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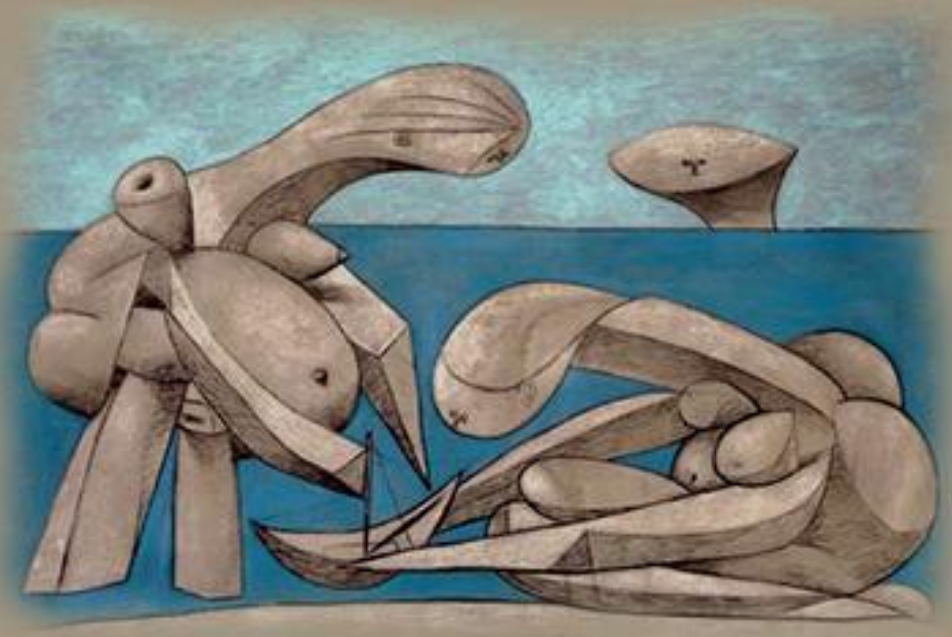

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Gail Lythgoe. *The Rebirth of Territory,* Cambridge University Press, 2024. Pp. 312. ISBN: 9781009377874.

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Inspired by the dearth of conceptual engagement with territory as an international law category, "The Rebirth of Territory", written by Gail Lythgoe, contains a comprehensive attempt to re-define it. The scope of the book, however, is much broader. The author deploys her revisited concept of territory to also rethink—and rescue from obsolescence—territorially mediated concepts such as sovereignty and jurisdiction. Also, the thematic boundaries of the book are widened as a consequence of the very definition of territory proposed. In the book's account, territories proliferate rather than succumb under the whirlwind of globalization. The state's loss of normative power does not annihilate territory nor erase its centrality as a concept in international law; less drastically, it just deprives the state of its territorial hegemony. The book indeed acutely envisions a territory for each non-state actor who exercises functions that once belonged to sovereign states. The basic premise is that functions must be exercised somewhere, as no social process, including legal ones, is a-spatial. Therefore, more than just a study on territory as an attribute of the state, Lythgoe's work is a wide-ranging reflection on international law's changing spatiality in our globalized contemporaneity.

The book's structure reflects the deliberate intent to build a "legal theory of territory" (at 210). It appears to be articulated into two logical parts (although the author opted for a division by six chapters only), which reproduce a Baconian-like argumentative style: a negative part (*pars destruens*), containing a critique of the "orthodox" concept of territory, and a positive part (*pars construens*), advancing the book's proposal for a reformulation of the concept of territory and its implications.

The first part is contained in the second and third chapters. Chapter 2 reviews systematically what the author labels the "deterritorialization" literature in international law. A term coined by French philosophers Gilles Deleuze and Félix Guattari,[1] not well established in international law,[2] deterritorialization appears in three main strands of discourse. The first originates from an influential argument advanced by legal theorists Gunther Teubner and Andreas Fischer-Lescano[3], namely that the international legal order

[1] Van Houtum, 'Deterritorialization' in Mark Bevir (ed), *Encyclopedia of Political Theory* (Sage Publications 2010) 377-378 (deterritorialization and re-territorialization designate the process of continuous de-making and re-making of "repressive fixations and despotic arrangements of a certain milieu, be it conceptual, social, affective or linguistic").

[2] Studies that have addressed it include Brölmann, 'Deterritorialization in International Law: Moving Away from the Divide Between National and International Law' in JE. Nijman and A. Nollkaemper (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press 2007); Milano, 'The Deterritorialization of International Law', 2 *ESIL Reflections* (2013); Rajkovic, 'The Visual Conquest of International Law: Brute Boundaries, the Map, and the Legacy of Cartogenesis', 31 *Leiden Journal of International Law* (2018) 267.

