

# Territoriality vs. Land Property

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I have been studying and writing about panarchy<sup>1</sup> and extraterritoriality<sup>2</sup> for almost ten years now<sup>3</sup>. I always try to look for flaws in the theoretical framework and come up with the trickiest questions to answer. This will hopefully sharpen both my thinking and the arguments. One of the deepest issues I still have with panarchy is the following question:

What is the fundamental similarity between, on the one hand, land property (private or common), and on the other hand, territoriality and territorialism made by current nation-states?

After all, they are all claims to land, to a particular segment of land.

But perhaps it's desirable to search for a more exact answer than that. It seems few thinkers have ever made any serious attempt at questions like this, probably because few others than panarchists see the inherent intolerance behind territoriality and territorialism as a problem. This isn't a fringe issue but of fundamental character and importance to mankind. So I will try to remain humble as I here present my initial attempt towards clarifying this.

## Defining the Concepts

We can start by simply defining a '**territory**' as a segment of land. This land can include some part of adjoining or enclosed seas, lakes, rivers, mountains, etc. It's a purely geographical term, and could be completely free from human inhabitants. For example, we might refer to a segment of land on another planet as a territory, even though no humans have ever been there.

Humans have per definition to live in a territory. Few live on the high seas or in space, so we can leave those cases aside, at least for now. Because humans live in territories, this has the natural consequence that to the purely geographical territory, also social dimensions are added. Thus, on this planet, 'territory' nowadays has both geographical and social dimensions. They cannot really be separated anymore.

'**Territoriality**' can be defined in this way, following Shih Shun Liu:

"It is a recognized principle of modern international law that every independent and sovereign State *possesses absolute and exclusive jurisdiction over all persons and things within its own territorial limits*" (*Extraterritoriality: Its Rise and Its Decline*,<sup>4</sup> emphasis added)

'**Territorialism**' would then be the idea or ideology that territoriality is the only proper way of governance. A '**territorialist**' is an advocate of territorialism, just as a communist is an advocate of communism.

## Territorialism in Human History

There could be different ways of addressing this topic. I will attempt at answering the question at hand by tracing territoriality and territorialism through human history. By doing this we can learn more about land property as well, since they do seem to have similarities.

In a prehistoric era, people lived in places like caves. It would then be natural to think that some claimed a certain cave to be theirs, at least as long as they stayed there. In case too many tried to live there and off the natural bounty of the surrounding territory, problems might arise. Perhaps there wasn't enough space in the cave, enough food around, or perhaps there were other reasons for rivalry. So perhaps some people wanted to make sure that only they could live there. This would probably be a group of people, perhaps an extended family (I leave it to the experts to sort out the details about that).

In order to shut other people or animals out of the cave, something resembling a gate might have been erected. A gate might also confine people that otherwise might have wanted to walk out of the cave, for example small children. So the gate might serve the dual purposes of shutting out and confining others.

Later people left the caves and eventually became farmers. They started cultivating land and thus more clearly occupied a particular territory. They might have domesticated animals. Thus, there might eventually be reasons to mark the used territory in some way to show others that it's occupied. There might even be some fencing or framework erected in order to shut other people or animals out, but also confine some other people and animals. Some of these places might eventually have started to look like villages, town or even cities. Within these, people might have erected their own dwellings or houses and considered them to be their own. They might also have had a chieftain, selected in whatever way suited the people and their way of life.

Later on in history, such cities were walled. This walled territory could offer protection against the elements, animals and other people. The walled city would probably also offer pretty good chances of earning an income from trade. They also offered a chance for a chieftain to obtain a much more noble title, maybe becoming a king or sultan of the city. The walls also offered a chance to confine people, and now people also could be imprisoned in a more effective way. Maybe some slaves weren't allowed to leave the city at all, and the city gates were guarded. The king might have used the gate as an excuse to raise revenue through tolls, maybe quite reasonable since the walls and guards needed to be paid for. Thus, a small part of the vast territory of earth was treated very differently than the rest. [i]

Now, I believe this might be a fairly accurate description of how people have related to territory in the past. But this has nothing to do with territoriality or territorialism. First of all, these claimed territories were minuscule parts of the overall territory.

Secondly, there are numerous accounts throughout history that even within such cities the king didn't possess 'absolute and exclusive jurisdiction over all persons and things within its own territorial limits'. See [Liu's](#) book for numerous historical examples.

