

THESIS

A RIGHT TO NORTH:  
CONSIDERING TERRITORY IN THE 21<sup>ST</sup> CENTURY

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## ABSTRACT

### A RIGHT TO NORTH: CONSIDERING TERRITORY IN THE 21<sup>ST</sup> CENTURY

Humanity has a profound migratory past, incited and shaped substantially by climate change over time, spanning from the earliest humans to the current day. As greenhouse gas emissions rise to levels unprecedented for human history, climatic changes are certainly never more relevant to human movement and settlement. Yet even while greenhouse gas emissions and climatic changes move freely across global space, the movement of people in the 21<sup>st</sup> century is deeply restricted and, in some cases, prohibited by state territory. Territory's rights, and its associated technologies and practices, confine and restrict, even as the world warms. This project writes against state territory in its current political form utilized by democracies in the global North. It considers territory's history, definition and defenses, the paradox it creates for democratic consent, and its power and subjects. The final chapter of the project imagines resistance to territory and spaces of creolized alterity, articulating a right to both movement and North.

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## Introduction

Someone, somewhere, is seeking to get out of their territorial state. A Gallup World Poll Survey from 2015-2017 estimated that more than 750 million adults, 15 percent of the global population, would migrate, permanently, to another country *if they were able* (Esipova, Pugliese, and Ray 2018). That some people find movement their best chance at thriving and even risk their lives for movement, is nearly as old as humanity itself. Early humans migrated in waves around the world (Friedrich and Timmermann 2016). This migratory history was shaped indelibly by climatic shifts and changes; periods of warming and cooling spurred the movement of peoples throughout various archaeological ages (Fagan 2004; Friedrich and Timmermann 2016; Rito et al. 2013; Scholz et al. 2007). Yet despite humanity's profound migratory history, hundreds of millions of people on this planet are deeply restricted in their potential for movement. Even as technological innovations, such as the airplane, have made crossing distance remarkably simple, tools of spatial restriction have become more advanced and penetrating. State territory, particularly in the global North, is a trenchant divisor of human subjectivities and socio-political relationships, as it defines the guarded within and designates the territorial outside. A fundamental feature of colonization and empire in modern history, territory was used as tool for resource consolidation by European powers, carving out both resources and populations across the globe (Diaz 2018; Thomson 2004). State extracted resources flowed to the global North throughout periods of colonization, funding the economies of colonizing states (Acemoglu, Johnson, and Robinson 2005; Galeano 1997; Thomson 2004). Territory is still used as a tool by former colonizing states, but rather to control the movement of peoples and guard the resources and populations of their own territorial inside from the territorialized outside.

This project writes against territory. Particularly situated from *within* the global North, it addresses state territory in the global North. It does not consider or address other territorial realities and movements, like international indigenous movements and claims to political territorial statehood. Calls for territorial sovereignty have been used by populations in the global South and indigenous and marginalized peoples in the global North to defend against colonization and protect resources and interests within historicized space. The use of territory by indigenous and other marginalized peoples is not within the scope of this paper. Rather, *this paper is written in response to territory utilized by contemporary state democracies in the global North*. It is not written with any transhistorical aims, but rather with this particular time and scope in mind. While territory is named generally throughout this project, it is meant in this particular way. The theoretical tradition it addresses is also situated particularly in the modern and contemporary eras and the global North. Its home is then partly couched in Western philosophy and thought, a home that I think is at least partly based in the exclusion of uncomfortable truth<sup>1</sup>.

Why address state territory? Many salient issues of the day appear fundamentally international in scope rather than bound to the territorial state. Climate change, for example, is often presented as a global problem in need of global solutions. Climate change does not respect borders and greenhouse gas emissions move freely across territories and affects all states, requiring international cooperation, as Chaturvedi and Doyle (2015) explain the common narrative. This fits in nicely with socio-cultural and economic globalization discourses, in which social and economic phenomenon are enmeshed transnationally across territorial boundaries. The movement of capital, information, and goods across borders again signals a globalized world rather than a world dominated by atomistic territory. Meanwhile, political theorists like Wendy

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<sup>1</sup> See Mohanty and Martin (2003) for discussion of ‘being home’.

Brown (2010) argue that the territorial nation-state is becoming increasingly irrelevant alongside the rise of neoliberal capital, and increased calls for border walls are perhaps its dying gasp.

Yet this paper argues that state territory remains decisively relevant for political and environmental theory. Greenhouse gases may cross borders freely, but people do not. The effects of greenhouse gases and atmospheric pollution may cross borders freely, but again, people do not. Capital, goods, and information may cross borders relatively unencumbered, but again, people do not. The geographic tools and security technologies of state territory control tightly the movement of people into and out of the spaces of the global North. Greenhouse gases and atmospheric pollutants may have no borders, and the effects of globalization and climate change may be indiscriminate in terms of state territories, but the effects still take place in particular territorialized spaces. As regions become climatically and environmentally inhospitable to human life and wellbeing, and people seek to exit certain territorialized space and enter others, state territory emerges as a critical mitigating factor for climate and environmental justice (not to mention social and economic justice). The democracies in the global North are more likely to have the resources to mitigate the effects of extreme climate change while also being the primary historical instigators of global greenhouse gas emissions<sup>2</sup>. Yet these states cling most fiercely to state territory and the exclusion of the territorialized ‘other.’ How can climate change scientists and activists argue that ‘we’ are all on the same boat, the global North and the global South, if it is not an “open boat” as Chamoiseau and Glissant (2018, 268) call it? This project seeks to open the boat, so to speak, as it is truly not an open boat. It articulates, in the very least, that the boat *could* be open.

To begin such a project, it is necessary to trace out the historical emergence of territory as a political concept as well as some of its modern and contemporary definitions and defenses. The

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<sup>2</sup> For discussion of historical emissions and climate justice, see Agarwal and Narain (2019) and Warlenius (2018).

first chapter does this with a brief summary of Stuart Elden's (2013a) historical genealogy of territory as a concept and then an overview of some of the definitions and defenses of territory in contemporary political philosophy. This chapter forms the literature review portion of the thesis. Since I am interested in what territory means for democracies in the global North, the second chapter explores the interaction of territory and consent within the social contract theories of Jean Jacques Rousseau (1762/1987) and John Locke (1681/2003). I argue that territory poses a paradox for democratic consent and consider this paradox in action using a brief case of United States' immigration and citizenship law presented in Kunal Parker's history (2015). After this overview of the definitions, defenses, and presentation of the territorial paradox in consent and democracy, the third chapter presents ways in which to understand and study territory using Foucauldian thought. This is done through a consideration of Foucault's conception of the subject, power, and state biopower alongside territory. Foucault may seem an unlikely companion and sequitur to Rousseau and Locke, but I understand Rousseau and Locke's notions of consent as a reaction to the power relations of political absolutism and divine right. In a sense, they are attempting to articulate resistance and an alternative to a set of power relations in their historical moment. While Locke in particular may be couched in the liberal tradition and not necessarily associated with Foucault, this project understands consent and social contract theory as part of a discourse that it is historically specific. In a sense, it is a Foucauldian understanding of Locke and Rousseau's thought. The fourth and final chapter explores potential forms of resistance to and transformations of territory through a consideration of creolized alterity. I seek to imagine what a deterritorialized global North might look like and argue that people have a right to the North. In the conclusion, I present some final thoughts on the implications of this project and ideas for future research.



## Chapter One: Territory's Definitions and Defenses

From 1972 to 1979, the Legal Subcommittee of the United Nations developed an international agreement that designed rules for a frontier formerly unreachable (United Nations Office for Outer Space Affairs). Previously constrained by severe physical limits to the space beyond earth, human beings were faced with a potential for access to radically new places as space exploration opened the border between earth's spatiality and extra-terrestriality. What human societies decide to do with that space politically is open-ended. And this particular proposal by the Legal Subcommittee of the United Nations was novel considering previous centuries of colonization and intense territorialization by states on earth.

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies was adopted as a resolution in 1979 by the General Assembly of the United Nations. The agreement declares lunar land and its resources inalienable from the whole of humankind, with no individual state able to stake claim to it territorially. Article 4 of the agreement states this explicitly: "The exploration and use of the moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development" (Article 4, Section 1). Access to the Moon and other celestial bodies is not only deemed within the rights of all humankind, but its resources should be utilized for the interests of all, with no regard to existing inequalities. This is a non-territorial, egalitarian international strategy, and represented a cosmopolitan stance on the question of extraterrestrial territorialization. Rather than differential access based on nationality and statehood, the agreement presented a fluid and open picture of lunar and other planetary spatial relations. Article 8 of the agreement describes this open spatial design:

States Parties may pursue their activities in the exploration and use of the moon anywhere on or below its surface, subject to the provisions of this Agreement.

For these purposes States Parties may, in particular:

- (a) Land their space objects on the moon and launch them from the moon;
- (b) Place their personnel, space vehicles, equipment, facilities, stations and installations anywhere on or below the surface of the moon.
- (c) Personnel, space vehicles, equipment, facilities, stations and installations may move or be moved freely over or below the surface of the moon. (Sections 1-2)

The free movement of people and settlements in the form of space stations are constricted only in that they should not impede in other's access to lunar places, as described in Article 9, section 2: "Stations shall be installed in such a manner *that they do not impede the free access to all areas of the moon* by personnel, vehicles and equipment of other States Parties conducting activities on the moon" [emphasis own]. There are no borders on the Moon, the agreement suggests, or Mars for that matter, as it extends to all celestial bodies.

Though ratified by few states, the Moon Agreement is a specific example of potential political control over space. I use this example of the Moon as a frontier in order to illustrate the constructiveness of the socio-political phenomenon that is contemporary state territory. Territory is defined here as the political control of space by a state, marked by absolute spatial control and rights to exclusion. The idea of territory is so naturalized<sup>3</sup>, so embedded as a primary backdrop for socio-political contexts and organization, that the Moon or other planetary bodies present a useful example in their foreignness and extra-terrestriality. These extra-terrestrial spaces are not places human social organization has had experience operating within prior to space exploration and are thus uniquely placed as one example in the reexamination and critique of current patterns of spatial control.

In this work, I argue that territory, and its associated rights, presents challenges for democracy in the states of the global North. While territory may grant security and stability to certain populations and is thus an attractive technology of the biopolitical state (see Chapter

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<sup>3</sup> See Sack (1986) p. 33 for discussion of obfuscation and territoriality.

Three of this work), territorial practices undermine the construction that is at the heart of promises of liberty, equality, rights, and democracy: the refusal of political absolutism and the radical notion of consent. As I explain in Chapter Two, territory's detrimental effects on political freedom can be understood as both a remnant and reminiscent of previous relations of absolutism under prior political structures and social arrangements, such as divine monarchy and slavery. I argue in Chapter Three that territory as a political technology engenders power relationships that creates particular effects and modes of subjection and subjectivities. Thus it is a political relation that can be resisted and transformed. This resistance is something I consider in the fourth and final chapter, in which I consider deterritorialized alternatives and a right to North. Because territory produces power relationships that are absolutist, the unauthorized migrant could be considered a figure of democracy, engaged in a contestation and resistance of territorialization.

First, it is necessary to introduce the definitions as well as defenses of territory within political philosophy, which is the aim of this first chapter. Before I define contemporary understandings of territory, however, I briefly reproduce Stuart Elden's (2013a) history of the political concept of territory in order to demonstrate its emergence as both an idea and technology of governance. After an exploration of his history, which brings us from Greek political thought to early modern thought, I pick up where he leaves off and consider modern and contemporary definitions of territory and territorial rights. I then consider philosophical defenses of territory, and distinguish between neo-Lockean theories, neo-Kantian, and group theories of territory.

### *Territory's History*

As noted above, to begin it is helpful to introduce Stuart Elden's (2013a) work on the history of territory. His book, *The Birth of Territory* (2013a), is an important resource for

thinking beyond territory for several reasons. First, Elden is a current theorist who attempts to trace the emergence(s) of the concept of territory. While other theories may try to explain what territory is and how it is justified, Elden examines the ways in which it has been historically constructed. He writes, “The idea of a territory as a bounded space under the control of a group of people, with fixed boundaries, exclusive internal sovereignty, and equal external status is historically produced” (2013a, 18). His genealogical study traces the relation between place and power and attempts to understand both how and why the idea of territory was produced. His work then uncovers the ways in which “the term *territory* became the way used to describe a particular and historically limited set of practices and ideas about the relationship between place and power” (Elden 2013a, 6-7).

Why is this historical examination of territory important? Because, as Elden explains, it allows us to consider territory as a political construction that is created through *particular* political technologies and relationships. This is crucial, as it denaturalizes territory as inevitable and ahistorical. Elden writes, “It is precisely in order to disrupt that inevitability and eternal nature that an interrogation of the state of territory is necessary” (2013a, 7). By considering territory as a historically produced construct, in which territory is a production of a particular time and not necessarily an eternal political fixture, this project can fully contemplate alterities. The future of territory is fundamentally contingent, as Elden’s work suggests, and it is only through an understanding of why and how territory came into being that it is possible to consider alternatives. In this section, I summarize some of Elden’s important uncoverings in his genealogy of territory (2013a).

Elden’s historical analysis spans millennia in Western political thought, beginning with the ancient Greeks. According to Elden’s analysis, the Greeks did not have an understanding of

place and power equivalent to the modern notion of state territory. Ancient Greeks had notions of autochthony, myths in which the founders of the *polis* are born of the earth (thus making their rule and connection to the land completely natural) and complex understandings of place and associational politics. But their ideas on land were not comparable to contemporary practices and thought regarding territory. Indeed, Elden suggests that the Ancient Greek conception of land or *khora* is best understood as “the other, the outside, of being, that which makes externality possible, that which makes it possible for something outside being nonetheless to be” (2013, 39). *Khora* may even be external to the *polis*. While land and site are important features in Greek thought and practices, they “cannot serve as a direct source of modern conceptions” (Elden 2013a, 52) of territory.

In contrast, the Romans had more interest in geography, and especially in the development of notions of terrain that were influenced by their frequent military expeditions. But even as the Roman Republic and then the Roman Empire’s influence stretched over wide swathes of geographic area, Elden warns about reading into their geographic understandings and technologies of demarcation contemporary notions of territory. In his discussion of Roman frontiers, Elden explains their multiplicitous and ambiguous functions:

It is therefore difficult to give too much credence to accounts that see the walls, frontier posts, and rivers as forming a coherent system. The *limes* should be understood not as fixed lines, but as fluid zones, both for the rivers and fortifications on land, which meant that people lived in these areas. Three points need to be underlined. First, the Romans secured the land on both sides of these notional lines: the far bank of rivers or lands beyond fortifications. *It was therefore more a case of controlling, rather than preventing, passage.* But in this way they were able to force passage through specific sites, and to extract taxes. Second, they saw them as fortifications or temporary stopping points, not as static absolute limits to their expansion. *What was on the other side was not the possession of another sovereign entity that was recognized as an equal, but merely separated what was Rome and what was not yet Rome.* The Romans regularly went beyond the lines, both in terms of seeking to expand and in their general practice. There is plenty of archaeological evidence for this. Third, and following from these, it does not

make sense to see the Roman Empire as having boundaries in anything like an unproblematic modern sense. (Emphases own, 2013a, 92).

While land acquisition was vital to the Roman system's expansion and colonization, the spatiality of their conquest should not be seen as totalizing territorial control or even strict jurisdictional authority. Elden writes, "There were not homogeneous spaces of absolute Roman control. As well as the borders being imprecise, there would be overlapping jurisdictions, and enclaves of other rulers" (ibid, 83). This is not a precise system or understanding of territory in which a sovereign state entity possesses certain territorial rights, but rather a fluid, expansive project of conquest and domination, subject to the limited geographic and particular discursive technologies of the time.

In Elden's account of the medieval history, again, we see particular relationships between place and power. In this period, there are some changes from Roman to the medieval attitude of control over place in which land is treated as a possession or kind of commodity (Elden 2013a, 135). In the early centuries of the millennia, "land was regularly exchanged as a commodity", as opposed to the Roman period in which "land was accumulated by the empire, and not exchanged or donated" (ibid, 135). In his discussion of kingdoms and landholding patterns, he understands a patchwork of inheritance and control. He writes, "Lordship was attached to a person and inherited; it was not a right over land. In other words, the land was a secondary, rather than determinate, aspect of the lordship" (ibid, 153). In addition, and importantly, land was a possession of the ruler as opposed to a fixed territory in which the ruler exercised permanent jurisdictional authority. Elden explains this possession versus supremacy distinction: "While the notion of *Landeshoheit* -- land supremacy -- was the principle eventually conceded at Westphalia as *iure territorii et superioritatis*, territorial right and supremacy, at this time the land was still a

possession of the ruler. *Landesherrschaft* or *Landeshoheit* was understood as an expansion of the feudal relation of manorial lordship” (ibid, 153). Any territorial notions that do emerge at this time continue the previous age’s understandings of seeing the land surrounding the city as belonging to that city: “it is clear that *territorium* is still a possession of a city—that is, lands outside it, surrounding it, belonging to it—and not a larger area that includes the city itself” (ibid, 140).