[3] Teubner and Fischer-Lescano, 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law', 25 *Michigan Journal of International Law* (2004) 999.

is witnessing a shift from territoriality to functionalism. Competencies are no longer organized on the basis of state territory (all functions are exercised in a centralized manner by the state within its territory), but of sectoral regimes (each regime is competent for a specific function linked to a certain regulatory matter, such as trade, the environment, human rights etc.). In other words, boundaries are becoming less territorial and more functional. The second strand that the author identifies comprises studies addressing the relocation of powers from states to non-state actors. Lastly, the third strand highlights the "porosity" of state borders as evidenced by cross-border phenomena. It brings together studies with a pessimistic view on the continued relevance of state territoriality, mostly perceived as an obstacle to global interactions.

To grasp the author's critique of these strands, it is important to first appreciate the main finding, by no means obvious, that her categorization implies. To her, there is "considerable overlap between the deterritorialization debate and the aforementioned 'shift to functionality' narrative" (at 15). Aware that functions must be exercised by some actors in some space, the book's reflection continually swings between the triad functions – actors – spaces. Preliminary, it observes that the three strands share the problematic assumption that states are the only actors to naturally "have" a territory. This assumption has important consequences. Firstly, it generates the impression that non-state actors exercise their newly-acquired functions nowhere—"functions appear to just float free of territory" (at 66). Secondly, it means that state and territory are used interchangeably, as synonyms. On the analytical plane, this semantical confusion implies that the only relevant space in the international legal discourse is state territory. Therefore, the migration of functions away from states and into functional regimes inevitably entails deterritorialization. However, the author intends to demonstrate precisely the opposite; that the redistribution of competencies among multiple actors beyond states entails a proliferation of spaces (non-state *territories,* to use her lexicon) beyond state territories.

Chapter 3 complements the literature review on deterritorialization with a deconstruction of the orthodox concept of territory intended to justify its seeming decline in international law. The premise for the analysis is that territory is a complex and everchanging concept, yet still sufficiently delimited to be identified and discussed. The most accepted and difficult to eradicate feature of territory is its naturalness. Perceived as a purely or primarily physical phenomenon, it appears as existing as a matter of nature. Its physicality is deceptive as it hides that it is an artifact, a social construction. As a consequence, territory is generally regarded as temporally stable and ahistorical (how could it be otherwise if it is a brute geographical fact?). Also, being "portion[s] of the globe",[4] territories are non-overlapping; there can be just one territory in each physical area. Territory is internally homogenous, as all of its points "belong" to the state (e.g. international law has no interest in the centrality or peripherical nature of its internal locations). It is also contiguous, as all of its parts are connected to one another and lie within a defined border.

[4] *Island of Palmas (US v Netherlands)* 2 RIAA 829 (1928) 8 ("Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the function of a State").

The examination subsequently moves to the *use* of territory in the international law's discourse. Although there is no such methodological justification, this valuable step in the examination suggests a certain approach to the meaning of concepts; one that is contextual and dependent on use in a given linguistic community,[5] rather than essentialist and faithful to an unchanging core of signification. The chapter thus identifies four uses of territory; as an object, a reified entity to which an action is directed; as a subject, whenever territorial actors cannot be considered as states, such as non-self governing territories or entities like Taiwan; as a framework for the manifestation of state power; or, lastly, as an organizing logic underlying international law's operationalization (e.g. international rules are implemented in each state's territory).

The last stretch of chapter 3 draws from the above to examine the notion of territorial sovereignty, described as shrouded in confusion. Territory has indeed been regarded as either a piece of property belonging to the ruler (property or object theory); a natural element of the state (essential element or quality theory); or the space of validity of the state legal order (jurisdictional or competence theory, attributed to Hans Kelsen). Despite such theoretical variations, just as territory, territorial sovereignty is ultimately always conceived as a state prerogative, as the state exercise of competencies within *its* territory.

Chapters 4 and 5 make up the second, constructive part, where the book advances its theory of territory and applies it to territorially mediated categories. The conceptualization proposed draws heavily and expressly from the elaboration, by French philosopher Henri Lefebvre (1901-1991), of the notion of space in his major oeuvre, "The Production of Space", encapsulated in the oft-quoted statement: "(social) space is a (social) product".[6] By rethinking territory as "produced", the book highlights the social, historically contingent nature of territory, distancing itself from the naturalizing/physicalizing tendency previously discussed. Territory is thus effectively defined as a category of space, as "controlled and disciplined space" (at 255). Since territory is not something physical, it cannot contain the state nor it is owned by it; instead, it is created by the state *and* by non-state actors, wherever they exercise their power. To understand whether a space is a territory, the author develops a "loose" test of control: a space is a territory whenever an actor has the ability or is legally empowered to influence or discipline activities and peoples in some ways. Thus, the same physical geographical area can be controlled by various actors. Territories can, therefore, overlap geographically. Moreover, being linked to temporally contingent social practices, the temporality of territory is malleable; territory is understood as a *process* of continual deterritorialization and reterritorialization. Likewise, borders can be reconsidered as bordering practices, as "complex relational social institutions" rather than "cartographic representations" (at 179).

In other words, in The Rebirth of Territory, the state loses the spatial monopoly of the international legal order, allowing other actors, with their territories, to enter the scene.

[5] Wittgenstein, *Philosophical Investigations,* (G. E. M. Anscombe tr., Blackwell 1953) §43 ("For a large class of cases—though not for all—in which we employ the word "meaning", it can be defined thus: the meaning of a word is its use in the language").