Thirdly, since there are no wide-spread accounts available of people claiming that such 'absolute and exclusive jurisdiction over all persons and things within its own territorial limits' would be the only proper way of governance, there was no real territoriality or territorialism present.

On the other hand, I do see how territoriality or territorialism could arise from the examples above. As soon as enough power had concentrated in the cities, they could start to make claims to the surrounding countryside. And as more and more such claims arise, in some parts there might be such claims to every single segment of land.

From such claims there is only a brief step to feudalism. And in AD 1158 the Emperor Frederick I Barbarossa at the Reichstag of Roncaglia first established in writing the sovereign rights that in addition to water access included, inter alia, the right to raise duty, the right to hunting and the right to levy taxes, opening up for wide-spread territoriality and feudalism in Europe. Or as Henry Sumner Maine<sup>5</sup> put it:

Territorial sovereignty - the view which connects sovereignty with the possession of a limited portion of the earth's surface, was distinctly an offshoot, though a tardy one, of feudalism. This might have been expected a priori, for it was feudalism which for the first time linked personal duties, and by consequence personal rights, to the ownership of land." (Ancient Law, Chapter IV)

## Property

From the sketch of human early history and the Henry Sumner Maine quote we can infer something about property as well. Often property is divided into 'common property' and 'private property'. But I think this is too simple. As a minimum, I think we have to divide private property into two categories, in the tradition of Proudhon, and differentiate between (i) '**private personal (moveable) property**' and (ii) '**private land property**'. The former would include things that are moveable and might even include things like buildings if they are built on land that doesn't belong to you. The latter is simply the land itself, including any adjoining or enclosed sea, lakes, rivers, mountains, etc. But also the common property could be divided along similar lines. First we could have (iii) '**common moveable property**' and then (iv) '**common land property**'. It would then look like this:

Property			
Private Property		Common Property	
Private	Private	Common	Common
Moveable	Land	Moveable	Land
Property	Property	Property	Property

It's interesting to note that in the historical cases I mentioned above, i.e. the cave, the farmer village, the city, there surely was a lot of common property within and without the confinement of the territory claimed. Some people might have more or less often been excluded from a specific territory, but these people might in turn have excluded other from another territory. Common land property of those times had really very little to do with what today is called 'public property', where the territorialist monopolist state claims ownership. So I see very little problem with common property at all in relation to territoriality and territorialism, but I might be wrong.

What about private property in those historical cases? Well, it's highly likely that people had personal property, from simple things like a comb to more advanced tools. But even though they might have had their own dwellings and houses in villages, towns and cities, these might still have been considered personal property rather than land property. The land property itself wasn't a big issue early in human history [ii]. Hence, it seems that another thing that makes everything more complicate and that set everything in motion towards territoriality and territorialism was claims to private land property.

## Natural Right to Private Land Property

But before we jump to conclusions about private land property, it might be useful to consider various ways of handling this kind of property. One very famous defence of private property came from John Locke in his '*Second Treatise of Government*' (1690). This included both personal and land property, the major requirement of this natural rights argument would be that it had (somehow) been mix with personal labor [iii]. This argument should be seen in light of the major move towards territoriality and territorialism that followed from The Peace of Westphalia (1648) that ended the Thirty Years' War in Europe, published 42 years after the Peace. It might have been a reaction to that movement, or simply a similar argument applied to a related issue, I don't know.

Although it seems perfectly natural that you have a right to your personal property and even to such property like crops and trees that you have planted, as well as to buildings, claims to the territory or land itself falls into a completely different category. These are things that were there long before humans existed. It's not possible, it seems to me, to rightfully claim that some person at a particular point in time should have any exclusive right to the land or territory itself. That would indeed be a kind of territoriality and territorialism. Maybe that kind of property indeed is theft, to use Proudhon's famous words. [iv]

## Everyman's Right to Private Land Property

There are, fortunately, non-territorial solutions to such a territorialist dilemma that avoid absolute and exclusive claims to the segment of land at hand. Some might be unaware of this, but there's a rich legacy of customary law that handles this in a very neat way. I'm thinking of the so-called '**everyman's right**' prevalent throughout Scandinavia. According to [Wikipedia](#)<sup>6</sup>:

Ancient traces provide evidence of the freedom to roam in many European countries, suggesting such a freedom was once a common norm. Today, the right to roam has survived in perhaps its purest form in Finland, Iceland, Norway and Sweden. Here the right has been won through practice over hundreds of years and it is not known when it changed from mere 'common practice' to become a commonly recognised right. A possible explanation as to why the right has survived mainly in these four countries is that feudalism and serfdom were not established there. Another factor is the survival of large areas of unenclosed forest. Elsewhere in Europe land was gradually enclosed for private use and enjoyment, with commoners' rights (for instance, rights to gather fuel or graze animals) largely eliminated.

