

SYMPOSIUM
PEOPLE AND TERRITORY



A PRÉCIS OF
A POLITICAL THEORY OF TERRITORY
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A Précis of *A Political Theory of Territory*

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In my book, I defend a political theory of territory, which is a theory of the appropriate, normatively defensible relationship between the state, the people, and land. Any theory of territory has to explain how these three elements are related, and to justify the particular configuration.¹

I What is territory?

Territory, as I understand it, is the geographical domain of political or jurisdictional authority. It is a *political* concept and so distinct from land, which I define as the part of the earth's surface that is not covered by water. Of course most land is claimed by a state, and so is also territory, but there could be unclaimed land or land that is contested between two states; and the territorial extent of the state also extends to the airspace above and to the sea off shore, so territory can extend beyond land. Territory is also distinct from property, which we normally understand as a cluster of claim rights, liberties, powers, and immunities that, when held together with respect to a material

¹ David Miller, "Territorial rights: Concept and Justification", *Political Studies*, 2012, vol. 60, no. 2, 252-268.

thing, represent a form of ‘ownership’. For many theorists, jurisdictional rights conceptually precede property rights since the state typically defines the kind of property relations that are legal in the state: they define the rules surrounding acquisition, transfer and the like.

II

Why do we need a theory of territory?

Is a political theory of territory really necessary? After all, in the current inter-state order, all states by definition have territory. As the 1933 Montevideo Convention on the Rights and Duties of States (Art.1) makes clear, having territory is definitional of a state: states are defined as “entities *with fixed territories* (and permanent populations) under government control and with the capacity to enter into relations with other states.”² Why not then justify states and so, in the process, justify their possession of territory as necessary to fulfil state functions?

This has been the dominant attitude to the issue of territory in international relations, international law and political science, but is inadequate for two reasons. First, territorial statehood requires a *defence*; the existence of territorially-ordered states should not be assumed as part of the natural ordering of the world, but comes at a cost. In particular, the division of the world into distinct territorial entities is challenged by the cosmopolitan idea that views borders and territory as inimical to the moral equality of all human beings. Cosmopolitans typically object to two features that are often associated with territorial state: rights to control resources within the jurisdiction of the state; and rights to

² A. John Simmons, “On the territorial rights of States” in Ernest Sosa and Enrique Vellanueva, eds., *Social, Political and Legal Philosophy: Philosophical Issues* 2003, vol. 11, 321, note 5. Italics are mine.

regulate borders. Cosmopolitans have argue that resources are part of the common stock of mankind and that exclusive control by the territorial state is unjustified: the bounty of the earth should be used to benefit everyone.³ State control over borders is criticized too on cosmopolitan grounds: that it violates individual's rights to free movement and equality of opportunity.⁴ More generally, some argue that the territorial state is an outmoded form of organization. As the world has become more interdependent, many world problems require global responses, which cannot be effected by the system of independent territorial states: this is true of human-induced global climate change and environmental degradation generally; poverty which is exacerbated by global capitalism and a race to the bottom on the part of competing territorial jurisdictions; and international crime and terrorism, which many argue require a global response. On both philosophical and practical levels, then, the territorial state needs defending.

The usual defense of a territorial state appeals to the functions that it performs. There are obvious benefits to be had from the state applying uniform laws and common policies to people living in proximity to one another, regardless of their status or identity.⁵ The territorial state, its defenders may claim, is essential to the

³ Christopher Armstrong, "Justice and Attachment to Natural Resources", *Journal of Political Philosophy* 2010, vol. 18, no. 3, 313-334/

⁴ See Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013); Kieran Oberman, "Immigration as a Human Right" in *Migration in Political Theory: The Ethics of Movement and Membership*, ed., Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016).

