7 The Materiality of Territory

NISHIN NATHWANI

1 The Resurgence of Territory

A couple of decades into the new millennium, despite much discussion of deterritorialization,[1] we cannot help but to pause in humility at the remarkable persistence – and even resurgence – of territory as an organizing principle of the global *res publica*. Scholars have recently drawn attention to the myriad forms of reterritorialization that have enabled new exertions of sovereign power beyond traditional jurisdictional boundaries.[2] As territory's durability as a form of political organization comes into sharper focus, we find ourselves faced with the important task of trying to grasp what territory has become – and, perhaps more fundamentally, what it meant in the first place.

The essential ambiguity around the concept of territory has recently spurred a series of renewed attempts in political theory to clarify what exactly territory and territorial sovereignty are. These debates revolve around a series of key historical, analytic, and normative questions. First, what is territory in relation to other similar concepts – for instance, terrain, space, place, jurisdiction, and sovereignty – and how has its meaning transformed over time?[3] Second, what bundle of rights ought to be attached to the legitimate occupation of territory – for example, property rights, jurisdictional rights, resource rights, and/or border control rights? Put differently, what rights does territorial sovereignty entail? Third, who is the legitimate holder of territorial rights?

In this chapter, I ask: How do we understand the materiality of territory? I begin with the premise that territory, across its many valences,

[1] As examples of this deterritorialization literature in legal studies, see Berman (2018) and Brölmann (2007). For an excellent critique of the concept of deterritorialization, see Elden (2005).

[2] See, e.g., Benhabib (2020) and Hirschl and Shachar (2019).

[3] This is a debate that straddles both political theory and political geography. See, e.g., Elden (2010, 2013a, 2013b) and Painter (2010). For an extended discussion of these themes see Nathwani (2024).

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is a concept that assumes a particular relationship between human beings and the land, water, and air that they occupy for the pursuit of their ends – what I call *natural space*. This relationship, I contend, is built on a certain *ontology of natural space*, or, in other words, a particular conception, whether explicit or implicit, of the kind of thing that natural space is such that it can (or cannot) be leveraged in particular ways for human ends. By extension, I argue that every theory of territorial sovereignty is also necessarily a theory of the kind of thing that natural space is such that it can be legitimately appropriated, held, administered, and enclosed in certain ways by human beings.

Territory, in other words, is first and foremost land, water, and air reconfigured for the exercise of sovereign ends; and a certain conception of the ontic qualities of land, water, and air is presumed in any attempt to imagine them as the spatial domain of sovereignty.

2 Dominium and Imperium

There are two distinct senses in which modern sovereignty might be understood as territorial, both of which stem from the distinction in ancient Roman law between *dominium* and *imperium* – that is, for my purposes, respectively, the right of a sovereign to exercise powers on a territory itself (including the right to dispose of that territory) and the power of a sovereign over persons and moral entities within a jurisdictional domain that is territorially defined.[4] In tracing out an ideal-typical distinction between *dominium* and *imperium* from Roman law, part of my goal is to highlight how these two distinct modes of grasping territory – either as the property of the sovereign community or as the site of sovereign authority – offer differing accounts of the prerogative of territorially sovereign communities to exclude certain types of human "others" in modern liberal thought.

Understood as a function of dominium, territorial sovereignty is constructed to entail the prerogative to exclude nonmembers from territorial access as a natural extension of a prior original right to take exclusive control of land, water, and air in the absence of civil association – that is, the natural right to original appropriation in a "'state of nature." Drawing on Immanuel Kant and John Locke, I demonstrate

[4] For an extended discussion of this distinction, see, e.g., Gaudemet (1995).

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that from a dominium-based perspective, territorial sovereignty entails the right to exclude because it is positioned as a logical culmination of prototypical forms of precivil private property association that are predicated on the exclusive appropriation of natural objects, including land, water, and air. Territorial sovereignty may be irreducible to private property ownership; but from the dominium-based viewpoint, its core features, including the right to exclude, are distinctly propertarian in logic and scope.