Today these rights underpin opportunities for outdoor recreation in several of the Nordic countries, providing the opportunity to hike across or camp on another's land (e.g. in Sweden for one or two nights), boating on someone else's waters, and picking wildflowers, mushrooms and berries. However — with the rights come responsibilities; that is, an obligation neither to harm, disturb, litter, nor to damage wildlife or crops.

Access rights are most often for travel on foot. Rights to fish, hunt or take any other product are usually constrained by other customs or laws. Building a fire is often prohibited (though in Sweden fires are allowed with proper safety precautions). Making noise is discouraged. In some countries, putting up a tent in the forest for one night is allowed, but not the use of a caravan. Access does not extend to built up or developed land (such as houses, gardens) and does not include commercial exploitation of the land. For example, workers picking berries may be legal only with the landowner's permit.

There are some significant differences in the rules of different countries.

While it's true that Scandinavia had no feudalism and no large enclosed forests, I'm not sure what were the hen and the egg here. Having grown up in Scandinavia, I can tell you that we learn as toddlers about this customary law (still not formalized into law) and easily accept the validity of the arguments in its favor. So I would rather like to believe that it was because of this that there was no feudalism or no large enclosed forests in Scandinavia, than the opposite.

This kind of private land property might seem weaker than the Locke kind, but I'm not entirely sure about that. For example, there's clearly something positive to know that your land property never can be land-locked. Also, there's a stronger natural respect for the really private parts of the properties, like gardens etc. Moreover, the actual need itself to own land property is greatly diminished if you know you always can access land and water. Incidentally, I have never liked the Lockean argument when applied to land, probably because I grew up with one kind of everyman's right.

By this example we can see that relatively large populations in several advanced countries have a system of property rights that covers both common property and private property to both personal property and land property, while at the same time avoid the trap of territoriality and territorialism.

## **Territory without Territorialism**

At the beginning I asked this question:

What is the fundamental similarity between, on the one hand, land property (private or common), and on the other hand, territoriality and territorialism?

Now we have established a basic similarity – they are all based on territoriality and territorialism. But while this might look like bad news, or at least disturbing, but I would like to see this as extremely positive. It could present another avenue towards avoiding the trap of territoriality and territorialism altogether. How?

Well, we have already seen that there are real-world examples of how land property can be justified without falling into the trap of territoriality and territorialism. So because of the

similarities, we might find more confidence in our search for ways of avoiding territoriality and territorialism also on a macro level.

Why not start by looking at history again?

There are numerous examples where visitors to a territory were granted the right to follow their own laws. For example, Shih Shun Liu showed in his '[Extraterritoriality: Its Rise and Its Decline](#)<sup>7</sup>' that non-territorial governance has existed very early in Africa, Europe, the Middle-East and the Far East, indeed, all the places Liu studied. Such non-territorial rights have been granted both unilaterally and reciprocally, and sometimes imposed. [v]

But while that would mean a strike at the root of both territoriality and territorialism, there would still seem to be claims to territoriality and territorialism involved. However, there are other historical examples as well. For example, during the later stages of the Roman Empire, there were many local kings around the Empire. For example, as [Henry Sumner Maine](#)<sup>8</sup> noted 1861, "the Merovingian line of chieftains, the descendants of Clovis, were not Kings of France, they were Kings of the Franks."

This is of highest importance and I want to make this entirely clear. First you had an Emperor in Rome, being Emperor of a very large territory. Within this territory people submitted to various kings. But these kings were not kings of a part of the major territory, but king of the people in question. And they weren't at all territorial, insofar as (i) people submitted to their own kings and laws even when living in the same territory, and (ii) they often could change allegiance more or less freely.

