The Collective Rights of Environmental Refugees

(First draft)

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Historically, societies have constantly displayed an astounding ability to adapt to drastic changes in their environment. Climate change is very likely to bear down on the limits on this adaptability. This will be particularly true in the long run, as climatic changes threaten to transform weather patterns, destroy coast lines, cause environmental disasters and give rise to armed conflicts (Barnett 2003: 12; Bell 2004: 135-6; Suhrke 1994: 474). It has been estimated that there are already about 25 million people in the world seeking refuge from environmental degradation. As we are beginning to experience the consequences of climate change, this number is likely to increase significantly. Climate change causes drastic environmental disruptions — such as earth erosion, water shortages, water poisoning and deforestation — which force people to leave their homes and seek refuge in other places, either within or outside their own country.

Unsurprisingly, the vast majority of current and future environmental refugees are citizens of developing countries. Most of them will end up either within their own countries, and become internally displaced, or they will move to neighboring developing states. Only a minority will find their way to developed states. The emerging phenomenon of environmental migration thus once again highlights the vulnerabilities of developing states and their citizens. The most unpromising estimates say that the number of environmental refugees could reach about 200 million by 2050. If these estimates turn out to be correct, we will within forty to fifty years experience a doubling of the total number of migrants in the world (Brown 2007: 5; Myers 2002; 2005; Stern 2006: 3). It would also make migration in response to environmental degradation the most pervasive form of forced migration to occur in the 21st century (Bell 2004: 136).

The most conspicuous environmental cause for the displacement of people is probably the rising sea level and the subsequent floods. The IPCC has estimated that by the end of this century the sea level will rise between 28 and 43 centimeters as a result of thermal expansion and the melting of glaciers and ice caps (IPCC 2007: 409). Moreover, regional variances will likely result in small island states suffering disproportionate consequences in terms of land loss (IPCC 2007: 413-14; 2008). But the rising sea level will not only affect small island states; countries with low-lying coastal areas will also suffer extensive land loss. In regions with high population densities, e.g. in South Asia, the problems will be even more accentuated. A country like Bangladesh has already been quite severely affected by flooding which has resulted in salt contamination of previously arable land (McFerran 2007).

The possibility of this bleak future obviously brings forth questions about what kind of normative claims can be made on the part of environmental refugees. In this paper I will discuss the particular
issue of what kind of rights environmental refugees can claim; what is the substance and basis of such rights?

**Collective Ownership of the Earth and the Right to Relocation**

The philosophical literature on the issue of environmental refugees is still quite scant. There is indeed an expanding debate on the more general normative issues of how the responsibilities and costs for mitigation and adaption should be distributed. But many of the more specific issues relating to climate change, such as the one of environmental refugees, have still to receive more expansive discussions. Still, one can find a few recent attempts to address the issue of the rights of environmental refugees. Mathias Risse (2009) has defended an account of the rights of environmental refugees which he bases on the classic idea, found in for instance the works of John Locke and Hugo Grotius, that humanity collectively owns the earth. Since the earth’s resources and spaces are the accomplishments of no one, at the same time as they are needed by everyone in order to make a living, the most plausible view of the ownership of natural resources, argues Risse, is that they belong to humankind collectively. More specifically, this collective ownership is egalitarian, in the sense that all humans, no matter when and where they are born, have some sort of symmetrical claim to the earth’s natural resources. This idea of egalitarian ownership need not entail that every human has a legitimate claim to an equal share of these collectively owned resources. Instead, Risse interprets this idea to say that all co-owners ought to have an equal opportunity to satisfy basic needs to the extent that this turns on collectively owned resources (Risse 2009: 286-288).

From the standpoint of collective ownership of the earth then, we can derive individual entitlements in a way that stresses the symmetrical position of human beings in relation to external spaces and resources that they have done nothing to create, but that they all need for survival. Further, this means that states can claim exclusive control over portions of the originally commonly owned resources and spaces of the earth only if they accept certain conditions that make such an arrangement acceptable to other co-owners. One such condition is that states must accept a proviso, or a “right of necessity” which takes precedence over the arrangement, and over any preferences to for instance keep migrants out, in situations of emergency where individuals are unable to satisfy their basic needs (Risse 2009: 283, 293).

