To illustrate, assume that portion P is identified as the territory the mainlanders must cede to the islanders in due course. (I explain how to select that territory in Section 4.) Assume that mainlanders in the current generation incur larger-than-reasonable costs if they must

inculcate an attachment, A1, which no longer extends to P. Inculcation of A1 thus falls beyond the demands of the Reparation-principle. However, if inculcation of A1 has larger-than-reasonable costs, inculcation of another attachment, A2, which is slightly closer to the status quo-attachment, will be slightly less costly, and so on. At some point, the Reparation-principle will prevail. The relevant inculcation-costs are then reasonable to impose, and the corresponding less-territory-consuming attachment must be inculcated. If we repeat this for one or more generations, the mainlanders may collectively withdraw their attachment from P – thereby properly discharging their *collective* duty – without imposing more than reasonable costs upon *any individual member* in the process.<sup>25</sup>

So, if we allow the *modification period* to be flexible in this way, the *costs* incurred by the collective's members also become flexible. We can now appreciate why my thesis is unaffected, as I claimed above, by (virtually) whatever account the nationalist attachment-theories might give of the reasonable costs imposed by the Reparation-principle. We may offset any lowering of the reasonableness-threshold by extending the modification period. A duty of modification – derived from the Reparation-principle – is thus inescapable.

#### **4. Specifying the Contents of the Duty**

At this stage, one might wonder why the duty of modification will take the precise form it does. Even if I have established that there *is* such a duty (grounded in the Reparation-principle), why does it require that the refugees are offered *territorial sovereignty* over a new geographical space? Why is it not enough to put some other type of rights on the table, such as immigration rights or rights of intra-state autonomy? The reason, I believe, is found in the Reparation-principle. Recall that the nationalist recognizes a pro tanto duty for wrongdoers to 'return to a



state of affairs that is as close as possible to the status quo ante, assuming that itself was not unjust' (Miller, 2016: 114). If we take this reparative duty seriously, it is hard to deny that the refugees have a right to reestablish full territorial sovereignty. After all, in the status quo ante, sovereignty was what they did enjoy. Before the sea swallowed their island, they did not merely live as a minority with (some degree of) collective autonomy within an encompassing state, nor did they live as individual migrants scattered about. To honor the Reparation-principle's requirement of restoring the status quo ante as closely as possible, we must offer the refugees a new territory.<sup>26</sup>

Now, the refugees might of course be willing to exchange their right to a new territory for a different arrangement (e.g. intra-state autonomy within a larger state), and the mainlanders are at liberty to place alternatives on the table. My aim is to establish that the refugees have a *right* to reestablish themselves as a territorial sovereign. The mainlanders must thus at least give them *that* compensatory option. To be clear, nothing I say in this article is meant to rule out that the wrongdoers are duty-bound to offer the refugees *more* than new territory (including financial compensation, an apology, etc.). My present thesis identifies a necessary reparatory measure. It is silent on whether that measure is also sufficient.

So, the duty of modification implies that the refugees have a right to a new territory. Does the duty also have implications for the *size and quality* of that territory? I think it does, for two reasons. First, because the Reparation-principle requires restoring the victim as closely as possible to the pre-harm situation, the duty-holder cannot select the territory to be ceded at will. It should resemble the previous island as much as possible. This will typically mean having a similar geographical reach, similar flora and fauna, similar climate, and so on. By following this selection-rule, the refugees will be able to reestablish generically equivalent territorial practices.

The Maldivians, for example, may continue their fishing practices rather than having to adapt to mountain farming, and so on. Second, apart from the Reparation-principle, the case for territorial resemblance is further supported by another core nationalist belief. As seen, for the nationalist, it is morally important to let collectives freely sustain their preferred ways of life and identity. Insofar as the refugees will need a closely resembling territory to do just that, the nationalist has reason to favor selecting a new territory that has as many characteristics as possible in common with their lost island.

## **5. Compensating Relocated Inhabitants**

We have just seen that the refugees have a (reparative) right to be offered a new territory that enables them to sustain their shared ways of life and identity as far as possible. Presumably, this territory will include a large stretch of coastline. Because the world's population density is significantly higher in coastal than non-coastal areas (Neumann et al., 2015: 3), the duty of modification might well require relocating current inhabitants. One reason could be that, if they stay, such inhabitants would be numerous enough to form a democratic majority that effectively precludes the refugees' territorial sovereignty. Another possible reason is that the refugees could have a right to uninhabited territory in the first place.<sup>27</sup> Let us now assume that the duty-holder must relocate at least some of members. How should we handle such cases?