In contrast, grasped as a function of imperium, territorial right does not *eo ipso* entail a *claim* right to exclude "others" from territorial access – only a *liberty* right to do so as an extension of material, sovereign power. Through a reading of Thomas Hobbes, I highlight that in dissociating the emergence of sovereign authority from a supposed original right to appropriate natural space, the imperium-based view of territorial sovereignty denaturalizes the right to exclude persons from territory. While a purely imperium-based conception of territorial sovereignty offers a dearth of resources to imagine territorial justice, its denaturalizing turn recasts the right to exclude as a tactical question of sovereign power rather than as a logical or ethical consequence of a sovereign community's supposed natural right to appropriate land, water, and air.

I center my analysis of the early modern liberal uptake of the dominium-imperium distinction on the thought of Immanuel Kant, John Locke, and Thomas Hobbes largely because their foundational accounts continue to animate contemporary debates in liberalism on the nature and scope of territorial right. The "closed society" that serves as the starting point for Rawlsian political liberalism, for instance – which Rawls himself recognizes as a "considerable abstraction" (Rawls, 1993: 12) – finds it archetypical form in Kant's and Locke's earlier idealization of a world in which the emergence of political authority is intricately tied to a vision of natural space as readily available for appropriation, transformation, and enclosure for humanity's sociopolitical ends. Michael Walzer's seminal liberal account of distributive justice – which centers a right to territorial integrity as a core principle – similarly draws on a Kantian and Lockean paradigm in "presupposing a bounded world within which distributions take place" (Walzer, 1983: 31). We find parallel contemporary imaginaries of natural space underpinning the justice claims of a diverse array of contemporary accounts of what Seyla Benhabib has called "liberal nationalist" and "liberal international" theories of state sovereignty (Benhabib, 2020).

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In this context, juxtaposing dominium and imperium as ideal-typical alternative viewpoints on territorial sovereignty serves as a theoretical strategy to remind us that the moral-ethical dilemma of inclusion in a bordered world is profoundly imbricated with the ecological-ontological question of how we imagine our collective selves to be coconstituted with the natural space around us. The cosmopolitan call to recognize various types of interdependence across territorial borders – as much as its liberal nationalist and internationalist alternatives that bolster, to varying degrees, the sovereign right to exclude – are intimately tied to particular ways of grasping the nature of land, water, and air and the prerogatives that stem from our interaction with them.

3 Origins in Roman Law

In ancient Roman law, the concepts of dominium and imperium do not originally point to a distinction between two aspects of sovereign power or territoriality.[5] Rather, the distinction refers to the difference in how a given right attaches to a right-holder in public versus private law.

Dominium is the Roman private law conception of an absolute right held by a unified legal person (*dominus*) to do with a tangible object (*res corporealis*) as one pleases, including the right to possess, modify, transfer, or destroy it, as well as to exclude others from accessing it.[6] Such possession requires the right acquisition of such an object either by civil means (*acquisitio ex jure civili*), such as by trade or agreement, or by natural means in the case where no civil mode of acquisition has been defined for a given object (*acquisitio ex jure gentium*).[7] Importantly, to have dominium over territory does not, in its Roman sense, mean to have legal and political sovereignty over that territory, but rather to possess a claim right to hold, use, and transform a segment of territory as private property within the parameters defined by law.

[5] In discussing various Roman legal terms and concepts in this section, I have relied heavily for definitions on the classic nineteenth century historical-philosophical encyclopedia, Smith (1859).

[6] See, e.g., Smith (1859: 421) and Birks (1985: 1). Dominium is distinct from a more basic form of property ownership (*proprietas*) which requires respecting the rights of certain non-owners to the fruit (*fructus*) produced by an object by its own productive power (*usufructus*, or usufructory rights) – for instance, the right to consume edible plants produced by the land.

[7] See, e.g., Smith (1859: 422).