[6] Lefebvre, *The Production of Space* (D Nicholson-Smith tr, Blackwell Publishing 2013, originally published in 1974).

In so doing, the book obviates to a fundamental misalignment between legal theory and the reality of globalization. As the state loses in normativity, state territory seems to be relinquishing its relevance; but while the state's loss of normativity resulted in the migration of its competencies to non-state actors, the state territory has not been similarly redistributed, giving instead the impression of being just disappearing (cf. deterritorialization).

The understanding of territory proposed in the book mirrors the belief that concepts are unstable results of social and historical processes. At the same time, its express social constructivist approach entails placing attention mostly on the process by which a concept *develops into* its most updated version. But what happens *after* such version is delineated and territory accordingly re-defined? What explains the urgency and what is the purpose—whether theoretical or practical—of defining, i.e. crystallizing the essence of an entity (after assuming it is ever-changing and fluid) instead of just describing the changing spatiality of international law?

An implicit, partial answer to these questions is contained in chapter 5, which applies the proposed reconceptualization of territory to the notions of sovereignty and jurisdiction. Inspired by legal realism, the work understands sovereignty as a bundle of legal relations that are divisible across a multiplicity of actors. This implies also a reformulation of exclusivity, i.e., the right to act to the exclusion of others in a given physical area. In the same physical area, multiple actors exercise their own functions with exclusivity. Law regulates the relations among those actors, rather than between actors and space. Likewise, if territory is not geographically determined but is produced wherever an actor exercises its power, the dichotomy between territorial and extra-territorial jurisdiction fades.

It is perhaps superfluous to underline that, to embrace the reconstruction of sovereignty and jurisdiction proposed in The Rebirth of Territory, one must be content with the legal realist view that non-state actors exercise rights and duties with exclusivity as a matter of fact that needs no justification, rather than by way of delegation from the state.

The last part of chapter 5 contains three case studies. Each analyzes the exercise of rights and duties by, respectively, the (1) European Union, the (2) International Seabed Authority (ISA) and (3) international organizations who use and manage data, from the prism of the space where such exercise takes place. Given the book's intent to build a general theory, it is worth noting that the three case studies chosen are particularly apt, if not strategically curated, to demonstrate that the functions now exclusively exercised by non-state actors are not performed in a spatial void, but in relation to specific geographies that, in the book's approach, coincide with those actors' territories. The connection between a function and the spatial domain where it is exercised is self-evident in relation to the European Union and the International Seabed Authority. Concerning data governance, the nexus is also clear in that the discussion is centered around data governance in specific contexts, such as humanitarian crises. Furthermore, the selection of cases borrows from one specific category of non-state actors, that is, international organizations. And among all international organizations, the ones discussed are endowed with operational functions enabling them to contribute to the actual application of general, abstract and thus (seemingly) a-spatial international rules in the real, spatial world.

Beyond these case studies and their strategic selection, the whole book is replete with examples, which contribute significantly to the verifiability and intelligibility of its theoretical ruminations. They draw from different areas of international law, making it appealing to scholars with disparate research interests, beyond international legal theorists. Moreover, the examples provided refer not only to contemporary international law but also to its history. This makes up for the lack of a systematic historical account of the legal concept of territory and supports the author's intent to de-naturalize and thus historicize it.

Yet, the foremost methodological value of the book lies in its transdisciplinary. Firstly, the book radiates familiarity with epistemological and ontological notions, adding depth to its conceptual operation. Furthermore, it is particularly timing for its proximity and sensitivity to law and geography (or legal geography), which is in and of itself a interdisciplinary approach.[7] A methodological lens long applied to various legal analyses, law and geography has struggled to take took off in international law, a field dominated by temporal and historical narratives. And yet, though perhaps outshined by universalistic ambitions and state-centered inclinations, spatial elements are ubiquitous in international law. The term "spatial", as opposed to "geographical", is here used deliberately, to stress that international law, though perhaps unwittingly, does not always reduce space to mere physical geography. International law, through its agents, does produce spaces that are not necessarily state territories. Suffice it to think of the international rivers born in Europe after the Congress of Vienna, which paved the way for the institution of so-called river commissions, generally considered as the first international organizations.[8] What is missing is *awareness* of international law's "wheres", i.e., a spatial narrative. The geometry of the international legal order is reconfiguring and this calls for a spatial mapping. "The Rebirth of Territory" proves up to this challenge. Scholars intrigued by the promise of legal geography in international law will find it a clear and fertile learning terrain. The reflections it will certainly spark will ultimately give concrete shape to the transformative potential of this work's revisited concept of territory.

[7] For a primer on legal geography, see Bennett and Layard, 'Legal Geography: Becoming Spatial Detectives', 9 *Geography Compass* (2015) 406. For an application to international law see Zoe Pearson, 'Spaces of International Law', 17 *Griffith Law Review* (2008) 2.

[8] Wolfrum, 'Administrative Unions', *Max Planck Encyclopedia of Public International Law* (2006) paras 7-14.