Anomalies of Territory: Examining the Relationship between Territory, Sovereignty, and Statehood

Alexandra R. Harrington, Faculty of Law, McGill University, Montreal

August 2014

A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Doctor of Civil Law.

Table of Contents

Thesis Abstract (English)

This thesis examines the nature of the legal relationship between territory, sovereignty and statehood in the face of assertions that state sovereignty is being undermined by globalization and climate change. In response to these challenges, this thesis asserts that, in the context of state control and sovereignty, the role of territory is not static but rather elastic, and that this elasticity has allowed for the growth and development of the state as a theoretical and practical legal construct throughout a spectrum of new challenges.

The thesis establishes what is termed the model of legal elasticity and the *imperium* and *dominium* relationship in order to evaluate the relationship between territory, sovereignty and statehood. "Legal elasticity" refers to flexibility of control over territory and of state policies relating to territory in the face of growing, developing, changing and/or challenging legal and political situations. This flexibility accommodates different legal systems, governance structures and populations without weakening or undoing state control and the state itself. To support the application of legal elasticity, the thesis uses a modified version of the Roman law relationship between *imperium* and *dominium* to explain how a state maintains overall territorial control and sovereignty while at the same time allowing for legal elasticity within the confines of its borders.

The model of legal elasticity and the *imperium* and *dominium* relationship is next applied to identified key periods of growth, development, change and/or challenge to legal constructs of territory and state territorial control in the domestic and international law realm. The thesis then applies the model to current day forms of anomalies of territory, sub-categorized as anomalies of economy, anomalies of politics and anomalies of military. The application demonstrates the strengths of the model as well as the many situations in which it has been used, albeit without being referred to as such, throughout different legal systems. Based on this, it is the assertion of this thesis that current challenges such as globalization and climate change might require a shift in the *imperium* and *dominium* balance within the state but that legal elasticity allows for this to occur without undermining the relationship between territorial control, sovereignty and statehood.

Thesis Abstract (French)

Cette thèse porte sur la nature de la relation juridique entre le territoire, la souveraineté et indépendance face à des affirmations que la souveraineté de l'Etat est compromise par la mondialisation et le changement climatique. En réponse à ces défis, cette thèse affirme que, dans le cadre du contrôle de l'Etat et de la souveraineté, le rôle du territoire n'est pas statique mais plutôt élastique, et que cette élasticité a permis pour la croissance et le développement de l'État comme un théorique et pratique construction juridique à travers un éventail de nouveaux défis.

La thèse établit ce qu'on appelle le modèle d'élasticité juridique et l'*imperium* et *dominium* relation afin d'évaluer la relation entre le territoire, la souveraineté et l'indépendance. "Élasticité juridique» fait référence à la flexibilité de contrôle du territoire et des politiques de l'Etat relatives au territoire dans le visage de plus en plus, le développement, l'évolution et / ou situations juridiques et politiques difficiles. Cette flexibilité peut accueillir différents systèmes juridiques, les structures de gouvernance et les populations sans affaiblissement ou de les défaire contrôle de l'État et de l'État lui-même. Pour appuyer la demande d'élasticité juridique, la thèse utilise une version modifiée de la relation de droit romain entre *imperium* et *dominium* d'expliquer comment un État conserve le contrôle du territoire global et de la souveraineté tout en permettant en même temps l'élasticité juridique dans les limites de ses frontières.

Le modèle d'élasticité juridique et l'*imperium* et de la relation de *dominium* est ensuite appliquée à des périodes clés identifiés de la croissance, le développement, le changement et / ou un défi à des structures juridiques, de territoire et de contrôle territorial de l'État dans le domaine de la législation nationale et internationale. La thèse applique ensuite le modèle à des formes de jours actuels d'anomalies de territoire, sous-catégorie des anomalies de l'économie, des anomalies de la politique et des anomalies de militaire. L'application montre les points forts du modèle ainsi que les nombreuses situations dans lesquelles il a été utilisé, mais sans être visé en tant que tel, l'ensemble des systèmes juridiques différents. Sur cette base, il est l'affirmation de cette thèse que les défis actuels tels que la mondialisation et le changement climatique pourraient nécessiter un changement dans l'équilibre de l'*imperium* et *dominium* sein de l'Etat mais que l'élasticité juridique permet que cela se produise sans porter atteinte à la relation entre le contrôle du territoire, la souveraineté et l'indépendance.

Acknowledgements

Throughout the researching and writing of this thesis I have received great encouragement from many people. I would like to acknowledge my doctoral supervisor, Professor Frederic Megret, for all of his efforts and energy throughout the thesis creation process. I would also like to acknowledge the members of my doctoral committee, Professor Francois Crepeau and Professor Evan Fox-Decent, for their support, enthusiasm and understanding throughout the thesis process. Also, I would like to acknowledge the McGill University Faculty of Law for its support of my doctoral studies and for the rich experiences it provided.

Personally, I must acknowledge my parents, Dr. George and Mrs. Barbara Harrington, and my husband, Onchan Inkhamfong, to whom I owe a huge debt of gratitude for their constant support and guidance in this and all other endeavors. A special acknowledgement of and thanks to my mother for her editorial advice as well. My uncle John Harrington has provided me with inspiration throughout. Special thanks are owed to friends and mentors Professors Danshera Cords, Peter Halewood, Timothy Lytton, Connie Mayer and Alicia Ouellette. I have been privileged to receive encouragement from many friends and family members, including Dr. Amar Khoday, Dr. Nelcy Lopez Cuellar, Dr. William O'Dwyer, the Philipp family, the Ruthman family, and Ms. Nicole Camuti Sufian.

Chapter 1 – Introduction

I. Introduction

At its core, territory is fixed. Barring a natural disaster or occurrence, territory does not and cannot move or be moved. Indeed, territory physically meets fluidity only at the shoreline. And yet, as a legal construct, territory is very much in flux. Territory can be bought and it can be sold. Territory can be inherited and it can be the spoils of war. It can be on one side of a border today and another side tomorrow. Territory is a building block of the state and it can be a tool to undo the state. Territory is a source of conflict, pride, and legitimacy for states and peoples. All this, and yet territory cannot move.

How, then, is territory to be conceived of as a matter of law? What are the parameters of the relationship between territory and sovereignty, to say nothing of statehood itself? And how does territorial control – and overt or covert challenges to it – affect state sovereignty and legitimacy? The standard terms of modern public international law require that territory of some form – even if geographically imperfect or subject to political disputes – be held in order for an entity purporting to be a state to in fact be a legitimate state in the international system. However, this requirement alone does not provide meaningful or historically durable insight into the relationship between territory, sovereignty and statehood. Nor does this requirement inform analysis of how territory functions as a vehicle of state control, particularly in times of growth, development, change and challenge to domestic and international law and state practice.

The lack of definition of this relationship represents a gap in legal theory and poses important questions. These questions become increasingly urgent when set against current globalization theory forecasting the downfall of the state as a result of shifts in territorial control and usage, as well as the ability of industries and political groups to operate across borders. These questions are also pressing in the face of estimates from scientist that portions of states – if not indeed the entire state itself – will be rendered uninhabitable in the not too distant future due to effects of climate change. The forecasted impacts include rising sea levels that cause a territory to, colloquially, “sink,” as well as significant coastal erosion in island states such that state territory cannot sustain viable

political and economic communities.[1] Understanding the ways in which territory is and has been conceived of as a legal construct in relationship to sovereignty and statehood, as well as the parameters of this relationship, is necessary to address solutions for the next generation of territorial contours of the state as well as sovereignty and statehood.

This thesis offers an analytical approach to questions regarding the parameters of the relationship between territory, sovereignty and statehood through the creation and application of a legal model explaining how states respond to growth, development, and change in claims to territorial control within the domestic and international realms. The purpose of this model is to develop an understanding of the role of territory that can be applied and evaluated at particularly important historical points of evolution of the state (or entity serving in the position of a state) in order to demonstrate the impacts of centralized attempts at territorial control on sovereignty. It is a model in that it uses a set of stylized observations to analyze the relationship between sovereignty and territory along a scale of potential understandings. The model is offered to counter assertions regarding the decline of the state as a result of, notably, globalization. This model involves the concept of legal elasticity in the control relationship between the state and the territory over which it asserts authority and uses the *imperium* and *dominium* relationship to explain the sustainable yet potentially shifting parameters of legal elasticity. The core assertion is that, in the context of state control and sovereignty, the role of territory is not static but elastic, and that this elasticity has allowed for the growth and development of the state as a theoretical and practical legal construct from the Roman Empire onward. Indeed, this thesis posits that it would have been impossible for even the Roman Empire itself to grow as a governing force without elastic constructs of territory that were accommodated and enforced through balancing the *imperium* and *dominium* relationship.

By "legal elasticity" what is meant is essentially flexibility of control over territory and of state policies relating to territory in the face of growing, developing, changing or challenging legal and political situations. This flexibility allows for different forms of

[1] See e.g. Eric Maher, "Notes: Weathering Rising Seas in a Sinking Ship: The Constitutional Vulnerabilities of the Regional Greenhouse Gas Initiative" (2011 – 2012) 23 Fordham Envtl L Rev 162.

legal systems, governance structures and populations to exist within the territory of a state without weakening or undoing state control and, thereby, the state itself. Legal elasticity can be overt – through statutes and rules – or it can be through more subtle methods such as customary law and practice by state actors, be they national or sub-national. As a result, legal elasticity in territorial control allows the state to continue to exist and exert control as a sovereign entity over the claimed areas of territory despite the ability of other groups to claim a form of legal control over the territory. In essence, legal elasticity manifests the establishment of boundaries of state control over territory. Again, this can be achieved through the strong assertion of power and state control, with military force for example, or it can be a more subtle understanding of the boundary relationship that relies on custom and practices. Stretched too far, legal elasticity will result in the state losing control over a territory, thereby potentially losing sovereignty and legitimacy over it as a matter of domestic and international law. Given sufficient slack, however, legal elasticity allows for the maintenance of state control over territory as a matter of law while providing a place for pluralism in the dynamics of accommodation of differing forms of sub-national control within the territory itself.