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Imperium, by contrast, emerges in Roman public law as the supreme power in political, legal, and military matters in a given domain.[8] Put differently, imperium is the power to authorize and structure legal and political relations, including the power to authorize and regulate private property relations – a power closer to what we typically identify with sovereignty as jurisdictional authority (*iurisdictio*). For my purposes here, it is important to note that in both its Roman origins and in its early modern uptake, imperium is first and foremost a right to rule or command a group of people rather than a right to control territory.

Considering sovereignty from the dual perspective of dominium and imperium presents a subtle but important tension. On the one hand, dominium's conceptual origins lie in the natural acquisition of objects by individuals prior to civil agreement. As such, as a matter of *fact* – that is, in the context of its facticity as human object acquisition and possession apart from civil society – dominium is conceptually prior to imperium. However, as a claim held against others, dominium always presupposes a community of corollary duty-bearers bound together by a common legal authority. In this sense, as a matter of civil *right*, dominium is emergent from and conditional on the power of imperium to legally define private property rights.

The tension, then, can be restated as follows: depending on whether we emphasize the natural facticity or the civil right of territorial acquisition, dominium and imperium appear differently preponderant as elements of sovereign power. I refer to this as the *fact-right discrepancy* in the constitution of sovereignty. For my purposes here, this discrepancy is important because it suggests the groundwork for two diverging theoretical accounts of territorial sovereignty – what I call the dominium-centered and imperium-centered accounts.

4 The Dominium-Centered Conception

The first account of territorial sovereignty suggested by the fact-right discrepancy discussed here is the one advanced by John Locke and Immanuel Kant, among other early modern natural law theorists: namely, that imperium emerges from, or is justified by, the imperative to secure private dominium. In its emphasis on the facticity of the precivil use of

[8] See, e.g., Smith (1859: 629).

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natural space as the basis of territorial sovereignty, this view situates secure private property relations as the basis of sovereign legitimacy.[9]

At the root of John Locke's version of the dominium-centered position is a blurring of the distinction between human bodies and the bodies of nonhuman objects with which humans interact through productive labor. According to Locke, in the state of nature, because everyone has "*property* in his own person," and because the "*labour* of his body and the *work* of his hands […] are [thus] properly his," mixing one's labor with various natural objects in the commons, including land, "joins" and "annexes" those objects to one's own body (Locke, 1980: 19). Locke describes the product of this ontological incorporation of the object of labor into one's own body as "property."

Because of this extended conception of the corporeal self, Locke contends that the prudential concerns for self-preservation that propel human beings into the civil condition via natural reason necessarily entail the pursuit of protections for property, which he defines as "life, liberty, and estate" (Locke, 1980: 46). As such, securing private property rights serves as the impetus, justification, and basis of legitimacy for the creation and exercise of common sovereign power in Locke's commonwealth.

Immanuel Kant, on the other hand, rejects Locke's account of the emergence of private property in the state of nature because he understands private property principally as a relationship between persons rather than as a relationship between persons and objects.[10] As such, Kant denies the ability of individual human labor to unilaterally transform a natural object into private property in the absence of a formal civil association that could establish reciprocal property relations between persons.[11]

[9] Contemporary versions of the dominium-based view of sovereignty have been advanced in Nine (2012), Meisels (2009), Miller (2012, 2016), Ypi (2014), Stilz (2019), and Moore (2015), among others.

[10] See, e.g., Kant (1991: 82–83). For an illuminating discussion on this theme, see also chapter 4, "Private Right II: Property," in Ripstein (2009: 89–106).

[11] See, for instance, the discussion of enclosure in Kant (1991: 88–89). Kant writes: "The first working, enclosing, or, in general, *transforming* of a piece of land can furnish no title of acquisition to it; that is, possession of an accident can provide no basis for rightful possession of the substance. What is mine or yours must instead be derived from ownership of the substance in accordance with this rule (*accessorium sequitur suum principale*), and whoever expends his labor on land that was not already his has lost his pains and toil to who was first."

