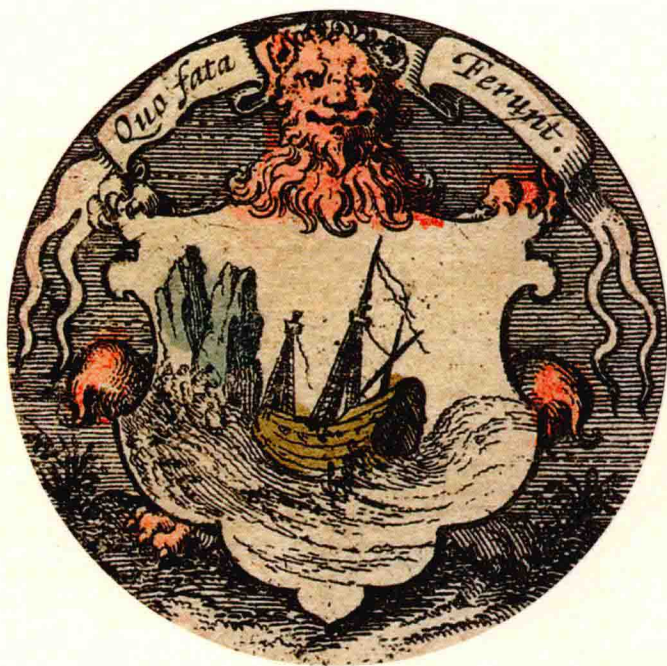


A
POLITICAL
THEORY
OF
TERRITORY



MARGARET MOORE

A Political Theory of Territory

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A Political Theory of Territory

... calm seas, auspicious gales
And sail so expeditious that shall catch
Your royal fleet far off.
—William Shakespeare, *The Tempest*
(also inspired by the founding
of Bermuda) (1610–11)

In modern political thought, the connection between a political
society and its territory is so close that the two notions almost blend.
—Henry Sidgwick, *The Elements of Politics* (1891)

Farewell my Country a Long farewell
My tale of anguish no tongue can tell
For I'm forced to fly o'er the ocean wide
from the home I love by Lough Sheelin side.
—Irish ballad 'The Lough Sheelin Eviction', based on
early nineteenth-century evictions in Ireland

Almost all the governments, which exist at present, or of which there
remains any record in story, have been founded originally, either on
usurpation or conquest, or both.
—David Hume, 'Of the Original Contract' (1742)

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On the whole, I have enjoyed writing this book, although I must confess that I am happy to be finished. I have been interested in territory and political theory for a very long time: indeed, I first argued that territory was seriously under-theorized in a chapter in my volume *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998). Although I recognized the deficiency, I was unable to correct it: I did not at that time have a *theory* about territory.

I began to focus in a more systematic way on issues of territory and territorial rights in political theory when I was first included in 2009 in Chris Bertram's and Cara Nine's wonderful Territory and Justice network. One of the reasons why working on this topic has been rewarding is that it has been a cooperative endeavour in many ways. Indeed, there are some parts of this book where it was very hard to disentangle my own original arguments from the reactions of various people to my arguments and my reactions to these. Much of this was facilitated by their initial network. On more occasions than I can recount, I received emails from my friends, alerting me to recent work on territory or case studies related to it or thoughts on some part of my argument. It was, however, less gratifying when I was asked how my book is coming along (the answer was: slowly).

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Margaret Moore, June 2014

CONTENTS

Acknowledgements ix

1. Why Do We Need a Political Theory of Territory? 1
2. What Is Territory? Conceptual Analysis and Justificatory Burdens 15
3. Foundations of a Theory of Territory: Individual Moral Rights of Residency, Collective Moral Rights of Occupancy, and a People's Rights of Self-Determination 34
4. Non-Statist Theories of Territory 71
5. Functionalist and Statist Theories of Territory 89
6. Heartlands, Contested Areas, Secession, and Boundaries 111
7. Corrective Justice and the Wrongful Taking of Land, Territory, and Property 139
8. Territorial Rights and Natural Resources 162
9. Territorial Rights and Rights to Control Borders and Immigration 188
10. The Right to Territorial Integrity and the Legitimacy of the Use of Force 219
11. Conclusion 241

Bibliography 245

Index 257

Why Do We Need a Political Theory of Territory?

