Imagination and Function

One of the main difficulties in talking about territory is that this concept is transversal to several different disciplines—ranging from geography to sociology, from ethology, to ecology, from anthropology to law—all of which assume to have a clear understanding of their own object. Consequently, the wide interest in territorial phenomena, territorial dynamics, and territorial features paradoxically failed to generate an open debate on the topic. There seems to be little on-going exploration of the potentialities of the category of territory from a cross-fertilizing perspective, i.e., in a way that problematizes unstated assumptions, whilst at the same time remaining open to different discourses and epistemic frameworks.

This paper does not aim to do a comparative study of the various disciplinary understandings, nor to set up any specific interdisciplinary dialogue. It does not aim to ascertain the fault-lines that divide scholars more biologically oriented, who tend to frame territoriality basically as an instinct, from scholars more sociologically-minded, who conceive it as a strategy. The main attempt of the paper is rather to present the characteristics of a radical conception of territory and to suggest how social and legal sciences could take advantage of this conception. Admittedly, it is an ambitious task for a single article, which may be mirrored in the sketchy nature of some of its passages. I apologize to the reader for not providing an exhaustive treatment of the whole matter and for covering, so to speak, a lot of ground in a few pages span. I also apologize for being rather selective and idiosyncratic with referencing. My hope, however, is that the paper may open a path and initiate further investigation on territorial topics in non-conventional ways, so that more in-depth contributions may follow.

* I wish to thank Robert Leckey, Roderick Macdonald, Peter Fitzpatrick, Francesco Bocchetti, Isacco Turina, Leonidas Cheliotis as well as two anonymous editorial referees, for their valuable comments, suggestions and critiques. I am also indebted to Frédéric Vandenberghe for intellectual inspiration.


* Andrea Brighenti

The mainstream view, commonsensical in the social, political and legal sciences, regards territory as *species* of the *genus* “land” and, specifically, as a portion of land under the authority and within the jurisdiction of a local or central agency (in life sciences, an organism; in social sciences, an institution). This mainstream view is largely based on a monist legal understanding, retrievable in the classic concept of *jurisdiction*. The classic monist legalist point of view used to systematically muddle territory with the contingent physical-spatial dimension, which however is, at most, its container or support. During the 20th century, important contributions from philosophy, anthropology, sociology, and economics, as well as the perspectives of critical theory, deconstructionism, semiotics and gender studies, have demystified the traditional image of law and, more pointedly, have deeply reshaped our understanding of the nature of the relationship between law and territory. Yet, the concept of territory underpinning numerous analyses, even by critically oriented scholars, remains surprisingly naïve.2

Rather than undertaking a definitional task in the attempt to bring all the perspectives on territory towards a (im-)possible synthesis, this paper does not explicitly call for a strong ontological definition of territory. Indeed, there is an inescapable ironic *nemesis* in the various attempts to produce *definitions* of territory. Because *definition* is in itself a territorial device that has to do with ‘sketching down’ (*de-* the boundaries (*fines*) of a concept, the tool one uses to grasp the object is part of the very object one tries to seize. Rather than definitionally, therefore, territory will be explored here as a working concept. The adopted perspective, in other words, is a pragmatic one, whose starting point is not the question of *what* is territory in the first place, but rather what can be grasped by describing something—and, specifically, a series of relational phenomena rather than a series of objects—as a territory, and what can one learn on law by looking at it as a territorial endeavour. While not explicitly aiming at producing definitions, the paper proposes to explore a constellation of attributes that can be predicated of territory in order to address a number of possible analytical traits of the territory concept.

Whereas the most widespread view takes territory as the hard fact which provides the visible support or backup of invisible social ties, it may be more interesting to explore how every type of social tie can be imagined and

---

constructed as territorial. This is not to say that all territories look the same. On the contrary, territories differ dramatically in the degree of visibility. Usually, as we will see below, only the most visible ones are recognized as proper territories. But visibility effects depend in their turn on specific relational arrangements. Only once relations among subjects, rather than space, are put at the conceptual core of territory, it becomes possible to capture the ways in which spatial and non-spatial territories are superimposed one onto the other and endowed with multiple reciprocal connections. A relational conception does not forget the dimension of power that is involved in human relations, but it strives to avoid reducing territory to mere space imbued with power, where spatial structures would simply represent the carrier of power.³

There are two main etymological hypotheses about the origin of the word *territorium* (commonly indicating the land around a town, domain, or district). According to the first, the term comes from the Latin word *terra* ("dry land") + *-orium*, the suffix denoting place. According to the second theory, *territorium* derives instead from *terrere* ("to frighten"). Following this second hypothesis, territory is "a place from which people are warned off". From this point of view, the very origin of the term seems to reveal a functional dimension within which territories arise.

The biologist Jakob von Uexküll was probably the first to point out that territory appears as a subjective product which cannot be inferred from mere characteristics of any objective physical environment.⁴ Consequently, in ethology (the science of animal behaviour) the basic concept is not territory, but *territoriality*. Territorial animals are endowed with territoriality, which we may think of as a *habitus* of action and, above all, of reaction. Territoriality does not manifest itself as a constantly visible behaviour. It can be latent until a cospecific (a member of the same species) displaying a type of behaviour that is considered intrusive makes its appearance. In short, territoriality is *virtual*: it is a disposition to act—or better, react—according to given patterns (generally, aggressive/defensive patterns) under given circumstances.