It is plausible to assume that the inhabitants who must relocate are relevantly similar to other members of the collective. They have the same interest in sustaining the collective's shared attachment. Each of them will thus incur the same modification costs as non-relocating members. However, as already mentioned, in addition to shared attachments, people typically establish various non-shared attachments to particular geographical spaces. Various components of a

person's wider personal identity and way of life will normally be 'located'. Her economic and cultural activities, her social ties, and so on, will largely revolve around her place of residence (Stilz, 2013). To the extent that the collective's modification process is incompatible with sustaining such non-shared attachments, it imposes *additional costs* upon the relocating members. As seen, the Reparation-principle places demands upon any member of the collective. However, those demands are already exhausted by the costs any member incurs from modification of the collective's shared attachment, or so we may assume. If so, the relocating inhabitants should be compensated for the additional costs they incur.

What would an acceptable – preferably voluntary – relocation process, which properly compensates those involved, look like?<sup>28</sup> Although I cannot offer more than some brief thoughts here, I think several cues might be taken from the relocation of the towns of Gainesville, Pearlinton, and Logtown, in Hancock County, Mississippi, whose inhabitants (ca. 600 in total) had to move in order to make room for a NASA Space Center (Herring, 1997). The relocation decision was publicly announced on 25 October 1961, and by January 1963, the US Government had successfully negotiated the buying and easement of all necessary land properties, amounting to more than 200 square miles in Mississippi and Louisiana. Between those dates, the inhabitants (of whom some were initially very reluctant) had been gradually won over, but not without significant effort. The process included calls to patriotism (supporting the Cold War space race), several rounds of negotiating compensation rates (which were gradually increased), as well as securing of funds for moving expenses, which included '[jacking up] the old homes and [moving] them out' – an option preferred by 75 percent of the inhabitants (Herring, 1997: 36). Other parts of the process involved relocating burial grounds, and identifying a common relocation place – the nearby town of Picayune, whose Mayor and Chamber of Commerce

President both extended a ‘warm and friendly’ welcome (Herring, 1997: 37) – thus giving people the opportunity to sustain social ties.<sup>29</sup>

If relocation is at all necessary, it seems plausible that an effort on a similarly moderate scale will be sufficient to make room for a suitable new state for the refugees.<sup>30</sup> Take Kiribati as an example. Half of its roughly 100,000 inhabitants currently live on the capital island, South Tarawa, which measures only 6,1 square miles. Now, this equals the population density of Tokyo or Hong Kong, and the islanders currently struggle with problems of overpopulation, such as water contamination and insufficient food production (Siddle, 2014). For prospective I-Kiribati refugees, then, significantly more than 12,2 square miles would be needed. However, something in between 12,2 and the 200 square miles acquired for NASA’s John C. Stennis Space Center, would arguably provide ample space for a new state.

The funds the duty-holder needs in order to compensate its relocating members could be raised by collecting a special tax, which may be used to buy their land at a fair price, cover moving expenses, and make needed investments (in infra-structure, job-creation, etc.) in the place where they shall relocate. Of course, the costs of paying that special tax must be added to the overall (reasonable) costs that any single member of the collective is required to bear. The size of the modification costs imposed on each member – as part of those overall reasonable costs – would thus be reduced accordingly. This, in turn, would *extend the period* within which the collective must discharge its duty of modification, all else equal.<sup>31</sup>

To conclude this section: a collective’s duty of modification might require relocating some of its members. If so, realization of the islanders’ claim to new territory will be postponed. The mainlanders’ duty of modification does not disappear, however, so the islanders will not be waiting in vain. The question is when, not if.

## 6. Concluding Remarks

I have argued that there is a collective duty to modify one's way of life on a territory. The duty arises whenever such modification is necessary to satisfy the competing claims of outsiders whom the duty-holder has wrongfully harmed. Although my analysis has focused on sinking island states, it straightforwardly extends to other groups who have suffered wrongful territorial deprivation. Indigenous claims for territorial restitution, for example, in the Americas and elsewhere, can no longer be rejected by appeal to the current territorial attachments of colonist-descendants. Over time, those attachments must be downsized, and territory handed back. The nationalist attachment-theories I have discussed might balk at that conclusion. It follows, however, from their own core claims.