On 10 April 1606, James I of England established by royal charter a joint-stock company, the London Company, for the purpose of establishing colonial settlements in North America and claiming land for the English crown to the exclusion of other European powers. Under this charter, territory was granted to the company from the thirty-fourth parallel north to the forty-first parallel, and included a large portion of Atlantic and inland Canada. Although the land was 'claimed' in the charter, there was an expectation that these claims needed to be consolidated with long-term English settlement and military defence of the settlements. Under the auspices of the London Company, Sir George Somers, an admiral of the company's Third Supply relief fleet, set sail from Plymouth, England, on 2 June 1609, destined for Jamestown, Virginia, carrying 500–600 people, including crew and settlers. On 25 July, the fleet ran into a hurricane and one of the ships eventually ran aground on the rocks just off the shores of an uninhabited island, and the passengers and crew (and a dog) were able to make it to the shores of what we now know as Bermuda. The crew and passengers set to work building a settlement there, including a church and some houses, and this original settlement is now thought to constitute the founding of Bermuda.¹

The assumption that a royal charter accompanied by colonization with an aim to affect control would legitimately 'claim' land for England is now thought to be antiquated, deeply rooted in an imperial mentality that ignored the claims and agency of indigenous people. But what exactly is the appropriate relationship between people and territory? If we no longer accept the basic assumptions underlying the London Company, which founded settlements and claimed land on behalf of the English Crown regardless of the wishes and aspirations of the people living on the land, what theory of territory do we now hold, consonant with democratic values? And what do we think of claims in places like Bermuda, which, at the time that Sir George Somers landed, was

completely uninhabited? Is land that is uninhabited simply 'up for grabs'? Can any state or people settle on such land and claim rights to it?

If the idea of Sir George Somers claiming land in Bermuda seems defensible, that may be because there were no other people in the picture. It was uninhabited; islands are clearly demarcated spaces, surrounded on all sides by water; and there were no other human beings present to make rival claims. It is, however, not at all obvious that the idea of particular peoples having control over, or special entitlement to, particular pieces of land can be justified at all. This is particularly so when we reflect on the image that all of us have internalized, that of a fragile blue planet, hurtling through space, which we share with one another. From this perspective, it seems natural to think not only that we all have an obligation to work together to preserve this blue planet but that we are all equally entitled to its fruits, as Locke initially suggested at the beginning of the *Second Treatise*.² The division of the world into separate territories seems deeply problematic from a normative perspective as cosmopolitan theorists in particular have argued.

Territorial rights seem even more troubling when we reflect on some of their practical implications. Consider the right to control the flow of people and goods across borders, which we normally associate with rights over territory. Keeping people out of territory is deeply, normatively problematic: many people have argued that it violates people's fundamental rights (to freedom of association, freedom of movement) and that it prevents deprived people from improving their situation and so perpetuates poverty. There is a similar concern about resource rights—namely that control over resources within a territory allows rich political communities to 'hog' the resources for themselves. As with immigration, territorial rights over resources seem to privilege people in particular territories (especially rich ones) and keep people from poor geographical zones from participating in and benefitting from these riches. Beyond the question of the appropriate scope of territorial rights (whether this should extend to control over immigration and resources), the very idea of territorial zones may suggest that the world can be neatly divided into homogeneous, sharply bounded communities. State boundaries do not and cannot match the variegated nature of the political communities that they govern; and there are many people who have relationships of various kinds with people across territories, across zones, and seek to deepen them. Perhaps what is needed is not a political theory of territory, but a theory beyond territory, a sketch of a normatively attractive, institutionally feasible de-territorialized world.

I find this vision of a de-territorialized world, a world held in common by all, attractive at some levels, but nevertheless I resist it. In this book, I advance a theory of territory which defends the idea of having rights over territory, and I argue that a philosophical account of territorial rights is necessary to

address many issues facing us today, including: territory that is disputed between states; secessionist conflicts; conflicts over stolen land; unoccupied islands, and frozen lands in the Arctic or territory under the sea; control over resources; control over boundaries; and the right to use force in defence of territory, to name a few.