Parenthetically, there has been an extensive debate as to whether, and the extent to which, the territorial *habitus* should be considered as rooted in instinct. Predictably, biologists have supported in large majority the instinct thesis (territoriality as a *biological imperative*, according to Ardrey's famous expression), while social scientists have mostly opposed it (territoriality as a *strategy*, as Sack aptly replied). When framed in this way, it is easy to see that the problem of the instinctual nature of territoriality represents the flip

---

³ Something akin to this has been attempted for instance by Pierre Bourdieu, who advanced the idea that social places are structured like (and upon) physical places. See e.g. P. Bourdieu, "Effets de lieu" in P. Bourdieu, ed., *La misère du monde* (Paris: Seuil, 1993).

side of the mantra of the “socially constructed.” These dichotomies call for an accurate exploration which is not possible to carry out in full here. One should keep in mind, however, that a sort of primordialists versus circumstantialists opposition, a debate originally concerning the nature of ethnicity, has emerged in the explanation of the origin and nature of territoriality. As we will see below, some scholars have stressed the historical, collective and ancestral nature of territory, while others have rejected this interpretation, advancing an image of territory as rational and strategically activated. In response to these conflicting views, this paper is meant to argue that the characteristics of fixity or flexibility can be predicated on specific territories, rather than on territory in general.

The ethological conception draws our attention to two important points. The first point is that territory has fundamentally to do with functions. For both animals and the human being, these functions are usually described as defense, control, reproduction, and access to resources. The second point is that territory is an imagined entity, a space that is carved out, excerpted and circumscribed in view of a set of tasks to carry out. The territorial redux is an imaginative mechanism whereby someone is recognized as an intruder or insider (or other equivalent qualification) to one’s territory. For its part, territory is not simply the physical setting for such recognition; rather, recognition and separation of two basic types of cospecifics (members of the same species) is what the territory is all about. Territory has to do with processes of inclusion and exclusion in the constitution of social groups, which—and in this sense ethology offers us a advantaged point of view—are not necessarily human groups, and of the order of those social groups. The intraspecific character of territory, i.e., the fact that it actualizes foremost among members of the same species, provides a confirmation of its selective nature. If territory were to be understood as a simple “region of land,” this would be at odds with the fact that the established spatial monopoly is only selectively directed at cospecifics, or even more circumscribedly at given cospecifics (e.g., of a given sex) while other species usually transit freely on the same region of land.

The difference between territory and home range helps illustrate the point at stake. Whereas the home range is a real space of life, occupied but not defended by the organism, territory, while it is defended, need not necessarily be occupied by the territorial animal. The existence of an organism’s territory oriented towards functional activities involves what can philosophically be called imagination. Rather than lived, territory is

---

5 A pervasive critique of the nefariousness of social constructivist theories can be found in the latest works by Bruno Latour. See e.g. B. Latour, Reassembling the Social (Oxford: Oxford University Press, 2005).


7 The term is used here without connection to sociological functionalist theories.
imagined. Contrary to the home range, territory may not even be perceived all at once. While the reality of the former is experiential, the reality of the latter is imaginary, presupposing of course that imagination is a truly operating vital force. From the point of view of the organism, territory is a way of seeing, a way of framing and imagining the environment as well as the organisms (in most cases, cospecific organisms) that are in it. Territory is meaning—better still, it is relational meaning. It is a form of intraspecific communication.

In the last twenty years or so, in the social and political sciences, territory has passed from being regarded as the natural, neutral support of the political entity to being recognized as a crucial strategic dimension of power. One of the most fruitful theoretical reflections in this line has been developed by Robert David Sack, who built on insights from Jean Gottman and Michel Foucault. Sack defines 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.”

By making strategy a central concern, Sack rejects naturalist determinism and frames the question of territory as inherently political. This point of view has the advantage of identifying some crucial, often neglected, features such as the potentially strategic, flexible, and selective quality of territoriality. By pointing out that territories may exist in degrees, and that they can be switched on and off according to strategic aims, Sack brought agency to the foreground of the concept.

However, three short critical observations can be made on Sack’s theory. First, no one-to-one correspondence between a single territory and a single strategy can be assumed. On the contrary, a plurality of strategies, which may reinforce as well as conflict with each other, may characterize a single territory. Different people live together within shared institutions and social patterns, they are territorialized on them, but they often interpret them in contradictory, controversial and even conflicting ways. Even if it were possible to identify a hegemonic strategy, habituation never comes without resistance. Seldom, if ever, can control from a single agency upon patterns of social relationships be absolute. Consequently, the existence and proliferation of conflicting strategies need to be accounted for. Rather than saying that territory happens in degrees, as Sack does, it would be preferable to say that control happens in degrees. A territorial framework may tend towards an ideal of harmonious homogeneity and single strategy, but it can never fully accomplish this ideal.

Second, Sack seems too preoccupied with differentiating his own approach from the ethological one, which according to his view is prone to biological determinism. But the rejection of ethological insights entails the

---

oppose risk of hyperrationalist anthropocentric exceptionalism. Associating territory exclusively with the strategic dimension of interaction entails an over-cognitivization of the territorial experience to the detriment, *inter alia*, of its affective dimensions. As it will be discussed below, territory breeds attachment and identification thanks to a-rational identity-carrying mechanisms, which humans happen to share with other animals. The strategic dimension cannot account for the whole import of the territorial phenomenon. It is therefore important to avoid both biological and sociological reductionism in the exploration and explanation of territorial processes.

Third, even narrowing down to the strategic domain, control of space is just one—albeit an important one—among the many territorial functions, as will become clearer below. Control cannot be taken as the territorial *redux*. Understandably, Sack insists on control as an alternative to the defense thesis, which required full occupation for a territory to exist. Sack rightly argues that one can control a territory one does not occupy. Nonetheless, his conclusion on the difference between the model of occupation and the model of control is ultimately still consistent with the thesis of the selective nature of territory advanced by von Uexküll and other biologists. Control *per se* does not tell enough about the why, when and how of selective territorial activations.