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Despite his conventionalism with regard to rights, Kant nonetheless ties the emergence of civil society to the impetus to secure private property relations. For Kant, like Locke, practical reason discloses that all humans are originally in "common possession of the land of the entire earth (*commodio fundi originaria*)," and moreover, that "each has by nature the *will* to use it" (Kant, 1991: 87). At the same time, Kant argues that in the state of nature, "the choice of one is unavoidably opposed by nature to that of another" (Kant, 1991: 87) insofar as appropriating objects in the exercise of one's private freedom removes those objects from common possession. Every act of free, original appropriation of an external, usable object, though entirely justified as private Right, thus violates public Right – that is, the equal freedom of others.

Kant, however, discerns a way out of the injustice of precivil object possession in the rational structure of original appropriation. In acquiring external objects in the state of nature and privately willing that they are "mine," each appropriative act presupposes a situation there is a law "to determine for each what [...] is mine or yours in accordance with the axiom of outer freedom" (Kant, 1991: 87–88). That is to say, the will to "mineness" in every act of original appropriation, while only *provisionally* rightful in the absence of a common agreement on the division of "mine" and "yours," implies the possibility of "*conclusive* acquisition" in accordance with public Right – that is, stable, mutual private property rights (Kant, 1991: 85–87, emphasis in original).

Accordingly, for Kant, practical reason discloses a universal moral duty in the structure of precivil original appropriation – namely, to generate a civil condition in which laws enabling "conclusive acquisition" rights can be established to secure the preconditions for equal freedom. For Kant and Locke alike, territorial rights are principally justified by their ability to secure rightful private property relations between individuals. For Lockeans, this structure of justification is *retrospective* – that is to say, territorial rights are justified because they follow from the prior natural right to private property – while for Kantians, the justification is *prospective* – that is to say, territorial rights are justified because (and to the extent that) they generate rightful individual private property relations. But for both, the pursuit of secure private property relations is the principal explanans for the emergence and exercise of legitimate sovereign power.

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At the core of both approaches is the elision of jurisdictional authority over persons and direct control of natural space – that is, a justification for the exclusive attachment of particular human communities to particular segments of natural space. This includes the right to exclude "others" from territorial access in a way that parallels the right of exclusion in private property ownership. In affirming the propertarian foundations of territorial sovereignty, the Lockean and Kantian views bolster an understanding of territory that is more than simply the *personal* jurisdiction of sovereign authority. Instead, territoriality comes to denote jurisdiction directly over the physical spaces that persons occupy.

Each of these strategies justifies extensions of personal jurisdiction to jurisdiction over physical territory itself either by recognizing human personhood as already coextensive with nonhuman personal property (like Locke) or by grasping all natural objects as already situated in provisional human property relations (like Kant). In different ways, the Kantian and Lockean strategies each rely on an idea of individual personhood – and human relations – that is inseparably enmeshed with property-like control over natural space.

5 The Imperium-Centered Conception

The second account of territorial sovereignty implied by the fact-right discrepancy I have outlined is the reverse of the first: namely, that rights of dominium emerge from imperium and remain subordinate to it in the exercise of territorial sovereignty. In centering the dependence of all property claim rights on a common sovereign power to delineate, judge, and enforce them, this view emphasizes the contingency of a propertarian conception of territory. This account is most notably embraced by Thomas Hobbes.

In parallel to the Kantian account, the Hobbesian view holds that no private property prior to the establishment of sovereign power would at all be conceivable given that private property is never simply a relationship between a person and an object, but always first and foremost a legal relationship between persons – namely, a claim right held against others. For Hobbes, "the introduction of *propriety* is an effect of the sovereign […], it is the act only of the sovereign; and consisteth in the laws, which none can make that have not the sovereign power" (Hobbes, 1998: 164, emphasis in original).

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On first glance, Hobbes' contention that private property is impossible in the precivil condition seems analogous to Kant's later critique of Locke; however, a closer analysis suggests otherwise. Recall that for Kant, it is only because practical reason discloses the "propertarian potential" of natural objects in the precivil condition that individuals can ultimately discern the justice imperative to establish civil society. In his words, "if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of Right with regard to them and therefore no command to leave the state of nature" (Kant, 1991: 124).[12] Unlike Hobbes, Kant's construction of the problematic implies that it is not the absence of a concept of private property as such, but rather the absence of the legal and political preconditions of private property relations in the state of nature that ultimately generates a justice imperative to establish the sovereign state.

