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## Review

# A political theory of territory

Margaret Moore

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Margaret Moore's book *A Political Theory of Territory* is an important contribution to our normative thinking about territorial jurisdiction, territorial boundaries, and the relation of land and place to individual autonomy, as well as collective self-determination. Moore covers an impressively comprehensive range of issues by reference to the foundational idea that territorial rights serve the interests political 'peoples' have in collective self-determination. The book unfolds with two opening chapters devoted to a conceptual analysis of territory and territorial rights, moving on to elaborate Moore's own normative account of jurisdictional authority over territory and to present her objections to the two main rival accounts, namely liberal nationalist accounts that identify cultural nations as territorial right holders, and what she calls 'statist' or 'functionalist' accounts that condition territorial rights on the right holder serving important values such as justice and stability. The final chapters of the book apply Moore's collective self-determination account of territory to problems of boundary-drawing, secession, correcting historic territorial injustices, rights over natural resources, rights to control immigration and rights of territorial defense.

A political theory of territory must answer two broad questions: the question of what territory *is*, or what territorial rights *involve*; and the question of the *conditions under which* some agent has territorial rights. In answer to the former question, Moore accepts the jurisdictional domain view: in essence, what it amounts to for a state to have territorial rights over a particular geographical area is that that state has legitimate 'jurisdictional authority' – the justified 'power to make and enforce laws' – within that area (p. 26). In doing so, Moore rejects a patrimonial understanding of territory as a kind of property that she associates with an 'older, feudal order' (p. 26), in favor of the modern understanding of legitimate political authority as rooted in 'popular sovereignty' and the conviction that 'government ought to be in the interests of, and authorized by, the people who are governed by' (p. 27).

In answer to the latter question, Moore argues that what she calls a 'people' *P* are justified in constituting themselves as an independent state to collectively make and



enforce laws over some geographical area *G* if two conditions are met: first, in virtue of their projects and relationships that are tied to residence within *G*, the individual members of *P* have a moral right to secure residence in *G* (pp. 37–39); second, in virtue of a group identity, history and way of life that is bound up with settling in and controlling what goes on within *G*, *P* has a group-level moral right to settle in and exercise control over the human activities that unfold within *G* (pp. 40–44). Against liberal nationalist accounts of territorial rights, Moore rejects the notion that a ‘people’ is a group whose unity is founded on a shared culture. Instead, for Moore peoplehood is an essentially *political* idea. For a group to count as a ‘people’, its members must meet three conditions: first, they have a shared political identity; second, they share a history of political cooperation; third, they are jointly capable of establishing and maintaining institutions that can make and implement collective decisions (p. 50).

Moore is quite right to understand the idea of territory in terms of establishing a geographical domain over which a particular legal and political system is to enjoy exclusive sway; she is also right to condition the legitimate exercise of political power on that power serving the interests of, and being authorized by, those persons over whom it is exercised. However, I worry that her account of the conditions under which a particular agent – for her, a politically defined ‘people’ – legitimately holds territorial rights is insufficiently attentive to the significance for political legitimacy of respecting and protecting individual rights and other minimal requirements of justice. In addition, I want to suggest that, contrary to Moore’s claims, theories that give a much more diminished role to pre-institutional political identities and to collective self-determination are able to solve problems of boundary drawing as well as her theory can.

Consider first Moore’s resistance to justice-based conditions on holding territorial rights. If, as Moore accepts, the basic territorial right is the right to exercise political power over a particular geographical jurisdiction, then that right should be assigned only to states whose basic institutions satisfy the conditions for legitimately exercising political power. According to liberal conceptions of political legitimacy, governments and political institutions more generally must serve those persons who fall under their jurisdiction, not only taken as a group but also *as individuals*. Specifically, for the exercise of coercive political power over free and equal moral persons to be justified, that power must not violate and indeed must protect the individual rights of those subject to it. Hence, a state can only be justified in holding the territorial right of jurisdictional authority if its political institutions reliably serve the basic requirements of justice.