**Drawing Boundaries**

Territory cannot but be delimited. It is widely accepted that boundaries are a constitutive prerequisite of territory. The activity of drawing boundaries is incredibly important for territoriality and its related experience. It can be argued that this association ought to be pushed to its farthest consequences to be fully appreciated. Boundaries may at times be *implicit* and even *invisible*. Nonetheless, territory and boundaries can be understood as two aspects of the *same* phenomenon—or, better, of the same *activity*. Because this activity is immanent and wholly contingent, pre-destined boundaries, also known as “natural boundaries,” do not exist. Consider, for instance, that even in the case of a completely isolated island in the middle of the ocean, neither sea turtles nor the local population of fishers ever treat the island’s beach as a boundary. Indeed, their life-cycle activities embrace and merge water and dry land into a single territory.

Once a shift from an essentialist and objectivist to an operational and interactional imagination of territory is made, the activity of boundary-drawing can be investigated through a series of questions:

*Who is drawing?* The territory cannot be conceived outside its relationship with the agents who undertake the territory-making activity.
Notably, individual as well as collective (group) territories may exist. Human territory-making activities encompass both types of territory. The ratio among individual and collective territories varies according to social groups, their culture and economy. Of course, the most visible and stable political territories tend to be collective territories.\(^{10}\)

**How is the drawing made?** There are many different technologies for drawing, which range from body secretions and urine to boundary stones, graffiti, cartographic projections and GIS technology, as well as situational, *ad hoc* procedures. Technology always matches the specific sensibility and understanding of the boundary-drawing agent. Different technologies correspond to different types of markers.

**What kind of drawing is being made?** Territory is not an absolute concept. Rather, it is always relative to a sphere of application or a structural domain of practice. Territory is always “qualified”: reproductive territory, proprietary territory, economic territory, political territory, psychological territory and so on.\(^{11}\) Boundaries are more or less focused on a given set of functions that shape the *rationale* for a certain territorial constitution. Because not all boundaries are of the same type, there may be no coincidence between different types of boundaries (e.g., modern economic and political territory clearly do not coincide).

**Why is the drawing being made?** From this point of view, territory can be thought of as *teleological*, as it is established as part of a plan to control resources. Territory itself is transformed by the plan into a resource. The strategic dimension of territory has been best theorized by Robert Sack, who first pointed out that territoriality can be turned on and off according to the aims of those who successfully control a territory. But not only does territory guarantee access to resources: it can also become a resource in itself—most notably, a resource for identity formation. It is not only a rational mechanism, but also an affective one. Attachment, the affective dimension of territory, has been outlined by scholars such as Torsten Malmberg,\(^{12}\) and appears to be no less motivational than rational strategy. Finally, creativity and expressiveness, too, may lead to territory creation.\(^{13}\)

To stress the dependence of territory on a subjective—be it an individual or collective subject—activity, such as boundary drawing, does not amount to saying that territories are merely arbitrary constructions.\(^{14}\) After being

---

\(^{10}\) See David Storey, *Territory: The Claiming of Space* (Harlow: Pearson/Prentice Hall, 2001), at §3.

\(^{11}\) Interestingly, legal territories are transversal to the just mentioned ones. Other types of similar transversalities can be imagined, which, on the whole, invite to de-essentialize the physicalist conception of territory.


\(^{14}\) This is a well-known issue in the epistemology of social knowledge: the fact that social categories are constructed does not mean at all that we might undo them as it pleases us and simply go on without them. The need that a certain constructed category was called to satisfy, the style of construction and the history of the social construct are rarely (if ever)
established for the first time—and it may not be easy to tell when the first time was, since it is often the case that the origin is enveloped in myths and tales—boundaries become the object of an ongoing work of enactment, reinforcement and negotiation. Territorial markers are in themselves meaningful: each marker bears its own individual characteristics, so that it can be more or less effective, impressive, memorable, and affectively powerful according to specific circumstances.

While basic territorial relationships were initially thought of by ethologists in the dichotomous terms of attack/defence and aggression/protection, more complex supportive functions, such as that of identity-carrying, were recognized later. If territory appears to be an effective carrier of identity it is because, in fact, identity is in itself territorial. Indeed, identity requires ongoing activities of boundary-drawing, maintenance of coherence, and construction of relationships. These may take place through strategic as well as through affective and creative dynamics. Not surprisingly, territory has often been the pivot of “blood and belonging” rhetorics, as is clear, inter alia, in first nations settlement claims and in post-colonial land restitution processes.

Writing in line with the primordialist theory of nationalism, developed by Anthony D. Smith since the 1980s, Steven Grosby has recently stressed, in a transcendence-oriented mood, the primordial attachment that each human being nurtures for her own territory. The religious dimension of territory, which becomes particularly visible in the rituals that institute and preserve holy places, is linked to the affective value of territory. To make the whole matter more complex, the affective and emotional dimensions can, in their turn, be exploited for political purposes. Mircea Eliade and Gaston Bachelard observed that for the religious man space is discontinuous, as there are qualitatively different territories which stand out from the others as marked against unmarked ones, as sacred against profane. Given the essentially imagined nature of irrelevant. While being critical and vigilant about naturalized categories is a worthy activity, such critical awareness does not in itself represent an endpoint of the enquiry.


The point is made cogently by Bertrand Badie, La fin des territoires. Essai sur le désordre international et sur l’utilité sociale du respect (Paris: Fayard, 1995).