In Hobbes' reasoning, however, the very concept of private property, like the concepts of justice and injustice, could not be derived via natural reason alone prior to the creation of a commonwealth, for the simple reason that human beings would lack the key sociostructural precondition for this kind of shared normative thinking about objects – namely, a common sovereign authority to define human relations in propertarian terms. Hobbes writes, "before the names of just, and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, […] and to make good that propriety, which by mutual contract men acquire, in recompense of the universal right they abandon: and such power there is none before the erection of a commonwealth" (Hobbes, 1998: 95–96). For Hobbes, the passions that drive human beings, via natural reason, to establish a common legal-political authority are oriented strictly around securing a "common peace and safety" (Hobbes, 1998: 165) for the purposes of individual self-preservation, not for the higher moral goal of justice. In this context, the formalization of private property relations emerges post hoc as one possible sovereign strategy to secure the peace, but cannot be collapsed into the very drive to establish sovereign power itself.

[12] On this point, note also Kant's (1991: 124) assertion that if "no acquisition were recognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible" (Kant, 1991: 124).

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Rather, the structure of Hobbes' account opens the possibility that a sovereign might legitimately pursue a plurality of nonpropertarian strategies to enable subjects to escape death, pursue commodious living, and achieve industriousness.[13] From a strong Hobbesian perspective, then, to the degree that Kant claims that there is a rationally discernible moral duty to transfigure acquired objects into private property, Kant's view ironically presupposes a Lockean, propertarian ontology of natural acquisition even as he denies that private property can exist prior to civil society. For Hobbes, private property is a purely tactical artifact of political power; it is a specific and contingent technology of the power of imperium.

To be clear, the Hobbesian position does not contest the assertion in Roman law that individuals possess a natural right of object acquisition prior to civil property relations (*acquisition rerum singularum ex jure gentium*). Rather, the Hobbesian account emphasizes the categorical difference between this kind of natural right – that is, a *liberty* right to object acquisition, ascertainable through natural reason alone, that cannot be held against others – and a civil right – that is, a *claim* right that generates reciprocal duties for others in a defined community of rights-holders (whether negative duties not to interfere or positive duties to assist). The liberty right to object acquisition does not presuppose or teleologically point to the claim right to property; nor does this liberty right generate any imperative toward civil private property relations.

This has two main consequences for my purposes. First, it means that the Hobbesian conception of territorial sovereignty relies on a purely imperium-based conception of sovereign power over persons. From a Hobbesian point of view, when we refer to modern sovereignty as "territorial" sovereignty, we are simply referring to the geospecificity of the sovereign community of civil rights-holders (i.e., persons in a given territorial area) – not to a prior sovereign dominium (or protodominium) concealed in the idea of sovereignty itself.

Second, this means that no sovereign has a legitimate claim to the exclusive stewardship, ownership, or trusteeship of a given segment

[13] This refers to the three passions that Hobbes (1998: 86) identifies that incline human beings in the state of nature toward peace: "fear of death; desire of such things as are necessary to commodious living; and a hope by their industry to obtain them."

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of territory that would trump competing claims of other contending sovereigns to that same territory – even if, for instance, that sovereign represents a people group with especially compelling historical, ethical, or environmental reasons for occupying that territory. Because the notion of private property as a right held against others emerges *within* a particular instantiation of territorially sovereign power, there is no automatic right stemming from precivil object use – or from any object use within the commonwealth – that would generate negative duties *between* sovereign communities to respect one another's territorial claims. While the notion of property within a given territory is thus justifiable within a Hobbesian world, the notion of sovereign territory itself as property (i.e., as a title held against other sovereign communities) finds no basis in Hobbes' imperium-centered view. This also means that the right of territorial exclusion is only a liberty right within a given Hobbesian polity; it does not bind "others," including noncitizens, migrants, refugees, or others who seek territorial access.