The contrasting construction to legal elasticity is "legal hardening." This is defined as a system in which there is little to no flexibility, and the state actor perceives that it cannot maintain territorial control, and thus sovereignty, unless there is uniform control over the territorial units within its jurisdiction. In this system, the state as a legal construct is perceived to be threatened, thus the state imposes stringent legal controls over territory in order to ensure that it is not used as a base to undermine state control and state sovereignty. Used in certain times of crisis or domestic or international uncertainty, hardened territorial control will be sustainable since it provides protection to the territory and its people. Contracted too tightly or continued for too long, however, hardened territorial control has a tendency to result in damage to state control over territory as those within the territory often act against such restrictions and/or the restrictions will cease to be effective due to the subordination of the sub-national. In these situations, damage does not necessarily mean overt rebellion, however, and it can manifest itself in many ways that involve undermining or attempting to flout state legal control over a

territory. Prolonged use of hardened territorial control also suggests that the state itself is weak and cannot otherwise function, calling into question its ability to claim sovereignty and control over territory as a matter of law when there is little else left to bind the state together.

To support the application of legal elasticity or legal hardening of territorial control, this thesis uses a modified version of the Roman law relationship between *imperium* and *dominium* as a method to explain how a state maintains overall territorial control and sovereignty while at the same time allowing for legal elasticity within the confines of its borders. The legal structure and functioning of the *imperium* and *dominium* relationship has of course changed in dynamics across time and legal structures, and certainly has experienced many differences in legal terminology. Despite this, the evolution of the *imperium* and *dominium* relationship as a matter of law throughout history demonstrates that the core aspects of the relationship have remained in tact even as the geographic and systemic applications of the legal relationship have varied.

The *imperium* and *dominium* dynamic was first pioneered in Roman family law, which vested a legal status and authority in the designated heads of households within the City of Rome – *dominium* – such that they had the authority to govern their family with nearly unquestioned authority.[2] At the same time, those exercising *dominium* and their families existed and functioned under the *imperium*, or larger laws and legal authority, of Rome as well. Within this system, there was essentially a double layer of law and control – one very local and one at a meta-level in the form of the state. There were boundaries to the legal capacity of *dominium* and the authority of *dominium* holders, however these boundaries existed to protect the City of Rome overall and its governing system. In this construct of the *imperium* and *dominium* relationship, *imperium* subsumed *dominium* when individuals within a household committed acts such as murder outside of the household or attempts at treason against Roman governance. The system of *imperium* and *dominium* expanded from a state/family dynamic with the spread of the Roman Empire and soon took on another meaning within the Roman pattern of governing those who

[2] Andrew Borkowski & Paul duPlessis, *Textbook on Roman Law*, 3d ed (Oxford: Oxford University Press, 2005) at 113.

were as a matter of law holders of second-class status because they were not Roman citizens. This secondary meaning referred to the system in which a newly conquered territory was incorporated into the Roman Empire and placed under its overarching laws and control, however the local systems of leadership and many local laws and customs were allowed to continue provided they did not pose a direct challenge to Roman laws and Roman leadership.[3] As this thesis demonstrates, this dichotomy far outlived the empire that created it, taking on new contours along the way but retaining at its core the theory that it is possible for *imperium* and *dominium* to co-exist in a way that explains the relationship between territory, sovereignty and statehood.

This thesis charts the overt and tacit use and development of *imperium* and *dominium* in relation to state control throughout periods of growth, development, change and challenge to legal constructs of territory and territorial control. The *imperium* and *dominium* relationship as used in this thesis refers to the relationship between state territorial control and a more localized or sub-national form of territorial control. The time period over which the thesis applies the model of legal elasticity and the *imperium* and *dominium* relationship is vast in years. However, this is necessary in order to demonstrate the applicability of the model throughout history when growth, development, change and challenge existed as a potential threat to sovereign stability.

Within this system, however, one cannot expect static relationships to occur be it within the same sovereign entity or throughout history. Rather, it is asserted that there are robust forms of both *imperium* and *dominium* and weak – or at least weakened – forms of *imperium* and *dominium* and that these can be expected to shift over time. The concept of robust *imperium* is an expression of legal hardening in that it refers to a powerful state that applies a thick form of territorial control in which there is little question of the state's ability to assert sovereign territorial control and in which there is little allowed localized or sub-national territorial control. In an alternative version, there can be some allowed localized or sub-national territorial control provided that it functions within the acknowledged overarching power and sovereignty of the state. In essence, the state is the

[3] See Charles Phineas Sherman, *Roman Law in the Modern World*, vol 1 (Ithaca: Cornell University Library, 2010) at sect II.

dominant force for territorial control in instances of robust *imperium*. Conversely, the concept of weak or weakened *imperium* implies that, although the state still exerts some form of sovereign territorial control, that level of control is limited and if challenged could, as the most extreme option, become inoperable. Here, regardless of cause, state control over territory is fragile.

Conversely and by implication, the concept of robust *dominium* refers to a local entity or sub-unit that enjoys a thick form of territorial control even as it is still under the *imperium* of the larger state. The concept of weak or weakened *dominium* implies that the local entity or sub-unit exerts very little territorial control and is largely under the control of the state in which it is located. The causes for this can be many, from antipathy to the legal dominance of a state with robust *imperium*.

Within this dichotomy, it is possible for statehood and sovereign territorial control to be maintained when there is robust *imperium* and robust *dominium*, and robust *imperium* and weak or weakened *dominium*. While it is also possible for statehood and sovereign territorial control to be maintained when there is weak or weakened *imperium* and either robust *dominium* or weak/weakened *dominium*, there is only so far that this system can stretch before a state can no longer assert legitimate sovereign territorial control. Throughout this thesis, these relationships will be described by referring to the model of legal elasticity (or legal hardening where relevant) and the *imperium* and *dominium* relationship. Thus, *imperium* and *dominium* can be seen as the supporting pillars for legal elasticity or legal hardening in that they are integral parts of establishing the confines in which legal elasticity and legal hardening occur and operate.

This thesis applies the model of legal elasticity and the *imperium* and *dominium* relationship throughout key periods of growth, development, change and challenge to legal constructs of territory and state territorial control in the domestic and international law realm. These periods have been selected because they represent pivotal moments in the ways in which territory, statehood and sovereignty were legally constructed and demonstrate the applicability of the model of legal elasticity and the *imperium* and *dominium* relationship in such situations. The application demonstrates the strengths of

the model as well as the many situations in which it has been used, albeit without being referred to as such, throughout different legal systems. As noted previously, these are key examples across the historical timeline and, thus, the discussion of them represents a summary of the systems in which they operated. To provide a complete overall history of the sovereign entities studied is without the scope of this thesis.

The evaluation highlights the applicability of the model in order to provide context on which to build for the discussion of the implications of anomalies of territory on state control of territory and the role of territory as an agent of sovereign legitimacy or undoing. Analysis of current anomalies of territory thus forms an essential part of the thesis analysis and the evolution of applicability of the model of legal elasticity and the *imperium* and *dominium* relationship. In addition, the application is necessary in order to provide context for the discussion of globalization as the next step in the path of the relationship between territory, statehood and sovereignty.

II. Territory, Sovereignty, Statehood and Globalization Theory

One of the underlying challenges for the creation of a theory of the relationship between territory, sovereignty and statehood is the growing challenge to the continued legitimacy of the territorially-based state from globalization theory. By applying the model of legal elasticity and the *imperium* and *dominium* relationship throughout territorially significant periods of legal development, this thesis demonstrates that, even in the face of modern day globalization, it is inappropriate to herald the death of the territorially-based sovereign state. Rather, while globalization may offer new changes and challenges to the established system of state territorial control as well as the potential for growth and development, it can be viewed as functioning within an established model for shifts in concepts of state and sub-national relationships. To provide a context for this argument, it is necessary to discuss key strands within globalization theories from the outset of the thesis.