Mircea Eliade, Le sacré et le profane (Gallimard: Paris, 1965/1957); Gaston Bachelard, La poétique de l’espace (Paris: P.U.F., 1957). Michel Foucault developed on this ground his concept of heterotopias as places that are foundationally incommensurable to common
On Territory as Relationship and Law as Territory

territory we have outlined above, communication of identity takes place at various levels at once, with different degrees of formalization, so that each territory is constituted around the tension between the explicit (the stated, the said) and the implicit—(the unstated, the tacit).

De-/re-territorialization

Whenever a territory appears, new functions are created, and pre-existent functions are re-organized into new ones. The creation of a territory generates a basic discontinuity between the inside and the outside. Each drawing activity determines effects of deterritorialization and reterritorialization. Something or someone is included because something else or someone else is excluded. These basic territorial operations of deterritorialization and subsequent reterritorialization generate on-going processes of separation and fusion, which are expressive and semiotic processes. Basic territorial operations are non-dialectic, as they do not end up in any synthetic moment. Each deterritorialization entails a chain of subsequent reterritorializations, the two movements recursively embedded into one another.

Four short examples may illustrate the dynamics of de-/re-territorialization. First, as theorized by Leroi-Gourhan and powerfully staged in the opening scenes of Stanley Kubrick’s 2001: A Space Odyssey, the human hand, once deterritorialized from the ground, is reterritorialized on a tool—which initially happens to be a bone used as a weapon. The hand and the tool make a territory together. As soon as this territory is created, new functions appear. The tool means not simply an amplification of the capacity of action, but also qualitatively new possibilities of action—a new territory of action.

To get to the second example, let’s skip—wishfully, with some of Kubrick’s grace—some hundred thousand years of human evolution to get to the globalization debate. As some authors have recently argued, the literature on “globalization as deterritorialization” is largely misplaced, because it fails to recognize all the forms of reterritorialization that
inevitably follow each deterritorialization process. These critiques have provided sound arguments for being sceptical about the equivalence of globalization and deterritorialization, as well as about the alleged prevision on the demise of the nation state argued for by the “transnational vulgate.”\textsuperscript{24} Forms of reterritorialization, in fact, have been observed not only in post-colonial settings, in failed state settings and in migratory and refugee fluxes, but also in global capital practices.

Both theoretical globalists and their critics, however, somehow overlooked the fact that de/re-territorialization processes need not involve movements in space. For instance, people can be deterritorialized from a political territory not necessarily by being deported, but even more ‘simply’ by being excluded from the basic legal categories of a political space. This is the case of racism as well as of the treatment of illegal aliens.\textsuperscript{25} David Lyon has observed that contemporary surveillance processes entertain an ambiguous relationship with nation-state boundaries. In the aftermath of 9/11, Lyon argues, we have witnessed a deterritorialization of national boundaries of several Western countries (with the U.S. in a leading role, of course) not because of their disappearance, but because of their multiplication all around the world.\textsuperscript{26} Displacement of boundaries is effected through a series of technologies that aim at controlling people preventively, and limit the mobility the people profiled as “posing a threat.” Social sorting and profiling can be explained as forms of territorial reshaping. Clearly, this is a case where territories are transversal to several places, i.e., of translocal territories.

Third example: the difference between American and French wine-makers is sometimes expressed as a difference between brand and terroir, especially because of the legal tool of the appellation d’origine adopted in

\textsuperscript{24} The classic debate on globalization has largely been focused on a problematization of the modern model of territoriality and on whether the primacy of modern nation-state political organization is being superseded or not. In other words, the question has been concerning the uncoupling of people (population in Foucault’s meaning of the word) from the land (political and governmental country, territoire in Foucault’s meaning). Several intermediate solutions have been proposed, which pointed out how dispersal and re-concentration are concurrent but in constant, and at times even paradoxical, tension. See for instance David Jacobson, “New Frontiers: Territory, Social Spaces, and the State” (1997) 12:1 Sociological Forum 121; Matthew Gandy, “Cyborg Urbanization: Complexity and Monstruosity in the Contemporary City” (2005) 29:1 International Journal of Urban and Regional Research 26.


France. But in fact priority focus on brands makes American producers no less territorialized than their French counterparts. The difference lies in the type of territory concerned. In the end, both types, the brand and the land, are clearly symbolic and relational.

Finally, a fourth, less intuitive, example is provided by counter-cultural movements that stressed the importance of deterritorializing practices. The Situationists’ practice of dérive, or drifting was conceived as an exercise of “rapid passage through varied ambiances” so as to induce awareness in the detachment from places. By practicing dérive, the Situationists’ ultimate aim was to reterritorialize themselves in what they called “constructed situations,” which were thought of as spaces of experimentation in liberated social interaction.

Conditions of Hegemony

Territory can be imagined and drawn to serve several different functions, following several different affects and in the pursuit of different strands of creativity. Functions may range widely, although, at first sight, some of them appear to be the core of certain specific territories. Defense and control are commonly accepted as two basic territorial functions. The original territorial form is said by ethologists to be indistinguishable from a “keep out” message. In fact, only very rarely can a monopoly be established or preserved without degrees of tolerance and negotiation. Whereas occupation and defense are undoubtedly territorial activities, in most cases territory is defined by co-presence. Indeed, complete denial of territorial sharing would amount to a denial and rejection of interaction itself. But territory is not denial of interaction: it cannot bear complete absence of interaction. Territory is a positive framework for interaction which requires interaction itself. Exclusion and copresence can thus be described as the two opposite directions that define the relational range of territory. Territory lies in between the two extremes of isolation and overpopulation: while overpopulation threatens territory, complete isolation makes it impossible.