In the late medieval period, Elden traces out the emergence of something closer to the modern sense of territory. In Baldus’ writings, the notion of jurisdiction being embedded in territory is nascent: “[J]urisdiction inheres in a *territorio* . . . but a *territorium* has its own boundaries [*nes limitatos*].’ Territory and jurisdiction go together, he [Baldus] suggests, ‘as mist to a swamp [*sicut nebula sup palude*]’” (Elden 2013a, 231). Territory begins to emerge as the object in which jurisdiction is applied. The Medieval Roman Law Jurist Bartolus shared similar ideas on territory as that which jurisdiction applied to: “The *territorium*, then, is not simply a property of a ruler; nor is jurisdiction simply a quality of the *territorium*. Rather, the *territorium* is the very thing over which political power is exercised; it becomes the object of rule itself. It thus becomes something sufficiently close to the modern sense of territory that we can begin to translate the term in that way” (ibid, 220). This is an important development, Elden explains, as it represents a radical departure from traditional notions of rule over people, sovereigns’ lands as exchangeable commodities, and territory being used merely to describe the land surrounding cities. Instead, territory itself is conceived as the object of governance.

Elden identifies Leibniz as a crucial thinker of the modern notion of territory in which sovereignty is linked inexplicably with territory. As opposed to an idea of territory as just spatial control, Leibniz sees territorial superiority as an essential justification of sovereignty. Leibniz

writes, ““He who considers these things with care will see that territorial superiority consists in the highest right of forcing or coercing”” (Leibniz qtd in Elden 2013a, 319). Leibniz then roots sovereignty in territory, as a “sovereign is he ‘who is master of a territory’” (ibid, 321).

According to Elden, Leibniz’s definition of territory reflects in part modern notions of territorial jurisdiction: “Territory is a name common to a civitas or a dominion or a tract of land [*terrae tractui*]. But in addition to its fundamental meaning, it also expresses the aggregate of laws and rights, so that just as inheritance and patrimony involve the whole of the things and rights in some family or dwelling, so *territory signifies the whole of laws and rights which can come to obtain in an inhabited portion of the earth*” (emphasis own, ibid, 318). Sovereignty and territory begin to be fundamentally linked.

This leads us to early modern notions of territory, in which sovereigns are sovereign over territory, and territory is imbued with jurisdictional spatial privilege. Elden gives a Rousseau citation as an example of this notion. Rousseau writes, as opposed to previous eras in which kings called themselves king of particular peoples, ““present-day monarchs more shrewdly call themselves Kings of France, of Spain, of England, etc. By thus holding the land [*terrain*], they are quite sure of holding the inhabitants”” (qtd in Elden 2013a, 29). Elden thus brings us to the modern age, in which sovereignty is fundamentally territorially defined: “To be in the territory is to be subject to sovereignty; you are subject to sovereignty while in the territory, and not beyond; and territory is the space within which sovereignty is exercised: it is the spatial extent of sovereignty. Sovereignty, then, is exercised over territory: territory is that over which sovereignty is exercised” (2013a, 329). The conceptual and theoretical emergence of modern state territory is complete.



Why take us on this detour through thousands of years of history in political thought regarding the relationship between land and power? Elden's project aims to demonstrate that territory is fundamentally a political technology, one that developed in various historical contexts, and remains open. This modern technology and understanding of territory occurred coincidentally with the scientific revolution's methods of calculating space. The fundamental purpose of this historical account is to prove that "the idea of a territory as a bounded space under the control of a group of people, usually a state, is therefore historically produced" (Elden 2013a, 322). There is nothing natural, nothing essential, about the concept of territory. It is a political concept that has an emergent genealogy and is in no way transhistorical or eternal. This fact opens up alternatives to modern state territory and to the reality that "other ways of organizing the relation between place and power have existed, were combined in diverse ways, labeled with multiple terms, argued for and against, and understood differently" (Elden 2013a, 322). My project later on argues for alternate ways of organizing relationships between place and power (see Chapter Four), as well as expands on the notion of territory as a political technology (see Chapter Three).

For the purposes of this chapter, I have recreated some of Elden's history of territory in order to trace out the genealogy of the meaning of territory over time. But it also serves a second purpose of demonstrating the historically contingent, fundamentally constructed nature of territory. The notion of state territory as intrinsic to political organization and a fundamental backdrop of political possibilities can and should be examined and reexamined. There are spaces for alterity in discourse and knowledge production regarding the political organization of space. Elden's history also serves as a useful introduction to contemporary definitions of territory in political thought, which I consider in the next section. Elden's account of territory ends in the

early modern era, and this next section considers contemporary definitions in political philosophy.

### *Defining Territory*

When considering definitions and contemporary understandings of territory, Paasi's (2003) assertion that knowledge production itself contributes to political realities is useful for the purposes of my project and for later discussion in Chapter Three. The discourses and Truth of territory are in part produced by scholarship. Subsequently, while I reproduce definitions of territory here, I have no intention of politically reifying them, but rather aim to delineate some of the political concept's current iterations in order to explain the underpinnings of territory as both a technology of the state and a form of subjection. Paasi is apt to contend that scholars themselves have been key "in the production of the territory centered outlook on the world and in shaping the practices and discourses through which the current system of territories is perpetually reproduced and transformed" (2003, 117). As I think the genealogy of the political concept of territory demonstrates, political practice informs conceptual definition and conceptual definition informs political practice.

This is related to Agnew (qtd in Murphy 2013, 1213) and Murphy's (2013) contention that the material and ideological are coupled. Agnew, for example, argues that "'ideal-types of the dominant spatiality of power' (i.e., dominant political-territorial conceptions) are characteristic of each socio spatial order. The ideal types of the dominant spatiality of power... 'will change as the material conditions and associated modes of understanding change'" (Agnew 1999 qtd in Murphy 2013, 1213). Murphy (2013) maintains that the continued and enduring importance of territory in the modern state system perceptually suggests its conceptual and

ideological power is high, even as globalization and transnational networks of capital and information seem to materially function in porous and ubiquitous ways.

This section is then interested in the ideas that constitute territory's definitions and defenses because of their significance for political practices. In a sense, I am examining political and geographic thought as something that creates as much as it explains. In a similar vein, Branch (2017) argues, "fundamental *ideas* – such as the nature of political rule and authority – give actors their identities and their notions of what they can or should do in light of their particular capabilities and relationships" (133). What are the fundamental ideas regarding what territory is, its purposes, and justifications? While Chapter Two assesses territorial ideas in contract theory critically, this section does not aim particularly to present a critique of modern and contemporary notions and defenses of territory. Rather, I aim to relay and explain fundamental political definitions and then defenses of territory.

For Murphy (2013) territory, or modernist political-territorial ideas as he terms it, operates according to at least three principles that govern the relationship between states and the earth's spatial zones:

- (1) that Earth's surface should be divided into discrete territorial units (i.e., states),
- (2) that states should reflect the pattern of political-cultural communities (i.e., nations),
- and
- (3) that areas of the Earth's surface under state control should be free from external interference. (1213)

Murphy argues that these notions of territorial state division, nations, and sovereign territory remain highly influential and naturalized in contemporary political life, as apparent in international conventions like the legal doctrine *uti posseditis juris* and United Nations charters

such as article 76(b) that specifies *territories* with people not yet self-governing are the *rightful beneficiaries* for self-determination (2013, 1218).

Territory is inextricable from its rights, and subsequently its rights are an essential part of modern political-territorial ideal and definitions. Simmons (2001) defines the state's territorial rights as including:

- (a) rights to exercise jurisdiction (either full or partial) over those within the territory, and so to control and coerce in substantial ways even non-citizens within it;
- (b) rights to reasonably full control over land and resources within the territory that are not privately owned;
- (c) rights to tax and regulate uses of that which is privately owned within the state's claimed territory;
- (d) rights to control or prohibit movement across the borders of the territory (which, of course, involves as well certain quite direct "rights against aliens" from our second category);
- and (e) rights to limit or prohibit "dismemberment" of the state's territories, by prohibiting unencumbered transfer of land to aliens. (306)

Territory, according to this definition, includes jurisdictional rights over space (i.e., the monopoly of coercive power within a space), control over land and resources within a space, rights to regulate the things and phenomenon within the space, the ability to prohibit and regulate movement across the spatial borders of the state's space (which includes rights against aliens), and then, finally, rights to political spatial supremacy within the bounds of the space under control.

Not all definitions are as robust as Simmons', but Ypi (2013) similarly argues that most understandings of territorial rights include at least three elements:

The first is what we might call a right to jurisdiction, i.e. the entitlement to make and enforce rules over a bounded geographical area. The second should be understood as a right to control, use, exchange, or transfer natural resources available in the territory. Finally, the third involves a right to control the movement of people across the borders of the territory and to exclude others from entering it. (242)

For the purposes of this project, I focus most closely on the right to control territorial borders and exclusionary power. However, all of these rights are related to one another, as the right to control movement across borders is connected to the state's interest in protecting resources and controlling social and economic activities within the territorial bounds, as well as appeals to territorial integrity. Subsequently, these rights are all constitutive of contemporary notions of territory and interdependent.

### *Defending Territory*

Territory and its associated rights have a variety of modern and contemporary defenders. Operating within liberal political thought and tradition, there are neo-Lockean theories of territory and neo-Kantian justifications for territory. Then there are what I will call the group theories and defense of territory; these group theories ground rights to territory based in some sort of group affiliation and their right to determination, whether it be national affiliation, ethno-geographic affiliation, or a simple collective or group not necessarily defined by nation or their ethno-linguistic characteristics.

In the second chapter, I examine contract theory critically as it relates to territory. I present an interpretation of contract theory and territory and explore territorial paradoxes for consent. Like some other neo-Lockean theorists (Steiner 2008 and Simmons 2001), I base much of my argument in a reading of Locke's concept of consent. However, unlike Steiner, I present a Lockean reading and account of consent that is more contextual, contingent, and historical. While contemporary liberal theorists sometimes present natural law theory as somehow essential, rational, and formulaic, I present the Lockean concept of consent, and how it relates to territory, as a historical response to absolutist power. Instead of defending territory, I argue that contract theorists did not adequately provide for a defense of territory, and territory's modern and

contemporary incarnation is paradoxical to core notions of consent. However, in this chapter and for the purposes of this review of territory's defenses, I will consider contemporary neo-Lockean theories, then examine neo-Kantian as well as group theories of territory.

### *Neo-Lockean*

Neo-Lockean accounts of territory may fall into property-based, individualistic groundings of territorial rights or collectivist understandings of territorial rights, as Nine (2008) and Ypi (2013) have explained elsewhere. To find an example of this fault line, one may look to the philosophical debate between Cara Nine (2008) and Hillel Steiner (2008) and A. John Simmons (2001) over the origins of Lockean territorial rights. Steiner (2008) maintains that states' territorial rights are derived from property rights and consenting individuals; if an individual is no longer consenting, they can exit the state and take their property, including land with them, essentially seceding from the territorial relation. He writes, "precisely because a nation's territory is legitimately composed of the real estate of its members, the decision of any of them to resign that membership and, as it were, to take their real estate with them, is a decision that must be respected" (Steiner 1996, 144, qtd in Steiner 2008, 951). A. John Simmons (2001) similarly maintains an individualistic Lockean version of territorial rights derived from the consent of subjects. However, unlike Steiner, and in line with Locke, he does not think individuals can alienate their property from the state "except on the condition that subsequent holders of that land will also be bound by the obligations of membership, including subjection of the land to state jurisdiction" (Simmons 2001, 313). The stability of state territory and defense of territorial rights comes from the consenting of the individuals forming the political group. He writes:

"The state's rights over subjects are independently justified in terms of the subjects' free consent. The state's rights against aliens are then derivatively justified as what is

necessary to properly exercise authority over subjects, with the state's rights to non-interference, self-determination, and free interaction with other agents being understood on the model of individuals' natural rights to self government. Indeed, on Locke's version of the model, the state's rights against aliens just *are* (a subset of) individual rights against aliens, transferred to and exercised collectively by the state. Finally, on this model the state's *territorial* rights are derived as well from its rights over subjects. For a state's rightful territory is to be understood as that geographical area exclusively and legitimately owned, occupied, or used by the state's subjects. In order to effectively control and protect its subjects (in the exercise of its first- and second-category rights), the state requires as well control of various sorts over the territory in which those subjects lead their lives. Thus, the derivative third-category rights of states over territories" (Simmons 2001, 307).

Nine (2008) meanwhile, disputes the individualistic neo-Lockean groundings of territorial rights in which property owners contrive an agreement as a group to create state territory. She argues that if we accept that individuals have meta-jurisdictional rights to form territorial rights then territorial rights as practiced in the contemporary era are not possible or must be radically reimagined, "because individuals could exit their lands from the state's jurisdictional realm at will" (2008, 153). She argues that this form of territory and its associated rights is not practiced, and if it was it would alter the functional ability of states' territorial jurisdiction. This creates what she calls an unsavory dilemma (Nine 2008) in which neo-Lockean theorists are left with either an account of territorial rights grounded in individuals with meta-jurisdictional authority that undermines territory as we know it or, if territorial rights as we know it are maintained, then "territorial rights cannot be explained by consent, because territorial right itself is the reason for the state's right to demand consent to its rule" (ibid, 154). This would leave contract theory in a position unable to explain territorial rights.

Nine (2008), however, does not want to give up on a Lockean theory of territory. She argues that states can acquire and maintain territorial rights just as individuals gain property rights (Nine 2008, 155). She utilizes the Lockean moral grounding of property rights to establish separate state territorial rights according to the following criteria: "(1) agents must be capable of

changing the land, thereby creating a relationship with it; and (2) this relationship must be morally valuable – established by the Lockean principles of liberty, desert and efficiency” (2008, 155). In the context of state territory, states gain territorial through their ability to improve the space they occupy and through the realization of liberty, desert, and efficiency through their territorial jurisdictional powers (Nine 2008). According to Nine, this process is not reducible to a property relationship, and is unique as territorial rights. For Nine, territorial rights ensure the protection of liberty through creating spaces for self-determination. Desert, meaning justice that ensures deservedness, is guaranteed in that states can “come to deserve territorial rights to land” (Nine 2008, 159). Nine (2008) explains, “[A] Lockean principle of desert could be stated as follows: if the value of the land L is significantly attributable to an agent X, then agent X has a weak rights claim to L” (159). This, she qualifies, should not be used to justify colonization, but can rather explain rights to homeland and the historical connections people and the state have to land. Finally, she argues that a state can gain territorial rights by being the most efficient user of the land (ibid, 161-164).

While not necessarily Lockean, but couched in the liberal tradition and so placed here, other liberal philosophers focus specifically on the territorial right to control borders and restrict movement across state boundaries and justify it in personal liberties extrapolated to the state. Christopher Wellman (2008) for example, grounds the territorial right of states to control borders in the liberal right to freedom of association. He argues that states should have the right to choose who they let in as part of their community, similar to how individuals have the right to freedom of association. He summarizes his position here: “[J]ust as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. And just as an



individual's freedom of association entitles him or her to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community" (Wellman 2008, 116). He argues that freedom of association is a moral right which all people and the state representing the people are entitled to.

### *Neo-Kantian*

Neo-Kantian defenses justify territorial rights through "the claims of legitimate states" (Ypi 2013, 249). Because territorial integrity is of fundamental value and interest for states as well as the individuals residing within states, states derive rights to territory from the legitimacy of states (Ypi 2013). Territory allows in part the preservation and administration of a legal order that benefits the people. The people, here, "do not exist before the state but are thought to be politically constituted by them" (Ypi 2013, 249). Not all states have rights to territory. In order to claim territorial rights, states must be legitimate, and meet certain requirements, such as the "ability to protect basic human rights understood both as specific entitlements to political participation and guaranteed access to a set of material goods" (ibid, 250) and cannot be "implicated in violations of human rights and its institutions not to have come about through usurpation of other people's lands" (ibid, 250).