One might think that defending the idea of rights over territory requires mainly an excavation into the standard operating assumptions of our world. After all, the idea of states having control over, indeed rights to, territory is a standard background assumption, in political science and international relations, and in law. It is also assumed by citizens, whose rights, duties, and entitlements are defined by their territorially organized communities. Despite much academic and popular talk of globalization and de-territorialization,³ we live on a planet that is completely divided into distinct, mutually exclusive territorial units. Indeed, the entire usable landmass is divided into political units; and this process is not yet complete, as states seek to extend their control to the area under the seabed, to the frozen Arctic, and perhaps eventually beyond the Earth. Yet, while the territorial imperative is in full force, and territorial disputes are at the centre of some of the most intractable controversies facing us today, it is also one of the most undertheorized concepts that we rely on. We do not have a clear consensus either about what territory is, or how disputes about territory should be resolved, or the appropriate justice limits of territorial rights.

This is true of work in both international relations and political science more generally, and most normative analysis by political philosophers. Political scientists operating within the general field of international relations typically begin by noting that it is inherent in state sovereignty that it involves political authority over a territory (a geographical domain), and while they theorize extensively the relations between such sovereign units, the territorial dimension of sovereignty is rarely questioned, or theorized. This reflects the general assumption that having rights over territory is part of what it means to be 'sovereign', and sovereignty, especially state sovereignty, is assumed to range across a geographic domain. Indeed, having control over territory, or territorial rights, is often thought in international law (as well as international relations) to be *definitional* of what it is to be a state.⁴ For example, under the 1933 Montevideo Convention on the Rights and Duties of States (Art. 1), 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'.⁵

Territory is also one of the most undertheorized elements in political theory. This is because we often think, unreflectively, that state sovereignty involves control over territory; and this is a natural thought, since there are good reasons (connected to efficiency, solving collective-action problems,

dispute resolution, and realizing equality) why states are territorial entities. However, there is relatively little further normative analysis of the specific issues raised by territorial control or how these territorial rights are interrelated. Consider for example John Rawls's work, which is typical of much political theory, in its focus on the appropriate relations between citizen and state, the limits of state power, and principles of distributive justice, but which fails to address the territorial or geographical domain of 'sovereignty' or the 'state'. In *A Theory of Justice* Rawls begins with the convenient simplifying assumption that the just society is closed: that it is a 'self-sufficient association of persons',⁶ thereby abstracting from the issue of the territory to which 'the just society' is entitled and the relationship of that territory to other territories. Rawls's conception that justice is concerned with the principles that ought to govern the basic institutional structure of the society, which, for simplifying purposes, he conceptualizes as a self-sufficient entity, sparked a considerable debate amongst people interested in global justice. Global-justice theorists disagreed with Rawls about limiting the scope of justice to the state, and pointed out that the global realm is not an arena where simply strictures of morality apply, but rules of justice too,⁷ and they have developed distinct justificatory arguments for this move.⁸ However, little attention was drawn to the fact that Rawls also assumed that justice operated within a *territorially* delimited political community (a state) and the territorial dimension of the state was not addressed in anything like adequate terms. Although of course global-justice theorists tend to be sceptical of statist arguments, they rarely advocate *political* cosmopolitanism, so they also need to address issues of territory and the various justice issues that are thereby raised. Indeed, the dominant view—that state sovereignty necessarily involves control over territory and that whatever justifies the state also justifies the territory of the state—is the basis of virtually all our contemporary thinking about states and their territories.

This dominant view is wrong, in two main ways. First, even if we accept the central claim of the Westphalian order that the modern state must be or should be territorial, it is not clear that this requires the full range of territorial rights that we normally associate with state sovereignty.⁹ In the discussion about international relations and political theory treatments of territory, I was using the term 'territory' as if it were synonymous with the right of jurisdictional authority over a territorial or geographical domain, and while I think that is the most fundamental right, it is too simplistic. Territorial rights are typically assumed to include rights of jurisdiction, rights to control borders, rights to control resources; and it is not at all clear that the justificatory argument for one dimension of territorial right will also apply straightforwardly to other things.