Definitions of globalization are themselves sources of contention, and not all definitions require or connote the same level of demise or ineffectiveness of the territorially-based state or the diminution of state control over territory. Sassen offers a complex definition

of globalization as a process that touches on the international but works most – and most importantly – at the national level.[4] In her construction, globalization works to create processes of denationalization that are subtle but result in national societies changing their thought processes and mores to global views rather than essentially national views.[5]

Others assert that a more simplistic and pragmatic definition of globalization is in order. For example, globalization has been defined as a process that focuses on interweaving aspects of finance, trade, labor and communication on a global rather than national or regional level.[6] In terms of market access and labor concerns, globalization has been viewed in a negative and rapacious light, one that leaves the fates of vulnerable workers in the hands of potentially weak legal systems rather than corporate notions of appropriate conduct.[7] In addition, there are some who argue that globalization as a construct of market and trade integration is actually centuries old.[8] For the purposes of such arguments, globalization has often been defined as "the integration of international commodity markets."[9] Indeed, some have argued that the definition of globalization over long periods of human history remains largely unchanged even with the advent of modern technology and communications opportunities.[10] According to these assertions, even arguments for and against globalization have remained largely unchanged, centering on the potential impacts of developments in technology and international capital

[4] See Sakia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2008) at 2 [Sassen, "Territory, Authority, Rights"].
[5] *Ibid*.
[6] Stein Tonnesson, "Globalising national states" (2004) 10 Nations & Nationalism 179; Geoffrey Garrett, "The Causes of Globalization" (2000) 33 Comparative Political Studies 941; Alexandra R Harrington, "Corporate Social Responsibility, Globalization, the Multinational Corporation and Labor: An Unlikely Alliance" (2012) 75 Alb LR 483 [Harrington, "CSR"]; Wilfred von Bredow, "The Changing Character of National Borders" (1998) 2 Citizenship Studies 365; Michael Hayes et al, "The citizen of empire" (2010) 14 Citizenship Studies 511; Wladimir Andreff, "La deterritorislisation des multi-nationales: firmes globales et firmes-reseaux" (1996) *Cultures & Conflits* 21, 21-22.
[7] See Harrington, "CSR," *supra* note 6 at 483.
[8] Kevin O'Rourke & Jeffrey D Williamson, "When did globalization begin?" (2002) 6 European Review of Economic History 23, 23 – 24; James A Lewis, "Sovereignty and the Role of Government in Cyberspace" (2010) 16 Brown Journal of World Affairs 55. See also Andrew Gordon & Trevor Stack, "Citizenship Beyond the State: Thinking with Early Modern Citizenship in the Contemporary World" (2007) 11 Citizenship Studies 117.
[9] O'Rourke & Williamson, *supra* note 8 at 25.
[10] Benn Steil & Manuel Hinds, *Money, Markets & Sovereignty* (New Haven: Yale University Press, 2009) at 1; David Held, "Cosmopolitanism: globalisation tamed?" (2003) 29 Review of International Studies 465 at 465 – 468.

markets.[11] Regardless the light in which one views it, these constructs of globalization suggest that there is an evolving internationalized body of customary practice that functions in multiple territories without the necessity to acquiesce to state control in order to operate.

Krasner notes the claims regarding globalization working to undermine the control of states and explains that this lack of control does not necessarily undermine the state.[12] Further, he asserts that the impact of globalization on statehood and state sovereignty is often over-inflated and that in reality globalization is not as new because

> rulers have always operated in a transnational environment; autarky has rarely been an option; regulation and monitoring of transborder flows have always been problematic . . . the difficulties for states have become more acute in some areas, but less in others . . . there is no evidence that globalization has systematically undermined state control or led to the homogenization of policies and structures.[13]

Krasner's arguments underscore the elastic reasons for which states develop different forms of domestic laws, such as customs laws, and the ability of states to adapt to changes by developing new legal regimes that reaffirm their robust *imperium* rather than simply losing sovereignty or acceding to weak *imperium* as the result of a new threat.

All of these definitions are similar in that they assume the existence of some form of state sovereign, and indeed are set against this backdrop, since the unspoken framework of law and regulation for globalization is such that the lack of sovereign existence would undermine the ability for any of these actions to occur. Indeed, rather than globalization shifting the locus of importance away from the territorially based state and toward individuals and cross-boundary actors, these concepts of globalization reinforce the need for elastic state territorial control within the model of legal elasticity and the *imperium* and *dominium* relationship. While such definitions of globalization may indicate that there is a newly important territory in which *dominium* might be held – for example a city or site of market structure – and that this might be the site of robust *dominium*, they also indicate that there is the need for robust *imperium* to be exercised in order to offer and

[11] Steil & Hinds, *supra* note 10 at 1 – 2.
[12] Stephen D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999) at 12 – 13.
[13] *Ibid* at 223.

enforce laws and rules to keep this area in check. Certainly there is a need for elasticity in the form of a territorially-based state that adapts to the changing needs of its constituents and the holders of *dominium*, as well as to the new forms of development that affect them. There is still, however, room for this level of legal elasticity without undermining the state or creating chaos.

Beyond definitions *per se*, globalization theorists are vocal in their assessments of the relationship between globalization and state control of territory. These views seek to provide context for globalization as well as for the continued presence or demise of the territorially-based state as a modern repository of legal authority and as holding capacity to enforce that authority.

Some arguments regarding the relationship of the state to globalization stress the internal (domestic) and external (foreign) capacity aspects of state control and assert that globalization has increasingly caused the internal and external to coalesce.[14] In this scenario, it has been asserted that the states themselves are responsible for being proactive and engaging with the international community so as to be part of the governing apparatuses for globalization rather than simply remaining concerned with domestic governance.[15] Thus, the onus is on the territorially-based state to become engaged rather than to simply enjoy the standard rights and benefits of sovereignty associated with statehood status. At their core, these arguments support the model of legal elasticity and demonstrate the many facets in which a state may act in an elastic manner while preserving its status as the holder of robust *imperium* internally and externally as the recognized sovereign on the international stage. In these scenarios, globalization may result in robust *dominium* for a certain territorial area, however this increase in *dominium* strength does not automatically require or result in a decrease in or weakening of *imperium*.

Additionally, it has been asserted that the totality of changes in global information accessibility and trading capabilities will impact on, though not entirely do away with,

[14] Tonnesson, *supra* note 6 at 179; Philip G Cerny, "Neomedievalism, civil war and the new security dilemma: Globalisation as durable disorder" (1998) 1 Civil Wars 36.
[15] Tonnesson, *supra* note 6 at 179 – 80.

the concept of territorially-based state sovereignty.[16] According to this theory, the sovereign power will not disappear completely, however the impact of increased information accessibility "mean[s] . . . that no government, over time, can act alone . . . [because] the world is watching."[17] Dire as these predictions sound, they contain several omissions. First, they underestimate the need for a state as a backdrop to give meaning to technological innovations and the societal demands that come from them. While the world might be watching, life still exists within the structures of a state and the laws that it creates. Communications and social media can help to attract the attention of the world, however it is what happens at the concrete legal level and not in the virtual world that defines the state and how it operates. It is here that the territorially-based state is the key actor and exerts territorial control, and this highlights that the ability of the territorially-based state to assert robust *imperium* is undeterred by the advent of technology or global access to information. Second, these arguments ignore the ability of the state to embrace new forms of information and instead assume that the state will remain in the same static, hardened legal framework that it has used in the past, thus causing conflict. Overall, these arguments view information as an elastic entity but do not extend the same view to sovereignty and territorial control. Indeed, these arguments suggest a view of territorially-based states as existing only within a hardened framework in which legal elasticity would threaten the state's robust *imperium*.

Some theorists of globalization take a negative view of the relationship between territory and globalization, as is evidenced in the assertion that "territorial sovereignty is being diminished on a spectrum of issues in such a serious manner as to subvert the capacity of states to control and protect the internal life of society, and non-state actors hold an increasing proportion of power and influence in shaping the world order."[18] Other scholars have observed that the idea of globalization as fully breaking down the concept of states and their associated borders has not yet come to fruition, even if globalization

[16] See generally Walter B Wriston, "The Twilight of Sovereignty" (1993) 17 Fletcher Forum on World Affairs 117; Richard Falk, "The Decline of Citizenship in an Era of Globalization" (2000) 4 Citizenship Studies 5.
[17] Wriston, *supra* note 16 at 129.
[18] Richard Falk, "State of siege: Will globalization win out?" (1997) 73 International Affairs 123 at 125. See also Bjorn Hettne, "The Fate of Citizenship in Post-Westphalia" (2000) 4 Citizenship Studies 35.

has arguably changed some aspects of the state and state control of territory.[19] It has further been argued that states have used the pressures of globalization to adapt their legal policies rather than simply withering away and losing control over their territory.[20] Missing from these arguments, however, is an attempt to view territorial control through anything other than a hardened lens. As such, these arguments tend not to make room for an elastic construction of territorial control. Instead, the potential for changes in state territorial control patterns and in the *imperium* and *dominium* relationship are regarded as *per se* dangerous to the concept of state sovereignty.

Sassen asserts that there is a middle ground between arguments that state power has remained the same as the result of economic globalization and that economic globalization has caused – and will continue to cause – a "declining significance of the state."[21] Instead, she asserts that there is "an intermediate zone marked by great possibilities for changing current alignments – a highly dynamic intermediate zone with different outcomes depending on the types of political work that gets done."[22] In terms of the current position of state sovereignty, Sassen argues that state sovereignty

> is usually conceived of as exclusive authority over a particular territory . . . today it is becoming evident that state sovereignty articulates both its own and external conditions and norms . . . sovereignty remains a systemic property but its institutional insertion and its capacity to legitimate and absorb all legitimating power, to be the source of law, have become unstable . . . the politics of contemporary sovereignties are far more complex than notions of mutually exclusive territorialities can capture.[23]

In this sense, Sassen's views of territoriality have the potential to intersect well with the model of legal elasticity and the *imperium* and *dominium* relationship because an understanding of legal elasticity supports her views regarding the need for a middle ground of both politics and territoriality.