Stilz (2009) presents a defense of territorial rights that is characteristic of appeals to state legitimacy as the basis for territorial rights. Using Kantian groundings of the state, she argues that states make rightful claims to territory when:

- (a) the state effectively implements a system of law regulating property in that territory;
- (b) the system of law meets minimal criteria for securing the people's consent, by guaranteeing their most basic rights;
- (c) the state is not a usurper. (198)

For Kant, as well as Stilz, only states can have territorial rights and not groups or individuals. This is because the state possesses a moral imperative in order to both define and implement property rights. The state is “necessary in order to maintain a relationship of equal independence between subjects while still allowing them to claim rights to property” (Stilz 2009, 201). In this understanding of the state, consent is not foundational; indeed the state is not even something people can consent to, as it is morally essential and prior. Stilz explains, “entering the state is not a choice, instead it is an unconditional moral requirement, and indeed, it is something we can be forced against our wills to accept” (2009, 202). Subsequently, states, and not individuals or groups, possess rights to jurisdiction “because only they can promulgate a unitary, public, and objective criterion of the limits to property that binds everyone in a given area” (ibid, 202). However, Stilz argues that only *legitimate* states are able to possess territorial rights. To be considered legitimate, states must be “legal states that protect a minimal degree of freedom, equality, and independence for each citizen” (ibid, 204). Territory, according to this defense, is a justifiable use of power for states because the state itself is justified, at least theoretically.

#### *Group-based theories*

In group-based theories of territory, groups, not individuals or the state, form the justification for territorial rights. These groups may be nationalist, indigenous, ethnogeographic, or merely a collective not necessarily defined by ethnic or linguistic lines. Ypi (2013) argues that these group-based defenses of territory are “grounded on the importance of a shared history of improvement of the territory and of transforming the land to fit a group’s distinctive geographical, social and cultural needs” (Ypi 2013, 247). The theory thus “explains how a particular group of people may want to be in a *particular* area of geographical space and wish to continue preserving control over that area” (ibid, 247). The justification for territory rests in the

“relationship between the people and the land” (ibid, 246), a relationship that is defined by attachment. Ypi (2013) thus calls these types of arguments an attachment defense to territorial rights. However, for the sake of simplicity of explanation and to cast a broader net, I define them as group-based theories.

David Miller (2012) grounds his defense of state territory and associated rights of jurisdiction, rights to resources, and controlling borders in national or indigenous claims to land. Thus, in contrast with Kantian statist, the originators of territorial rights are the people and not states. He maintains that territorial rights “belong in the first place to peoples and not to the states that represent them” (Miller 2012, 265). These territorial rights are gained by nations or peoples not just by occupancy, “but by the material and symbolic value that becomes embedded in territory with the passage of time” (ibid, 265) through their use and activity on the land. This process of embodying value, both materially and symbolically, leads to all associated territorial rights: “A group, typically a nation or an indigenous people, which gains rights of jurisdiction over land on the basis of the value embodied in that land, will also have a good claim to control the resources the land provides and to decide who should have access to it, either temporarily or permanently” (ibid, 265-266). This then provides the basis for state territory: “states may claim and exercise the full set of territorial rights as representatives of the peoples” (ibid, 266).

Meanwhile, Avery Kolers (2009) presents another group theory in which territorial rights are grounded not in the nation but an ethnogeographic community. He writes, “A territorial right exists if and only if an ethnogeographic community demonstrably achieves plenitude in a juridical territory; this right grounds independent statehood only if there is no competing right and the territory is a country” (Kolers 2009, 136-137). What is an ethnogeographic community? He conceives it as “a group of people who share an ethnogeography and whose land-use

practices densely and pervasively interact (ibid, 108-109). Meanwhile, his definition of a country is “a juridical territory that has achieved a certain level of resilience” (ibid, 115-116). Plenitude, meanwhile, must meet two criteria, empirical and intentional. He explains that “A place is empirically full when it is internally diverse and distinct from other places” (ibid, 126-127). And it is intentional when the plenitude is based in plans to “achieve, maintain, or enhance empirical plenitude in perpetuity” (ibid, 129). Territorial rights are grounded in these conditions of plenitude achieved by an ethnogeographic community.

Margaret Moore (2015), meanwhile, does not look to nation or ethnogeographic features of a community to ground her theory of territorial rights. Moore also rejects statist justifications of the state “that state sovereignty necessarily involves control over territory and that whatever justifies the state also justifies the territory of the state” (Moore 2015, 4), which she argues is the basis of contemporary thought regarding states and territory. For Moore, traditional statist views of territory are unequipped to normatively defend territory, as they do not explain how territory is acquired or how to address territorial contestation or justice considerations. This leads to a sort of circular justification of territory where control over territory is also what justifies it (ibid, 5). As opposed to a jurisdictional view of territory that is individualistic, statist or cultural nationalist, Moore bases her theory in collective self-determination of people.

Moore maintains that people have a collective right to jurisdictional authority over geographic area (that is also legitimately occupied) only if:

- (1) a large majority of people are in a relationship with one another that involves a shared political commitment to establish rules and practices of self-determination;
  - (2) they have the political capacity to establish and sustain institutions of political self-determination;
  - and (3) they possess an objective history of political cooperation together, through for example participating in state or sub-state institutions or in a resistance movement.”
- (Moore 2015, 36)

Yet this self-determination over a particular geographic area is not solely dependent on political commitment and capacity, it also requires a *collective moral right of occupancy*, occupancy being the right to settle and remain for Moore. This collective moral right to occupancy is where her defense becomes distinctly attachment-based. Collective rights of occupancy relate to the ways in which a group's way of life (plans, projects, history, and identity), not just individuals' lives, are tied up with a specific area. Occupancy rights also include control over that place's nature and its continuity, as long as it does not impact other natural rights.

But having a collective stake in the relationships and projects of a place is not enough to justify territorial rights. As Moore explains, "Occupancy rights are a necessary but not sufficient condition for full territorial rights" (2015, 45). Under Moore's collective self-determination theory of territorial rights, only certain groups can meet the criteria for jurisdictional authority over a geographical area. Occupancy rights fulfill just one condition. The full requirements are as follows: first, a group must legitimately occupy a geographical space (in that they hold group occupancy rights); second, they must be the right kind of group for territorial rights (conceive of themselves as a group with a common political project, capacity for self-determination through establishing and maintaining political institutions, and have a history of political cooperation within the group) (Moore 2015).

Moore justifies a bundle of territorial rights based in her theory. These territorial rights include rights to control borders and immigration and rights to natural resources. I focus on the territorial right to control borders and immigration here. Moore argues that group occupancy rights (in which people have a right to remain in and protect an area from unwanted change) and being the right kind of collective agent to exercise jurisdictional authority, guarantees territorial rights to exercise control over borders, with some limitations. The right to control borders and

exclude potential migrants is based in the jurisdictional authority of the collective people to maintain their quality of life and relationships. Control over a collective's life is in part related to demographics (Moore 2015, 197) and the institutions and wellbeing of a place are impacted by demographic consideration. In addition, relationships are impacted by demographics, and Moore argues that we have unique associational obligations to the children of territorial occupants compared to immigrants. Immigrants may seek a relationship with a collective, but there is no obligation from the collective to give immigrants a relationship if they do not seek a reciprocal relationship, according to Moore. Whereas children of occupants are included in the sphere of relationality based in the pre-existing relationships and projects of existing occupants. Moore compares this to a family; one has unique associational duties and obligations to the children of immediate family members compared to other, non-related people.

Moore denies that border controls are tantamount to a violation of the freedom of movement. Restrictions on immigration still allow people a "sufficient degree of freedom of movement" that are consistent with human rights (Moore 2015, 205). Moore does not explain what amounts to a sufficient degree of movement, but she does claim that very small states may not be large enough to offer sufficient degrees of movement and therefore should enter into treaties with other states to allow their citizens more range of movement. While Moore does not believe everyone should have the right to entry, she does think right to exit is a fundamental right. Through negotiating with other states, small states can guarantee their citizens have the right to exit. We encounter here a variant of Locke's territorial paradox that is explored in the next chapter: when state A exercises territorial rights, state B's population may have its freedom severely limited, undermining its ability to consent. This is a paradox that Moore does not seriously consider.

### *Chapter Conclusion*

This chapter has sought to introduce a genealogy of the political concept of territory from Ancient Greece to the early modern period and then provide a cursory review of some of territory's contemporary philosophical definitions and defenses. Most basically and traditionally, territory is understood as the exclusive political control over geographic space, in which states' exercise jurisdictional power over a space and maintain rights to territorial supremacy, regulation of land and natural resources, and border control. This review has not intended to justify or uphold any of these definitions or defenses, but rather explain contemporary ideologies of territory. I understand these definitions and defense as fundamental pieces in the production of territory itself. Their significance in contemporary debates remains; even as globalization and networks of capital and information demonstrate the porousness of borders, the territorial state maintains its powerful effect on social and political life.

## Chapter Two: Territory's Democratic Contradictions

This chapter presents the contradictions territory may pose for democracies through an exploration of foundational notions of movement in the contract theories of John Locke and Jean Jacques Rousseau. At the heart of contract theory, I argue, is the notion that consent is constituted by the ability to choose movement or residence. The liberal democratic promise of political rights, liberties, and equality thus relies fundamentally on rights to movement. Robbed of the ability of movement, territorial subjection undermines the very basis of consent. Without the ability to both leave and remain, consent cannot truly exist. A government's exercise of territory and its associated rights of exclusion and border control, produces a democratic problematic. The conditions of territory produce subjects who are not able to consent. However, this contradiction territory poses for consent is not fully addressed by Locke or Rousseau. In fact, as I explain in the beginning of this chapter, Locke even *establishes* territorial rights in a fundamental paradox that maintains choice of movement or residence as the basis for territorial rights while also creating the conditions that makes that choice potentially prohibited. Rousseau also establishes internal and external territorial rights. Both authors then potentially complicate or even contradict their foundational notions of consent through residence and movement by also establishing territorial rights.

In this chapter, I first consider both Rousseau and Locke's ideas on the primacy of movement for consent and then explore the construction of territorial rights by both theorists. I argue that state territoriality erodes democracy and operates in ways reminiscent of political absolutism. To illustrate this point, I close the chapter with a consideration of Kunal Parker's (2015) history on immigration law from 1600 to 2000 in the United States. As Parker's case study presents, territory has been utilized to legally and politically disable and disenfranchise



people in the U.S.'s territorial interior as well as exterior since its time as a colony to the present. The U.S.'s history of territoriality demonstrates a betrayal of the democratic promise of political rights through consent by free movement and residence.

### *Consent and Mobility*

Interestingly, Locke and Rousseau do not consider the territorial paradox within their theories of the origins and justifications of the state. This is particularly surprising for Locke due to his understanding of human freedom in the context of territorial realities. In fact, a reading of *The Second Treatise of Government* demonstrates that Locke understands the restriction of movement and migration as against the very nature of freedom. For Locke, being born under a particular government and its territorial jurisdiction does not mean one should have to submit to it; a person must give consent, and consent is either given tacitly through continued residence or expressly through a promise or compact. Thus, potential for movement represents an important form of consent for Locke.

Locke (1681/2003) does uphold in the *Second Treatise* an understanding of spatially based jurisdiction; he clearly sees laws as being applied across a bounded area, and sovereignty as exercised over land area along with population. But he is critical of a territorial definition of political relationships; this is apparent in his critique of the idea that being born in a place necessarily determines one's political affiliation. Indeed, he seems to be at odds with the idea that place of birth determines citizenship. Locke writes, "A man is naturally free from subjection to any government, though he be born in a place under its jurisdiction" (ibid, 359). How is this so? Well, it has to do with Locke's conception of childhood and the origins of human freedom. He explains, "a child is born a subject of no country nor government" (ibid, 322). The child is born with innate rights to freedom and the preservation of his or her welfare, but until the child

has adult faculties the parent acts as a proxy for their well-being: “He is under his father’s tuition and authority till he come to age of discretion, and then he is a free man” (ibid, 322). Once the child is old enough to make decisions and is a free person, he or she is “at liberty what government he will put himself under, what body politic he will unite himself to” (ibid, 322). This is because a child is born free, and once of age and out of his or her parent’s care and free to make decisions, his or her parent has no rule over the child. Thus, it is not appropriate for the parent’s decision (to be a citizen of a commonwealth) to dictate their posterity’s decisions as well. Locke understands territorial naturalization as insubstantial and unverifiable based in the fundamental nature of human freedom:

For if an Englishman’s son, born in France, be at liberty, and may do so, ‘tis evident there is no tie upon him by his father being a subject of that kingdom, nor is he bound up, by any compact of his ancestors. And why then hath not his son, by the same reason, the same liberty, though he be born anywhere else? Since the power that a father hath naturally over his children is the same wherever they be born; *and the ties of natural obligations are not bounded by the positive limits of kingdoms and commonwealths.* (emphases own, ibid, 322)

Locke argues that because the child of a parent often inherits property from the parent, and since the property is under the territorial jurisdiction of the state and subject to certain laws, we mistake the child’s initial political status as being territorially defined (and because of this misunderstanding, free adult persons are also mislabeled). But Locke explains that the grown child who inherits may sell the property or leave the territory altogether. This is because simply living in a place or being born in a place does not mean one’s individual citizenship and belonging is fundamentally territorially defined:

But since the government has a direct jurisdiction only over the land and reaches the possessor of it (before he has actually incorporated himself in the society) only as he dwells upon and enjoys that, the obligation any one is under by virtue of such enjoyment to submit to the government begins and ends with the enjoyment. So that whenever the owner who has given nothing but such a tacit consent to the government will, by donation, sale, or otherwise, quit the said possession, *he is at liberty to go and*

*incorporate himself into any other commonwealth*, or agree with others to begin a new one in *vacuis locis*, in any part of the world they can find free and unpossessed. (emphasis own, *ibid*, 323)

While remaining in residence of a state's geographic area (a form of tacit consent), one must submit to its laws and respect its territorial rights. However, one may leave the territory and find another political society to join with in a separate territory. (Note: this is restricted if one pledges express consent to a commonwealth, according to Locke, but I would argue this is a stipulation that is reminiscent of perpetual allegiance, which is a contradiction for Locke considering his criticism of perpetual allegiance.) Membership in political societies is created through consent, and one becomes a true member through "positive engagement, and express promise and compact" (*ibid*, 324). Thus, Locke is critical of absolutist notions of political power in monarchy in which authority is established through paternalism on the part of the monarch and acquiescence to the political society is passed through generations from father to son in similar paternalism. Consider this passage in which he refutes perpetual allegiance completely:

"All men," say they, "are born under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance." *'Tis plain mankind never owned nor considered any such natural subjection that they were born in, to one or to the other, that tied them, without their own consents, to a subjection to them and their heirs.* (*ibid*, 320)

In this way, I think Locke understands territorial subjection as evoking that same absolutist notion of political power. Just as parental power is limited, non-absolute, and does not extend beyond childhood and into adulthood, birth in a particular spatial jurisdiction is non-absolute and does not create restrictions to a person's inherent freedom to political choice and potential movement between territories.

Rousseau also has a foundational notion of chosen residence (and thus the ability to migrate) as the basis of the contract in his work *On the Social Contract* (1762/1987). Similar to

Locke, he also finds perpetual, absolute notions of subjection to governance as contrary to fundamental rights. He argues like Locke that all people are “born equal and free” (Rousseau 1762/1987, 142) as children and are only subjected to parental power for their well-being until they are old enough to use discretion: “as soon as he reaches the age of reason, since he alone is the judge of the proper means of taking care of himself, he thereby becomes his own master” (ibid, 142). At this point, “none give up their liberty except for their utility” (ibid, 142), this advantage being the security and enhanced well-being that is accomplished through social compact. The social compact is the basis of legitimate governance, and it solves the problem of finding a “form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself, and remains as free as before” (ibid, 148).

In order for this compact to be legitimate, however, Rousseau argues that civil association must be essentially voluntary, and similar to Locke, refutes any subjection without consent:

There is but one law that by its nature requires unanimous consent. This is the social compact. For civil association is the most voluntary in the world. Since every man is born free and master of himself, no one can, under any pretext whatever, place another under subjection without his consent. To decide that the son of a slave is born a slave is to decide that he was not a man. (ibid, 205)

For Rousseau, perpetual allegiance from birth on is contrary to the nature of human freedom.

Civil association is based on voluntary consent.