What is crucial about territory is the peculiar economy of objects and places it is able to initiate. Territory is not defined by the things that are collected in it, even though things may be used to mark territory’s boundaries. Because a territory is not a collection of things—not even a collection of things in a given place—when something is ascribed to a territory, or when it is claimed in the course of a territorial struggle, territory plays the fundamental function of naturalizing the ownership of a given object, as it publicly declares it to be a property of the territory’s pre-
announced owner. In this respect, the most powerful territorial feature is the *pre-*-, i.e. the *a priori* mechanism. Territory is a framework that pre-assigns to an official owner control or precedence over every possible object that will happen to lie within it—regardless how this “within-ness” happens to be defined, spatially or otherwise. Territory is linked to ownership, but the classic model of private property as exclusive enjoyment of certain goods is not fully suitable to describe its workings.30

The focus of territory is not exclusion from a given area, but creation of ordered social relations, which are, in many cases, relations of dominance. To the newcomer, a territory looks like a set of rules and standards.31 Explicit displays of superiority and submission, which define priority in the access to resources, are of fundamental importance in animal behaviour. Territory, in other words, represents the bridge-mechanism between the two figures of *possession* and *ownership*. Etymologically, possession is defined by physical occupation of a space (German, *Besitz*; Latin, *possido*). Instead, ownership is individually tailored upon the owner (German, *Eigentum*; Latin, *proprium*). By “anchoring” ownership on possession, territory facilitates the making of hierarchies. Differences and differentialities help to establish hierarchical relations which are objectified by the territorial fixation. Territorial definitions thus help stabilizing given patterns of relationships, as well as their related status distributions. Territory serves as an imaginary but nonetheless effective prop for social relationships. But it is not simply a *setting* for social relations: it is also, crucially, a *form* of social relations.32 What are the characteristics of territorial relations, i.e. the characteristics of relations that are based upon territory and that aim at preserving territory?

A demand for consensus surrounds the maintenance of territory. Territorial relationships are not only monopolies established and maintained through aggressiveness and displays of dominance. They also need respect as a pivotal regulatory social device. The demand for respect constitutes the consensual side of territorial relationships, a consensus which makes order-through-territory much more attainable. Territorial respect is primarily focused on the other and her ownership. A demand for respect of the other *qua* owner is directed in the first place to the newcomer. Territory helps stabilize a certain distribution of respect by setting up a visible stage for the taking place of the relationships which are played out interactionally. In most cases, territory is the resonance of some form of past *command* which has gained temporal stability and acceptance.33 A territorial framework for

---

31 See for instance the discussion of the feeling of *déplacement*, out-of-placedness, in Bourdieu, *supra* note 3.
interaction has the properties of a hegemonic framework in Gramsci’s meaning of the word.34

Both territorial exclusiveness and tolerance happen in various degrees. Understanding territory as relation implies appreciating its processual dimension. Selectivity in the actualization of territorial exclusiveness refers not only to subjects, but also to time. Time is an essential dimension of territories, as territories are created, reproduced and destroyed according to temporal periods, rhythms and cycles. Towards the end of his life, Henri Lefebvre sketched a rhythmanalytical project,35 and one could infer that most territories are indeed rhythmic and that they can be looked at through the lens of their specific rhythmic constitution. A similar point was made by Erving Goffman, who identified three types of territory—fixed, situational and movable—and hypothesized a link between each kind of territory and its temporal extension.36 Specifically, Goffman defined as “situational territories” those public spaces like tables at restaurants or desks in libraries that are only temporally appropriated by some people according to an implicit norm. The duration of this kind of territorialization is therefore intimately linked to the type of activity that is considered legitimate in that given context, such as a seat at a restaurant’s table, on a bus, in a theatre, and so on.

Because it generates conflict as well as order, territory is an ambivalent mechanism. The order-making capacity of territory is to be sought in boundaries. Boundaries make classification possible and, as well known since classic anthropology, classificatory systems are an indispensable component of social order. Order through territory, however, is not only rational order. By embodying relations, territory works as a complex identity-making mechanism. This is a pivotal point for modern political formations which has been recognized by many geographers.37 In modern Western history, large-scale territories have been employed to forge identity, mainly through the political and narrative mechanism of the nation.38 Modern nationalism tells the story of one’s territory in the style of a heroic

34 Here the term “hegemony” is used simply in the original Gramscian meaning, as the “intellectual and moral headship” exercised by an agent or a class in a spontaneous, molecular and organic way so as to generate a wide, accepted and shared framework within which even conflict and dissent can be accommodated, and which ultimately determines the features of a historic bloc. See Antonio Gramsci, Quaderni del carcere (Roma: Editori Riuniti 1975). It is not possible here to venture further into the vast literature on hegemony and ideology. On the interplay between power and space, see in particular G. Rose, supra note 2; N. Blomley, supra note 2; D. Massey, supra note 2; D. Harvey, supra note 2; Andrew J. Herod & Melissa W. Wright, eds., The Geography of Power: Making Scale (Oxford: Blackwell, 2002).


37 See for instance D. Harvey, supra note 2; D. Storey, supra note 10; Richard A. Wright, “Operations on the Boundary: The State, the Border and Marginalized Identities” (2004) 36:2 Antipode 138; D. Delaney, Territory, supra note 2.

saga. As already noticed, affective and a-rational engagement with territorial relationships is produced thanks to embedded identity-shaping mechanisms.