6 A Propertarian Ontology of Territory

I have argued that the dominium-centered view of territorial sovereignty depends on an idea of individual personhood – and human relations – that is inseparably enmeshed with property-like control over natural space. The question now arises: What underpins this propertarian conception of human personhood and relations? Or, put differently, what does the dominium-centered view assume about natural space to imagine that it can be so readily attached to human corporeality or leveraged to secure rightful relations between persons? A rereading of Locke's and Kant's accounts of original appropriation suggests that the dominium-centered view achieves this basic attachment – that is, of humans to natural space as such – by attributing three basic qualities to natural space: divisibility, tameability, and ownness. I refer to the view of land, water, and air projected by these three attributes as a *propertarian ontology of natural space*.

The first attribute of this ontology, *divisibility*, specifies the quality by which natural space is imagined to be separable in such a way that a given segment can be held and transformed without consequence for the integrity of the larger natural systems in which it is embedded and the myriad forms of life that they sustain. Divisibility does not require that an object be physically separable in a literal sense. Rather, some

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bodies of natural space that are not physically separable might still be imagined to be juridically separable, such as hedges shared across property lines and water bodies intersected by state borders.

As an instance of the logic of divisibility, consider Locke's argument about the limits of original appropriation. Recall that for Locke, the first appropriation of any natural object, including "any parcel of *land*," is constrained by two provisos: first, that individuals may appropriate to the extent that there is "still enough, and as good left" for others; and second, that appropriation is limited to "as much as any one can make use of to any advantage of life before it spoils" (Locke, 1980: 20–21). To exemplify the point, Locke writes that drinking plentifully from a river "does as good as take nothing at all" because no one could plausibly "think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same" (Locke, 1980: 21). In short, we can justify the original appropriation of natural objects *because* there are reasonable limits to leave intact a remainder for others to enjoy; these limits separate legitimate original appropriation from personal injury.

For Locke, then, land and water are implicitly imagined as divisible into component parts, such that for any given "part-type" – water in a river, in his example – the salient distributive concerns are: (1) how much is taken vis-à-vis how much is left, and (2) how much is consumed or used vis-à-vis how much is spoiled or wasted. At the core of this assessment is a ratio-centered model of legitimizing natural acquisition premised on levelling natural space into a series of equivalent units for quantitative comparison. I am entitled to extract water from a river for my ends because there is "enough" left for other humans; but I am only able to determine that there is enough left for others because I already imagine water as something which can be segmented into identical units and placed in a ratio with a "whole" for quantitative balancing.

Divisibility is closely tied to *tameability*, by which I mean the quality by which natural space is understood to be (re)producible by human beings as divisible, even where it is found to be otherwise. Kant's discussion of original acquisition, for instance, relies on the tameability of natural space as a strategy to legitimize its attachment to human beings, albeit more subtly than Locke's explicitly quantitative

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approach. Kant argues that from the original position of common possession of earth, the only condition under which individuals could privately appropriate land in conformity with "the law of everyone's outer freedom" is "that of *priority* in time, that is, only insofar as it is the *first* taking possession (*prior apprehensio*)" (Kant, 1991: 84). Kant then asks: To what extent is such unilateral, first acquisition of land justified? His answer: "As far as the capacity for controlling it extends, that is, as far as whoever wants to appropriate it can defend it – as if the land were to say, if you cannot protect me, you cannot command me" (Kant, 1991: 85).

He applies the same logic to water, arguing that, for instance, rivers can be originally appropriated by someone "who is in possession of both banks" in the same manner that "he can acquire any dry land" – that is, by taking control (Kant, 1991: 90). On the other hand, for the same reason, the sea can only be appropriated "as far as cannon reach from the shore" – that is, up to the limit that one has the "mechanical ability" to "secure [one's] land against encroachment by others" (Kant, 1991: 89). Up to this limit, the sea is closed (*mare clausum*) and subject to legitimate appropriation by whomever is first able to control it; beyond this limit, the sea is free (*mare liberum*), since it is "not possible to *reside* on the high seas themselves" (Kant, 1991: 6, 269).[14] Regarding shifting or other fluid natural objects, Kant argues that anything that becomes inseparably connected with one's land, such as "a change in riverbed adjoining my land and the resulting extension of my land," is also (provisionally) rightfully one's own (Kant, 1991: 89).