A crucial part of this voluntarism, however, is residence (and its inverse, movement). Rousseau writes, “Once the state is instituted, *residency implies consent. To inhabit the territory is to submit to sovereignty*” (emphasis own, 205). Voluntarism is essential in the initial creation of the compact, and once a governance structure has been instituted, to reside or remain in a state

is to give consent. Like Locke, residence is foundational to consent for Rousseau. The importance of this cannot be understated, because for both Locke and Rousseau, consent is the origins of just governance and the democratic underpinning of the social contract. Just political power comes from consent and voluntarism; otherwise, the political relation is one of absolute subjection. Yet without the ability to both leave and remain, the existence of a free migration continuum, consent cannot be said to exist. A government's exercise of territory and its associated rights of exclusion and border control, then, is fundamentally suspect as illiberal. The conditions of territory make subjects who are unable to consent.

### *Territorial Rights and their Paradox*

Yet in a fundamental contradiction, both Locke and Rousseau establish territorial rights. While some theorists extrapolate territorial rights from Locke's ideas on private property (see neo-Lockean accounts in Chapter One), I find Bas Van der Vossen's (2015) careful reading of Locke's thoughts on territory a preferable analysis due to its complexity and consideration of the historical and philosophical context of Locke's writing. Van der Vossen is critical of a common misreading of Locke: that "states obtain territorial rights by means of individual acts of property submission by their subjects" (2015, 713). According to this conventional understanding, people submit part of their property rights to the state and because of that submission, the state gains territorial rights across the people's area of properties. Contrary to this view of territorial rights being rooted in property rights, Van der Vossen argues that Locke sees territorial rights and property rights as entirely separate. Property rights are neither necessary nor sufficient to grant states territorial rights, according to Van der Vossen's reading of Locke. Instead, he introduces an alternate framework for understanding Locke's theory of territorial rights. He arrives at this understanding through a consideration of Locke's writings on jurisdiction over oceans, the

fundamental nature of executive rights, and the foundational nature of good ruling for consent as opposed to submission of property.

According to Van der Vossen's analysis, Locke's theory of territorial rights is a two-part construction involving both the internal and external formation of territorial rights. Internal territorial rights are constructed through tacit consent of a population within an area under justified political power (also relayed and discussed in the previous section of this chapter), and external territorial rights are gained through international treaties in which other states agree not to attempt jurisdictional power within another territory. He explains the parts here:

1. "Internally, a state gains the right to rule over the people in its territory by being the first to exercise justified political power within an area. When people remain in this area they give the state their tacit consent. Thus, for Locke, tacit consent can justify not only the authority of the state that already has territorial rights, but it can also justify those territorial rights themselves" (Van der Vossen 2015, 713)
2. "Externally, a state gains the exclusive right to exercise such political power within its territory by securing the agreement of other states not to engage in competitive exercises of political power. This is achieved through international treaties" (Van der Vossen 2015, 713-714)

Within this theory of territorial rights we encounter an immediate paradox: just political power within an area in which people give tacit consent by continuing residence is a foundational origin of internal territorial rights. But tacit consent through residence only makes sense *if people are physically and legally able to leave the state's territorial boundaries*. Otherwise, it is not consent, it is force. In Locke's historical imaginary of new colonial frontiers and vast spaces, the idea of moving out of a territory unencumbered and into a new political reality may have been

feasible. However, the external construction of territorial rights presents a fundamental conundrum: as states construct external boundaries and agree to territorial sovereignty internationally through treaties, the ability of populations within that territory to leave becomes severely restricted or even at times impossible. Tacit consent through continued residence is not truly consent if it is forced through emigration and immigration restrictions and exclusive borders respected through treaties. Thus, the contradiction emerges that both the internal and external construction of territorial rights undermines potential democratic legitimacy established through consent.

North Korea is an example of this fundamental paradox in Locke's conception of territorial rights. One can entertain the framework here as well: Let us assume in a *hypothetical* that within North Korea, political power was *originally* exercised over a certain area under the assumption that it was a just exercise of power, based upon the benefit of all people and created through consent. The people of North Korea give their tacit consent to the territorial rights of the state by continued residence within this territory. Other neighboring states in the area, like China and Russia, respect North Korea's territorial rights and do not attempt jurisdiction within the geographic area under control.

However, what if North Koreans are physically unable to leave the state? Thousands of North Korean citizens do attempt to leave each year, and many are restricted by the territorial realities of their own state as well as neighboring Russia and China. When entering the territory of China, for example, North Koreans are often captured and returned due to agreements between China and North Korea on the status of defectors. The territorial state system in this case acts as a form of mandated segregation between and within territories and operates through force. Here is the paradox of Locke's conception of territorial rights: the construction of consent

is made impossible by both the internal and external construction of territorial rights that lock the populations within territories. What is consent by continued residence if there is no ability to safely migrate? Migrants and refugees may attempt to escape their states but are often returned by force to the very place they have fled by other states. In this way, there are perhaps more parallels between the slave catcher and the border control officer than not.

Rousseau's foundation of territorial rights is similarly constructed to Locke's argument. In his section on Real Property in *On the Social Contract* (1762/1987), he explains the process through which the state becomes master of public territory. Like Locke, Rousseau understands rightful governance based in mutual consent and contract as a prerequisite to the foundation of the state. This mutual consent and contract creates the ability of the sovereign state to regulate goods and land because through the contract, one gives up some autonomy over one's resources and services for the public good. He writes, "Each member of the community gives himself to it at the instant of its constitution, just as he actually is, himself and all his forces, including all the goods in his possession" (Rousseau 1762/1982, 151). This is not a complete transfer for Rousseau, though public possession does demonstrate strength and irrevocability. He explains: "This is not to say that by this act possession changes its nature as it changes hands and becomes property in the hands of the sovereign. Rather, since the forces of the city are incomparably greater than those of a private individual, public possession is by that very fact stronger and more irrevocable, without being more legitimate" (ibid, 151). The source of public possession and territory comes from the nature of the contract, in which people come together for public good, giving up some of their autonomy with regards to individual regulation of property.

However, Rousseau's ideas on the source of territorial rights should not be mistaken as the accumulation of individual private lands that constitute the spatial extent of a territory.



Indeed, institutions of private property are not even necessary for this transfer to occur; communities with possessions in common can also form contracts and subsequently create territorial rights. He writes:

It can also happen, as men begin to unite before possessing anything and later appropriate a piece of land sufficient for everyone, that they enjoy it in common or divide it among themselves either in equal shares or according to proportions laid down by the sovereign. *In whatever way this acquisition is accomplished, each private individual's right to his very own store is always subordinate to the community's right to all, without which there could be neither solidity in the social fabric nor real force in the exercise of sovereignty.* (emphasis own, *ibid*, 153)

In this case, Rousseau is explaining that acquisition of property can occur in common or individually, but either way, an individual's estate rights is subordinate to the "community's right to all" (*ibid*, 153), as he says. Internal territorial rights come not from some aggregate of the right one has to one's property, but through the social contract entered in for general welfare. That is how the state constitutes its internal justification for "public" territory, as Rousseau calls it.

External territorial rights, sovereign rights to justify control over space and the relationships and things within a space vis-a-vis other political communities, are based in the occupancy rights of the people who initially constituted the Sovereign power through contract. He explains this distinction between internal and external territorial rights: "For with regard to its members, the state is master of all their goods in virtue of the social contract, which serves in the state as the basis of all rights. *But with regard to other powers, the state is master only in virtue of the right of the first occupant, which it derives from private individuals*" (emphasis own, *ibid*, 151). So external recognition of sovereign territorial right is established by occupancy rights. These occupancy rights are created through meeting the following prerequisites:

In general, the following rules must obtain in order to authorize the right of the first occupant on any land. First, this land may not already be occupied by anyone. Second, no one may occupy more than the amount needed to subsist. Third, one is to take possession of it not by an empty ceremony, but by working and cultivating it—the only sign of property that ought, in the absence of legal titles, to be respected by others. (ibid, 152)

The strictness of these occupancy right requirements would assumedly contribute towards legitimizing territorial rights to external powers. However, one must imagine that there would be at least some negotiation through international treaties of more contested borders, though Rousseau does not mention it here explicitly. More fundamental to Rousseau, though, is that both internal and external rights are created through the rightful institution of sovereign power which is based in mutual compact and consent of the people. However, as I explore in the next section, Rousseau's notion of consent in the contract is also based on residence and the existence of a migration continuum. Yet through establishing absolute territorial rights, Rousseau, like Locke, endangers the possibility of his very notion of consent.

For Locke and Rousseau there is a somewhat radical notion of the right to movement and migration, and an understanding that political membership is not fundamentally defined territorially. While jurisdiction is spatially bounded, and one must submit to the laws governing a particular territory while within its areas, merely staying in a place or being born in a place does not mean one's freedom to change political societies and geographic area is restricted. Despite this acknowledgement, there is an inherent tension in Locke and Rousseau's ideas, and one which restricts the radical potentialities of their consent-based theories. The exercise of external and internal territorial rights by states limits the fundamental nature of Locke and Rousseau's understanding of human freedom. When one cannot leave a territory, one cannot give consent. There is a contradiction between the creation of political societies exercising territorial rights, and the freedom to choose the political society in which one lives. State territory, even under

liberal democracy, creates conditions of absolutism and submission that are reminiscent of paternalistic monarchy based in naturalized subjection to political power.

The political exercise of territory is an internal paradox that contradicts the democratic promise of contract theory. A failure to fully address territory as a problem limits democratic realities and creates conditions for democratic states in which elements of political absolutism and domination remain even in the midst of extended rights and suffrage. The use of territory did not emerge under democratic principles or conditions, rather it was a political technology used to control monarchs' subjects. Territory is historically a weaponized and political use of space. Under the rule of British monarchs, territory bounded people to perpetual (and involuntary) allegiance to the king (Parker 2015, 28). Systems of monarchy employed the political control of space as a means to subjection: one's position in space determines one's subjection to the king's power. Sir William Blackstone wrote in the 18th century that "[n]atural allegiance is such as is due from all men born within the king's dominions immediately upon their birth" (qtd in Parker 2015, 28). This is a territorial definition of the political relationship, rather than a socially or individually defined political relationship. As Elden (2013a) points out in his history of territory, kings eventually became the rulers of a territory, rather than that of a specific ethnic group, a break in historical traditions of power. Rousseau comments on this transition (as Elden 2013a also notes), explaining the power of territory: "This advantage [of territory] does not seem to have been fully appreciated by the ancient monarchs, who, calling themselves merely King of the Persians, the Scythians, and the Macedonians, appeared to regard themselves merely as the leaders of men rather than masters of the country. Today's monarchs more shrewdly call themselves King of France, Spain, England, and so on. *In holding the land thus, they are quite sure of holding the inhabitants*" (emphasis own, Rousseau 1762/1987, 152). In this passage of

Rousseau, again, the democratic problematic of territory for social contract theory is apparent: territory acts as a form of entrapment and limits, restricts, and prohibits movement.

Subsequently, it is a direct contradiction of consent based in residence and potential movement.

There can be no true willing residence if it is by force and movement is constricted.

This next section considers the problems of territory and its complication for democracy through a brief historical case study of the United States based in Kunal Parker's book on the legal history of immigration and citizenship from 1600 to 2000, *Making Foreigners* (2015). Starting from its roots in the British monarchy's use of territory up until the modern United States' immigration regime, I argue through a consideration of Parker's work that territory in the United States has served primarily to limit democracy, not surprising considering its fundamental contradictions for democracy and its origins in absolutism.

#### *Territorial Power in the United States*

As people's primary political relationships and allegiance become bound in space through territory, the absolute control of movement also emerges as a crucial element of territorial right. In the case of late-Medieval and early modern Britain, subjects were controlled through intense territorialization, both by restricting internal and external movement, and denying rights of choice to stay. Parker (2015) details these conditions: "[R]ights to territorial presence and movement were not considered basic incidents of British subjecthood. British subjects could be barred from leaving the kingdom, denied rights to remain in the kingdom, and prevented from moving at will throughout the kingdom" (2015, 29). In 1381, an act was issued that barred British subjects from leaving the domain of the kingdom (Parker 2015). The act expressly forbid "the Passage utterly of all Manner of People ... except only the Lords and other Great Men of the Realm, and true and notable Merchants, and the King's Soldiers ... out of the

said Realm, without the King's special Licence [sic]" (qtd in Parker 2015, 30). In 1606, the act was repealed to end restrictions of movement from Scotland and England, but exit rights were still limited -- so much so that even the early colonists needed special permission to exit (Parker 2015, 30). Besides prohibitions and restrictions on territorial exit, subjects also could be involuntary removed from England, and thousands of convicts and hundreds of the poor were shipped to colonies. Parker reports that "two-thirds of all felons convicted at the Old Bailey, London's principal criminal court, suffered this fate" (ibid, 32).

British subjects were also denied rights to travel and residence: "A complex grid of laws restricted the mobility and residence of, or forced mobility and residence upon, impoverished, mobile, 'masterless' subjects" (ibid, 32). Poor laws were instrumental in establishing the internal territorialization of British subjects, a precedent that continued and carried into the American colonies (Parker 2015). These laws assigned local governments the responsibility of poor relief, "formalized in the 1662 Settlement Law, which stipulated how local poor relief officials should determine who came under their jurisdiction for purposes of administering poor relief and *how they could remove poor people to their home parishes*" (emphasis own, ibid, 32). Like birth within the territory itself, one's initial 'settlement' was a crucial part to removal of the poor: "*Settlement determined where one belonged and, hence, where one could be returned against one's will*" (emphasis own, Parker 2015, 32). In this early modern period of British employment of territory, the internal poor and migrants faced the same fate as contemporary migrants today: territorially defined political identities and severe limitations on rights to movement. The forced internal expulsion of the poor is another instance of the overlap between internal and external territorialization by a modern state. In early modern England, internal subjects were intensely territorialized and lacked basic rights to movement or residence.

The internal territorialization of populations continued from early modern British practice and into colonial North America. While recent immigrants were granted political rights in some colonies if they met stipulations of being white, male, and land owning (ibid, 35), much of the internal population was made alien or foreign. Native Americans and free blacks were particularly territorialized and made other. Parker explains that in many areas, “Native Americans were not permitted to stray beyond the borders of plantations designed for their use” and they were “*made aliens not by having come from anywhere, but by having bounded territorial English communities literally emerge in their midst and name them as such*” (emphasis own, ibid, 38). Colonial territory, then, was used to create a territorial other whose movement could be controlled and restricted and through this disabling any chance of political rights: “It was when these communities placed Native Americans beyond a frontier of the communities’ making, or drew borders around them, that Native Americans became aliens” (ibid, 38). Colonies also used territorial methods to refuse free black political rights: “South Carolina and Virginia required free blacks to leave the colony or be re-enslaved” (ibid, 41). Crucially, “This rule applied not to white indentured laborers, who were considered valuable settlers at the end of their indentures, but *only* to blacks and regardless of where they had been born -- that is, whether or not they were native-born” (ibid, 41). In addition to free blacks and Native Americans, the colonies’ poor were widely territorially restricted and denied rights to movement. This was accomplished through poor laws in which populations were ‘warned out’ of towns and physically returned to the place where they come from. Parker writes, “Not surprisingly, single women, unmarried mothers, widows, the disabled, the sick, the aged, and subordinated racial groups were disproportionately represented among the ranks of those ‘warned out’” (ibid, 45).

Through the American Revolution and until after the U.S. Civil War, internal territorialization and restricted movement continued heavily. Parker explains, “In general, because state citizenship did not entail rights to enter and reside in every part of state territory, this meant that states were also not obliged to open their borders to all citizens of other states” (ibid, 74). Many states prohibited the in-migration of free blacks and “placed restrictions on their entry, residence, and movement” (ibid, 76). Virginia, for example, forbid the “in-migration of ‘any free negro and mulatto’” (ibid, 76). In Georgia, any free black person discovered in violation of the prohibition to in-migration was “subject to a penalty not exceeding one hundred dollars and, if unable to pay the penalty, became ‘liable to be sold by public outcry, as a slave’” (ibid, 77). For Native Americans, the poor, free blacks, and sometimes women, the American republic was fraught with territorialization: “Millions could be classified as aliens, share legal disabilities with aliens, and be far less welcome than aliens. Depending on one’s legal status, the experience of internal territorial borders -- accompanied by a fragility of rights and mobility -- was also a given” (ibid, 85).

The post-World War II rights revolution brought hard fought victories for expanded political rights and protections for many of these populations rendered foreign in the territorial inside. Rights to travel for native-born people were recognized internally and desegregation ended at least de jure territorial exclusion if not segregation in practice. Poor laws that restricted movement were gradually overturned as the federal migration regime became solidified.