---

[19] Miles Kahler, "Territoriality and conflict in an era of globalization" in Miles Kahler & Barbara F Walter, eds, *Territoriality and Conflict in an Era of Globalization* (Cambridge: Cambridge University Press, 2009) 1.
[20] *Ibid* at 2; Andrew Linklater, "Cosmopolitan Citizenship" (1998) 2 Citizenship Studies 23; Luke Goode. "Cultural citizenship online: the Internet and digital culture" (2010) 14 Citizenship Studies 527.
[21] Sassen, "Territory, Authority, Rights," *supra* note 4 at 271.
[22] *Ibid*.
[23] *Ibid* at 415.

What emerges from globalization theory is, paradoxically, a system in which the territorially-based state is essential. Despite assertions regarding globalization and the demise of the territorially-based state, globalization literature of any form reaffirms that the state and its ability to assert robust *imperium* are vital to the creation and maintenance of a strong and non-anarchical marketplace and society. At the same time, globalization highlights that legal elasticity is essential to the continued relevance and functioning of the territorially-based state, as well as to the ability of globalization processes to function and grow. Although the forms and interactions fostered by globalization might be new or novel, as this thesis demonstrates, the essential quality of legal elasticity and the *imperium* and *dominium* relationship to sovereignty and statehood is in fact part of a legal continuum.

III. Thesis Outline

As with any theory or model, it is essential to establish the fundamental underpinnings prior to its application. Following that, the thesis applies the model to various time periods where the sovereign was under pressure due to growth, development, change and challenge. Chapter 2 of this thesis addresses theories of territory, sovereignty and statehood as well as early imperial constructs of the model of legal elasticity and the *imperium* and *dominium* relationship. It opens with a discussion of classical Roman law and the development of constructs of *imperium* and *dominium* throughout the growth of the Roman Empire. In the aftermath of the fall of Rome, this chapter discusses the ways in which the model of territorial control and the *imperium* and *dominium* relationship was applied throughout successor entities and forms of sovereigns in the East and the West. These governmental forms were plagued by changes and challenges, and also presented with potential for growth and development, and applying the model of legal elasticity and the *imperium* and *dominium* relationship provides insights on how these issues were handled in a way that allowed for the continued existence of the state as holder of robust *imperium* even as the levels of dominium exercised varied.

Chapter 2 then delves into early Ottoman practices of conquering territory, including territory in which many different religious and ethnic groups lived. Rather than requiring religious conversion and social assimilation on the part of newly conquered peoples, the

Ottomans pioneered the *millet* system under which non-Muslim peoples were able to live as part of their religious communities, subject to the laws of these communities in most instances and largely undisturbed by Ottoman presence, in exchange for the payment of certain taxes and continued loyalty to the empire. This system functioned for centuries, allowing the Ottoman territory to become a massive area that was home to countless minority groups. In this sense, the Ottomans were forerunners in the use of the model of legal elasticity and the *imperium* and *dominium* relationship, a relationship in which both *imperium* and *dominium* could function together as robust entities.

Finally, Chapter 2 discusses key aspects of classical and modern legal theory regarding issues essential to the legal construct of the state, the relationship between territory, sovereignty and statehood, and the role of the state as part of the overall international state system. This discussion is necessary to understanding the ways in which classical and modern legal theorists have shaped the contours of the model of legal elasticity and the *imperium* and *dominium* relationship. It is also necessary in order to grasp how the ideas found in the model of legal elasticity and the *imperium* and *dominium* relationship have formed the underpinnings of much classical and modern legal theory.

Chapter 3 discusses the morally repugnant yet important legal history of European colonization in order to examine the ways in which the model of legal elasticity and the *imperium* and *dominium* relationship applied to the evolution of state territorial control and on-the-ground practice. Colonialism was selected for discussion because it represents a mass span of time during which the construct of *imperium* – and concomitantly of *dominium* – shifted in often-dramatic ways. It was also selected because many of the ways in which the model of legal elasticity and the *imperium* and *dominium* relationship were framed during the colonial period informed ideas of territory, sovereignty and statehood well after colonialism ended. Further, this discussion provides insights into areas of tacit resistance to hardened legal control that were largely condoned, demonstrating that there is the chance for some level of legal elasticity within even restrictive conditions.

The period covered by Chapter 3 spans from the fifteenth century until the onset of World War I in 1914. Accordingly, this period is broken into three stages during which there were changes in the European context – changes that could have undermined individual state's *imperium* – and then applies the model of legal elasticity and the *imperium* and *dominium* relationship to the legal bases of colonial practice in each phase. Ultimately, Chapter 3 applies the model of legal elasticity and the *imperium* and *dominium* relationship to a span of time during which powerful states on the international stage faced and responded to issues of growth, development, change and challenge from the perspective of territorial control and state sovereignty.

In Chapter 4, the focus shifts to the years between World War I and World War II. World War I and its aftermath had tremendous impacts across the spectrum of combatant states as well as across their colonies and territories. The war and the peace that followed represented significant changes and challenges to legal and political order throughout the world and also presented opportunities for growth and development, including the development of new legal systems to handle overseas territorial possessions. Chapter 4 applies the model of legal elasticity and the *imperium* and *dominium* relationship to the these developments and demonstrates the ways in which it explains the retention of state *imperium* – and indeed the encouragement of it, at least theoretically, through the goals of the mandate system – while the parameters of *dominium* and its strength were continually shifting. In this situation, legal elasticity allowed for the expansion of powers and functions granted to overseas territories through the mandate system without calling into question the territorial sovereignty of the mandatory states within their own colonies.

At the same time, Chapter 4 examines the impact of new colonizations by states such as Germany, Japan and Italy – states that felt the Treaty of Versailles had undermined their robust *imperium* regardless which side of the treaty they were on. These states proved to be the exception of the presence of the model of legal elasticity and the *imperium* and *dominium* relationship as they represented hardened territorial systems in the metropole and in the colonies alike. Over time, however, they demonstrated the legal, political and societal impracticability of implementing a sustained hardened territorial system of control.

Chapter 5 follows the lessons of Chapter 4 and briefly discusses World War II itself before turning to issues of territory and the peace in the years afterward. At the end of World War II there were no formal peace conferences on par with the Paris Peace Conference for World War I. Indeed, before the war was over there was another cleavage established, that between the victors themselves, and this cleavage would define the terms of the peace as well as the tenor of future decades of international law and politics. Within this context, Chapter 5 applies the model of legal elasticity and the *imperium* and *dominium* relationship to the war settlement agreements negotiated with the various defeated states, noting the importance of the model in situations where there was a shift in the *imperium* and *dominium* balance over time in order to ensure that the defeated state reemerged under governments that would not follow in the legal and political paths of their predecessors.

Further, Chapter 5 discusses the trusteeship system created under the auspices of the United Nations and intended to replace the League of Nations' mandate system. The mandate system was in essence a passive attempt to do away with colonialism in the vanquished states over time. The trusteeship system, in contrast, was an active plan by the United Nations system to break colonialism not only in the territories of the vanquished but throughout the world. Ultimately, this was a successful undertaking. However, the process was complicated and contentious, often requiring major colonial powers to call into question their legal ideologies and the ways in which they defined themselves at the level of the metropole as well. Overall, the trusteeship system and its implementation created a period of growth, development, change and challenge in metropolitan states and colonies alike. For this reason, the model of legal elasticity and the *imperium* and *dominium* relationship is applied to the response to trusteeship and the decolonization process. The results of this application demonstrate the importance of legal elasticity in the face of a shifting and sometimes contested *imperium* and *dominium* relationship. These results were essential at the time and have also served as the methodology for understanding issues of territorial control and state sovereignty moving forward in modern statecraft and international law.

Chapters 6 – 8 discuss the application of the model of legal elasticity and the *imperium* and *dominium* relationship to selected studies falling into three categories of what are generally termed as anomalies of territory because they represent territorial areas where there is or is the potential for a conflict between *imperium* and *dominium*. In this way, these territories differ from the typical pattern of the *imperium* and *dominium* relationship that characterize the modern state.

Chapter 6 addresses "anomalies of economy," in which the four designated studies apply the model of legal elasticity and the *imperium* and *dominium* relationship to analyze areas of anomaly that have the potential to undermine territorial sovereignty and statehood in the modern international law system because they occur in situations characterized as having the potential for economic growth and development as well as change and challenge for the state that at least facially poses a threat to balance within the *imperium* and *dominium* relationship. The selected studies involve situations where a host state's *imperium* is potentially undermined through geographically bounded areas in which foreign corporations or foreign states exert forms of *dominium*. The first study applies the model of legal elasticity and the *imperium* and *dominium* relationship to Special Economic Zones. The second study applies the model of legal elasticity and the *imperium* and *dominium* relationship to foreign corporation and/or foreign state purchases of large tracts of land within a host state for agricultural or other development. The third study applies the model of legal elasticity and the *imperium* and *dominium* relationship to internationalized port facilities and airports that have been fully or partially privatized by host states. Finally, the fourth study applies the model of legal elasticity and the *imperium* and *dominium* relationship to areas of a host state in which the host state has agreed to extend foreign laws to non-citizens. Each study is heavily nuanced, however in each situation application of the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that these anomalies of economy do not shift the balance in favor of *dominium* at the expense of *imperium* or state weakening of territorial control.