In his late, pan-Africanist perspective, Malcolm X advocated a "revolution based on land." He explained his project as the construction of a spatial political territory by and for black people. This was the project of a counter-territory, opposed but symmetrical to the traditional modern political territory. The idea of Black state clearly illustrates the search for homogeneity that is the basis of every territorial project, as well as the ability of territorial imagery to colonize imagination. Territories are instruments of social sorting, and, interestingly, racism is itself a territorial practice. Racism does not simply manifest in aggregated spatial segregation, which is one of its most visible indices, but it also constitutes personal, movable territories, tailored and projected upon people through hegemonic (i.e., accepted) categorizations.

Michel Foucault revealed the complex connections between population and territory at the core of governmentality, the practice of "disposition of men and things towards the realization of specific aims." For Foucault, the definiens of the governmental state is not so much the territory per se, but population, the apparatuses of security and the discursive savoirs used to govern population. Interestingly, Foucault took territory in its intuitive understanding in order to criticize the cult of the centrality of territory in the definition of sovereignty. However, once a step further towards a radically relational conception of territory is made, territory appears precisely as what keeps sovereignty and government together. The link between sovereignty and government is indeed the territorial relationship par excellence. In order to work properly, government needs to territorialize a given population on its own framework of sovereignty. In Foucault’s account, on the other hand, this is precisely the aim that disciplines help to achieve. What counts, in any case, is not the place, but the relationship among people that is built throughout and even beyond it.

Finally, claims to territory in international relations form a particularly interesting chapter. The role of narrative and argumentation in political
power is clear in political claims to territory. In this field, discourse is deeply intertwined with its referent. Only rarely, if ever, is title to territory an all-or-nothing concept. It is graduated and inevitably open to negotiation. Defense and conquest are only ideal-typically easy to separate. In practice, they never are. Who is acting (taking the initiative) and who is reacting (taking consequential measures) in international territorial disputes is always a matter of controversy. The type of claim or justification employed bears relevant consequences on the extent and boundaries of the contested space at stake. As shown by Alexander Murphy, justification is not an irrelevant ex post reconstruction or embellishment. Arguments advanced and the rhetoric deployed in the disputing process affect the extent of physical territory and the whole political and military process at stake. In a radical perspective, disputes themselves—ranging from diplomatic skirmishes to genocide—are territorial and should be understood as processes of re-/re-territorialization.

Scale and Visibility

To describe territory as a piece of land is, so to speak, like describing money as a piece of metal or paper. By doing so, one misses the whole picture. Of course, the carrier is hardly irrelevant, as features of portability of paper money had a profound impact on economic history. Yet, the carrier is, at best, just half of the monetary mechanism. Likewise, territory is not simply a matter of physical space marked on land; nor is it merely space with a function. Just as not all physical spaces are territories, not all territories are spaces. Space, or more precisely the practice of its division and administration, is one of the most powerful ways of creating social order. However, while space can be described as a capacity to host and to become the recipient of objects and relations, territory can be best understood as a relationship in itself, which may subsist even without any spatial dimension. Not only has space an inherent imagined dimension, so that it is ultimately impossible to maintain the distinction between real and imagined space, but there exists a non-spatial territorial imagination as well.

This is not to deny the existence of fundamental spatial constraints to human action. Space remains the most visible territorial carrier. For instance, spatial territory is at the basis of the most powerful modern political organization—or, at least, ideologically so—i.e. the nation-state. Nonetheless, there are ways of living space that are not territorial, just as there are ways of living non-spatial experiences and relations that are territorial. The persistent difference between territory, on the one hand, and the space it occupies and the places in which it manifests, on the other hand,
also entails the recognition that there can be more than one territory in the same place. Territories are mutually exclusive only at an ideal level; in reality, they are coexistent, merged and stratified one onto another.

Two pivotal categories to appreciate the relational features of territory are thus scale and visibility. Almost all territories can be classified along these two variables. Interestingly, while the rule of thumb associates larger scale with higher visibility, this correlation is not always valid. Rather than simply large-scale ones, the most visible territories are the institutionalized ones. One can consider for instance the following territories: the nation-state, the city and its functional places, the interpersonal sphere, the body, and the psyche.

Indisputably, the nation-state is the most visible modern political territory. Its main ambition lies in creating and guaranteeing the co-extension of a number of territories, which vary according to the version of nationalism: political territory, economic territory, cultural territory, ethnic territory and so on. The higher the number, the closer one gets away from civic versions of nationalism and approaches ethnic and totalitarian versions. The city is constituted by a series of territories, which can be thought of as superimposed (e.g. blocks, neighbourhoods, boroughs), or mutually exclusive (e.g. safe havens vs. gang turfs), or even criss-crossed and overlapping (e.g. administrative units vis-à-vis graffiti-bounded areas). Within the city there are functionally-defined places, such as offices, which are devoted to be the containers of pre-defined sets of activities. At the interpersonal level, each social actor is surrounded by a movable territory towards which it is possible to advance claims for respect. In this regard, Goffman analyzed what he labeled "civil inattention" as an important device for territorial interpersonal management in everyday interaction. Interpersonal territories may also have more stable temporal bases, such as

48 I have tried to develop visibility as an analytical category in a forthcoming article. See Andrea Brighenti, “Visibility, a category for the social sciences” (2007) 55:3 Current Sociology [forthcoming].
52 E. Goffman, Behavior, supra note 36.
marriage and other contractually defined relations. As far as the body is concerned, boundary-drawing practices make use of rings, tattoos, female genital mutilations and all the forms of body-drawing. Michel Foucault has examined the way in which early modern medicine described the body as a "corporeal space," and how madness was consequently investigated as taking place in an "internal space." While the internal, psychological spaces are spaces only metaphorically, they are literally territories. Indeed, modern medicine has developed a territorial model of the human being, both in its physiological and psychological dimensions. As far as the latter are concerned, Freud’s model of the psyche is in fact a territorial one, where Ego, Super-ego and Es form three different jurisdictions, three major territories of the psyche. The goal of psychoanalytical therapy, as stated by Freud in his famous epigram “Wo Es war, soll Ich werden,” can likewise be interpreted as a territorial task, intended as a redrawing of boundaries between the territory of the Es and that of the Ego.