*Edwards v. California* (1941), brought to court by a man sentenced to six months of imprisonment for bringing his brother into the state, overturned a California law which made a misdemeanor “every person... that brings ... into the State any indigent person who is not a resident of the State, knowing him to be an indigent person” (qtd in Parker 193). *But the*

*protections for the internal populations were combined with a growing and absolute control of immigration from outside the state's territory.* Parker explains, "When the rights revolution for citizens is juxtaposed against the simultaneous affirmation of plenary power vis-a-vis aliens, what becomes clear in the post-World War II era is a greatly widened gap between citizen and alien" (2015, 187). This widened gap between resident immigrants and people naturalized by *jus soli* meant increased territorial justifications for political rights and equality under the law. Democracy, in this case, became defined by its ability to exclude. The Supreme Court explained it this way, "The exclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of political self-definition... Judicial incursions in this area may interfere with those aspects of democratic self-government that are most essential to it" (qtd in Parker 2015, 213). The institution of territorial governance not only deprives millions of people living within the United States of political rights and subjects them to the absolute power of the state in the form of forced deportations, but also excludes and refuses in-migration of those on the territorial outside. The history of territory in the United States has meant a contradiction of the principles of democratic consent through movement and residence.

The first uses of territory were attempts of absolute sovereign control of movement, both internally and externally, and the justification for this control was based in territory and political absolutism. In the context of the United States, as people on the territorial inside were extended citizenship, distinctions between the alien or foreigner and citizens became more apparent. But through the majority of U.S. history, Parker (2015) argues in *Making Foreigners*, the rights of many of the territorially inside (Native Americans, women, the poor, free blacks) and the rights of the territorial outside, 'immigrants,' were for all purposes comparable. Territory has anything



but a democratic history; rather it has been both a justification for and a means to limiting political rights of people.

### *Chapter Conclusion*

This chapter sought to explain the contradictions territory poses for social contract theory and foundational notions of consent for democracy. Both Locke and Rousseau, I argue, utilize the notion of consent through residence. At the heart of social contract theory, then, is mobility. Yet territory and its associated rights radically complicate, restrict, and prohibit movement. While Stilz (2009) briefly acknowledges the contradiction that residence as consent poses for territorial rights in Locke's conception, her response is to make the territorial bind even more strict by removing consent altogether. In this way, she essentially circumvents the paradox (see Espejo 2014 for discussion of paradoxes). She writes, "We must abandon the role of the social contract in justifying territorial rights" (Stilz 2009, 202). According to her Kantian conception of territorial rights, states have territorial rights through their unique legal powers to guarantee property rights that are impossible in the state of nature. Because the state is necessary, consent is morally irrelevant: "the state is not an institution to which we must consent in order to be bound by it: instead, it is a necessary condition of our standing in a rightful relation to others" (ibid, 202). How are states' territorial rights established? By virtue of their being "legal states that protect a minimal threshold of freedom for each citizen" (ibid, 203). By grounding her theory of territory in the non-existence of consent, she dissolves the territorial paradox of liberalism rather than asserts it.

However, my work in this chapter has been to assert the paradox in contract theory, and, through this assertion, maintain consent but deny territory its liberality. This is not because I ultimately understand consent as some essential, originary political phenomenon in democratic

states. But the idea of consent is infinitely valuable even in its utterance because it suggests an alternative to its opposite: subjection and domination. The idea of consent resists notions of political absolutism, of perpetual allegiance, of power relations that are morally and philosophically irresistible according to the dominant discourse of the day. The notion of consent in contract theory opens up space to consider that power relations can be resisted, and that people have a right to decide and mitigate the power they are subjected to. Locke and Rousseau were writing against something, and that was perpetual, absolute political power exercised by the few and over the many. The problem is, the exercise of territory creates another form of nearly absolute power over population by states. The spirit of resistance these early theorists engaged in their highly specific historical contexts is what I wish to continue in the next chapters.

### Chapter Three: Territory's Power and Subjects

Sack (1986) describes human territoriality as “*the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area*” (19) and calls the area under control ‘territory’. Instead of territoriality, I have chosen territory as the primary term of use to name processes of state territorialization, as I agree with Elden (2013a) that territoriality evokes a sort of trans-historical, generalizing conceptual category. Territory, on the other hand, is conceptually tied to the historical emergence of the modern nation-state (Elden 2013a). I, like Elden, use the term territory, then, to describe a form of spatial power particular to the contemporary state, as opposed to a collective or group. While there have always undoubtedly been attempts to control people and things by controlling space in some way (Sack 1986), however varied or limited, I am interested in states’ spatial power and governance in this historical moment. Contemporary spatial governance by states can be understood as territory, in which states use spatial strategies and practices to control land and resources, coerce populations, and control or prohibit movement. As a set of practices it is “porous, provisional, labour-intensive and ultimately perishable” (Painter 2010, 1116), yet its governing and political effects are deep. A form of governance, territory is an active political technology and not the static material backdrop of the state (Elden 2013b, 17).

As stated above, territory is not merely the spatial bounds of the state, but rather a particular political technology defined by states’ use of spatial control as an instrument of exclusion and regulation of population. I argue in this chapter that territory as a technology of the state produces certain subjectivities and power relations. Territory, for example, may be when a person is signified as a member of a political community based on birth in particular space or

when citizenship is primarily defined territorially (those on the outside are made ‘alien’). It is when a state builds legal, material, administrative, and coercive apparatuses to exclude, restrict, and complicate entry and exit of space. It is when certain spaces, relationships, and resources are designated as belonging only to a certain people, a people that is defined territorially. Territory marks the end of the primarily social definition of the political community and the beginning of the territorial definition of the political community (Elden 2013a). In short, territory is a political technology that is an effort to politicize space in an effort to govern populations and resources spatially.

In this chapter, I discuss theories of power relations and subjects in relation to the production of territory, territory being the exclusive political control of space by the state that produces a system of relations in which a person is coerced to remain within the spatial bounds of states under threat of violence. While some scholars have spent time discussing the practices and technologies of territory (Branch 2017) and its networks (Painter 2010), I choose to focus on the ways territory governs and produces the subject. My question, then, is what sorts of power relations are involved in territory? How do territorial ideas, practices, and technologies affect human lives? In order to explicate territory’s relations of power and its subjects, this chapter first explores Foucauldian theories of power and the subject, and through a discussion of Foucault considers a way to approach territory’s power and subjects. I consider Foucault’s understanding of territory using Elden’s analysis and critique (2013b and 2007) and discuss territorial biopower. I then turn to theorizing the constellations of power and subjectivity under territory. In the next and final chapter, I argue that territory must be refused in order to build democratic agency and new deterritorialized subjectivities.

*Foucault, Power, and Subjects*

For Foucault, power cannot exist without subjects. He writes, “Power is only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and adverse comportments may be realized” (1982, 790). This is because power is neither violence or consent to Foucault, rather what “defines a relationship of power is that it is a mode of action which does not act directly and immediately on others” (ibid, 789) but instead “acts upon their actions: an action upon an action, on existing actions or on those which may arise in the present or the future” (ibid, 789). The exercise of power can take various means of manipulation over action: “*it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely*; it is nevertheless always a way of action upon an acting subject or acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions” (emphasis in original, ibid, 789). The exercise of power guides “the possibility of conduct” and puts “in order the possible outcome” (ibid, 790). This sort of exercise of power or governing has always existed for Foucault, but in historically specific iterations; as he explains, prior to the idea of government as formal political structures or state management, early governance structures “designated the way in which the conduct of individual or of groups might be directed: the government of children, of souls, of communities, of families, of the sick” (ibid, 790).

Because of power’s exercise being dependent on action and resistance, “[t]he relationship between power and freedom’s refusal to submit cannot, therefore, be separated” (Foucault 1982, 790). For at the center of the power relationship, “and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom” (ibid, 790). Due to imbrication of power and action, there can be no “essential freedom” for those being acted upon in relations of

power but rather only ‘agonism’: “a relationship which is at the same time reciprocal incitation and struggle, less of a face-to-face confrontation which paralyzes both sides than a permanent provocation” (ibid, 790). This is because the exercise of power is dependent on the existence of others’ actions; there is no power relationship without the attempt to govern others’ potential actions, and the reaction to those attempts. As long as there is attempt to govern others’ actions and some potential action against those governing, there are power relations. And for Foucault, power relations are fundamental to human society: “In any case, to live in society is to live in such a way that action upon other actions is possible-and in fact ongoing. A society without power relations can only be an abstraction” (ibid, 791). Thus, there can be no total liberation from all power relations, but rather only contestations and transformations of particular *forms* of power relations through agonism and new sorts of actions and subjectivities.

The fact that social existence without power relations is impossible does not mean that existent power relations are natural or necessary: “to say that there cannot be a society without power relations is not to say either that those which are established are necessary or, in any case, that power constitutes a fatality at the heart of societies such that it cannot be undermined” (Foucault 1982, 791). Foucault understands the negotiation, contestation, and refusal of power relations as an ongoing socio-political project: “I would say that the analysis, elaboration, and bringing into question of power relations and the ‘agonism’ between power relations and the intransitivity of freedom is a permanent political task inherent in all social existence” (ibid, 791-792). This view of power relations creates space for the contingency and fluidity of power relations, always contestable, and “makes all the more politically necessary the analysis of power relations in a given society, their historical formation, the source of their strength or fragility, the

conditions which are necessary to transform some or to abolish others” (ibid, 791). Analyzing power relations opens up spaces for alterity.

In order to define and illuminate power relations, Foucault suggests a method based in identifying points of resistance to power relations. This method “consists of using this resistance as a chemical catalyst so as to bring to light power relations, locate their position, and to find out their point of application and the methods used. Rather than analyzing power from the point of view of its internal rationality, it consists of analyzing power relations through the antagonism of strategies” (Foucault 1982, 780). This analysis consists of investigating both the “forms of resistance and attempts made to dissociate these relations” (ibid, 780). These spaces of resistance constitute the fault lines of power relations, the spaces of fragility, and “by following lines of fragility in the present” we can “grasp why and how that which-is might no longer be that-which-is. In this sense, any description must always be made in accordance with these kinds of virtual fracture which open up the space of freedom understood as a space of concrete freedom, that is of possible transformation” (Foucault 1994 qtd in Allen 2015, 524).

Though power relations define human society, and in this way we are always already imbricated in and constituted by relations of power, there is still possibility for liberation from or transformation of certain types of power relations in Foucauldian analysis, particularly in regards to domination (Allen 2015, 517). While relations of power are “mobile, reversible, and unstable” (Foucault 1997 qtd in Allen 2015, 517), domination occurs when power relations are “blocked” and “frozen”, “a condition that occurs ‘when an individual or social group succeeds in blocking a field of power relations, immobilizing them and preventing any reversibility of movement’” (Foucault 1997 qtd in Allen 2015, 517). The immobilization and irreversibility of power relations during domination means that they are continually asymmetrical and have severely

limited the realm of practices of freedom (Foucault 1997 qtd in Allen 2015, 517). For Foucault, then, transformation of particular forms of power relations might mean “transforming a state of domination into a mobile, reversible, and unstable field of power relations within which freedom may be practiced” (Allen 2015, 517).

Yet power is not the primary theme for Foucault’s work, rather it is the subject. Foucault writes, “I would like to say, first of all, what has been the goal of my work during the last twenty years. It has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subject” (1982, 777). For Foucault, the question is not what is the subject and how do power relations act on the subject, but rather, how do power relations “manufacture subjects” (Kelly 2008, 89). This subjectivity is constituted “specifically in connection with certain precise, historically-constituted ‘experiences’” (Kelly 2008, 92).

Both subjectivation and subjection are forms of subject production. Subjectivation is the process through which subjectivities are self-reflexively constituted through relations of power (Kelly 2008, 99), while subjection is related more to domination: subjection means “people being induced by power to relate to themselves in certain ways, to subjectivise themselves in certain ways” (ibid, 100). Subjectivation is logically prior to subjection in that subjectivation is as ever ongoing as power relations itself, but subjection is the constitution of subjectivities that are more forced and limited, the subjection of domination (ibid, 95). Crucially, the constitution of subjectivities is not *by* the power relation itself: “Rather, it is the self that creates the subject in its relation *to itself through power*... [T]hat is not to say that there is not a considerable degree of determination by power in subjectivation – there is – but it is only possible because *the self-relation is itself a power relation*” (emphasis in original, ibid, 100). The



constitution of the subject under relations of domination will undoubtedly be more restricted and conditioned by the asymmetrical rules of the relationship, but it is always a process of *self*-relation to both knowledge and rules.

Foucault suggests that contemporary oppositional struggles resist subjecting power (1982, 781). Subjecting power is a form of power that “applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects” (1982, 781). Resistance to contemporary power relations is then marked by opposition to processes of subjection. These oppositional struggles ask the question “Who are we?” (Foucault 1982, 781) and refuse “abstractions, of economic and ideological state violence, which ignore who we are individually” (ibid 781) and also are “a refusal of a scientific or administrative inquisition which determines who one is” (ibid 781). I think we can understand in Foucault then that liberation from the subjection of domination is accomplished through the refusal of forms of power that constrict and limit the realm of subjectivities. Thus, he argues, the problem of the day is “not to try to liberate the individual from the state and from the state’s institutions but to liberate us both from the state and from the type of individualization which is linked to the state” (Foucault 1982, 785). In order to do this, “We have to promote new forms of subjectivity through the refusal of this kind of individuality that has been imposed on us for several centuries” (ibid, 785). Oppositional struggles against subjectivation work toward dual ends: “on the one hand, they assert the right to be different, and they underline everything which makes individuals truly individual. On the other hand, they attack everything which separates the individual, breaks his

links with others, splits up community life, forces the individual back on himself, and ties him to his own identity in a constraining way” (ibid, 781).

What analytical resources can be applied from Foucault in a study of territory? First, Foucault’s notion of power, that power is “a way of action upon an acting subject or acting subjects by virtue of their acting or being capable of action” (1982, 789) and that particular power relations can be resisted and transformed (though power relations themselves are perpetual). Secondly, that particular subjects are produced through particular power relations, and subjectivity is constituted by both sides of the power relationship, the governing and the governed. Both of these points will be explored in a later section, which considers the power relations of territory (intertwined with biopower), subjection by territory and the production of territorialized subjectivities. (The next and final chapter introduces potential forms of oppositional resistance to the particular constellations of power and subjectivity under territory.) First, I look to Elden’s work on Foucault’s understanding of territory to situate the following discussion of territory and biopower, as the two are interconnected.

### *Foucault on Territory*

This section briefly examines Foucault’s ideas on territory using Stuart Elden’s (2007 and 2013b) work alongside Foucault lectures in *Security, Territory, Population* (2009). Foucault (2009) understands a fundamental shift in state sovereignty’s focus from territory to population over the past few centuries. He delineates the initial scope and problem of sovereignty as a question of territorial maintenance:

We could say that if the traditional problem of sovereignty, and so of political power linked to the form of sovereignty, had in the past always been either that of conquering new territories or holding on to conquered territory, then its problem was in a way: How can it not change, or how can I advance without it changing? How can the territory be demarcated, fixed, protected, or enlarged? In other words, it involved something that we

could call precisely the safety (*sûreté*) of the territory, or the safety (*sûreté*) of the sovereign who rules over the territory. (Foucault 2009, 70)

He identifies Machiavelli as representing the end of the age of territorially focused sovereignty (Elden 2013b; Foucault 2009). The emphasis in the contemporary age is not territory for Foucault, but rather population: “No longer the safety (*sûreté*) of the prince and his territory, but the security (*sécurité*) of the population and, consequently, of those who govern it” (Foucault 2009, 93). The political question of the moment for Foucault, then, is not the security of the prince and his territory (territory being essentially the source of his sovereign power), but the security of the population. The demarcation of the spatial bounds of the state, and ensuring those spatial bounds are not infringed upon by other sovereigns, is no longer the essential problem for the state. Rather, it is ensuring proper circulations of things and people for the benefit of the population:

Now it seems to me that through the obviously very partial phenomena that I have tried to pick out we see the emergence of a completely different problem that is no longer that of fixing and demarcating the territory, but of allowing circulations to take place, of controlling them, sifting the good and the bad, ensuring that things are always in movement, constantly moving around, continually going from one point to another, but in such a way that the inherent dangers of this circulation are cancelled out. (Foucault 2009, 93)

However, Foucault is mistaken above in declaring territory no longer essential, partly because of his inability to see territory as an active process and political technology of the state, according to Elden (2007 and 2013b). Elden writes that “[t]erritory is a political technology: it comprises techniques for measuring land and techniques for controlling terrain” (Elden 2013b, 14). While fixing and demarcating lines is a part of territory, so is controlling circulation and movement based upon these lines. Both are essential pieces of territorial sovereignty and are employed for population governance purposes. Foucault understands the population as the focus of sovereignty, and so attempts to excise territory’s importance in modern governance, but

territory is an integral modern tool for governing populations. As Elden's historical genealogy of the concept of territory has demonstrated, territory became "an object of governance, alongside that of population" (2013b, 12). (See also Elden 2007, 578). *Territory emerges with and alongside biopower*, not completely prior.