Chapter 7 addresses "anomalies of politics," in which the four designated studies apply the model of legal elasticity and the *imperium* and *dominium* relationship to analyze areas of anomaly that have the potential to undermine territorial sovereignty and statehood in

the modern international law system because they occur in areas within a sovereign state's territory where another political unit is allowed to function as either a largely self-governing entity or as an entity that exists in tension with the sovereign state government. The selected studies features anomalies that have arisen from periods of growth, development, change and challenge within the territory of the state and without the territory of the state in terms of the influence of outside legal practices. The first study applies the model of legal elasticity and the *imperium* and *dominium* relationship to indigenous communities within Australia, Canada, New Zealand and the United States. The second study applies the model of legal elasticity and the *imperium* and *dominium* relationship to the Kaliningrad oblast, the unique Russian exclave on the border of the European Union and the Baltic states. The third study applies the model of legal elasticity and the *imperium* and *dominium* relationship to areas of disagreement between national and local governments where the local government takes action despite national statements of disapproval on the legal policy area. Finally, the fourth study applies the model of legal elasticity and the *imperium* and *dominium* relationship to the issue of internationally leased territory returning to the state from which it was located. This study places particular emphasis on the examples of Hong Kong and Macau as territories that reverted to a different legal and political system than had governed them before and during the terms of the international lease.

Chapter 8 addresses "anomalies of military," in which the four designated studies apply the model of legal elasticity and the *imperium* and *dominium* relationship to analyze areas of anomaly that have the potential to undermine territorial sovereignty and statehood in the modern international law system because they involve foreign military and military-associated installations within the territory of the host state. Military as a whole is a jealously guarded facet of *imperium* in most sovereign states, and the presence of foreign military and associated installations has the power to undermine the host state's monopoly of military power within its territory. The selected studies have arisen largely in the context of change and challenge at the national and international level, although they do pose some aspects of potential for growth and development, particularly in terms of bringing stability to a host state and the region in which the host state is located. The

first study applies the model of legal elasticity and the *imperium* and *dominium* relationship to overseas military bases of a foreign state that are located in a host state, typically as the result of a lease agreement between the foreign state and the host state. The second study applies the model of legal elasticity and the *imperium* and *dominium* relationship to overseas military bases for international peacekeeping and associated functions. Again, these relationships are typically the result of agreements between the host state and the international organization, although the stability of the host state to exercise *imperium* in this situation is often called into question. The third study applies the model of legal elasticity and the *imperium* and *dominium* relationship to zones of military occupation post-conflict, particularly in the Iraqi Green Zone. Finally, the fourth study applies the model of legal elasticity and the *imperium* and *dominium* relationship to foreign war dead cemeteries – a practice used in only a limited number of conflicts and yet retaining legal and diplomatic significance.

Ultimately, Chapter 9 concludes and summarizes this thesis, noting the importance of applying the model of legal elasticity and the *imperium* and *dominium* relationship in order to understand the continuously evolving nature of territory in relationship to sovereignty and statehood. As is noted in this chapter, in order to contextualize current trends in globalization and globalization theory it is necessary to fill the gap in existing understandings of the relationship between territory, sovereignty and statehood. Issues of science, namely climate change, also threaten the factual existence relationship and interconnectedness between territory and the state at a very practical level. The model of legal elasticity and the *imperium* and *dominium* relationship – and the ways in which legal elasticity has expanded the parameters of territorial constructs at critical junctures for individual states and the international system – is insightful for how handle these issues without entirely breaking the overall relationship between territory, sovereignty and statehood. The model of legal elasticity and the *imperium* and *dominium* relationship provides a mechanism to fill this gap while at the same time explaining how this relationship can evolve as a flexible legal construct.

Chapter 2 – Origin and Early Applications of the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

I. Introduction

This chapter serves as a point of origin for the concept of legal elasticity and the *imperium* and *dominium* relationship, presenting the foundation of the *imperium* and *dominium* relationship in Roman family law and the spread of this relationship throughout the Roman Empire's territorial boundaries. This discussion presents further insights into the ways in which the model of legal elasticity and the *imperium* and *dominium* relationship was used in the aftermath of the Roman Empire's demise. This era represented a severe rupture in the legal, political and societal existence of successor entities and brought with it periods of growth, development, change and challenge to existing legal constructs of territory and territorial control. While the concept of legal elasticity and the *imperium* and *dominium* relationship might not have been as strong and well organized as it was during imperial administration, it nevertheless persevered at a point where it could have broken into other forms of law and relationships between state control and territory. Thus, there is perhaps no better time period during which to test the operability of the model of legal elasticity and the *imperium* and *dominium* relationship.

In addition to the Roman Empire and its immediate successors, this chapter discusses early to mid-stage Ottoman imperial practices regarding legal elasticity and the *imperium* and *dominium* relationship. Although often thought of as a monolithic entity under the exclusive control of the Sultan, throughout its history the Ottoman Empire adopted and modernized many of the initial aspects of the model of legal elasticity and the *imperium* and *dominium* relationship that were created under Roman law, particularly in terms of the legal standing and pluralistic capabilities of religious and ethnic minority communities within the empire. The multitudes of religious and ethnic communities contained in Ottoman boundaries presented changes and challenges from the original religiously motivated rhetoric used by the Ottomans when they were amassing territory. They also presented the Ottomans with the opportunity for territorial and economic growth and development if properly incorporated into the confines of empire. It is for this reason that the Ottomans are included in the thesis at this juncture, as early to mid-stage

Ottoman history represents a continuous series of points at which critical decisions regarding issues of territorial control had to be made or reaffirmed.

From that point, the chapter presents major theoretical arguments as to the origins of the modern state along with key theoretical constructs of the relationship between territory, sovereignty and statehood, such as state control over property, state identity and the demise of state identity, and the function of states as territorial entities in the international system. This presentation demonstrates the importance of the model of legal elasticity and the *imperium* and *dominium* relationship to the continued identity and function of state control. The theoretical arguments and theorists themselves are those who are regarded as essential to classical and modern legal theory and state practice. They also shared the bond of writing within the span of several centuries during which the legal contours of the state would emerge and during which the system of European colonialism was forged as a legal construct. Thus, the theoretical aspects discussed in this chapter were forged in a time of growth and development for certain European states and for the place of the state as the central legal entity within the governing system of an emerging international law community. These theories were also forged in the face of change both within the European state and within the concept of law and overseas conquest and colonization, as well as the legal and societal challenges brought by conquest and colonization.

II. Foundations of the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship in Roman Law

Much as "Rome" conjures images of vastness, empire and dominance, it was an empire controlled by a relatively small metropolitan entity.[24] The vastness of empire represented growth and development for Rome as a political entity and also a change in status from a city-state to something far more legally and societally complex and, potentially, pluralistic.[25] As the territory controlled by Rome increased through conquest, there was a serious challenge with regard to the form of law and state control to be extended to the newly conquered areas.[26] Faced with the concept of expansion outside the metropolitan

[24] Greg Woolf, *Rome: An Empire's Story* (Oxford: Oxford University Press, 2012) at 5.
[25] *Ibid* at 5 – 7, 17 – 19.
[26] *Ibid* at 71 – 75, 97 – 103, 218 – 222.

territory, Roman law extended an already existing dichotomy between Roman family law status and status as a Roman citizen, bound by the laws of Rome itself.

Within the boundaries of Rome, legal and social status was determined by whether one was a freeman or a slave, and by one's status within the family with which one was associated.[27] Although a different set of legal standings and expectations was established for freemen and slaves, both were considered to belong to a family for the purposes of identity and social control.[28] These designations constituted a broad legal system within which myriad forms of relationships existed, each of which impacted upon one's legal and social standing.[29]

Inside this system, obedience and subservience to the patriarch were essential regardless of one's age or relationship to the patriarch.[30] Certainly, the higher social position one occupied, the greater ability one had to establish a personal identity, however it was a rarity for one to be entirely free from the patriarchal system's confines unless one was the patriarch or was granted explicit freedom.[31] The patriarch was legally and societally protected as the ultimate arbiter of household matters and was granted the ability to undertake punishments that would otherwise be within the jurisdiction of Roman law.[32]

The family was essentially the crux of identity and status within Rome itself, creating a non-territorial based unit that served to perpetuate small households of government throughout Rome. Through this pattern of small household government for many matters that would otherwise be within the ambit of state control, the Roman state itself demonstrated elasticity. In this way, Roman practices themselves can be viewed as elastic in that they allowed for a powerful family structure to exist and share legal functions and

[27] Borkowski & du Plessis, *supra* note 2 at 13; Jane F Gardner, *Being a Roman Citizen* (New York: Routledge, 1993) at 3. See generally George Mousaourakis, *A Legal History of Rome* (New York: Routledge, 2007).
[28] Borkowski & duPlessis, *supra* note 2 at 113 – 127; Gardner, *supra* note 27 at 3 – 4.
[29] Borkowski & duPlessis, *supra* note 2 at 113 – 127.
[30] *Ibid*; Gardner, *supra* note 27 at 3 – 4.
[31] Borkowski & duPlessis, *supra* note 2 at 113 – 127; Henry Sumner Maine, *Ancient Law* (New York: Cosimo Classics, 2005) at 83; Gardner, *supra* note 27 at 3 – 4.
[32] Borkowski & duPlessis, *supra* note 2 at 113 – 114; Gardner, *supra* note 27 at 72 – 74.

space with the state governing system at the same time that the strength and position of Rome was not undermined by the power of these entities.