As I underlined at the outset, my present aim has been to reject the nationalist attachment-theory's distributive conclusions without relying on claims that its proponents could dismiss as controversial. I have therefore established a duty to modify one's territorial attachments strictly on *reparative* grounds. In principle, however, I believe we might establish a duty of modification based upon various *other cost-imposing principles* (and for various other types of attachment-based rights, including property rights). Candidates for justifying the relevant cost-imposition include duties to assist (Singer 1972), duties to avoid benefitting from injustice (Miller, 2007: 102-103), duties to avoid enabling harm (Barry and Øverland, 2012), and so on. Showing how this might happen, however, for each candidate principle and each right-type, falls beyond this article's scope.<sup>32</sup>

For the people of Kiribati, time is running out. A 'Migration with Dignity'-plan, devised under former President Anote Tong, aims to establish expatriate I-Kiribati communities 'able to

absorb and support greater numbers of migrants in the longer term’, and to raise ‘the levels of qualifications to be obtained in Kiribati’, such that future I-Kiribati generations become ‘more attractive as migrants’ (Office of the President, 2016). As a spokesperson of the Office of the President puts it, ‘we want to prepare ourselves so that 50 years from now, there will still be a nation called Kiribati’ (Nuwer, 2015). If I am correct, the world’s remaining territorial states – the ones responsible for global warming – owe the I-Kiribati people more than individual entry and occupancy rights. What they are due, from the nationalist attachment-theories’ own perspective, is the opportunity to pursue a future where they collectively rule themselves as a territorial sovereign. That future might be distant – it might lie generations ahead – but it exists.

Let me end by saying this. My thesis is silent on whether the I-Kiribati should exercise their right to reestablish territorial rights. There might be good reasons against doing so. Perhaps life as a minority group within an encompassing state, possibly with some degree of intra-state autonomy, would be better overall. At any rate, I believe, the choice is theirs to make.

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<sup>1</sup> For present purposes, we can understand refugees as ‘people whose human rights cannot be protected except by moving across a border’ (Miller 2016: 83).

<sup>2</sup> I will use “identity” and “way of life”/ “life plan” interchangeably. “Attachment” is shorthand for both.

<sup>3</sup> The idea that attachment may ground entitlements is traceable to John Locke (1988), who famously argued that external objects may be appropriated through *labor-mixing*. In A. John Simmons’s (1992: 273) plausible reconstruction, we “mix our labor” with things by ‘[bringing them] within our purposive activities’, such as ‘when we gather them, hunt them, enclose them, and use them in other productive ways’. On this reconstruction, the laborer ‘need not [...] bring about any physical change in the object’. It is ‘changed only in the sense of being brought within my life and plans’.

<sup>4</sup> Such attachments may ground various individual entitlements, e.g. occupancy rights. See Stilz (2013: 324-356).

<sup>5</sup> For some nationalists, the appeal to attachment is intended to justify territorial rights *directly*; in order to respect people’s shared ways of life, granting them such rights is necessary (e.g. Meisels 2009: 126-130). For others, the appeal plays an *indirect* role; shared attachment justifies a lesser set of entitlements for the territory’s inhabitants, such as collective rights of occupancy or private property, whereas territorial rights are justified on further grounds. David Miller, e.g., claims that, in principle, we may properly respect people’s shared attachments by granting them collective legal property rights. He then justifies jurisdictional rights by pointing to how legal property rights are ‘susceptible to be redrawn by whoever holds rights of jurisdiction’, and that a collective needs jurisdictional rights in order to secure its property holdings over time (2012:

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263). Although notable, this difference can be set aside here, as it is immaterial to the thesis I shall defend. Direct and indirect attachment-theories both use the appeal to attachment to *identify the particular geographical area* over which territorial rights are to be wielded (Kolers, 2012a: 101). As I shall argue, there is a collective duty to reduce the geographical reach of one's existing attachments. If so, nationalist attachment-based territorial rights will shrink accordingly, regardless of whether those rights are meant to follow directly or indirectly from people's attachments. For presentational ease, I shall therefore talk as if the attachment-claim is the sole determinant of territorial rights.