This misunderstanding of Foucault's partly relates to his impartial and historically inaccurate genealogy of the political concept of territory, according to Elden (2013b). Foucault writes, "From the Middle Ages to the sixteenth century, sovereignty is not exercised on things, but first of all on a territory, and consequently on the subjects who inhabit it. In this sense we can say that the territory really is the fundamental element both of Machiavelli's principality and of the juridical sovereignty of the sovereign as defined by philosophers or legal theorists" (2009, 134). This genealogy, according to Elden's (2013a; 2013b) work on the historical development of territory, is inaccurate. Elden writes, "Territory is not a term that is especially helpful in making sense of the Middle Ages, or even thinkers as late as Machiavelli. Crucially it is not the term that political thinkers used to describe the object of political rule" (2013b, 12). In this way, Elden thinks "Foucault sees territory as a defining feature of a period that had no sense of it; he sees its absence when it is actually being conceptualised and actualised. Territory emerges later than Foucault thinks it disappears" (2013b, 12). Rather, Elden argues that the historical record suggests the concepts of territory and population emerged at a similar historical juncture in the modern era. He writes:

[T]erritory and population emerge at a similar historical moment as new ways of rendering, understanding and governing the people and land. Both are crucial political questions—biopolitics and geopolitics exist, not in tension or as alternatives, but as entirely implicated in each other, intertwined in complicated and multiple ways. To control territory requires the subjugation of the people; *to govern the population requires command of the land*. (emphasis own, Elden 2013b, 17)

#### *Biopower and Territory*

The importance of territory for biopolitics – biopolitics here meaning population as the primary political problem (Foucault 2009, 21) -- is essential. The dominant use and logic of biopower in many contemporary states, and the necessity of territory as an instrument of biopower, demonstrates that the increased use of territory is not a signal of the demise of the state amidst globalizing forces, but rather an evolution of its biopower which is likely to become increasingly trenchant. Territorial power is biopower and biopower is fundamentally territorial. As Elden (2013b) explains, “To control territory requires the subjugation of the people; to govern the population requires command of the land” (17). Biopolitics and geopolitics are imbricated, he explains (ibid, 17). This section examines Foucault’s understanding of biopower and then considers what it means for contemporary territory. It expands on Elden’s suggestion that the biopolitical and geopolitical are intertwined and argues that territory, rather than being irrelevant to contemporary biopower, is a crucial biopolitical instrument. Without territory, the state’s capacity to regulate its populations would be impeded. First, I discuss Foucault’s conception of population and biopolitics, and then consider the ways in which territory and biopower are interwoven.

Foucault argues that while the size of a population was important for sovereigns in the past for population’s ability to provide troops and populate markets and towns, it is the development of cameralism and mercantilism in the seventeenth century that shifts the focus to population for sovereignty (Foucault 2009, 97). During this period, the population became the basis for the state’s power and wealth: population provided manpower for agriculture, manufacturing, and labor competition that guaranteed low wages and thus export (Foucault 2009, 97). This could only occur with a regulatory apparatus that accomplished the following:

Prevents emigration, calls for immigrants, and promotes the birth rate, a regulatory apparatus that also defines useful and exportable products, fixes the objects to be produced, the means of their production, as well as wages, and which prevents idleness and vagrancy. In short, it requires an apparatus that will ensure that the population, which is seen as the source and the root, as it were, of the state's power and wealth, will work properly, in the right place, and on the right objects. (Foucault 2009, 97)

However, during this period, population was still understood as a collection of the sovereign's subjects who could be managed to follow the sovereign's directives through law and force. The physiocrats and economists of the 18th century mark a fundamental break in this understanding; in contrast, they understand population as a set of biological-social processes: "the population no longer appears as a collection of subjects of right, as a collection of subject wills who must obey the sovereign's will through the intermediary of regulations, laws, edicts, and so on. It will be considered as a set of processes to be managed at the level and on the basis of what is natural in these processes" (Foucault 2009, 98). The population thus is no longer understood "from the standpoint of the juridical-political notion of subject" (ibid, 98) but as a "technical-political object of management and government" (ibid, 98). This is because, according to the discourse emerging at the time, the population is *variable*; it is not a tabula rasa for the sovereign to mold, or a collection of independent wills, but a natural phenomenon dependent on a multitude of variables such as climate, material environment, commerce and wealth, cultural standards, and the means of subsistence (ibid, 99). The population "[c]annot be transparent to a sovereign's action" (ibid, 99) and "the relation between the population and sovereign cannot simply be one of obedience or the refusal" (ibid, 100). He explains the reason why this is so:

The variables on which population depends are such that to a very considerable extent it escapes the sovereign's voluntarist and direct action in the form of the law. If one says to a population "do this," there is not only no guarantee that it will do it, *but also there is quite simply no guarantee that it can do it*. If we restrict ourselves to the sovereign-subject relationship, the limit of the law is the subject's disobedience; it is the "no" with which the subject opposes the sovereign. (Foucault 2009, 100)

In biopolitics, population is then seen as a “kind of thick natural phenomenon” (ibid, 100) that is managed through analytical calculation and transformation. The primary question of law’s efficacy is no longer a question of whether the subjects will obey, but now considers whether it is *favorable* to the population’s health:

Not only must voluntary changes in the law be considered if the laws are unfavorable to the population, but above all, if one wants to encourage population, or achieve the right relationship between the population and the state’s resources and possibilities, *then one must act on a range of factors and elements that seem far removed from the population itself and its immediate behavior, fecundity, and desire to reproduce.* (Foucault 2009, 100)

The techniques that emerge from this new understanding of population and power are not attempts to make subjects obey the dictates of the sovereign, but to have a grasp “on things that seem far removed from the population, but which, through calculation, analysis, and reflection, one knows can really have an effect on it” (Foucault 2009, 100). State biopower in this way governs the natural phenomenon that is population, not as subjects, but as a biological-social process. The population’s universal desire is essential in this, as the problem for governing individuals “must absolutely not be how they can say no, up to what point they can say no, and with what legitimacy they can say no “(ibid, 102) but rather “how they can say yes; it is how to say yes to this desire” (ibid, 102).

It is in this discussion of biopolitics, the governing of populations as the primary object of political power, territory emerges as crucial political technology of spatial governance. The governability of population is dependent upon controlling movement, particularly through the restriction of immigration and emigration in and out of political space. Foucault argues that utilitarian philosophy is the “theoretical instrument that underpinned the government of populations” (2009, 102) and the territorial state employs this utilitarianism especially in its treatment of those people outside its spatial bounds. Territory allows crucial elements of

population governance; without territory, the state's ability to regulate what it understands as the biological, economic and social processes of its populations would be compromised. Arguments regarding territorial controls are characteristically biopolitical in this way; migration is said to change economic and material conditions (Engler et al. 2020), influence population health and well-being outcomes (Reuveny 2021), influence statistics of threats to physical safety (*Sanctuary Cities: A Threat to Public Safety* 2015), either positively or negatively, and these are all biopolitical concerns, concern with the population at large. Subsequently, both emigration and immigration are managed through territorialization according to the "natural" dictates of population.

Intense territorialization as a biopolitical instrument is particularly true of highly developed countries whose mandate of population governance guaranteeing favorable conditions are backed through high capacity states. The states of highly developed countries cling tightly to territory, as it helps guarantee conditions for their own population, while managing outside and inside its borders people and phenomena that may impact conditions. It may be no coincidence that states which govern with highly sophisticated instruments for health and economy, also have sophisticated instruments for administering and developing policies on population movement, both in and out of their state. This is not to say that lesser developed countries with low state capacity do not use territory as a biopolitical technology, just that their abilities to implement territorialization may be more limited than in high capacity states in more industrialized countries.

#### *Power and Subjects in Territory*

Most basically, then, territory acts on other's actions through complicating, restricting, and prohibiting movement both to and from the spatial bounds of the state. This is accomplished



through a variety of legal, material, and coercive apparatuses that make movement complicated, difficult, or even unbearable to the point of physical danger or death. For certain people, territory can quite literally be a form of entrapment. If the possibility of leaving a state's spatial bounds is physically precarious and highly dangerous, the prohibition of movement is close to conditions of entrapment. The physical precarity of movement established by the use of territory may be created by the state within whose bounds one is located or another state whose bounds one wishes to move to, through, or within. For example, North Korea restricts non-state sanctioned movement out of its bounds by threat of torture and imprisonment, and its neighbor, China, aids that enforcement through repatriating defectors (United Nations Human Rights Council). Migrants attempting to enter the United States are restricted by security features leading people to travel through harsh deserts with deadly conditions in order to prevent capture. The United States Border Control's (2020) report from its Southwest Border Sector records a total of 8,050 border deaths in the fiscal years from 1998-2020, an average of 350 deaths per year. In 2020, there were 247 deaths at the southwest border (United States Border Control 2020). Globally, the Missing Migrants Project of the International Organization for Migration recorded 44,527 deaths from migration between 2014 and 2021 as people attempted to flee states and cross borders (International Organization for Migration 2021). These are deaths facilitated in part by territory and its restriction and prohibition of movement that forces desperate measures to enter and exit the spaces of other states.

While elites of a state may be partially excluded or even exempted from the most restrictive power relations of territory, the majority of the world's people are either highly restricted from free movement or outright prohibited. Free movement here meaning the ability to move to and through the spatial bounds of a state of one's choosing. This prohibition of free

movement is maintained through legal structures of territory that create often insurmountable restrictions and barriers to movement. Border and customs agents, police forces, policy makers, administrative bureaucrats, and lawyers work to maintain and enforce territorial governance and rules. The means to movement are heavily governed under territory, as major transportation and transit pathways across borders are policed and regulated according to the dictates of the legal rules and their accompanying administrative procedures. These relations of power are resisted through alternative routes that are beyond territorial agents' regulation, like contemporary underground railroads, as well as attempts to thwart agents along even traditional routes. Non-migrant individuals and groups within a state may also resist territorialization through aiding migrants and providing sanctuary outside the reach of agents of territory. One example is the case of the Arizona resident and United States citizen who faced up to twenty years of imprisonment on federal charges of harboring and conspiracy for aiding two migrants in the desert (Devereaux 2019).

In part related to its restriction and prohibition on movement, territory also governs conduct or acts on other's actions, through heavily influencing and sometimes forcing exposure to certain types of climatic, environmental, and economic vulnerability and hazards. By containing a population within a certain space, territory as a political technology creates conditions in which some people are more exposed to environmental and economic vulnerability. This is apparent in the restricted movement of people out of the spatial zones of states defined by severe climatic shifts and environmental deterioration, such as desertification, increased flooding, rising sea levels, and extreme heat waves. Similarly, containment within a space also exposes people to vulnerability when the economic conditions of a space are negative, such as in

prolonged periods of mass unemployment or depressed wages and decreased livelihood potential.

Territory also acts on others' actions by segregating entire populations from each other, radically limiting, restricting, and even prohibiting mutual dialogue and political action. As Lefebvre argues, segregation has profound impacts on political potential: "Segregation is inclined to prohibit protest, contest, action, by dispersing those who protest, contest, and act" (2000, 163). By segregating populations from one another quite literally and physically, territory can prohibit and limit potential political protest to relations of exploitation and domination created through global networks of economic, social, and political power. Globalization has transferred vast quantities of capital, particular economic relations, and cultural products over borders, but territory restricts and prohibits the people who can protest, contest, and politically act from engaging in political action in person beyond the spatial bounds of their state.

The power relations of territory produce camps, such as the camps of migrants and refugees. Without free movement into other polities, refugees and migrants are made stateless and confined to camps in which they are vulnerable to unfavorable health and economic outcomes. Territory also transforms the very boundaries of the state into a kind of camp, as migrants face potential physical harm or even death during attempts to leave their own state. The case of Rohingya refugees in Bangladesh fleeing ethnic violence in Myanmar is an example of the campification that territory engenders. While refugees have been living in camps in Bangladesh, like Cox's Bazar, the Bangladeshi government has been in the process of relocating significant portions of the refugees to a camp on a newly formed, climatically vulnerable silt island called Bhasan Char (Hossain and Natarajan 2021; McPherson 2019). The refugees are prohibited from leaving the island and those fleeing back to the camps on the mainland have died

in capsized ships or if caught, punished by officials, according to media reports (Hossain and Natarajan 2021; Alam 2021). Meanwhile, the residents of the spatial bounds of Bangladesh's state are climatically and economically vulnerable as well, and in 2017 represented 9% of maritime unauthorized migrants in Italy (Qayum 2017). Both citizens of Bangladesh and the stateless Rohingya are severely restricted from movement through territory.

Territory also acts on action through the naturalization of territory through discourse and institutions. This is partly related to Sack's (1986) point that territoriality displaces "attention from the relationship between controller and controlled to the territory" (33) itself. This makes territory itself appear a natural power, thus the relations of territory are seen as permanent, and essential. Space is then politicized in reifying, absolute ways. This limits the political imaginary of a deterritorialized world or the contestation of territorialization. Territory produces territorialized subjects who are both governed and govern themselves according to the dictates of territorial conduct. While there is resistance to territorialization, the contemporary moment is primarily defined by naturalization of territory. This lends to a discussion of territorial subjection, territorialization, and the production of territorialized subjectivities.

Territory marks the individual from birth. Though there are a variety of methods for determining citizenship, *jus soli* (right of soil) and *jus sanguinis* (right of blood), the birthmark of territory is still one of the most important determiners of economic, social, and political action in countries with *jus soli* citizenship laws. In countries with *jus sanguinis* citizenship laws, like most of Europe, territory still serves as a way of guarding *jus sanguinis* citizens from the territorial outside and others. Political status defined by birth either outside of or within the spatial bounds of a state is naturalized through territory, made essential to the individual's political membership, and defines the individual as a territorialized subject.

Territorialized subjectivities are inert, bounded, and static beyond the spatial limits of the state. The legal and institutional apparatuses of territory, which are backed through force, create subjects who both self-regulate movements while also being directly regulated. Territorialized subjectivities are boundary conscious, both to physical barriers but also psychological ones (they limit themselves to certain spatial realities). Territorialized subjects may understand movement to the spatial bounds of another state as outside the realm of reasonable possibility. Territory's subjects may also uphold restriction of movement for other peoples through migrant expulsion, and question these migrants for not following the 'order of things' under territory.

Territorialized subjectivity is psychically divisive. Territory creates fundamental divisions in understanding the other that goes beyond nation, race, ethnicity, or language and are based in the state's control of space. A territorialized other is so primarily divided from those within another state's space that their being within an unauthorized space is marked psychically as a kind of transgression. In order to fully grasp the completeness of this division, it may be helpful to consider its opposite through imagining conditions of deterritoriality. In a deterritorialized space, with all people possessing equal rights to free movement, the origins of belonging would be choice and subsequently universally accessible and acknowledged. While there are still undoubtedly social and cultural divisions, the right of being in, moving through, and leaving a space are not used as divisions. This is especially important for political futures, as deterritorialization opens up new ways of eroding the intense social divisions of territory to radically engage with and build with people who were fundamentally former politically 'others' in the sense of creating shared projects and futures. Territorial subjects and their 'others' on the territorial outside may be able to communicate with each other, but their ability to build shared political projects *within the same space* is made difficult if not impossible.