In addition to the above territories, which lie along a clear continuum ranging from macro to micro, more challenging, less intuitive territories, such as objects, rituals, and cultural worlds can also be recalled. Let us just consider a number of cases as instances. Jewish culture has long lived throughout the diaspora by reterritorializing itself on a symbolic world, to the point that, according to Emanuel Maier, “the role of Torah as movable territory developed as a substitute and in compensation for the loss of actual territory.” While not being land-based, the territory of the Torah is no less real than land, as it develops a whole set of territorial relations among believers and between the community of believers and God. Another non-intuitive example of territorialization is provided by the surveillance complex. Tracking and identifying people through relational databases gives shape to strategies for territorializing (including, differentiating, granting access to) and deterrioralizing (excluding, isolating, denying

---

53 One can get an a contrario example of the territorial dimension of intimate adult relationships by considering the case of sexual abuse as territorial trespassing. See e.g. Joanne Wright, "Consent and Sexual Violence in Canadian Public Discourse: Reflections on Ewanchuk" (2001) 16:2 C.J.L.S. 173. For a continuist take on the legal dimension in between everyday life and formal, institutionalized organizations, see Daniel Jutra, “The Legal Dimensions of Everyday Life” (2001) 16:1 C.J.L.S. 45.


access to) people. Finally, friendship, too, can be observed as a territory. The movie *Kitchen Stories* (2003) by Bent Hamer tells the story of a fictional experiment carried out in the 1950s by a modernist Swedish furniture company on Norwegian singles as they hang around in their kitchens. While the relationship between the scientist observer and the lay man observed is supposed to be neutral and non-interactional, in the case of Folke and Isak, the two main characters of the story, an unpredicted, strong friendship develops as soon as they start building together a new shared territory. The movie stages not simply a territory where friendship develops (the kitchen as a metric space, as understood by the Swedish company), but, properly speaking, friendship as a territory on its own (the kitchen as re-appropriated by the two men and endowed with the meaning of their human relation, with all its values and normative expectations—in short, with self-made fault-lines and territorial transactions).

Territory-drawing is thus a fundamental way of building relations among human beings mediated by places, spaces, objects, and every type of signs and symbols. Ultimately, when based on signs and symbols, territory need not be a space. This paper has attempted to begin an exploration of those territorial relations which develop independently from space in order to show that territory cannot be reduced to space plus functions.

**Law’s Territories: Federalism and Jurisdictions**

Traditionally, territory is conceived as a spatial structure of organization endowed with boundaries. This traditional conception adopted by the social sciences, is closely linked to—and, possibly, modeled upon—the legal concept of *jurisdiction*. Territory (naturalistically conceived) and jurisdiction were born as twin concepts. Only recently have critical theorists argued for their uncoupling. In law and geography studies, for instance, David Delaney proposed to distinguish the legalized landscape into physical and conceptual. In legal scholarship, too, recent attempts have been made to re-imagine the balance between the space and the functions of law. Describing Suzanne Comtois’ approach to the issue of territoriality in

---

59 The distinction between human being and animal, too, is one such basic territorial distinction made possible by boundary-drawing activities. Recently, Giorgio Agamben has provided an intriguing argument that the act of drawing the boundaries between man and animal is in fact much more crucial than human rights enforcement issues. Describing what he calls “the anthropological and anthropogenetic machine of the moderns,” which he investigates mainly through the works of von Uexküll and Heidegger, Agamben also reveals the existence of “zones of indistinction” between man and animal, i.e. of non-territorial relations, which are resolved by the introduction of a rupture between humanity and animality inside man himself. See G. Agamben, *L’aperto: l’uomo e l’animale* (Torino: Bollati Boringhieri, 2002).


---
administrative law, Robert Leckey writes: "[t]he idea of jurisdiction arose from staunchly spatial ideas of the administration of justice. The territory of the ordinary courts was coextensive with the nation-state. Legislatures then carved out domains on the map and granted them to administrative tribunals." According to Comtois' analysis, the territorial principle stands in opposition to the pragmatic and functional approach, which locates jurisdictions not spatially but on the basis of activities, tasks and functions. However, this argument seems to apply successfully only to the classical territorial imagination. On the other hand, in light of a relational conception of territory, one has to admit that functions, too, produce territories, albeit non-physical ones. In fact, a territory results from the naturalization of a function, and from the institution of the specific type of human relations described above.

Law needs to take place. \(^6^4\) In order to be, law needs to be somewhere. But, the "where" of law need not be a country (a nation-state), nor a region. It can be a person, as well as an interpersonal relation. Peter Fitzpatrick has stressed that the dimension of the "taking place," of determination, of law exists only within a constitutive tension with another fundamental dimension of law, which he calls responsiveness. \(^6^5\) Responsiveness represents the necessary moment of deterritorialization of law. Territorialization and deterritorialization of law thus co-imply each other. They are a not a dialectic pair. These movements or processes are embedded into one another in the form of repetitions and differences. Repetitions are extensions, differences are variations in the taking place of law and in its responsive becoming, which determine the territorialization of people, locales, objects, and spaces on law.