<sup>6</sup> The thesis I defend may also apply to *non-nationalist* attachment-theories. This includes the theories of Margaret Moore (2015) and Anna Stilz (2011). Although I cannot do justice to their complex and sophisticated views here, let me briefly point to their relevant features. Moore and Stilz both defend *indirect* attachment-theories of territory. They first ground a collective's right to occupy a particular territory by appeal to the attachments of its members; they then build territorial rights on top of that occupancy claim, by appealing (inter alia) to the collective's institutional capacity and its members' shared political history (Moore, 2015: 35-36; Stilz, 2011: 574, 591). The two theories differ in their conception of the collective's occupancy right. For Moore (as for the nationalist) that right is fundamentally collective; it relies on the *shared* territorial attachment of the collective's members. (Moore contrasts her view from the nationalist's by regarding shared 'cultural' attachment as neither necessary nor sufficient for occupancy rights [2015: 79-80].) Stilz, on the other hand, regards the collective's occupancy right as an "aggregated bundle of individual occupancy rights" (2011: 579, n. 15), where those individual rights are typically grounded in *non-shared* attachments. This difference aside (but see note 25): because both theories use people's territorial attachments to determine the geographical

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reach of a collective's territorial rights, my thesis about a *duty of modification* may apply to them. To forestall things a bit, as long as Moore's and Stilz's indirect attachment-theories accept what I shall call the Reparation-principle, there will be a (reparative) duty to downsize territorial attachments, which may correspondingly shrink the territorial rights defended on both theories. The vacated territory can then be ceded as reparation to the victims of wrongful territorial deprivation.

<sup>7</sup> Waldron (1992) used this term in an influential article, where he argues, on several bases, for the possibility that past (and ongoing) injustices need not call for present-day reparation. Miller and other nationalist attachment-theories explicitly refer to Waldron's work when they make similar claims (cf. e.g. Miller 2007: 220, n. 26).

<sup>8</sup> According to a significant and growing body of evidence, anthropogenic GHG-emissions are 'very likely' responsible, at least in part, for global mean sea-level rise (IPCC, 2014: 39-54). For present purposes, I take this mechanism for granted.

<sup>9</sup> Strictly speaking, the collective may properly discharge its duty of modification without modifying the shared attachments of its members, as long as it agrees to redistribute territorial rights. For presentational purposes, I hereafter omit mentioning this way of fulfilling the duty.

<sup>10</sup> Dietrich and Wündisch (2015) defend *sovereignty*, whereas Cara Nine (2010 and 2012: 162-181) defends mere *intra-state autonomy* rights for climate refugees. By basing her analysis on the idea of a Lockean proviso mechanism applied to the protection of politically self-determining groups, Nine appeals to different grounds than the nationalist attachment-theories I discuss. Moreover, she treats sea-level rise as a move by nature. Nine briefly states that, if certain groups bear responsibility for climate change they might have to give up territory as compensation (2012: 180). However, she does not explain why. My present account of 'the Reparation-

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principle' is combinable with Nine's analysis, and may support her claim about *territorial rights* as proper compensation.

<sup>11</sup> Although my present argumentative strategy grants the nationalist attachment-theories' core features, let me underline that those theories have been criticized in various ways. Some find their treatment of the interests of outsiders too harsh, and reject the nationalist's basic human rights-proviso in favor of (more) egalitarian ones. Most prominently, such critics defend various versions of global luck-egalitarianism. For a helpful overview, see Armstrong (2010). (Note that an egalitarian-minded critic, who rejects the nationalist attachment-theory's basic rights-proviso, may still regard territorial attachment as a pro tanto ground for territorial rights; see e.g. Armstrong, 2017.) Other critics are fundamentally skeptical, and doubt that people's shared attachments to particular territories are weighty enough to justify territorial rights in the first place (Ypi, 2017). Another notable line of attack questions whether the former right of a wronged claimant is superseded as often as the nationalist attachment-theories believe (Simmons, 2016: 153-186; see also Wellman, 2015: section 3.4).

<sup>12</sup> In addition to the attachment-based justification I presently discuss, Miller (2012) defends a separate *quasi-Lockean* justification of territorial rights, according to which a collective may come to deserve control over territory as a fitting reward for having increased its material value (e.g. by cultivating fields, and building roads and waterways).

<sup>13</sup> For present purposes, I assume that *current* reflective endorsement is necessary, but also sufficient, for a person's way of life and identity to count as self-chosen. This follows Miller (1995: 44-47). See also Stilz (2013: 337-8).

<sup>14</sup> Note that Miller operates with a conception of *collective* responsibility (2007: 111-161; see also Meisels, 2009: 59-61). This conception implies that current members of the collective

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cannot avoid the duty of reparation merely by pointing out that their *ancestors* were the ones responsible for the wrongs. Miller's account is controversial (cf. e.g. Lippert-Rasmussen, 2009). However, I can grant it for present purposes, as my aim is to show that a (reparative) duty to modify one's territorial attachments follows from the nationalist's own position.