Finally, territorialized subjectivity represents another layer of intersectionality and marginality. Marginalized identities are intersected with territorialized subjectivity. Social divisions and disparities based in class, caste, religion, race, ethnicity, gender, sexual orientation, age, ableness, and their intersections, are all complicated by territorialized subjectivity. So, for example, marginal identities of gender, class, and sexual orientation can be intersected with territorialized subjectivity when those identities are made vulnerable by the inability to leave political space, and territory's entrapment directly threatens their other identities. This is apparent in the case of women fleeing gender and sex-based oppression through migration from particular states, but encountering enormous barriers based in their territorialized subjectivities. For some, territorialized subjectivity may be their primary marginal identity, as the conditions of territorialization may be the most prominent form of oppression to an individual's particular experience. For example, the inability to freely leave an area on the brink of conflict or crisis may make territorialized subjectivity more salient as an oppressive force, especially as the physical and emotional harm of war hits those who cannot leave. The technologies of territory, its discursive, legal, bureaucratic, and physical apparatuses, contain internal and external populations even as they are desperate to flee. Subsequently, even those who may have had the monetary funds for transit, and are not in a locally oppressed economic caste or class, are prevented from movement. It is consequently important to note that territorialized subjectivity affects different groups differently, and some are more territorialized than others. This is particularly apparent in the ease in which some people are able to move through the majority of spaces relatively unencumbered, and others are restricted almost entirely by territory.

## Chapter Four: Territory's Resistance and Alternatives

*“Sapiens is by definition a migrant, an emigrant, and an immigrant. He spread this way, seized the world in this way and, in this way, crossing sands and snow, mountains and abysses; deserting famines to follow food and water. ‘There is no border that cannot be crossed.’ Such has been the case for millions of years. It will be so to the very end (even more with the impending climate changes) and none of the walls erected everywhere, under various circumstances, yesterday in Berlin and today in Palestine, or in the American South, or in the laws of wealthy countries, will be able to contain this simple truth: that the Tout-Monde becomes more and more everyone’s home -- Kay tout moun -- that it belongs to all and that its stability come from the stability of all.”*

-- Patrick Chamoiseau and Édouard Glissant (2018, 262)

In 1867 in the city of Boston, Frederick Douglass delivered a speech titled “Composite Nation” in which he argues for a fundamental right to migration. As a former fugitive slave, Douglass is uniquely positioned in his work to theorize both the meaning and processes of freedom and oppression. He understands the anti-Chinese immigrant rhetoric and hostilities emerging at the time as reminiscent of the oppressive power relations and prejudice that had limited the democratic potential of the Republic under slavery. He writes:

The real trouble with us was never our system or form of Government, or the principles underlying it; but the peculiar composition of our people, the relations existing between them and the compromising spirit which controlled the ruling power of the country. We have for a long time hesitated to adopt and may yet refuse to adopt, and carry out, the only principle which can solve that difficulty and give peace, strength and security to the Republic, and that is the principle of absolute equality. (Douglass 1867)

Douglass seeks to extend this absolute equality to all immigrants, both actual inhabitants and *potential* inhabitants or migrants, and in a radical move claims a fundamental human right for migration into the territorial jurisdiction of the United States and for full political membership and democratic incorporation of migrants. He writes, “Do you ask, if I favor such immigration, I answer I would. Would you have them naturalized, and have them invested with all the rights of American citizenship? I would. Would you allow them to vote? I would. Would you allow them to hold office? I would” (1867). He then addresses a series of protestations that may arise against

immigration and political incorporation. These protests bear resemblance to arguments for territorial rights (see discussion of Margaret Moore) in their claims for territory based in self-governance and preservation through exclusion:

But are there not reasons against all this? Is there not such a law or principle as that of self-preservation? Does not every race owe something to itself? Should it not attend to the dictates of common sense? Should not a superior race protect itself from contact with inferior ones? Are not the white people the owners of this continent? Have they not the right to say, what kind of people shall be allowed to come here and settle? Is there not such a thing as being more generous than wise? In the effort to promote civilization may we not corrupt and destroy what we have? Is it best to take on board more passengers than the ship will carry? (1867)

To these claims for territorial rights of exclusion and control, Douglass responds that indifference to others and selfish expediency are not satisfactory bases for territorial rights to exclusion. He proposes that the fundamental human right to migration overrules these concerns with security and territorial sovereignty: “There are such things in the world as human rights. Among these, is the right of locomotion; the right of migration; the right which belongs to no particular race, but belongs alike to all and to all alike” (1867). Douglass understands this right as “external, universal, and indestructible” (1867).

Interestingly, Douglass sees this right of migration as being present in both movement and residence: “It is the right you assert by staying here, and your fathers asserted by staying here” (1867). Importantly then, the right to migration is both a potential movement and actual movement. In *choosing* to remain residing in a place, even if one was born there, one is exercising one’s right to migration. Douglass explodes the notion of nativity in this way, the idea that by some basis of birth in a particular location one is naturalized as a subject. To stay is only the other side of moving, and thus we are always on a continuum of movement if there is choice. Crucially, this choice in residence is only truly possible if the right of migration is respected; for Douglass’ wealthy white audience, much of the global North was arguably open to



their movement, and thus their staying was an exercise of the right to migration. For populations which are forcibly excluded or whose movements are restricted by territory, the choice to stay or move is essentially impossible. Simply, then, the right to migration is both the right to live in a place and the right to leave a place. Douglass sees this right as above any national rights or interests: “It is this great right that I assert for the Chinese and Japanese, and for all other varieties of men equally with yourselves, now and forever. I know of no rights of race superior to the rights of humanity, and when there is a supposed conflict between human and national rights, it is safe to go to the side of humanity” (Douglass 1867). In the conflict between territorial rights to control movement and the right to migration, Douglass sides with migration.

Douglass repudiates any efforts by white populations to limit migration, and argues against relations of territory that excludes others. He writes, “But I reject the arrogant and scornful theory by which they would limit migratory rights, or any other essential human rights to themselves, and *which would make them the owners of this great continent to the exclusion of all other races of men*” (emphasis own, 1867). There are limits to territory, Douglass suggests, and the polity cannot *own* the geographic area of its jurisdiction in a way that can also exclude others from it. The geographic area of jurisdiction is not the property of the polity but rather its spatial extent. To see the spatial configuration of the polity as propertied territory that is fundamentally private to a particular society is to turn the function of the state from the pursuit of public good for the common welfare of humanity into a sphere of absolute dominion. This might seem like a plausible understanding according to the aristocratic classes in the American South, or for the autocratic regimes of some monarchs of the time, but it is unacceptable in Douglass’ vision of democracy. Douglass sees the polity as being fundamentally open “I want a home here

not only for the negro, the mulatto and the Latin races; but I want the Asiatic to find a home here in the United States, and feel at home here, both for his sake and for ours” (1867).

Indeed, he writes that the right to migrate cannot belong to only one part of the global population, and belongs to rather the whole population. By exercising territorial rights of exclusion, Americans preserve a radically racially segregated organization of territorial space that is not only inconsistent with human rights but with demographic realities, according to Douglass: “If respect is had to majorities, the fact that only one fifth of the population of the globe is white, the other four fifths are colored, ought to have some weight and influence in disposing of this and similar questions. It would be a sad reflection upon the laws of nature and upon the idea of justice, to say nothing of a common Creator, *if four fifths of mankind were deprived of the rights of migration to make room for the one fifth*” (emphasis own, 1867).

Not only is it elitist, aristocratic, and unjust to allow some the rights of migration while disallowing others the same rights, the exercise of territorial rights to exclusion and border control creates antidemocratic and colonizing potential everywhere: “If the white race may exclude all other races from this continent, it may rightfully do the same in respect to all other lands, islands, capes and continents, and thus have all the world to itself. Thus what would seem to belong to the whole, would become the property only of a part” (Douglass 1867). State territorial power of exclusion is fundamentally suspect as a violation of human rights and democracy, as states in the global North parse out specific pieces of the world as uniquely possessed by their current populations; state territory exercises absolute rights over that area and can restrict migration over large geographic space.

Like Douglass, this chapter argues for an articulation of the right to migration and considers through it a right to the North. The previous chapter presented the processes of

territory, its power relations and subjectivities. This chapter explores pathways for challenge of this segregation and theorizes unauthorized migration as democratic action. I then utilize contemporary political thought on fugitivity to consider potential pathways for realization of the revolutionary character of the migrant including flight and marronage (Roberts 2015), hospitality (Coles and Haro 2019), and *mondialité* (Chamoiseau and Glissant 2018).

### *The Unauthorized Migrant as Revolutionary Figure of Democracy*

Movement is fundamental for democracy. In fact, as I argue in an earlier chapter, early contract theorists' notions of consent require movement. Similar to Locke's discussion of staying as a form of tacit consent and Douglass' affirmation of staying as a kind of migratory choice, I propose that the right to migration exists as a continuum of non-movement and movement. According to this logic, the unrealized potential of movement may be as much a part of the right to migration as the realized. Subsequently willing residence or non-realized movement within the spatial limits of the polity can be said to be the exercise of the right to movement. Chosen movement or migration out of the spatial limits of the polity is on the other end of the continuum. This right to migration is not only a human right, but I also suggest it forms the very basis of democratic consent. Without the fundamental right to movement, members of a polity are reduced to naturalized subjects of a paternal state, and subject to the absolute dominion constituted by state territory and its associated powers.

States or polities that are founded under the auspices of democratic intent fail to realize democracy fully without respecting unequivocally the right to migration. Even in democracies that fully recognize their own citizens' right to emigrate, without full rights to immigration for people from beyond the spatial limits of the polity and into its spatial jurisdiction, it is a democratic facade. This is because creating restrictive immigration barriers that exclude people

from outside a polity's borders, while also respecting the right to emigrate within that polity, creates a fundamental double-bind that is distinctly non-democratic. Restricting others' right to migrate to the polity creates a condition in which emigration is also potentially limited. This paradox in the literature is explored in Chapter Two. Movement is a fundamental base to democracy, and a right to exit without a right to enter elsewhere renders movement impossible.

When state territory creates restrictions on emigration, it creates restrictions on migration (again the continuum between staying and moving). While most people might be able to acknowledge the evil in forcing someone to stay somewhere (there is an inherent violence to forced inertia which is reminiscent of relations of abuse when one person cannot leave the proximity of the home or that particular relation for fear of retaliation or violence), there has arguably been historical difficulty in accepting that someone should be allowed *in* somewhere. Thus, state territory creates the very conditions of forced entrapment in one location by restricting people's entry to another. Respecting the right to leave a space must also respect the right to movement into another space. We cannot tell an entrapped person that they should have the right to leave but then follow by saying they are not allowed in anywhere else. That would be a most basic contradiction.

Without the migration continuum there can be no authentic tacit or expressed consent in political relationships. People should be able to leave a particular set of abusive relations, and under the territorial state system in which jurisdiction and political action are applied over and acted within space, this leaving becomes quite literal. Democratic action and relationships rely on this migration continuum for consent.

This set of propositions lead me to advocate the migrant, particularly the unauthorized migrant, as an intrinsically revolutionary democratic figure. I contend that the unauthorized

migrant is engaged in a set of dialectical relations that have the potential to create spaces for democratic action that refuse the political relations of territory. This dialectic unfolds in the following ways:

1. The territorialized subject is in a condition of entrapment (i.e. forced inertia) by territory in which immigration and emigration are restricted.
2. This condition of entrapment is overcome through the refusal and transcendence of territory and territorial subjectification by processes of migration.
3. Through refusal of territorialization, the migrant creates openings for the realization of democratic action through the enactment of the migration continuum (stasis and migration), which create conditions for democratic consent and natality.

*Thus, the migrant, and perhaps particularly the unauthorized migrant who refuses the territorialized subjectivity under state territory, is a figure of democratic potential. Through their movement, they are rejecting the relations of territorial entrapment and affirming the right to migration, thus creating conditions for consent and, from that, democratic action.*

The democratic potential of the unauthorized migrant through migration can exist at any end of the migration continuum. Thus, at any point on the continuum there is democratic realization. When a person is inert and chooses to stay or remain in a place because it is within the space of the polity of their choice, when they cross territorial borders, when they even have the thought of leaving a place, all these instances can constitute enactment of migration and its democratic potential.

Considering the fundamental importance of migration (and the undocumented migrant representing its most radical form) for democratic realization, the next sections consider resistances to territorialization through migration (either static or in motion). The conditions of

global territorial segregation create limitless spaces of intervention by migration. I turn to the conceptual resources in contemporary political theory of slave agency, marronage, creolization, and hospitality as potential avenues toward realization of migration and contestation of territorialization. Territorialized agency is proposed as a form of consciousness that resists territorialization, marronage the creation of spaces of alterity to territorialization, and creolization and hospitality as the transformation of territory's power relations through migration.

### *Territorialized Agency and the Right to North*

Using Neil Roberts' (2015) ideas on micro-acts of flight and comparative freedom, this section argues that migrant consciousness by the territorialized subject is a form of agency and an enactment of freedom. To explain this, I introduce Roberts' understanding of micro-acts of flight and comparative freedom in slave agency, and then apply these concepts to explore micro-flight by the territorialized subject. I explore the consciousness of a right to North, and like Henri Lefebvre's right to the city, argue for its use and introduction into political and social vocabulary because of the term's potential for creating micro-acts of flight which may have macro-consequences for migration and power relations under territory.

Neil Roberts' work theorizes marronage and flight as fundamental processes of liberation (2015). Using a trans-historical analysis, Roberts theorizes beyond individual fugitivity or large-scale maroon societies to create categories of flight and sociogenic marronage. Sociogenic marronage (as opposed to independence in sovereign marronage, which is led by the lawgiver) is an ideal of resistance and freedom. It includes "a revolutionary process of naming and attaining individual and collective agency, non-sovereignty, liberation, constitutionalism, and the cultivation of a community that aligns civil society with political society" (Roberts 2015, 11).

Marronage, to Roberts, is “a total refusal of the enslaved condition” (ibid, 13). It is a “flight from the negative, subhuman realm of necessity, bondage, and unfreedom toward the sphere of positive activity and human freedom” (ibid, 15). The flight is “multidimensional, constant, and never static” (ibid, 15).

The fluidity and multi-dimensionality of Roberts’ conception of flight is consistent with his understandings of freedom, as he considers the transitional space between unfreedom and freedom: “Agency exists prior to and during a slave’s dialectical encounter with the stages of liberation and freedom. Agency is temporally fluid because of the political imaginary underlying it in the minds of the slave and the free” (Roberts 2015, 15). Slave agency consists of both slaves’ capacity to imagine collectively and individually states of freedom and to enact the imagined states of freedom in practice (ibid, 42). The micro-acts of flight inherent in agency have “macro-consequences for freedom” (ibid, 49).

The micro-acts of flight involved in slave agency is the focus of this section, as I argue similar forms of resistance to territory by the territorialized subject are and can be developed. To examine the micro-acts of flight in slave agency, Roberts explores Frederick Douglass’ account of struggle against a slave-breaker: “After resisting him, I felt as I had never felt before. It was a resurrection from the dark and pestiferous tomb of slavery, to the heaven of comparative freedom... [m]y long-cowed spirit was roused to an attitude of manly independence. I had reached the point, at which I was *not afraid to die*. This spirit made me a freeman in *fact*, while I remained a slave in *form*” (Douglass qtd in Roberts 76). Here, Roberts posits that Douglass means *form* as “the condition one occupies under articles of law and jurisprudence” (2015, 76). The *fact* is the “psychological disposition of the agent” (ibid, 76). When an individual questions the form of their condition and imagines an alternative, the psychological fact of their condition

changes. Roberts explains this process: “Suspending the lawful ramifications of jurisprudence in the political imaginary of an agent paradoxically amounts to a unique understanding of fact, which crucially brings moral psychology and the philosophy of embodiment into the domain of politics” (ibid, 76). Thus, the questioning or resistance of relations creates a psychological condition of freedom despite the laws or systems that make the enactment of the freedom restricted. This fact of agency has consequences for freedom, as it creates and multiplies sites of action, struggle, and resistance. In the case of the territorialized subject, the resistance to territory and exercise of agency creates a psychological condition of freedom that has potential for “macro-consequence”. This agency can be seen in the questioning of territory, and the refusal to accept the form of one’s territorialized condition.

An interesting example of this territorial refusal can be seen in stories of North Korean defectors, which illuminate spaces of agency and comparative freedom within territory. Roberts’ model of agency and freedom opens up considerations of agency within the liminal space between freedom and unfreedom, as he calls it, for North Koreans defectors. In stories of their experiences, defectors relay the exercise of agency and micro-flight. This interview is particularly telling: “We were told in school that we could be anybody. But after graduation, I realized that this wasn’t true and that I was being punished for somebody else’s wrongdoing. I realize I wouldn’t be able to survive here. So for two years I looked for a way out. *When I thought about escaping, it gave me a psychological boost*” (Fifield 2017). By imagining their escape, the defector was able to exercise freedom through migration in *fact* while still being restricted in *form*. This constitutes a refusal and resistance to the territorialized condition.