One of the most insightful ways of appreciating the scope and importance of territory through the lens of law is to examine the case of federalism. Following Roderick A. Macdonald, it is possible to identify three different "stages" of federalism: traditional spatio-territorial federalism, personal federalism, and kaleidoscopic federalism. \(^6^6\) Traditional territorial federalism provides the most intuitive geographical image of the federal structure of governance; personal federalism allows legal subjects free choice of their affiliation; whereas kaleidoscopic federalism allows actors not only to choose, but also to build and shape the categories and the dimensions of life they want to federate. These stages form a progression in the recognition that the fault-lines of federalization of the various powers


\(^{64}\) Peter Fitzpatrick, "Taking Place: The Spaces and Timing of Law" (Paper presented at Birkbeck College Anthropology of Law Workshop, 2005) [unpublished].


need not be traced in the same fashion. Thus, kaleidoscopic federalism represents the widest and most comprehensive conception of federalism, which encompasses the other two. Whereas traditional territorial federalism is very much an ideological version of how federalism works, kaleidoscopic federalism provides a more accurate description of reality. In short, Macdonald’s claim is that federalism is “the normal condition of human interaction,” because in fact most human relationships are constructed, managed and reshaped bottom-up rather than top-down.

A radically relational conception of territory is consistent with kaleidoscopic federalism. Kaleidoscopic federalism is an attempt at pluralizing the federalist imagination and recognizing heterogeneity in the composition of legal subjects. As such, it does not lead to the dissolution of territories, but to an exponential increase in actually existing territories. Kaleidoscopic federalism marks the point where federalism comes to coincide with legal pluralism, radically understood. In a radical legal-pluralist perspective, kaleidoscopic federalism provides a more accurate description of reality. In short, Macdonald’s claim is that federalism is “the normal condition of human interaction,” because in fact most human relationships are constructed, managed and reshaped bottom-up rather than top-down.

This paper has explored the possibilities opened by a shift in our understanding of territory from object to relationship, suggesting that a relational conception of territory potentially enables new analyses of law’s territories. Legal and socio-legal research may take advantage of this approach in order to bypass the dichotomy between ego-centric and geo-centric legal projections. The classic legal distinction between jus sanguinis and jus soli, for instance, can be described as the perspective from which legal norms are projected upon legal subjects. Whereas geo-centric legal projections give emphasis to the objective and the generalizable, ego-centric projections give emphasis to the personal and the particularistic. However, a relational conception of territory enables us to see that personal law is as territorial as traditional territorial state law, except for the fact that its territory is not a land but an ensemble of people. Hence, the “portable” quality of personal law. The same holds for emerging global law, where territorialization is carried out through contracts and other non-state

---


68 The dichotomy is introduced and discussed at length by Boaventura de Sousa Santos, Toward a New Common Sense. Law, Science and Politics in the Paradigmatic Transition (London: Routledge, 1995) at §7.

territorial relationships among private parties. Each type of law *in action* is territorial, as it shapes binding relations of access, pre-assignment, inclusion, superordination and subordination among actors.

To conclude, a radical conception invites us to understand territory as existing on a layer distinct from the physical-spatial layer where traditional sociological imagination has located it. Of course, distinction does not mean lack of interaction, since territories interact with spaces in a number of crucial ways: social actors are physical, corporeal persons who live spatially and are subject to spatial constraints. Yet, territory is generated by an act of *imagination*, and, as such, is not necessarily physical or spatial. The most important political and legal implication of a radical conception of territory is that, despite claims to control and monopoly, and despite homogeneity-claiming plans, each territory is as *heterogenous* as the ensemble of subjects and agents who form it by inhabiting (territorializing upon) it.

Résumé
Contre les conceptions traditionnelles qui confondent le territoire avec sa prolongation spatiale physique, cet article fait une proposition antiréductionniste. Il explore les caractéristiques d’une conception radicale et non intuitive du territoire, et les applique au droit. Au cœur du concept du territoire, il identifie des relations plutôt que des espaces, de sorte que territoires spatiaux et non spatiaux puissent être vus superposés les uns sur les autres, dotés de raccordements multiples, selon différentes échelles et degrés de visibilité. Le territoire peut alors être envisagé à la fois comme une activité de tracé de frontières et comme un processus qui crée des positions subjectives pré-assignées, toutes deux étant des soucis primaires pour le droit. De ce point de vue, le droit est un effort éminemment territorial. Le centre de l’enquête est par conséquent décalé sur les acteurs qui, en établissant et en formant leurs rapports sociaux, tracent différents types de frontières, sur les technologies qu’ils appliquent et les objectifs qu’ils essayent de réaliser en traçant des frontières.

Abstract
Whereas traditional conceptions tend to conflate territory and its physical spatial extension, this paper advances an argument to oppose such reductionism. It explores the features of a non-intuitive, radical conception of territory and proposes to apply it to law. Relationship, rather than space, is suggested to be at the conceptual core of territory, so that spatial and non-spatial territories can be seen as superimposed one onto the other and endowed with multiple connections, according to different scales and degrees of visibility. Territory is regarded as an activity of boundary-drawing and as a process which creates pre-assigned relational positions, both of which are key concerns for law. From this perspective, law is an inherently territorial
endeavour. The focus of enquiry is consequently shifted to the actors who, by building and shaping their social relationships, draw different types of boundaries, on the technologies they apply, and the aims they attempt to achieve through boundary-drawing.

Andrea Brighenti
8 via Franz Kafka
38066 Riva del Garda
Italy
andrea.brighenti@soc.unitn.it