<sup>15</sup> For a helpful account of an agent's appeal to costs, see Haydar (2009).

<sup>16</sup> As mentioned, the philosophical rationale flows from Waldron's work on supersession, which, as Miller writes, provides 'cogent general considerations in support of this view' (Miller, 2007: 220, n. 26).

<sup>17</sup> Here one might wonder what cost-level the phrase "unreasonable costs" refers to more specifically. I address this issue in Section 2, where I explicate that my thesis is compatible with virtually any account of this.

<sup>18</sup> The right of immigration may eventually entail citizenship rights. After entry, Miller writes, refugees are owed 'the opportunity to make a decent life for themselves in the place that they live', which, over time, might imply being 'given the chance of acquiring full citizenship rights' (2007: 225).

<sup>19</sup> For presentational purposes, I have simplified this case to include only two parties: the islanders and the mainlanders. In the real world, of course, several collectives have contributed to global warming. Does such *multiplicity* of wrongdoers have any bearing on my analysis? It is hard to see why it should. My present concern is whether the islanders have a (reparative) right to reestablish territorial rights, as opposed to mere immigration rights. That is a question of right-*types*. If there are several perpetrators, an independent issue becomes relevant: from which perpetrator(s) should the victims receive the relevant type of rights? That, however, is a question of right-*tokens*, not right-*types*. It seems perfectly fair for the islanders to say, "We understand

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that you, the various contributors to our plight, need some time to sort out amongst yourselves how to share the burden of providing us with the type of right we need for that plight to end. Anyway, that's *your* problem. Let us know when you're done. And, by the way: hurry up!" (When distributing the reparative burden among the wrongdoers, it might be relevant to consider additional factors than [degrees of] contribution to harm, including one's ability to bear the burden and the degree to which one has benefited from the harmful state of affairs. These concerns are all part of the ongoing debate on how to distribute duties of climate change adaptation and mitigation, cf. e.g. Page [2008] and Caney [2010].)

<sup>20</sup> Note that the islanders press their claim here and now, before they literally become refugees. For some proponents of the supersession-thesis, this detail could be more important than it might seem. According to Waldron, one reason for why a victim's claim to rights-reversion can be superseded is that the very *basis* for the victim's former right has disappeared, while a similar basis has been established for the members of the wrongdoing collective (1992: 16-20; see also 2004: 259-263). For attachment-based territorial rights, this could happen if the victims have been deprived, not only of their territory, but also of their (institutional) capacity to sustain their collective identity over time. Now, it is controversial whether a change in the original basis of a right must necessarily result in its dissolution (Simmons, 2016: 159-166). But we need not take a stand on this here. In the case at hand, the islanders' institutions are still operational; although their island will inevitably sink, it has not sunk yet. If they press their claim to new territory, here and now, the islanders will be capable of securely sustaining their (rights-generating) identity for several generations yet. Five decades is a common estimate, used e.g. by the I-Kiribati people (Office of the President, 2016). That arguably leaves enough time for the mainlanders to discharge their duty of modification. Moreover, even if discharging the duty takes longer, the



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islanders could be given a temporary territorial basis from which to perform their identity-sustaining activities.

<sup>21</sup> Another way of repairing the wrongful harm would be to bring more geographical territory into the world. There are examples of small artificial islands constructed by depositing sand upon coral reefs, as China has done in the South China Sea (Watkins, 2015). Whether this is doable on a scale large enough to relocate whole island states, and in a way that does not destroy already endangered coral reef ecosystems (Holmes, 2015), is far from clear. I therefore set this option aside here.

<sup>22</sup> I add the qualifier ‘plausibly’ to draw attention to the fact that the lower the nationalist attachment-theories set this bar, the less attractive their position on supersession of wrongful territorial deprivations may become. If they set the bar too low, they risk defending, as Miller puts it, ‘a charter for thieves’ (2007: 220).

<sup>23</sup> Miller and Meisels both (roughly) follow the conception of collective rights defended in Raz (1986: 207-210).

<sup>24</sup> The kind of inculcation I have in mind need not challenge or suppress “objective facts” about a collective’s past history and culture (although people might of course be led into believing falsehoods). Instead, the inculcation typically forms how a collective’s members *think about* such facts. History tells us that ‘Britain once ruled over Indian territory’. Yet, for the development of their collective territorial identity, it surely matters how British children *come to appraise* that historic fact – if they are inculcated into believing that ‘we should no longer assert power over Indian territory’ or that ‘Indian territory reflects valuable British practices and should be ours to rule’.