Agency in this typology requires in some form an articulation of resistance (though the capacity for agency is inherent in the dialectic). But what is compelling about this view of



agency is that it makes space for resistance which might be initially entirely in thought only and through an internal questioning of one's condition (and thus enacting freedom in *fact*). It is for the potential migrant's micro-act of flight that is internal and psychological that the right to North is particularly useful as a conceptual understanding.

The right to North as an idea is the questioning of the *form* of territorial segregation, and constitutes an enactment of it in *fact*. The right to North is the notion that people have a right of movement and migration to the global North and political membership in that space. The right to North affirms Douglass' conviction that it is a fundamental injustice "if four fifths of mankind were deprived of the rights of migration to make room for the one fifth" (1867). It asserts that the rights of migration do not belong only to those in the global North or those who possess wealth and capital. It is also the assertion that the rights to migration must also include potential movement to the global North. The right to North asserts that migration should not be limited or restricted by conditions of personal wealth and capital, race or ethnicity, national origin, gender, sexuality, and ableism. It is the demand that people have a right to the global North, just as they have a right to the city. It is the refusal to be exploited by and through territory, a relation which keeps one entrapped in place and reifies those particular relations. The right to North is an avowal that forced inertia is a fundamental wrong and that it creates conditions of structural unfreedom. The right to North is also the notion that the economies of the global North should not exploit the labor and environments of others while also using state territory to restrict their democratic action through movement. The right to North responds to Douglass' affirmation that "power concedes nothing without demand. It never did and it never will" (qtd in Roberts 74). It is a demand that resists state territory through its very inception as a thought.

### *Migration and Marronage*

Recognizing the territorialized subject's fundamental agency and potential to be deterritorialized in *fact* if not in *form*, this section considers the resistance and transcendence of conditions of territory. The territorialized are engaged in flight and marronage when they refuse territory and the territorialized condition and enact migration. To enter the boundedness of another polity illegally is to radically affirm a deterritorialized personhood. These unauthorized migrants refuse an immigration policy that has quantitative limits, a form of development that is just a "pretext, under the guise of the political language of toleration, to appease wary citizens, humiliate the immigrant, and stifle freedom" (Roberts 2015, 171). Instead, the migrant affirms a humanity that cannot be partitioned. Like the maroon, this is a great refusal. And similar to how "In the eyes of the plantocracy and slave population, the maroon is 'the personification of the devil' because she or he is 'the one who refuses'" (Roberts 2015, 149), the migrant who refuses territorialization is seen as an enemy of territory and its agents, the border control and immigration officers who detain migrants, the citizen vigilantes, and the justice departments which prosecute their acts of refusal.

Migrants take up residence in zones of refuge as they pursue their flight from the zone of non-being of territorialization (see Roberts 2015, 152 for discussion of zones of refuge in maroon context). These zones of refuge are "sites of resistance and sanctuary" (Roberts 2015, 152) away from the agents of territory. For the migrants fleeing territorialization, zones of refuge are not necessarily the swamps and mountains of marooned slave refuge. Their refuge include makeshift migrant camps like those at the Moroccan border of a Spanish enclave created by the migrants in the desert (constantly moving to avoid beatings or destruction by security forces) or the zones of refuge found in the partial protection of mass movements through caravans or refugee exodus. For the migrant who is on the stasis end of migration, zones of refuge may also

be found in cities that have policies not to enforce immigration policy or in family groups that protect each other from repatriation through mutual support and security. Zones of refuge may also be found in the large-scale refugee camps organized through international cooperation (although the ability to refuse state in these camps is more tenuous, as there is often no pretense at territorial transcendence in these concentration camps, otherwise there would be free movement to other geographic space).

*Territory's Alterities: Creolization and Hospitality*

While the refusal of conditions of territorialization is necessary, refusal alone is not sufficient for liberation from the conditions of territory; those conditions must also be transcended and the relations transformed. The creation of societies in which the deterritorialized subject is fundamentally accepted and forms the whole is ideal. A deterritorialized society and polity creates unique conditions for individual, social, and political freedom. This section considers the transformation of the relations of territory by considering Neil Robert's discussion of Glissant and creolization, Patrick Chamoiseau and Édouard Glissant's *mondialité*, and Haro and Cole's understandings of hospitality and sanctuary, applying their conceptual resources to theorize potential manifestations of deterritorialized political society.

In a deterritorialized society, the state cannot function as a territorializing agent, instead the state serves as protection from territorialization. This would be something like Glissant's statecraft which "constructs the state -- not the hills -- as the region of refuge" (Roberts 163). It would eliminate the distinction between the zones of refuge for the territorialized and the broader polity as a whole, providing sanctuary within the state itself for migration and migrants. But this does not mean erasing the experience of the territorialized but rather the "acknowledgement of

unanimity through supporting differences within the state, from the cities to the frontiers” (Roberts 163).

The deterritorialized society and polity is in a process of migration, always, of stasis and movement. It is distinctly creole, as it is neither an obsession over “fixed being in a new land or the search for freedom away from an agent’s home” but rather “realizing the dynamic possibilities of natality on an agent’s current landscape”, as Roberts understands creolization (Roberts 2015, 158). Deterritorialization creates the very conditions for creolization, as by its nature it also explodes atavism and “past myths and sameness” (ibid, 147). The process of migration, in which people are no longer territorialized and naturalized to a particular place or set of relations, creates the potential for creolization. The deterritorialized society would be composite and creole, as creole societies, according to Roberts “acknowledge difference, inclusion, and multiple visions of the political” (ibid, 147). These deterritorialized, creole societies would be in contradiction to atavistic cultural justifications for state territory and national myths of homeland. Glissant writes on the division between atavistic cultures versus composite cultures: “If we carefully observe the situation of the world today, we can see that within most atavistic cultures, identity is an exclusionary concept, whereas in composite cultures, that possibility is almost nonexistent” (Glissant qtd in Roberts 147). The next section explores the characteristics of this composite, deterritorialized and migrant society through an analysis of Patrick Chamoiseau and Édouard Glissant’s essay “When the Walls Fall: Is National Identity an Outlaw?”.

Chamoiseau and Glissant’s essay proposes that identity is lost through walls and barriers, and exclusion (i.e., processes of state territory) (Munro 2018). But the alternate to this state territorialization is the world made *Tout-monde*, that is the collision of “Languages and cultures,

civilizations and people” which mutually embellish and enrich the other “often without knowing it or showing it” (Chamoiseau and Glissant qtd in Munro 2018, 88). This process is antithetical to territorialization, and as Martin Munro explains it, its mantra is “To change by exchanging—changer en échangeant” (Munro 2018, 88). It is “enriching oneself in the most elevated sense of the term and not losing oneself” (88) and “is true for the individual and for the nation” (Chamoiseau and Glissant qtd in Munro 2018, 88). These exchanges are both “equal and unpredictable” (Munro 2018, 88).

Chamoiseau and Glissant (2018) understand the processes of territorialization as fundamentally alienating to both the territorial agent and the territorialized. Through building walls and excluding the other, territory and its walls “no longer knows anything about the world” (Chamoiseau and Glissant 2018, 263). The wall “no longer protects, it opens to nothing but to the involution of regressions, to the insidious asphyxia of the mind, and to the loss of oneself” (ibid, 263). Only through movement can this wall and territorialization be broken and creates “opportunity for poetry, where the being-in-the-world enhances the being-in-the self” (ibid, 263). For Chamoiseau and Glissant, “Beauty is inseparable from the movement of peoples; from their tireless quest” (ibid, 263).

Deterritorialization creates possibilities for *mondialité*, a relational identity which is “diversity that is like fireworks, an ovation of imaginaries” (Chamoiseau and Glissant 2018, 265). This *mondialité* is a relation which is not market-based or nationally based (ibid, 265). Rather it is a multiplicity and diversity of imaginaries, imaginary being “the way of thinking of oneself, thinking of the world, thinking of oneself in the world, structuring one’s principle of existence, and *choosing one’s native land*” (emphasis own, ibid, 265). No longer restricted or

confined by territory, refusing the territorialized condition, *mondialité* and liberation through migration opens up new relations to the self and to the other:

In *mondialité* (which exists already and yet beckons to be founded), we do not exclusively belong to a 'homeland,' to 'nations,' and *not at all to 'territories,'* but, from now on, to 'places,' to linguistic storms, to unbounded gods, who perhaps, do not demand to be worshiped, *to native lands which we will have chosen, to languages we have picked, to these geographies woven from materials and visions that we will have forged.* And these now unavoidable 'places' (we cannot remove them from our thoughts, nor can we circumvent them like an irrevocable inscription, nor enclose them behind walls) *come into relation with all the places of the world. The glow of these places beckons us to an infinite insurrection of unbounded imaginaries: to this mondialité.* (emphasis own, *ibid*, 266)

This is a world in which movement is essential, lands are chosen, languages picked. It is a world so open that its idea generates unbounded and infinite imaginaries.

Crucially, creolization in a society is not a synthesis of difference, or its erasure or dilution, but creates new realities and ways of being through difference which are neither caught up in the old or new ways (Roberts 2015,147). In "Creolization in the Makings of America", Glissant explains this process:

Creolization is not an uprooting, a loss of sight, a suspension of being. Transience is not wandering. Diversity is not dilution... creolization is unpredictable... [F]urthermore, creolization opens on a radically new dimension of reality, not on a mechanical combination of components, characterized by value percentages. Therefore, creolization which overlaps with linguistic production, does not produce direct synthesis, but *resultants*, results: *something else, another way.*" (emphasis own, Glissant qtd in Roberts 2015, 147)

This something else, another way, represents an alternative to the power relations of state territory, another set of relations made possible through migration and deterritorialization. The deterritorialized polity welcomes the formerly territorialized and processes of creolization through forms of genuine hospitality.

Hospitality in a deterritorialized society fundamentally reconsiders the relation between the formerly territorialized and the non-territorialized. As Haro and Coles explain, radical and

genuine hospitality “involves searching questions about the rights, powers, and prerogatives of ‘hosts’—in vulnerable dialogue that seeks to scramble the guest–host dichotomy” (2019, 22). In a deterritorialized society, the entrants and the residents are equal in their positionality. This might look like Haro and Coles’ genuine hospitality in which the “relations of reciprocal learning” are present, as well as a refusal to “know too well” (ibid, 22). Hospitality is creating both spaces and processes to facilitate this “receptive dialogue and learning” (ibid, 22).

Genuine hospitality should be distinguished from “hosti-pitality”, what Haro and Coles call: “the unacknowledged entanglements between welcoming hospitality and a hostility wherein the host maintains the power and privilege over his domain, leaving the guest hostage to the host’s priorities” (2019, 21). The deterritorialized society and polity should accept all as equal participants in social learning and its creole politics is constituted both by the stasis and movement of its migrants, in a constant becoming. Hosti-pitality, on the other hand, “bar[s] the newcomer (the foreigner, the fugitive, the other) from participating in fashioning the contours of coexistence and... [h]old the other hostage to the host’s order and the host’s sole arbitration of justice” (ibid, 21). Hosti-pitality is the territorialized refugee quantified and assimilated, it is the migrant allowed in but not given full political membership, it is the exploitation of the unauthorized worker’s labor, the consumption of other people’s cultures without deeper understanding, and the refusal by political, economic and social institutions to respond to and reimagine new relations based in creole realities. The deterritorialized society acknowledges that agents of territory in the global North have maintained systems that, like the privilege of the white middle-class, are “borne on legacies of colonialism, militarism, climate change, and global capitalism that have greatly contributed to the displacement of those in flight” (Coles and Haro 2019, 22). Subsequently, deterritorialization and liberatory migrant politics transforms the

connection between the formerly territorialized and those who are already free migrants in creating new, creole, power relations.

Hosti-pitality may act under the guise of integration, toleration and co-development. Integration for Chamoiseau and Glissant represents a “vertical pride that haughtily requires the preliminary disintegration of what comes to encounter us, leading to our impoverishment” (2018, 268). Tolerance is a survey of the other in relations of superiority (Chamoiseau and Glissant 2018, 268), and co-development a “pretext destined to appease potential economic accomplices, the better to expel with statistics in hand; to humiliate with impunity” (ibid, 268). Deterritorialization rejects integration, tolerance, and co-development in its radical acknowledgement of the mutual imbrication of human existence and need for migration. It acknowledges, as Chamoiseau and Glissant say, that “we are on the same boat” and it is “*an open boat*” (emphases own, ibid, 268).



## Conclusion

This project spent its time and space attempting to explain how state territory came into being conceptually, how it is defined and defended in political philosophy, the paradox it creates for consent and why that may pose problems for democracy, how its power and subjects can be understood, and an exploration of what it might look like to resist and transform territory's relations of power. In my concluding thoughts, I would like to explore some implications of and future directions for this study of territory. What are some of the salient contemporary environmental and political issues that may be found at the intersection of territory as presented in this paper? What are some future lines of inquiry that could emerge out of this project?

First, and perhaps most salient to environmental political theory (particularly the study of climate and environmental justice), is the intersection of territory and climate change. Climate change is frequently presented as a global problem, in need of international cooperation, affecting all people across state territories; in a sense, "a threat beyond borders" as Chaturvedi and Doyle explain the account (2015, 43). Entertaining this narrative in light of territorial realities, however, reveals some troubling complications. If all of humanity is on the same boat, territory dictates that it is a boat that is strictly partitioned and divided. In this theoretical 'climate boat', most people are assigned to their sections and severely restricted in their movement. If certain parts of the boat become inundated with hazards, it is uncertain where, when, and how the people in that section can move or exit. Many sections are strictly monitored and policed. During times of calm, it is most likely some sections can only move to nearby sections, and not necessarily those of choice. During times of crisis, the ways into other sections are complicated, convoluted, and have numerous barriers. Some only get through by sheer force of necessity. If there are lifeboats, it is unclear how many there are, and which sections will have access.

Humanity as a whole may all be on the same boat when it comes to climate change, but territorial realities dictate that it is most definitely *not an open boat*. Future study might focus on this intersection of climate change and state territory.

Secondly, there are myriad ways in which a study of territory's power and subjects might be applied to understand the social movements and agitation emerging against border policing. A theoretical understanding of state territory can help explain *what* social movements are organizing against and *the kinds of power relations they are resisting*. For example, a future case study might explore the No Borders Collective in Iceland and their efforts to prevent asylum seekers' deportation. The Collective's plan in 2012 to have a student refugee exchange is rife with implications for the resistance of territory's power and subjection: "We will be doing a student-refugee exchange, where we will offer 3 students from the university of Iceland to live for unspecified amount of time in one of the asylum camps, while 3 refugees will come to the university and replace the students in the classroom" (No Borders Collective 2012). It is my hunch that an application of the study of territory to these cases would demonstrate that social movements like the No Borders Collective are resisting *a particular form of state power*: territorial power and subjection.

Third, the lens of territory could also be used to examine state actors and institutions. How do states engender and maintain territory? What actions do states take against territory's agonists? One potential case study might be to examine legal history, like the federal case against Scott Warren, a professor in Arizona volunteering with No More Death, who was faced with two federal charges of harboring unauthorized immigrants after he provided humanitarian assistance to two people at the border (Jordan 2019; Stewart 2019). What were the legal justifications used

by the Justice Department in cases like these and how did they relate to the protection of state territory?

Finally, another line of inquiry that might emerge from this project is a study of the identity category of territorialized subjectivity. How does territory shape the subjectivities of individuals, their ways of self-relating and understanding? Qualitative research could investigate the production of the self under territory through interviews or ethnographic work. Other research might look into how territorialized identity interacts with other intersectional identities. For example, how might territorialized identity affect or interact with various gender, class, sexual, ethnic, or race-based identities? How does the experience of territorialized subjectivity affect transwomen differently? Territory affects different people differently. For someone living in a conflict zone that is desperate to exit and enter other territorialized space, for example, their territorialized identity may be the most important identity category. A woman facing deportation to an area where she has been threatened with gender-based violence is oppressed by both her gender and territorialized identities. Territorialized identity as an intersectional category can add to the understanding of social and political life in important ways, as it can explain what often goes unarticulated: that people are oppressed by territorial power.

In conclusion, this project was undertaken as an effort to understand the restriction and prohibition of movement in the contemporary age. It has considered exclusively state territory's role in the control of movement. Other socio-political and economic factors also shape and restrict human movement, but state territory emerged as the most salient factor for the purposes of this project. Situated within the global North, I wanted to turn a critical look into my 'home', the ways in which this 'home' is constructed, and the meaning of its walls. Rather than

protecting or buttressing the theoretical walls of state territory, I would like to take down the walls of my 'home' in the global North, piece by piece.

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