Unlike Locke, Kant does not admit any intrinsic quantitative limits on natural bodies that would suggest a ratio through which a segment of land or water could be put in relation to a "whole" to define restrictions on appropriation. Rather, divisibility in Kant's account emerges as a function of the basic tameability of land and water – that is, in the assumption that they can be continually segmented and thus possessed through human acts of 'taking control' (*occupatio*), even when they are in perpetual motion. Limits on original appropriation in Kant's account are tied to limitations in the mechanical ability of humans to assert control and defend their "provisionally rightful" possessions, rather than to anything ontically distinct about land and

[14] See also Mann's discussion in Chapter 8.

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water (for instance, their embeddedness in ecosystems, their finitude, or their movement).

To some degree, Kant's account recognizes the dynamic quality of natural space to exceed lines of appropriation – for instance, in his claim about shifting riverbeds. But the assumption here is that any "borders of control," so to speak, can be continually reasserted as unruly natural objects (such as shifting riverbeds in borderlands) attach to what Kant calls a "substance," such as land, and as human capacities evolve. In this context, tameability emerges as the assumption that possessive boundaries can be continually reestablished on land and water via acts of human control, as though such acts effectively extricate those segments from the larger natural systems in which they are embedded.

Kant's and Locke's accounts also rely on the assumption of *ownness* – namely, the metaphysical-theological quality by which natural space is understood to exist above all to support human ends. To be clear, by ownness, I do not mean the mere instrumentalization or appropriation of land, water, or air, but rather the presumption that the object's principal *raison d'être* is to serve human ends. One can appropriate without the assumption of ownness, for instance, if one does not presume that one is entitled to such appropriation, or if one grants that such appropriation is not legitimized by that object-type being intrinsically "for-me" in its existence.

Locke, of course, is very explicit about his theological commitment to ownness. He famously rationalizes his argument for the natural right to property by invoking the biblical claim that God "gave the world in common to mankind" and by his reason "commanded him [mankind] to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it which was his own, his labour" (Locke, 1980: 21). But even Locke's alternative argument for property rights – that is, his argument by natural reason instead of revelation – is rooted in the assumption of ownness. In asserting that humans are born with a "right to their preservation, and consequently to meat and drink, and other such things as nature affords for this subsistence" (Locke, 1980: 18), Locke assumes, without further justification, that humanity's innate right to self-preservation *ipso facto* justifies the instrumentalization of all nonhuman nature toward that end.

Kant's commitment to ownness, while less overtly theological, is still a key element of his justification of the original acquisition of

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land. Against a Lockean conception of a "right to a thing," which Kant sees as "personifying [nonhuman] things" as though rights can be held "*directly against* them," Kant instead frames object rights as held "against every other possessor of a thing" (Kant, 1991: 89) – that is, a relationship of exclusion held only against other human beings. While Kant would thus accuse Locke of anthropomorphizing labored land and water in postulating a precivil right to property, his own solution entails the total deadening of nonhuman nature such that other human beings' equal freedom remains the only salient limitation to the original appropriation of natural space.

These three core assumptions – divisibility, tameability, and ownness – emerge differently as legitimizing logics in Kant's and Locke's accounts of original appropriation. What is important here is simply to highlight that there *is* a distinctive imagination of natural space embedded in these dominium-centered views of territorial sovereignty, and that this imagination performs a critical conceptual function in rationalizing the original fixed attachment of human beings to territory. Without divisibility, there could be no distinctions between "mine" and "yours," whether in provisional or complete form; without tameability, the boundaries of possessed segments of natural space could not be defined and fixed; and without ownness, there could be no special entitlement to original appropriation by human beings, regardless of their status as first occupiers of a given area or as laborers who add value to land. By extension, the core sovereign prerogative of exclusive territorial right, and the supposed right to exclude "others" from territorial access, would be largely illegible.