Second, the statist view of territory—where whatever justifies states will necessarily justify the state's territory—is limited in its response to a number of

questions or controversies raised by the claim to territory. It is not obvious how that view can respond to contested territory, as when two states claim rights over the same bit of territory. It is also not clear how the statist view responds to territory claimed but not yet part of a state, such as in the oceans or uninhabited lands. The statist argument is retrospective, in the sense that it justifies the state in exerting authority across a geographical domain but tends to do so once the state has exerted its authority, but not to do so in advance, when there might be rival claims to the same territory. This is another way of saying that this argument doesn't address a fairly fundamental element of any theory of territory, namely, it doesn't have a theory about which group, which right-holder, gets rights to which bits of territory. And if it can't do those two things, it doesn't seem well equipped to answer some of the central questions that arise in political life, connected to the idea of rights over territory. It tells us that states should have control, but doesn't tell us which state should have control nor where it should do so. And it does not explain the principles on which territory is acquired in the first place, nor how we should think about corrective justice in cases that involve territory. Indeed, because it lacks a philosophical and normative account of territory specifically, this statist view ironically ends up endorsing a key element of a realist view of international relations, where might, or in this case actual control, over territory is what justifies it. It does not, in short, sit easily with the liberal democratic norms which animate other aspects of our thinking about the state and its relationship to people.

We need therefore to pay close attention to territory itself. We live in a world of territorial states and treat territorial boundaries and territorial rights as, more or less, sacrosanct, as something that just follows from the idea of a state-governed order. This is problematic, as I noted above, because it fails to address many issues that arise in relation to territory, but also because, at the most fundamental level, it seems that territory could be described as a universal good, to which all people are entitled, and so should not be parcelled out between different states. Many people attuned to justice considerations lament the complete territorial division of the world, adopting instead the attractive view from space of a single blue planet, to which we all have equal entitlements and equal responsibilities. The idea of territory, and of distinct territories, requires a *defence*.

1.1. The General Approach of this Book

My theory of territory rests on two fundamental insights. The first is that there are morally important particular relations among people, which can generate moral reasons and obligations, in addition to the general duties that we owe

to people as such. It is morally important—both important to individuals and morally valuable in an objective sense—that individuals have control over the collective conditions of their lives, and control in the relationships that give meaning to their lives, including their relationships with each other and with place. This book explains the importance of jurisdictional authority and other kinds of control that people aspire to over the world that they share with others through appeal to the value of collective self-determination.

Second, I argue that an intuitively plausible, attractive account of justice in territory has to acknowledge that there are important, normatively significant relationships between peoples and places. I argue that an important point of departure for theorizing about land and justice is the idea that land is both a universal good and a highly particular good. Land is a universal good, in the sense that everyone has an interest in the benefits that having it brings, and this general interest is important to grounding rights to it. People have an interest in land as a place to graze cattle, grow crops, and build factories. The interest that people have in land, however, is also highly particularized—people have an interest in particular territories, geographical locations, and property—and the particularized aspect of the good makes rights to land especially problematic. This may be true even of the banana-farming peasant who, in some sense, is treating land as a commodity similar to a large land-owning multinational corporation that produces bananas for export. However, that peasant farmer may also have an attachment to his particular plot of land, which he inherited from his father and which could not be matched by another (perhaps equally fertile) patch of land somewhere else in the world. This is typically true of gardeners who labour on their creations, and of burial sites where people pay respect to their ancestors. The particularistic aspect of the good explains why territorial rights cannot be theorized in exactly the same way as those human rights that are based on general and substitutable interests, such as a right to food or a right to shelter.

These two insights, taken together, lead me to reject the dominant ways of thinking about territory: territory as an artefact of state control; territory as property; territory as a distributable good. I do not think of territory as like property, to which either individuals or the state have an ownership relationship, as I will explain in the next chapter. There are different problems with the two different (individual and collective) property theories, as I will explain, but the central problem that infects both versions of the conception of territory as property is that it fails to capture the non-instrumental relationship of individuals and groups to land and the kinds of entitlements that develop from there.

I also reject the view of territory as an artefact of states. This is the dominant view, which I complained above fails to explain many things that we expect a