⁵ Christopher H. Wellman, *A Theory of Secession. The Case for Political Self-determination* (Cambridge: Cambridge University Press, 2005); Jeremy Waldron, "Proximity as the Basis of Political Community", paper presented to the Workshop on Theories of Territory, King's College, London, 21 February 2009.

realization of equal freedom, equality before the law, predictability, and social justice. But this argument isn't really adequate, because, while it defends a territorial state system, it doesn't defend or define the precise *territory* or domain of the state. It tells us that the state ought to be ordered territorially, but not where the state's territory ought to be. To answer this question, which is usually dubbed 'the particularity question', we need to connect particular states with particular geographical areas. This is necessary to address territorial conflicts, such as when two or more states claim the same piece of land, or, in the case of secession, to define the boundaries of the seceding unit, or to sort out claims to the seabed or the High Arctic or Antarctica, which require us to think about the principles on which boundaries should be drawn.

III The theory

In this book, I offer a defense of an international order comprised of territorially-organized states, which I justify on the grounds that it realizes the value of political self-determination. There are two aspects to the argument. One links the people with the land (and so responds to the particularist challenge); the second links the people with the value of political self-determination (and so justifies the political entity). Let me explain how these elements function within the overall theory.

To address the particularist challenge, I examine the relationship between people and place. This is a complex argument, because this investigation leads me to defend three kinds of place – related rights, some of which are held by individuals, some by groups, and some by institutions. Rights of residency are held by individuals; rights of occupancy are held by

groups; and territorial rights are held by political institutions. In all three cases, the rights are justified in terms of a deeper appeal to the fundamental interests of persons, who have important relational and associative interests, which ought to be protected by both individual and collective rights. The conception of rights that I rely on is an interest-based conception and the rights are conceived of not as absolute claims, but as subject to certain limitations, especially limitations imposed by justice (respect for rights of other kinds).

What are the three place-related rights? I understand a moral right of residency as a right that belongs to individuals and has two components: a liberty right to settle in an unoccupied area, and a right of non-dispossession, a right to remain, at liberty, in one's own home and community and not be removed from it. I also argue, as an extension of this right, that it involves a right of return, when an individual has been unjustly excluded from land on which s/he has a right to reside. I understand a collective moral right of occupancy as a collective right, which a group may have, over and above the individual residency rights that its members have. What justifies a collective right of occupancy? The basic idea here is that individuals have, in addition to individual identities, collective identities, which are integral to who they are; and many of these groups are attached to specific areas, specific bits of land, which form an important source of the collective identity and locus of people's collective lives. To make this argument, I appeal to empirical evidence, not only of indigenous people who have suffered from dislocation and social problems by removing them from the area to which they are attached, but also farmers, and nomadic people, and people living in distinctive local communities or neighbourhoods, all of whom may have attachments to place, which ought to be recognized. Like residency rights, they give the members of the occupancy groups rights to remain in a place, but also addition right to

exercise some forms of local control over the geographical area on which the people live and in which they have a special interest. The function that occupancy rights perform in my theory is to define the domain or area of individual residency rights and to solve the particularity problem for territorial rights. To see the importance of the first role, consider the case where an individual has been expelled from an area, and we think that they have a right of return. Now the question is: where do they have a right to return to? It can't be the specific house (which may be destroyed): how then do we specify the scope of the right of return? The answer is in accordance with occupancy rights, which appeals to various collective connections that we think are salient to individual identity. Occupancy rights also function to solve the particularity problem. I argue that territorial rights can be held only when the group in question has occupancy rights, and again, occupancy is more than just physical presence: it requires a stronger connection to land. The group must occupy the land legitimately (meaning that it has not displaced some other group) and it must be rooted in that geographical space by the individual life-plans and collective projects of the group's members. The answer to the particularity question is at the same time an answer to the scope question: it helps to address the question of the boundaries of territory, by which I mean, where the state ought to hold territorial right.⁶

Let me turn now to the justification for *territorial rights*, which is separate from the scope and particularity questions. On my account, states (or sub-state units) hold territorial rights by acting

⁶ This account can specify heartlands, but not the precise boundaries, which are often somewhat conventional. In my chapter on boundary-drawing, I discuss a range of innovative response to overlapping territory that is responsive to the group interest in collective self-determination.