This right of necessity provides the basis for a right to relocation for environmental migrants. This right includes a demand on host countries to provide support for people who find themselves unable to exercise their ownership rights in their native location due to, for instance, environmental degradation. This support ought to amount to, at least, providing opportunities for individuals to lead a life at the level of basic-needs satisfaction. When the circumstances are such that a territory is either lost completely or so damaged as to make it inhabitable, it is no longer possible to respect the troubled party’s co-ownership rights by supporting them in their current location. Instead, the only way to respect these rights is to help the affected people relocate to new territory (Risse 2009: 284, 293). It should be pointed out that these kinds of obligation only apply to states insofar as they have the capacity to fulfill them without making it impossible for some of their present citizens to satisfy their basic needs (Risse 2009: 291).
This way of defending a right to relocation has an interesting upshot, namely that we do not really need to worry too much about the causes behind the kind of environmental degradation that pressure people to leave their homes. People will retain their right to relocation when their home environment is destroyed, regardless of whether the environmental changes are natural or man-made. This contrast the argument for relocation based on a collective ownership of the earth approach, from arguments based on compensation. One could certainly argue that developed countries owe developing countries compensation for the suffering they have caused, and will continue to cause, through their extensive emissions of greenhouse gases. Such an argument, while it might have some strength, is sensitive to complicated questions about the extent to which certain environmental changes are actually caused by the actions of developed countries, or whether they are completely natural. Further, compensation based arguments are also sensitive to the issue of whether, even if we can establish causality between certain environmental damages and historical emissions, today’s citizens of developed countries can really be held responsible for the often uninformed and unintended actions of previous generations. An approach based on the idea collective ownership of the earth sidesteps these complex issues.

But there are also problems with Risse’s way of construing the right to relocation for environmental refugees. One is that it seems to be normatively indifferent between the two alternatives of either relocating a population on an individual basis, or relocating a population on a group basis. Risse discusses the case of Kiribati to illustrate his account, and we can use the same case to illustrate this problem. Kiribati is an island nation situated in the Pacific Ocean. It is threatened by extinction due to rising sea levels and salination caused by climate change. The Kiribati government is currently planning for the complete relocation of its people. Ideally, they would prefer to identify an area where the Kiribati people could relocate as a whole. But since this seems to be an unlikely scenario, the plan is instead to scatter the people of about 100,000 individuals throughout the nations of the world (Risse 2009: 281).

Oftentimes environmental migrants will relocate within their own country. This can be done either on an individual basis or as a group. Sometimes relocation will necessarily be to another country, as is the case when whole states disappear. On very rare instances a whole nation will have the possibility to relocate and recreate itself on new territory. A few very wealthy states might have this opportunity if they manage to strike deals with some other states to buy territory to which they can relocate their whole populations. More likely however, a people forced to leave their homeland for environmental reasons will face the choice of either relocating to other states on an individual basis, or as a group without the possibility of recreating themselves as a nation. The question now is whether the group based solutions are to be preferred, or whether it normatively speaking makes no difference if we relocate people on an individual or on a group basis.

Even if we acknowledge the impracticality of relocating as many as 100,000 individuals as a whole, intuitively there seems to be something odd about the suggestion that there is no moral difference between the two alternatives of either scattering the people of a nation like Kiribati throughout the world, or relocating them as a collective. But Risse’s account provides no way of explaining this intuitive unease. The right to relocation is derived from each individual’s entitlement as a co-owner of the earth to an equal opportunity to satisfy basic needs to the extent that this turns on collectively owned resources. This does not seem to leave any space for thinking of the right to relocation as a group based entitlement.
To be sure, Risse discusses whether his approach supports the Kiribati government’s wish for relocating their people, or most of them, as a whole to the same location. He states that this question cannot be answered in the absence of empirical investigations revealing whether there are countries that are under-using the spaces they occupy. If there are countries under-using their share of the earth relative to other countries to such an extent that the whole or most of the population of Kiribati, or some other threatened nation, could be admitted without creating an over-use situation, then troubled nations could indeed make claims vis-à-vis under-using countries to be admitted as groups (Risse 2009: 294). Or so, at least Risse claims. But it is difficult to see how considerations of collective ownership could base such claims without adding something to the argument. Collective ownership of the earth establishes individual entitlements. But Risse does not explain how to move from these individual entitlements to a collective account of the right to relocation.