7 The Materiality of Imperium

What, then, is the ontology of natural space that underpins territorial sovereignty? I have maintained throughout this chapter that the answer to this question depends on whether we adopt a dominium-centered or imperium-centered view of territorial sovereignty. If we imagine territorial right principally as the culmination of a natural right to property or as a means to establish rightful property relations, then I have argued that territorial right is predicated by a propertarian ontology of natural space as divisible, tameable, and ownable. This ontology animates the property-like attachment of particular human

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communities to particular segments of natural space, including their right to exclude noncitizen "others" from access.

If, on the other hand, we view territorial right strictly as the right of jurisdiction over persons in a given geographical area, then the answer is less readily apparent. Instead, we must ask: How does such jurisdictional authority materialize, and what does such materialization assume about the relationship between natural space and human ends?

On the one hand, Hobbes' radical separation of jurisdictional authority from a natural right to territory enables him to imagine the possibility of a personal-jurisdictional commonwealth without a territory – for instance, the "Children of Israel" before "they were masters of the Land of Promise," whom Hobbes identifies as "a commonwealth in the wilderness" (Hobbes, 1998: 164). But for the very same reason, Hobbes' imperium-based view offers little to imagine territorial justice or limits on modifying or destroying natural space. While a purely imperium-centered view of territorial sovereignty avoids a propertarian ontology of land, water, and air, it does so by entirely circumventing the question of how to legitimize human action on natural space in the first place.

At another level, the "fact-right discrepancy" that I have outlined also provides a lens into what scholars have called "deterritorialization" – that is, the decoupling of sovereign power from its exercise within traditional territorial boundaries. Rather than grasping extraterritorial exercises of state power as part of an ongoing erosion of an earlier, Westphalian form of territorial sovereignty, my account here suggests that the "deterritorializing push" is an impulse that emerges from a disjunction at very core of the idea of territorial sovereignty. While the dominium-based perspective grasps territorial sovereignty as a form of sovereign power supervenient on rightful territorial control or possession, from an imperium-based viewpoint, territorial sovereignty instead appears as a form of sovereign jurisdiction over persons that is unchained by a given territorial claim right. As imperium, territorial jurisdiction materializes in the shifting geophysical spaces that persons occupy – whether within or beyond traditional territorial borders.

What emerges from this account, then, is a notion of sovereign jurisdiction that exceeds its own juridical formalism in its constant materialization as power in physical space. As Abizadeh (2016) argues in his interpretation of Hobbes' *Leviathan*, because persons are always physically located, territoriality emerges in the exercise of personal

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jurisdiction as the apparatuses of the state materialize to advance sovereign ends.[15] To be sure, a seemingly fixed territory – even one with defined borders – might emerge as a practical compromise to concentrate the resources of a sovereign power geographically. But importantly, from a Hobbesian, imperium-based vantage point, territory remains a contingent technology of power rather than a constraint on the exercise of legitimate sovereign authority. From an imperium-based standpoint, the de facto jurisdiction that states exercise extraterritorially, such as in apprehending vessels suspected of transporting contravened substances in international waters, is squarely legible as a function of territorial sovereignty.

Of course, the looming question remains: Is the propertarian conception of natural space *justifiable*? Are land, water, and air actually the kinds of corporealities that can be divided, tamed, and owned in the way presupposed by the dominium-centered view? Moreover, for imperium-based notions of territory, can natural space be limitlessly leveraged to sustain the sociopolitical ends of human beings? It is clear that rematerializing territory raises crucial new questions and problematics about how we imagine the limits and futures of territorial sovereignty – questions that I hope will foster new dialogues between political theorists, legal scholars, and environmental scientists and practitioners.

[15] See Abizadeh (2016: 418) for a detailed interpretation of how Hobbes' account of jurisdictional authority is delinked from "a fixed territory" and "any intrinsically sedentary notion of statehood."

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