At the same time, Rome functioned as a governing entity over all within its territorial jurisdiction, applying established Roman laws and imposing the will of the state as a higher layer of authority existing over that of the household.[33] This established the essential system of *imperium*[34] (the law/power established and exercised by the state) and *dominium*[35] (the law/power established and exercised by the household or, in the larger property sense, the individual) as co-existing and interlocking jurisdictions.[36] Within this system, it was entirely possible for there to be two sets of authorities governing an individual or group of individuals provided that these authorities worked in tandem and that *imperium* was understood to subsume *dominium*.[37]

Outside metropolitan Rome stood the rest of the imperial world. Tributary king or servant, Gaul or Spaniard, all who were not Roman citizens were subject to different standing at law and in society generally.[38] This duality did not, however, diminish the authority of the Roman Empire over non-Roman citizens nor did it diminish the territorial control of the Romans over the far-flung corners of their empire.[39] Rather, it defined the tenor and scope of this control-based relationship.

Even where a conquered province was granted some measure of latitude in terms of internal governance it was still subject to Roman legal control and oversight.[40] Importantly, while territory was a key object to Romans in terms of conquest and retention, conquered territory did not have to be uniform in status at law once it became part of the empire. The territorial boundaries that comprised metropolitan Rome were used to legitimate the rights of certain peoples and governing structures, generating a

[33] See OF Robinson. *Ancient Rome: City Planning and Administration* (New York: Routledge, 2004) at ch 1.
[34] See Woolf, *supra* note 24 at 19.
[35] See Andrew Linnott, "What was the 'Imperium Romanum'?" (1981) 28 Greece & Rome 53.
[36] See Sherman, *supra* note 3 at sect I; Thomas Glyn Watkins, "Ownership Ancient and Modern Ownership in Public and Private Law" (1999) 11 Sri Lanka Journal of International Law 251 at 257 – 261.
[37] Maine, *supra* note 31 at 60.
[38] Sherman, *supra* note 3 at sect. II; Linnott, *supra* note 35 at 53.
[39] Sherman, *supra* note 3 at sect. II.
[40] *Ibid*.

system of exclusivity, while territory outside Rome was used to legitimate a sense of foreignness that would translate into legal practices that were allowed to be different provided that they did not disturb essential Roman order. In this instance, the legal elasticity of Roman territorial control mechanisms and requirements becomes obvious.

Within this territorial reality, Roman law constructs of *imperium* and *dominium* offered a way for dual systems of law and governance to exist within the realm of one empire. It was thus entirely possible for there to be multiple communities espousing differing legal systems and beliefs within the boundaries of empire. And it was equally possible that these communities would be subject to different legal treatment by the Romans while at the same time retaining many of their traditional laws and customary practices since incorporating all persons within the confines of the Roman Empire into a uniform Roman state was quite opposite to the accepted goals of empire.[41] It was only when Rome became weak and in need of stability that it allowed non-Roman citizens to have the same rights as Roman citizens in an attempt to create a more monolithic entity.[42] At this point, attempts at legal hardening of territorial control were unsuccessful since legal elasticity had been stretched to the point where weakened *imperium* came to predominate the Roman legal structure and, coupled with the robust *dominium* exercised by sub-units within the empire, this proved overwhelming for the preservation of empire.

III. Post-Roman Application of the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The end of the Roman Empire involved splits of legal control throughout the imperial territory followed by conquest by new, territory-seeking groups from outside the empire.[43] Throughout this, conceptions of territory and its link to sovereignty did not disappear. Indeed, the need to maintain a hold over territory in order to retain or assert legal legitimacy often became even greater in situations where a central, unifying empire was not present.[44] In this way, legal elasticity in territorial relationships emerged as a vital component for legal and societal organization. In this scenario, *imperium* and

[41] *Ibid*.
[42] *Ibid*; Woolf, *supra* note 24 at 219 – 220.
[43] See Woolf, *supra* note 24 at ch XVII; Timothy E Gregory, *A History of Byzantium*, 2d ed (New York: Blackwell Publishing, 2010) at 23 – 25.
[44] Woolf, *supra* note 24 at ch XVII.

dominium also became malleable and yet were ever present and ever necessary to preserve some semblance of legal order.

As the immediate successor to the eastern Roman territory, the Byzantines took up the mantle of empire albeit without the wide a swathe of territorial control.[45] Early Byzantine laws were concerned with maintaining order within its territories and ensuring that the existing population continued to be loyal to the government.[46] In this context, territory became something for the imperial governments to protect rather than something to be conquered or acquired.[47] As a result, there was an assertion of robust *imperium* at the cost of extremely weak *dominium*. In this system, legal elasticity of territorial control within the state was dramatically reduced and the state hardened its territorial controls in order to achieve stability. Given the instability of the time, acceptance of this legal hardening is perhaps not surprising.

Throughout Byzantine history, territory was something to be protected from increasingly frequent invasions launched by tribal groups seeking new places to settle.[48] It was also the subject of dynastic feuds over control and partition.[49] Faced with these realities, there were attempts by the Byzantines to allow some of the invading groups into their territories in exchange for pledges of loyalty and support.[50] In this situation, the ability to continue the exertion of hardened state control at the cost of elasticity and robust *dominium* began to change. The result was that *imperium* existed during this time although it was exercised in a reverse system to that created by the Romans. Rather than extending *imperium* outward and continuing to grant *dominium* powers to those who were in the new territories, the Byzantines sought to maintain robust *imperium* over existing territories by inviting in other groups and offering them robust *dominium* over a particular territory.[51] In these relationships, legal elasticity was essential to allowing both

[45] See Woolf, *supra* note 24 at 273 – 278.
[46] Gregory, *supra* note 43 at 41 – 42.
[47] *Ibid*.
[48] See *ibid* at 84 – 89.
[49] *Ibid*.
[50] See *ibid* at 88 – 89.
[51] *Ibid*.

the Byzantine government and local tribes to exist in a relatively stable relationship with varying degrees of *imperium* and *dominium* relative to each other.

The western portions of the former Roman Empire saw a breakdown of control and order in the immediate post-Roman period. During this time, the principle unit of law and identity reverted to the tribe and these tribes in turn tended to roam throughout territories, seeking access to resources and protection rather than as part of a concerted territorial system.[52] In some ways, this reinforced the conquest element of empire that had been embraced through robust *imperium* under the Romans but not the robust *dominium* qualities or the emphasis on elasticity within the state control structure.[53] Here, as in the East, there was a legal hardening of the construct of the state and a contraction of the legal elasticity with which territory had previously been viewed. Concomitantly, robust *imperium* was asserted along with weak *dominium*.

The medieval development of fiefdoms came in many forms. One form was the independent fiefdom, typically a small area of land controlled by a leader who functioned as the ruler and monarch within that territory.[54] Another form was more reminiscent of the robust *imperium* and *dominium* balance in that it involved small fiefdoms that existed under the control of their local rulers but were under the protection of a larger entity and paid some form of tribute to this entity in order to demonstrate loyalty and ensure protection.[55] The level of penetration of laws from the larger entity to the smaller depended on the particular situation, however robust *imperium* on the part of the larger entity existed regardless.[56]

Within this period, commercialism became increasingly important, as did the need for commercial cities and villages to act as conduits of trade and commerce.[57] This

---

[52] See Norman Davies, *Vanished Kingdoms: The Rise and Fall of States and Nations* (New York: Penguin Books, 2011) at chs 1, 2.
[53] *Ibid*.
[54] Robert Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change, 950 – 1350* (Princeton: Princeton University Press, 1993) at 113 – 114.
[55] *Ibid* at ch.2; Andrejs Plakans, *A Concise History of the Baltic States* (Cambridge: Cambridge University Press, 2011) at 26 – 28.
[56] Davies, *supra* note 52 at chs 2, 3; Robert Bartlett, *supra* note 54 at 950 – 1350.
[57] Bartlett, *supra* note 54 at 167 – 170; Lewis Mumford, *The City in History: Its Origins, Its Transformations, and Its Prospects* (New York: Mariner Books, 1968) at 248 – 253.

represented an opportunity for growth and development, although it required that the territory of commercial cities and villages be given special status and primacy in order to act as conduits. As a general practice in Western and Eastern Europe alike, the establishment of new cities or villages to serve as commercial centers, or the conversion of one to another, required official chartering from the appropriate state entity.[58] In this way, the state maintained control over the territory of cities and villages while also extending privileges and powers to them that were unique in the overall state governance structure – in short, allowing for robust *dominium* within these limited settings. These charters legitimated the functions of the city or village in question and provided the necessary legal structure for them and those residing and/or conducting business within their boundaries.[59]

Cities and urban areas came to occupy a dual place in the exertion of power during the feudal legal system. They were necessary to increase the ruling power's prosperity and place within the region while at the same time they posed a potential threat to the autocratic system of rule that characterized the legal power structures extant in the medieval system.[60] Thus, urban areas such as trading cities with robust *dominium* could advance feudal robust *imperium* or undermine it, but either way their existence and power signified a reemergence of the place of *dominium* as well as the exercise of control under *imperium*.[61] This relationship indicated the necessity of legal elasticity within the parameters of territorial control while at the same time promoting the financial benefits for the state. Thus, the model of legal elasticity and the *imperium* and *dominium* relationship was used to mitigate the often diametrically opposed interests of preserving state control over territory in order to maintain sovereignty while at the same time promoting the potential for economic and societal development that was offered through the creation of powerful commercial cities and villages.

[58] Bartlett, *supra* note 54 at 167 – 170; Mumford, *supra* note 57 at 261 – 265.
[59] Bartlett, *supra* note 54 at 167 – 172; Mumford, *supra* note 57 at 261 – 265.
[60] Mumford, *supra* note 57 at 248 – 253, 261 – 268.
[61] *Ibid*.