External Resources and Cultural Rights

One way of adding to Risse’s argument in order to create a collective account of the right to relocation is to highlight how the realization of cultural rights sometimes requires external resources. We can note, first, that the derivation from individual entitlements based on collective ownership to a right to relocation goes through a step where it is imagined that a certain physical environment has been so damaged that the only way of respecting co-ownership rights is to help people relocate to new territory. Here, Risse focuses exclusively on the loss of external resources necessary for satisfying peoples’ basic needs. His idea is that if a system of states is to be acceptable to all co-owners of the earth, states have to accept certain conditions, one of which is that they must provide support for individuals who find themselves in a situation where a lack of external resources makes it impossible to go on living in their native location.

But people use external resources for other things than for food, shelter and individual necessities of that sort. By using external resources in certain ways people also endow their national territory with symbolic significance. David Miller points out that living on and shaping a piece of land does not only mean increasing its value in an economic sense, it also means “endowing it with meaning by virtue of significant events that have occurred there, monuments that have been built, poems, novels and paintings that capture particular places or types of landscape” (Miller 2007: 218). Some ways of utilizing external resources transform them in ways that are of importance because it gives the territory a symbolic nature which becomes part of a people’s history and culture. The loss of external resources due to environmental degradation deprives people not only of resources needed for maintaining a life at, at least, the level of basic-needs satisfaction. It also deprives them of resources needed to sustain a culture and create a common history, at least insofar as this is dependent on endowing a territory with symbolic significance.

It can be argued then, that for each co-owner of the earth to accept an arrangement with states that claim exclusive control over territories, there need to be conditions in place that require states to support not only individuals who find themselves in peril in the needs based sense, but also to support groups of people who face the risk of losing external resources to the extent that they will not be able to sustain part of their common culture. Indeed, as Kymlicka (1989: 175) has argued cultural membership deeply affects our impression of personal identity and capacity. And further, cultural heritage, the sense of belonging to a cultural structure and history, is of significance for
individuals’ emotional security, personal strength, and even sense of agency. If we believe that cultural belonging is of such great importance to individuals, it would put the significance of external resources for satisfying basic needs on a par with the significance of external resources for upholding a cultural heritage. For us as co-owners of the earth to accept a state system, we would require conditions on such a system that protect us from the loss of external resources for both kinds of purpose. And if the kind of protection people is owed in some extreme circumstances requires a support to relocate, then there might indeed be such a right to relocation for individuals as well as for groups insofar as group based relocation is feasible and needed to provide opportunities for a peoples’ continued cultural existence.

If this cultural rights based account is interpreted as a right for environmental refugees to be given sovereign control over a new piece of territory, there is a serious problem with it. It would fall prey to the objection that even if cultural belonging is of fundamental importance to the individual, it is not obvious that it is precisely the culture that an individual currently belongs to that needs to be protected. Cultural belonging is important, but why must it be the culture an individual belongs to at a certain moment in time that must be upheld rather than some other culture? We do not need to get cynical and claim that environmental refugees could just willingly shift to the majority culture of the receiving country. Culture does not work that way. But neither are cultures static entities. Rather they are constantly evolving over time. And in the sort of case we are discussing here, cultural change is very likely. If we acknowledge that there is an external aspect to culture which is dependent on external resources, then it is very likely that we will see changes to a culture whenever the kinds of external resources its members have access to also changes radically. This will unavoidably happen when a people is relocated to completely new territory. If cultural change is likely to happen, we must ask why this way of “protecting” a culture, i.e. to relocate a people and give it sovereign control over new territory, is better than any other way. There is a wide array of multicultural policies with the purpose of protecting the cultural identity of minorities. Some work better than others. They are all likely to cause changes in the cultures of environmental refugees, but so is the radical solution to give them sovereign control over new territory. The cultural rights account gives us no reason to prefer one over the other. In the following section, I will suggest that self-determination gives us a reason to prefer the multiculturalistic solution.