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<sup>25</sup> Although it is sufficient for my present purposes to demonstrate that this holds for *inculcation*-costs, I believe a similar result is available for *attachment*-costs. Although space does not permit a demonstration, if I am correct, this means that the aggregated bundle of *individual* rights of occupancy that make up a collective's occupancy right in Anna Stilz's theory of territory (2011) may also be straightforwardly subject to a duty of modification. The idea is that members of the collective may gradually downsize their individually held attachment-based occupancy rights without incurring more than reasonable *attachment*-costs in the process. Such individual downsizing correspondingly downsizes the collective's aggregated occupancy right, which in turn reduces the geographical reach of its territorial rights. (My inculcation-cost analysis is irrelevant for Stilz's theory.) For Margaret Moore's non-nationalist theory (2015), which regards occupancy rights as collective in nature, the analysis of modification costs is similar to the one given for nationalist attachment-theories. See also note 6.

<sup>26</sup> An anonymous reviewer wonders why I do not regard *halting pollution* as the wrongdoers' primary duty; why focus on *offering new territory*? The reason is simple. I presently assume that the island will sink, regardless of whether we stop polluting. Scientific studies indicate that the GHG-amounts already accumulated in the atmosphere will cause sea-level rise for centuries to come (Caney, 2010: 204-205). Having said that, *if* immediately halting pollution would save parts of the island territories, I believe there is reason to do just that. However, wrongdoers would still be duty-bound to downsize their territorial attachments and offer new territory as reparation for island territories already lost to the sea.

<sup>27</sup> An anonymous reviewer doubts whether cession of uninhabited territory will ever be necessary; as long as the refugees are in a clear majority, they may reestablish effective sovereignty and impose their conception of the good on their new territory. I agree. Still, a claim

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to an uninhabited territory may make sense – from the nationalist attachment-theory’s perspective – for two reasons. First, the Reparation-principle, as seen, seeks restoration of the status quo ante as far as possible. If the refugees used to live without permanent minorities in their midst, the Reparation-principle favors reestablishing such a state of affairs. Second, if the refugees and the current inhabitants have divergent conceptions of the good, different languages, etc., the nationalist may favor national homogeneity (rather than a multinational unit) for its alleged positive effects on trust and social justice-promotion (Miller, 1995: e.g. 90-99).

<sup>28</sup> So-called “development-induced displacement and resettlement” projects in developing and industrializing countries – where little if any compensation were provided at all (cf. e.g. De Wet, 2006) – are text-book examples of how relocation processes should *not* be conducted. For a collection of case studies, with extensive oral testimonies from forcefully evicted people, see Bennett and McDowell (2012).

<sup>29</sup> The relocation effort should also ensure as far as possible that although the relocated inhabitants cannot sustain their *particular* located plans, they are able to reestablish *generically similar* ones in their new place of residence. To illustrate, although a relocated carpenter cannot sustain the particular business she previously had, she is able to reestablish a new carpenter firm rather than having to shift professions.

<sup>30</sup> Having said that, I think the duty of modification is in principle applicable also to densely populated areas.

<sup>31</sup> What happens if the island sinks before the modification period ends? If so, the refugees have a right to be admitted as temporary migrants in the meantime. In Sinking Island, they must receive such rights from the mainlanders. If other territorial states exist, they could be admitted elsewhere. Note that, in cases of multiple GHG-emitting collectives (cf. note 19), giving the

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refugees immigration rights in one state, while waiting for another to cede their new territory, is a straightforward way for the wrongdoers to share the costs of repairing the wrong. However, apart from being mandated on reparative grounds, such temporary migration rights are (also) justified by the nationalist's basic human rights-proviso (cf. Section 1). I am grateful to an anonymous reviewer for pressing me to clarify these matters.

<sup>32</sup> An anonymous reviewer wonders whether we might construe a duty to downsize one's territorial attachments as a "global duty", falling on *all states capable of assisting* the refugees (and perhaps primarily on states with especially large territories). As indicated, I am open to that possibility, which is fully compatible with my present analysis. However, it is important to note that such a construal of the duty would rely on a conception of global distributive justice that the nationalist attachment-theories explicitly reject. For them, we may recall, there are no global duties to assist deprived outsiders beyond what is necessary to secure their basic human rights.