IV. The Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship during the Early to Mid-Ottoman Empire

The Ottoman Empire came into existence in a territorial and political vacuum in which there was a constant tension between various groups competing for resources and power bases.[62] Although not offshoots of the Roman Empire, the Ottomans are important for an evaluation of the model of legal elasticity and the *imperium* and *dominium* relationship because they established the viability of the model in legal settings other than those pioneered purely by Roman law. The Ottomans also entrenched the model within the parameters of an empire that met multiple challenges and crises, as well as opportunities for growth and development, for centuries.

There is no established founding date for the Ottoman Empire,[63] although some historians use the year 1326.[64] The Ottomans originated as a tribal group that operated in the Anatolian region and were based on a familial, community and general religious structure.[65] Once it emerged, the Ottoman state controlled a vast segment of territory that encompassed an equally vast number of peoples espousing different religious beliefs and regarding themselves as having unique ethnic identities that were reflected in their own legal and customary systems.[66] Faced with this post-conquest reality, the Ottomans made several decisions that would set the tenor of their relationships with minority subjects for the majority of the Empire's life.[67] Prior to Ottoman establishment of vast territorial control, their leadership began a policy of building alliances – personal and political – with many Muslim sects and with Christians and other groups who were present and powerful in territories the Ottomans sought to influence or acquire.[68] This sense of pragmatic realism regarding the role of these groups and their potential benefit continued

[62] Cemal Kafadar, *Between Two Worlds: The Construction of the Ottoman State* (Berkeley: University of California Press, 1995) at 1 – 3; Caroline Finkel, *Osman's Dream: The History of the Ottoman Empire* (New York: Basic Books, 2005) at 5.
[63] *Ibid*.
[64] Stephen F Dale, *The Muslim Empires of the Ottomans, Safavids, and Mughals* (Cambridge: Cambridge University Press, 2010) at 48.
[65] Kafadar, *supra* note 62 at 1 – 6; Finkel, *supra* note 62 at 5 – 8.
[66] See generally Finkel, *supra* note 62; Dale, *supra* note 64.
[67] See generally *ibid*.
[68] Kafadar, *supra* note 62 at 15.

throughout the history of the Empire.[69] These policies manifested themselves in elastic territorial control and the application of a robust *imperium* and generally robust *dominium* relationship throughout the majority of the Empire's existence.

Early Ottoman treatment of territory focused on acquiring it – typically through force – and holding it against regional rivals.[70] Although they did engage in early acts of intentional colonization by sending those loyal to them to settle newly conquered areas,[71] the general policy of the Ottomans tended to be that of acquiring territory and incorporating it into the Empire rather than employing mass colonization to assert state control over the territory.[72] The Ottomans deployed legions of bureaucrats to newly conquered areas in order to provide administrative control and execute legal functions but tended not to engage in organized colonial operations and settlements.[73] In many ways, these policies were reminiscent of the middle and latter stages of Roman policy toward territory and conquest and also toward the larger balance between robust *imperium* and relatively robust *dominium* within a system of legal elasticity.[74]

When an area was conquered, Ottoman practice allowed for the possibility of it becoming a vassal state as well as formal and immediate incorporation into Ottoman territory.[75] However, status as a vassal state did not guarantee safety from outright incorporation by the Ottomans in the event that it was deemed politically expedient to do so.[76] These practices reflected legal elasticity in territorial control throughout the Ottoman Empire, as it was possible for the Empire to contain many forms of territorial control relationships over the conquered territories without there being an upset in the balance of robust *imperium* and robust *dominium* that allowed the state to exert control as a matter of law.

---

[69] See Dale, *supra* note 64 at 5.
[70] Kafadar, *supra* note 62 at 16; Finkel, *supra* note 62 at 9.
[71] See *ibid*.
[72] Kafadar, *supra* note 62 at 15 – 16.
[73] Noel Malcolm, *Bosnia: A Short History* (New York: New York University Press, 1996) at 45.
[74] Indeed, as has often been noted, many similarities exist between Roman and Ottoman policies and practices, as well as cultural manifestations of the founding of their empires and their perpetuation. Kafadar, "Between Two Worlds," *supra* note 62 at 1 – 3.
[75] Finkel, *supra* note 62 at 21, 36; Malcolm, *supra* note 73 at 44.
[76] Finkel, *supra* note 62 at 59 – 61; 68 – 69.

As the Ottomans became more administratively entrenched and conquered additional territories with diverse populations, they began to implement the *millet* system as a matter of law and a means of territorial control.[77] Under the *millet* system, religious and certain other minority communities were allowed to function largely unmolested by the Ottoman state.[78] This meant that such communities could maintain their legal practices and societal identities, continue the practice of having communal courts or tribunals handle legal matters unless they involved Muslim citizens or some criminal charges, continue to practice their religions, and, in most cases, remain in the same territory and maintain the same relationship with the land as they had prior to the arrival of the Ottomans.[79]

The leaders of the *millet* communities functioned as quasi sovereigns in that they were vested with "governing all cultural, religious, legal (family) and educational affairs of their communities."[80] However, this arrangement could be temporarily hardened in situations where there was a threat to the empire or where the Ottoman government perceived that local leaders were engaging in corrupt or otherwise problematic practices regarding their community administration powers.[81] In exchange for their freedom of operation and existence, the *millet* communities were assessed taxes that were not imposed on mainstream Muslim populations, were required to maintain loyalty to the Ottoman state, and were barred from engaging in certain cultural practices that were reserved for Muslim subjects of the Empire.[82] The taxes assessed against the community were divided between members of the community as the community's religious leader

[77] Dale, supra note 64 at 56. Some have asserted that the best way to conceive of the operation of millets is as a series of "microstates" existing within the Ottoman umbrella. See Esther Benbassa & Aron Rodrigue, *Sephardi Jewry: A History of the Judeo-Spanish Community, 14th – 20th Centuries* (Berkeley: University of California Press, 2000) at 18.
[78] See generally Kemal Karpat & Yetkin Yildirim, eds, *The Ottoman Mosaic* (Seattle, WA: Cune Press, 2010).
[79] See Ihsan Yilmaz, "Diversity, Legal Pluralism, and Peaceful Co-Existence in the Ottoman Centuries" in Kemal Karpat & Yetkin Yildirim, eds, *The Ottoman Mosaic* (Seattle, WA: Cune Press, 2010) at 93; Benbassa & Aron Rodrigue, *supra* note 77 at 3.
[80] Karpat & Yildirim, *supra* note 78 at 42.
[81] M. Akif Aydin, "The Role of Ottoman law in the Establishment of Pax Ottomana" in Kemal Karpat & Yetkin Yildirim, eds, *The Ottoman Mosaic* (Seattle, WA: Cune Press, 2010) at 124 – 126.
[82] Finkel, *supra* note 62 at 191, 213; Dale, *supra* note 64 at 57.

and representative saw fit[83] and the Ottoman government typically remained outside of the process of internal tax collection methodology.[84]

The geographical size and ethnic composition of the Ottoman state was such that a hardened model of territorial control was impossible. Similar to the Romans, the Ottomans discovered that territorial control did not – and often could not – require absolute legal control of every aspect of a territory. Thus, the Ottomans crafted systems for incorporating elastic territorial control into their legal structure and governance systems. There were several forms of identity that a conquered or otherwise acquired territory could assume within Ottoman law, ranging from vassalage to outright annexation and inclusion as an Ottoman province. These statuses were fluid in the sense that vassalage was not deemed to be permanent, and actions against the Ottomans could – and did – result in the stripping of vassal status and the annexation of an area.

In addition, the model of legal elasticity and the *imperium* and *dominium* relationship was applicable and essential to Ottoman legal methodology involving the ever-increasing number of minority communities within the expanding territories of empire. The model became a heavily entrenched aspect of the Ottoman legal system by allowing for elastic territorial control over minority communities through the *millet* system. While the model resulted in the exercise of robust *dominium* on the part of *millet* communities generally, the *millet* system was not free from robust *imperium*. However, the *millet* system also featured robust *dominium* in the sense that these communities were allowed to maintain their own laws, courts and customs and were allowed to maintain their own religious and cultural identities and to live as separate communities within the territory of empire.

In this sense, the model of legal elasticity and the *imperium* and *dominium* relationship as manifested in the *millet* system allowed for the fostering of parallel and plural forms of territorial control and community structure within the overarching Ottoman state. The model was used as an entrenched system that guided legal and societal relationships between the Ottomans and their diverse subjects and allowed the different communities

[83] Finkel, *supra* note 62 at 311; Dale, *supra* note 64 at 5.
[84] Finkel, *supra* note 62 at 311.

to exercise varying levels of territorial control that were mutually beneficial. As will be seen, when the Ottomans stopped their territorial advances and began to lose territory to their European neighbors, they began to lose important tax bases under the *millet* system. They also began a slow process of legal hardening of territorial control that ultimately resulted in a series of devastating backlashes from minority communities within Ottoman territory and from European states that became supporters of these communities.