**Self-Determination and the Lockean Proviso**

One way of solving the problem is to introduce a collective entitlement based on the right to collective self-determination. Cara Nine (2010) has recently defended such an account of the rights of what she calls “ecological refugees”. Her account is structurally quite similar to Risse’s, with a proviso or “right of necessity” doing the important normative work. Nine argues that the system of territorial states, since it is a system of exclusive rights over land, is subject to the conditions of a Lockean proviso mechanism. But for Nine, it is not the threat to an individual’s opportunity to satisfy basic needs that triggers a right to relocation. Instead it is the threat to a peoples’ opportunity to remain self-determining that triggers a right to be given sovereign control over a new piece of territory.

The point of a Lockean proviso Nine argues, is to ensure that the exercise of an exclusive right over goods does not undermine the very values that justify the right (or the system of rights of which it is
a part). In its original version, the Lockean proviso is a limit on property rights. Property rights are not inherently justified. Instead, the system of property rights is justified because it protects some other basic value (or values). For Locke, it was its ultimate benefit to humankind that justified the system of private property rights. The point of the proviso is to protect the preservation of humankind in situations where the system of private property rights threatens this foundational value. In such situations, epitomized by instances of severe scarcity, the system of rights should be changed so that it no longer undermines the foundational values.

Nine adapts this understanding of the Lockean proviso to territorial rights. For property rights, the foundational value for Locke was the “preservation of human kind”. The first step in adapting the proviso to territorial rights is to identify the foundational value (or value) territorial rights are meant to protect. Here, Nine argues that the foundational moral mandate for territorial rights is “the establishment of justice through the preservation of self-determining groups.” In order to reach this conclusion Nine first claims that the central function of a territorial right, and what separates it from simple property rights to external resources, is to give the right-holder the power to establish justice within a particular geographic region. A territorial right is a right of political authority; it is a right to claim the moral and political authority to establish justice, i.e. to establish a determinate jurisdiction, within a particular geographic region. A jurisdiction is a legal domain where a certain set of legal rules applies and where a certain agency or agencies have authority to make, adjudicate, and enforce those rules. The holder of territorial right is “an independent and autonomous power within its territory” (Nine 2010: 4).

A justification for territorial rights must therefore be “a justification for a system of rights to land held by groups that protects group autonomy in establishing justice within a geographical region.” Territorial rights are meant to establish a practical foundation upon which a group can exercise its right of self-determination. The right of self-determination is understood by Nine as the right of self-government:

A group is self-governing if it has the independent and determinate political control over some important aspects of its members’ common life. Self-determination requires both autonomy and independence. The self-determining group is autonomous—it has the ability to govern itself by adjudicating, legislating, and enforcing laws on its own, and it is independent — it has a domain of political control independent of higher or foreign political units to which the group’s self-made laws are subject to being overridden or revoked (Nine 2010: 4).

We can broadly define the kinds of groups which can legitimately claim a right to self-determination as “peoples”. A people must have some sense of internal identity that is “uniquely advanced by the self-determining powers of the group”. This identity does not have to be established by nationalist or cultural homogeneity. As Nine points out there are many senses with which we could explain the uniqueness of a group that is advanced by their self-determining status; for instance through the concepts of public reason of democratic association.

Territorial rights are justified then “because they protect and promote the self-determination of peoples and the people’s capacities to establish justice through their territorial rights.” If a people is to be self-determining, it must rule itself; and in order for it to rule itself it must have the moral and political authority to establish justice for its members. This means that in order to be self-determining, a group which is a legitimate holder of a right to self-determination must have
sovereignty over the territory where its members (usually) live. Without territorial rights, a self-determining group may cease to exist *qua* self-determining group (Nine 2010: 5).

With this understanding of territorial rights in place, we can apply the Lockean proviso in order to understand how restrictions on holdings of territory might work. If territorial rights are justified by their protection of self-determining groups, then the proviso will be triggered in circumstances when the self-determination of a group is threatened because of the territorial dispositions of other groups (Nine 2010: 5). Presumably, this is the case when an entire or very large part of a people loose their home land because of ecological disaster. When this happens, the “ecological refugee state” is under a threat to loose its status as a self-determining entity. When the territory of a self-determining group is destroyed, its self-determination is threatened with extinction because of the group’s lack of access to the territories of other states. In such circumstances the proviso requires that states with territorial rights over viable lands “have an obligation to allow reasonable access to their territory to the ecological refugee states.” The existing territorial rights of states should change, says the proviso, because of the change in circumstances; territorial entitlements must change in order to allow the ecological refugee states reasonable access to some territory somewhere (Nine 2010: 8).