Moore’s account, however, troublingly leaves out any justice-based criteria as necessary conditions on jurisdictional authority. She resists making jurisdictional authority conditional on serving even minimal requirements of justice, appealing to two main arguments. First, she argues that if serving minimal justice were necessary for jurisdictional authority, this would imply, implausibly in her view, that imperial



powers did not violate the territorial rights of pre-colonial peoples in cases where the pre-colonial regime was gravely unjust. Moore's argument here requires that one important element of colonialism's injustice was the violation of duties not to dismantle the rule of pre-colonial political regimes over their prior jurisdictional domain, even when these regimes were deeply unjust. But arguably colonialism's wrongness primarily consisted in the unjust nature of the colonial regimes themselves, rather than in the fact that these regimes replaced prior political systems that were often even more unjust. Of course, in cases where the colonial regime displaced a prior political system that reliably served basic justice, this was an additional wrong, but we cannot conclude from this that the displacement of *unjust* pre-colonial regimes was also wrong.

Second, Moore argues that imposing justice-based conditions on jurisdictional authority has unacceptable implications for cases where a just state annexes a failed state or a gravely unjust state after a just intervention. A failed state, since it entirely lacks institutional capacity, is unable to secure minimal justice for those persons within its territory and therefore lacks jurisdictional authority on a justice-based view; this has the unacceptable implication, Moore claims, that another state would be justified in annexing the failed state's territory provided that it erects minimally just political institutions there and incorporates the annexed territory into its overall territorial jurisdiction. Similarly, if violating minimal justice strips a state of its jurisdictional authority, then the Allied forces that occupied Germany after 1945 would have been justified in permanently annexing German territory provided that they established minimally just institutions there (pp. 100–104).

Moore's argument misunderstands what a loss of jurisdictional authority involves, however. To say that a failed state or a gravely unjust state lacks legitimate jurisdictional authority is simply to say that individuals under its jurisdiction are not bound to comply with its laws, and that external agents are not required, in virtue of their duties to respect the jurisdictional authority of the failed or unjust state in question, to refrain from intervening and establishing rival political institutions within the relevant territory. While a state that lacks jurisdictional authority may be morally *liable* to external intervention, occupation and even permanent incorporation into another state's territorial jurisdiction, whether intervention or annexation would be sufficiently *justified* in any given case will depend on a much wider range of considerations. Given the incentives a more permissive international rule would create for potential expansionist states, there are powerful reasons to adopt international rules that limit when interventions are permitted and that prohibit permanent annexation – rather than mere temporary occupation – of the territory of failed states and of states defeated in just wars. Hence, conditioning territorial rights on serving minimal requirements of justice need not have the unacceptable implications Moore worries about.

Consider next Moore's claim that justice-based or functionalist theories of territorial rights cannot provide guidance as to where territorial boundaries should



lie and cannot vindicate particular boundary lines. As Moore observes, it is often supposed that an account of territorial rights that invokes only justice-based conditions is too *general* to explain ‘how particular states can have authority over particular territories’ (p. 97): a theory that makes serving justice, or being able and willing to serve justice, *sufficient* for a state to establish jurisdictional authority will be unable to specify where jurisdictional – that is, territorial – boundaries are to be located. Such an account would therefore seem to make the important matter of boundary drawing essentially arbitrary and conventional. One major advantage of Moore’s theory, it seems, is that it connects particular peoples to particular pieces of territory: The theory posits that specific peoples are ‘attached to specific areas, specific bits of land’ (p. 40), and claims that when a given people’s attachment to a specific bounded geographical area is sufficient to ground a collective occupancy right over that area, then that particular people legitimately exercises jurisdictional authority over that area.