[Liu](#) established the former by writing:

Thus, in the same country – and even in the same city at times – the Lombards lived under Lombard law, and the Romans under Roman law. This differentiation of laws extended even to the various branches of the Germanic invaders; the Goths, the Franks, the Burgundians, each submitted to their own laws while resident in the same country. Indeed, the system was so general that in one of the tracts of the Bishop Agobard, it is said: 'It often happens that five men, each under a different law, would be found walking or sitting together.'

He also provides evidence of the latter (emphasis added):

In the first half of the eighth century, the Lombards in France were tried according to Lombard law and at least partly by judges who were Alamanns, the *latter having once been Lombards and lived under Lombard law*.

So clearly somebody had changed allegiance without changing territory, much like changing church or religion today. This system of governance is sometimes referred to as a system of personality of laws, i.e. the law followed the person and not the territory. In 1776 Edward Gibbon, in his tome [The Decline And Fall Of The Roman Empire](#),<sup>9</sup> wrote the following in reference to the 'Laws of the Barbarian' of the 5th and 6th centuries:

[T]he laws of the barbarians were adapted to their wants and desires, their occupations and their capacity; and they all contributed to preserve the peace, and promote the improvements, of the society for whose use they were originally established. The

Merovingians, instead of imposing a uniform rule of conduct on their various subjects, permitted each people, and each family, of their empire freely to enjoy their domestic institutions; nor were the Romans excluded from the common benefits of this legal toleration.

In a footnote related to this section, Gibbon<sup>10</sup> wrote that his source Bishop Agobard "*foolishly* proposes to introduce an uniformity of law as well as of faith" (emphasis added).

I believe this summarizes the stylized historical facts pretty well:

- Macro level – Emperor over a large territory.
- Meso level – King, paying allegiance to the Emperor. King did challenge Emperor from time to time if not content. Was king over a people, not a territory.
- Micro level – Individual, paying allegiance to the King. People challenged their king from time to time if not content. Individuals could voluntarily change allegiance.

From an individual perspective, insofar as this description holds, such kinds of governance were social contracts worthy the name, since they were both based on consent and a possibility to exit. And as Paul-Emile de Puydt<sup>11</sup> remarked 150 years ago, the kings "will have complete submission - voluntary, moreover, for the whole term of the contract." And even if the description wouldn't hold, we still have established another possible and more tolerant way of organizing governance.

It would matter very little to the individual who was the 'Master of the Territory', the Emperor, as long as you can change allegiance between kings/governments/laws without having to move. Just like you don't care and don't have to know who owns the land property in Scandinavia as long as you can go hiking in the forest [vi].

Thus, just as in the similar micro-level case with land property, it's possible to avoid the trap of territoriality and territorialism also on a macro level.

## Concluding Remarks

There are similarities between, on the one hand, land property (private or common), and on the other hand, territoriality and territorialism made by current nations-states. But the similarities are only there insofar as land property involves *absolute and exclusive* claims to particular segment of land, something that is far from inevitable.

But when such claims are made, they resemble very much territoriality and territorialism, and such claims are not rightful claims. They are intolerant and unjust. Territorialism is theft, to paraphrase Proudhon.

Although the human fate is inseparable from 'territory', it wouldn't be a correct inference to say that the human fate is inseparable from 'territoriality' and 'territorialism'. Fortunately, there are ways available, tested and refined by time, to avoid the trap of territoriality and territorialism. This hold for both land property and the territoriality and territorialism made by current nations-states, and we have looked at some examples above.

I'm not an advocate of one solution to fit all mankind for all time. *Au contraire*, that's a major argument against territoriality and territorialism. But also everyman's right comes in different varieties and is still or until recently only customary law, not written law. And the 'Emperor-King-Consenting Individual' approach might open up for many interesting truly social contracts. This could be realized within the current reality of territorialist nation-states, pretty much as de Puydt envisioned. Political parties could correspond to the kings of the past, the kings and queens of today could perhaps play a role in it, alliances could form over borders and they could meet in the local parliament. Once borders are loosed up like this, issues of immigration would soon lose validity. Elections would be held as usual, only now you would actually get the government and the politics you ask for. The elected "will have complete submission - voluntary, moreover, for the whole term of the contract." No system or government or nation-state would have to be abolished, only some tolerant changes introduced.

I'm sure there are many, many other ways of doing this around the world that avoids the trap of territoriality and territorialism. And there might perhaps be even better ways ahead of us. He who seeks finds, as the saying goes. But advocating Lockean territoriality and territorialism at the micro level as a solution to the problems created by territoriality and territorialism at the macro level cannot be a wise thing, I believe. And attacking private property with help of a territorialist monopolist nation-state seems just as unwise. After all, they are children of the same intolerant ideology.