Nine argues that the conditions triggering the Lockean proviso are not resolved by simply letting members of ecological refugee states immigrate to some other state. Allowing environmental refugees to immigrate will not satisfy the criteria necessary for the group to which they belong to be self-determining. In order to be self-determining, “a group may have to have territorial rights — to be granted the authority to establish justice within a certain region. In these cases, the conditions triggering the Lockean proviso are not resolved until the threatened group is granted territorial rights over some territory” (Nine 2010: 8).

A problem with Nine’s account is that it does not consider potential conflicts between the rights of self-determination between different previously (legitimately) self-determining groups. To be sure, Nine mentions how the fact that numerous ecological refugee states as well as other groups have legitimate claims to territorial rights presents something of a problem since currently there is no unoccupied, viable land on which they could all recreate themselves as self-determining peoples. Hence, “any claim that an ecological refugee state might have to a territory as a result of the Lockean proviso will compete with another group’s right to self-determination” (Nine 2010: 14). We need to note here, that the conflict between different groups’ rights to self-determination does not only concern “competing” stateless groups. There will almost always be a conflict between claims to territory by an ecological refugee state and the right to self-determination belonging to the people of the *receiving state*. If an ecological refugee state is to establish sovereignty over territory previously owned by another legitimately self-determining people, this will restrict the autonomy of the latter group. Presumably, their lives will be more restricted as they will no longer be able to emigrate to, travel, or hold a job in the relinquished region. More importantly, they will no longer “have a voice in determining the region’s economic or environmental or educational or language politics, some of which may affect their own fate” (Philpott 1995: 362). Saving the perhaps unlikely event that a receiving state will willingly give up a viable piece of its territory through its usual mechanisms of legitimate decision making, what we will have then is an unavoidable conflict between claims to territory by one group, and the right to self-determination by another.
We need to remember that what is offset by the proviso is not the right to self-determination, but territorial rights. Self-determination is of foundational value, and cannot be cancelled by the proviso since the proviso is in place in order to protect self-determination. The problem is that radical changes to the system of territorial rights will inevitably affect the self-determination of one group or another. It is a radical change in territory, i.e. ecological disaster, which creates a situation where the self-determination of an ecological refugee state is threatened. But the same is true about the radical change of territory caused by relinquishing territory from one self-determining people to another. To be sure, in the first case the threat is that of extinction of a group's status as a self-determining entity. In the other case, there is no real threat of extinction to the self-determination of the receiving state, but merely a restriction on the extent of its self-determination. But still, there is a conflict here that needs to be resolved. And it is not obvious that the solution lies in a radical restructuring of territorial rights.

There are ways out of this dilemma I believe. The key is to acknowledge that the creation of a new sovereign in a territory is but one way of institutionalizing a groups' right to self determination. There are other ways of realizing such a right which do not create such a serious conflict between the rights of self-determination of different groups. Local self-government is one way of institutionalizing self-determination which does not include complete sovereign control. Nine mentions herself how the meaning of “sovereignty” is developing. There is for instance talk of “limited sovereignty” as in the sovereignty of Native American nations within the sovereign United States (Nine 2010: 14). Self-determination comes in degrees and can be institutionalized in different ways. If this is correct we will have the option to create arrangements of limited forms of self-determination for previously self-determining groups now living on the territory of another state. There might even be some forms of multicultural policies that allow cultural self-determination to an extent that is sufficient to resolve the conditions that trigger the Lockean proviso in the case of environmental refugees. If so, immigration paired with cultural rights would be enough to satisfy the requirements of the proviso. What we need is a close examination of different, perhaps innovative ways of institutionalizing rights of self-determination which would not create such deep conflicts between the self-determination of different groups as would Nine’s radical proposal.

**Literature**