as a vehicle of self-determination for some group G.⁷ However, not just any group can qualify as a potential source of territorial rights. Three specific conditions are required: political identity, political capacity and political history. The political identity condition requires that the group is united by a shared aspiration for wide-ranging powers of jurisdictional authority or political control over the territory. The political capacity requirement refers to predicted and /or demonstrated ability to exercise self-determination and maintain effective forms of governance. The third condition requires that the members of the group have a history of shared practices and mobilization in terms of political projects. Unless these conditions are fulfilled, a group will not be equipped to exercise jurisdictional authority over an extensive territory. The territory itself over which jurisdiction is to be held is determined by the fact of occupancy (although obviously some groups who don't meet the three conditions will still count as occupancy groups, whose rights should be respected by the state).

The main argument then of the book can be formulated as follows: when group G (which meets the three conditions above) legitimately occupies territory T (understood as geographical space) it can be said to hold territorial rights over T and this is justified by the value V of the collective self-determination of the said group.

In later chapters, I argue that this theory of territorial rights can be applied to a range of issues that implicate territory. Consider the issue of resources, for example. It is usually thought that a legitimate state has control over the natural resources within its territory. This is sometimes called the permanent sovereignty over resources claim. Can this account justify such a right? I argue that the interest in collective self-determination

⁷ Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2015), esp. ch. 3.

does suggest that the state, as a vehicle of self-determination, ought to have control over resources – indeed, that it would be hard to think of a group as having robust self-determination rights unless they exercise some control over the land that they live on, the rivers that they fish in, swim in, and navigate, and so on. However, I also argue that this control is subject to important limitations, because other people, outside the state, also have important claims on resource based on their right of subsistence; and there may be occupancy groups within the state that have justified claims to resources or land. Moreover, a self-determination argument justifies a right to *control* resources, but doesn't justify a right to the full stream of benefit that flows from the exploitation of resources. It is compatible therefore with significant taxation in the interests of the global poor when the self-determining group does make the decision to exploit the resources in question.

Another important question that is connected to rights over territory is the right to control the flow of goods and people across borders. Here, the most contentious issue is control over human migration. I argue that states are justified in exercising control over migration, which is connected to their interest in self-determination, but that this interest is limited in various ways, especially when it conflicts with the human rights of the prospective migrants.

The theory also applies to secessionist conflict and territorial conflict over unoccupied areas that don't seem to implicate self-determination at all (and which I argue are really properly conceived of as property disputes), and just war theory, where I examine whether groups have rights to defend their interests in self-determination through the use of force.

In all these cases, I show that the value of self-determination both justifies some control, some rights, but that these rights

ought not to be conceived exactly how the current state order conceives of them. The scope of these rights is defined differently from the current inter-state order. It is justified through a self-determination argument for jurisdictional authority, and the rights are also subject to very important limitations, which are typically given by other, competing rights (which are justified by other pressing human interests).

IV Comparative Justifications

Although territory has, until now, been under-theorized, the book also argues that many of the competing theories of territory—Kantian theories, utilitarian theories, nationalist theories—are problematic in ways that my theory is not. Against nationalist theories, this political account is more inclusive and avoids the problematic categories of cultural nationalism as necessary to the exercise of territorial rights. The principal advantage of my account against statist, functionalist and Kantian theories is that it vests territorial rights directly in the groups that with the requisite political capacity to be self-determining, rather than in the state. This is far more intuitive. The problem with the other accounts is that it seems that people would lose territorial rights—the right to form their own political entity to exercise self-determination—if the state in which they live is a failed state or an unjust state. By contrast, the implication of my account is that external actors may have a third party duty to help the right-holding people create the conditions in which they can be collectively self-governing, *not* that external actors can gain territorial rights by exercising power justly in the territory of an unjust or failed state. Thus, it explains why the defeat of Nazi Germany did not result in the Allied powers exercising territorial rights over the German territory; but led to a situation where an

unjust regime was replaced, but the right to be self-determining over their own territory was still vested in the German people (though not on ethnic or cultural nationalist grounds).

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