Most people today seem to think territorialism is the only way, either by default or because they are dependent on that view for their income and career. "It is difficult to get a man to understand something when his salary depends on his not understanding it," as Upton Sinclair put it. Being on the territorialist payroll might make people overlook the non-territorialist alternatives. They do not seek. Let's end this essay by some words by Max Nettlau, who once commented in relation to the merits of non-territorialism and panarchy, that "all this is so simple and correct that I am convinced that no one will want to know anything about this." We all know he will eventually be proven wrong.

## Endnotes

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[i] Probably the most famous wall in the world today, the so-called Great Wall in China, was used not only to shut people out, but also to confine people. Once new territory was gained, a wall was erected to secure the land, shut the enemy out and confining the people living on that land. Similarly, the Berlin Wall was mainly erected for confinement. There are more examples available.

[ii] And even today in cities most people think it's the building that you own rather than the land. But as soon as you are allowed to demolish such a building and build another, the land has a value separate from the value of the building itself.

[iii] This argument has also been used in defence of common property, see Roderick Long's [A Plea for Public Property](#).

[iv] In the Proudhon tradition of thought also private moveable property in the form of capital goods are regarded as theft and anti-social, while private moveable property for personal consumption would be OK. That's really silly. For what if I started to use my personal property for productive purposes, i.e. in order to earn an income, and even hire someone to help me out? It would still be the same good, just put to a different use. Let's say I have a car, but suddenly find that I can earn an income from driving others, and use it like a taxi. Since now the car is used for productive purposes and is a capital good, should it then be forbidden? And since I still would use it partly as for

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private consumption, should it then be partly forbidden? Moreover, it might bring so much good to other people that I can't find time enough to drive on my own, so I ask someone else to do it for me during some hours every day. Since now the car is used for productive purposes and is a capital good, and is employing labor, should it then be double forbidden? It's a bit like banning knives because they could be used for murder – simply silly.

[v] However, Liu notes that in China, "a Mussulman was charged by the Emperor of China with the power to decide the disputes which arose among the men of the Mohammedan religion in the ninth century". There are other accounts as well, so extraterritoriality wasn't a late 19<sup>th</sup> century Western imposition on China, but an old way of life. This seems to be a generally established fact among scholars today, see for example Pär Cassel's interesting article. Let a hundred flowers blossom, Chairman Mao said. But he might have made it easier for himself by really allowing more flowers to bloom, just as his ancestors of the Tang Dynasty did.

[vi] Or what Scandinavian country you happen to be in for that matter, i.e. who the local 'Master of the Territory' is.

## Links

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<sup>1</sup> <http://panarchy.org/>

<sup>2</sup> [http://www.panarchy.org/shihshunliu/Extraterritoriality\\_Liu.pdf](http://www.panarchy.org/shihshunliu/Extraterritoriality_Liu.pdf)

<sup>3</sup> See <http://panarchy.org/johnsson/aterritorialism.2005.html>, <http://panarchy.org/johnsson/review.2005.html>, and <http://www.praxeology.com/downloads/Panarchy,%20revised%20PDF,%2012-28-08.pdf>.

<sup>4</sup> [http://www.panarchy.org/shihshunliu/Extraterritoriality\\_Liu.pdf](http://www.panarchy.org/shihshunliu/Extraterritoriality_Liu.pdf)

<sup>5</sup> <http://www.panarchy.org/maine/territorialism.html>

<sup>6</sup> [http://en.wikipedia.org/wiki/Freedom\\_to\\_roam#In\\_the\\_Nordic\\_countries](http://en.wikipedia.org/wiki/Freedom_to_roam#In_the_Nordic_countries)

<sup>7</sup> [http://www.panarchy.org/shihshunliu/Extraterritoriality\\_Liu.pdf](http://www.panarchy.org/shihshunliu/Extraterritoriality_Liu.pdf)

<sup>8</sup> <http://www.panarchy.org/maine/territorialism.html>

<sup>9</sup> <http://www.panarchy.org/gibbon/law.1776.html>

<sup>10</sup> <http://www.panarchy.org/gibbon/law.1776.html>

<sup>11</sup> <http://www.panarchy.org/depuydt/1860.eng.html>