However, it turns out that Moore’s theory must also rely heavily on convention to specify the location of territorial boundaries. While there may be what she calls a ‘heartland’ that a given people identifies with and that is central to its collective projects, Moore recognizes that ‘at the edges there is indeterminacy’ so that it is often ambiguous whether some area falls within a specific people’s heartland (p. 120). It is worth noting that this ambiguity goes very deep, first because state territories typically enclose substantial uninhabited areas, and second because property rights can offer no guidance in demarcating the heartlands supposedly occupied by a particular people, given that territory is prior to property. These difficulties will be multiplied when, as is almost always true of cases in which territorial boundaries are disputed, there are individuals attached to competing political identities intermingled within the same geographical area. Appealing to group rights of occupancy grounded in attachment to specific physical locations, then, does not provide a determinate way to specify the location of territorial boundaries.

Furthermore, it seems that Moore must appeal to convention in some form if her theory is to vindicate many well-established boundaries. To take just one example, consider the US–Canadian border (at least the part of it west of Ontario), which is a boundary any plausible theory of territory should be able to vindicate. I would submit that, independently of the Treaty of 1818, it would be absurd to suggest that the Canadian people were or are attached to the areas above, but not below, the 49th parallel, and that the American people were or are attached to the areas below, but not above, the 49th parallel. The precise location of the US–Canadian border from Manitoba to British Columbia seems in large part to be a matter of convention – more specifically, the result of a treaty concluded between two states and recognized by the international community.

The difficulties that Moore’s account has in marking out determinate territorial boundaries reflect, I suggest, a gap between the implicit sociological vision of her theory and our actual social world. Moore’s account would work best in a world



whose population is divided up into separate ‘peoples’ that display high levels of internal unity in terms of all sharing a distinctive political identity independent of existing institutional configurations, with each ‘people’ occupying a part of the earth’s surface whose boundaries can be defined independently of existing territorial boundaries as settled by the rules of international law. That, however, is not our world. Within each population, there is likely to be considerable diversity in the collective projects that different individuals identify with; to the extent that there is any unity of political identification, this will not be pre-institutional unity but rather the result of processes of socialization put in place by states who govern an already determined territorial jurisdiction.

Once we see this, we should be more comfortable with accepting the inevitable role that convention plays in specifying the precise location of territorial boundaries. We might then abandon the – in my view, futile – search for some deep connection between particular ‘peoples’ and particular patches of land, turning our attention instead to evaluating alternative possible conventions determining where specific jurisdictional boundaries lie. My suggestion would be to develop an extended version of an instrumental approach to the drawing of boundaries, along the lines suggested by Miller (2009). Where Miller suggests that the rules for drawing boundaries should be sensitive to the likelihood of various configurations conducing to the realization of substantive democratic values, we might require that the rules serve not only democratic values but also other important values such as the adequate protection of human rights, the stabilization of well-functioning political institutions, the realization of social justice and the preservation of international peace.

Indeed, some of the concerns that animate Moore’s account (as well as more culturally focused accounts) are relevant, albeit in a more instrumental way than she herself might accept. For example, if as a result of divergent identities and political aspirations different groups within an existing state become consumed with mutual distrust and loathing, there may be a strong instrumental case to allow the territorial break-up of the state through secession or some other reconfiguration of existing territorial boundaries. Or if sharing a common language or culture makes a particular population more likely to function well together as a political unit, and make it more likely that social justice will be done within that unit, achieving greater linguistic and cultural homogeneity may be an important consideration in devising the appropriate international rules for the drawing of territorial boundaries. It seems then that a conventionalist account of boundary drawing can accommodate the significance of group identities and attachments while providing an approach to understanding territorial boundaries that does not appeal to a mythical world of separate pre-institutional ‘peoples’ with clearly demarcated pre-institutional areas of occupancy.

Although I have tried to show why functionalist, justice-based accounts of territory are more plausible than Moore suggests, in closing I wish to reiterate the immense achievement of her book. It rightly draws our attention to the important locational dimension of collective self-determination and the pursuit of political projects, and



provides a plausible and supple account of territorial rights that will help readers navigate the whole range of normative questions that territorial jurisdiction gives rise to. This book stakes out a major new position in the debate on territorial rights that will resonate within that debate for years to come.

## Reference

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