V. Classical Legal Theory and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The model of elasticity and the *imperium* and *dominium* relationship features prominently in efforts to identify the origins of the modern state as a matter of law and legal theory. There are some who place the origin of the modern state – with a concomitant emphasis on territorial control by the entity claiming to be sovereign – in the medieval period.[85] Reasons for this range from the state's ability to exert military and general sovereign control over its claimed territorial areas and populations,[86] to the state's ability to act as the law enforcing entity throughout its claimed territory,[87] to the state's ability to enforce a certain amount of authority and control over private law and relationships,[88] to the state's ability to exert external sovereignty among the community of states as well as internal sovereignty over its territory and population.[89] Despite the ability of a state entity to assert a good deal of control over its territory and population, individuals, families and local government entities were still observed to have exerted a great deal of power and authority, particularly in areas not claimed by the state, thus perpetuating the model of legal elasticity and the *imperium* and *dominium* relationship.[90]

This observed dichotomy emphasizes the importance of establishing robust *imperium* for a state to function as a legitimate actor on the international and domestic levels while at the same time allowing for the existence of relatively robust *dominium* in order to fill the

[85] Joseph R Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 2005) at 10 – 12; Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1994) at 3 [Spruyt, "Sovereign State"].
[86] Strayer, *supra* note 85 at 10 – 12; Spruyt, "Sovereign State," *supra* note 85 at 3.
[87] Strayer, *supra* note 85 at 23 – 24.
[88] *Ibid* at 71.
[89] Spruyt, "Sovereign State," *supra* note 85 at 34.
[90] See Strayer, *supra* note 85 at 71.

gaps in law that exist within smaller pockets of territory. To do this requires the use of legal elasticity in apportioning territorial control. It also requires a delicate and ever shifting balance between the needs of the state and the needs of the *dominium* holders, reinforcing the need for the state to have the ability to implement aspects of legal elasticity over territorial control without calling into question the very sovereignty of the state itself.

Another view on the origin of the modern state uses the 1648 Treaty of Westphalia as the decisive point.[91] This is necessarily a Euro-centric view, however it too demonstrates the importance of the model of legal elasticity and the *imperium* and *dominium* relationship for understanding the dynamics between territory, sovereignty and statehood. The Treaty of Westphalia was created and ratified at a period during which there were changes and challenges throughout Europe as a result of a prolonged continental war that caused significant legal, political, economic and societal costs and resulted in a sense that such wars were to be prevented for the future.[92] The Treaty of Westphalia essentially solidified the map of Europe and the concentration of territorial control and authority between sovereign state entities, allotting contested pieces of the European continent to various claimant states and securing agreement that these territorial lines would be respected.[93] Further, the Treaty was explicit in providing that states were to enjoy control and autonomy within their territories and that other states were not to interfere with internal matters of other states.[94]

In some ways, the Treaty of Westphalia contributed to a shift in the model away from legal elasticity and toward legal hardening of territorial control as well as the primacy of robust *imperium* in the sense that it established fixed borders that the international community agreed to observe. However, establishing robust *imperium* through the use of agreed upon international borders that were not to be violated by members of the

[91] See Jeremy Larkins, *From Hierarchy to Anarchy: Territory before Westphalia* (New York: Palgrave Macmillan, 2010) at 3; Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002) at xi; *Treaty of Westphalia* (1648) preamble.
[92] Keene, *supra* note 91 at xi.
[93] See generally *Treaty of Westphalia* (1648).
[94] *Ibid* at art LXIV.

international community in no way indicated a weakening of *dominium* powers within the state as an internal matter. Nor did the border-based terms of the Treaty of Westphalia require that there be legal hardening in terms of internal policies.

More modern constructs of state origins have placed emphasis on the ability of the purported state to exert control over the claimed territory that forms the boundaries of the state in order for the state itself to exist.[95] Inside those boundaries, it is agreed that in order to be viable the state must have the authority and ability to act as the paramount actor and source of law,[96] although it is acknowledged that the state is not the only source of law and that a system of robust *imperium* and robust *dominium* in no way undermines the existence of a state.[97] These constructs reinforce the applicability of the model of legal elasticity and the *imperium* and *dominium* relationship through their allowance of laws other than those of the state *per se* to exist within the territory of the state and through the allowance of different balances of *imperium* and *dominium*, including one in which there is both robust *imperium* and robust *dominium*.

Regardless when modern states began to exist, the model of legal elasticity and the *imperium* and *dominium* relationship is vital to understanding the accepted definition of a state. Early constructs of statehood emphasized that, in any given territory claimed by a state entity, it was vital that there be the exercise of direct state territorial control (robust *imperium*) as well as sub-state forms of territorial control such as those exerted through local governments, city governing bodies, and family units (robust *dominium*).[98] These local and other governmental entities were not required – or even encouraged – to adopt the same laws and systems of territorial control, but rather were allowed to create

[95] *Montevideo Convention on the Rights and Duties of States*, 26 December 1933, 165 LNTS 19; Ian Brownlie, *Principles of International Law*, 7th ed (Oxford: Oxford University Press, 2008) at 105; Malcolm N Shaw. *International Law*, 6th ed (Cambridge: Cambridge University Press, 2008) at 487.
[96] See Brownlie, *supra* note 95 at 106; Thomas D Grant, "Regulating the Creation of States: From Decolonization to Secession" (2009) 5 Journal of International Law & International Relations 11 at 12 – 13.
[97] See *ibid*.
[98] Jean Bodin, *Six Livres de la Republique*, book 1 (Cambridge: Cambridge University Press, 1992) at 10. Bodin further stressed that states and other governing entities were in fact made stronger when communities shared some aspects of their identities but not all of them. *Ibid* at 49. See also Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence* (Indianapolis, IN: Liberty Fund, 2009) at definition V.

separate systems and were recognized as functioning in a way that did not undermine the robust *imperium* of the state *per se*.[99]

Moving away from the construction of the state and its origins is the question of how the model of legal elasticity and the *imperium* and *dominium* relationship applies to theoretical understandings of the relationship between the state and its citizens. This is of particular note in questions of balancing state and private authority and interests in property, of which territory is a vital category. Overall, legal theorists and philosophers agreed that private persons had – and continue to have – the ability to own and use property located in the state without violating the state's robust *imperium*.[100] The abilities of private owners to exercise robust *dominium* over their property have not been conceived of as absolute between theorists, however, and the state's ability to impose ownership and retention requirements for those seeking to attain property has been relatively unquestioned as part of its robust *imperium* function.[101]

Another situation of classical and modern law regarding state practice and the concept of legal elasticity and the *imperium* and *dominium* relationship involves the devolution of some state powers to state sub-units or local similar entities. For many theorists, such as Hobbes, the devolution powers of the state are necessarily limited in order for the state to retain legal legitimacy.[102] Included in the state functions to be reserved in order to retain unquestioned sovereignty were the ability to mint national currency,[103] the ability to make national laws,[104] ability to control the markets,[105] military control,[106] and the ability

---

[99] *Ibid*.
[100] Bodin, *supra* note 98 at 110 – 111; Hugo Grotius, *The Rights of War and Peace, Including the Law of Nature and of Nations*, book I (New York: Cosimo, Inc, 2007) at ch I art VI.
[101] Bodin, *supra* note 98 at 110 – 111; Grotius, *supra* note 100 at ch I art VI; John Locke, "A Letter Concerning Toleration Concerning Civil Government, Second Essay, An Essay Concerning Human Understanding" in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 35 (Chicago: William Benton, 1952) at book II, ch 5, sect 32; Emer de Vattel, *The Law of Nations, Or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, book I (Indianapolis, IN: Liberty Fund, 2008) at ch XVIII sects 203 – 204.
[102] Thomas Hobbes, "Leviathan, or, Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil" in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 23 (Chicago: William Benton, 1952) at pt II ch XVIII.
[103] *Ibid*.
[104] *Ibid*.
[105] *Ibid*.

to act for the state as a unified entity under international law.[107] These views suggest that there is a limit to the parameters of the legal elasticity element of the model of legal elasticity and the *imperium* and *dominium* relationship, and that this limit coincides with core functions that bring unity of national security and economic policy to the state as a whole.

Sovereign status within the international community of states has continued to be an issue of importance and some contest, and at the heart of this contest is the need to have a territorial entity over which to exert sovereignty in order to function as part of the legitimate community of states. This tension is palpable in Bull's attribution of goals – preserving the system of international society and preserving the independence and sovereignty of states in international society – to the international community of states.[108] In both goals, Bull asserts that states will come together in order to preserve the status of the international community as being comprised of sovereign, territorially based state entities rather than sub-states or even non-state based actors because of a shared interest in community status preservation.[109] In this construct, Bull evinces a concern that in a system that is too elastic in terms of territorial control, weak *imperium* and robust *dominium* will become damaging to the state and to the international system, thus suggesting the need for a robust *imperium* and a robust or weak *dominium* relationship in order for state survival.

VI. Colonization Theory and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

At the same time that theorists were defining the parameters of the relationship between territoriality, sovereignty and statehood in a system that was known to them – essentially that in Western Europe – they were also building theories of colonization that took them into new constructs of territoriality and legal relationships. As discussed further in Chapter 3, colonialism represented a morally repugnant yet pivotal moment of growth and development as well as change and challenge for metropolitan states. It was a time at which the state in Western Europe had coalesced to the point that it could seek territory

---

[106] *Ibid*.
[107] Vattel, *supra* note 101 at book I ch 1 sect 5.
[108] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 3d ed (New York: Columbia University Press, 2002) at 16.
[109] *Ibid* at 16 – 17.

outside the known confines of the world, which indicated that legal elasticity existed. No longer was the state simply concerned about asserting and retaining robust *imperium* among citizens and other states – it could now follow the Roman tradition of expanding its territorial holdings. It was also a time at which the state needed legal and often moral justifications for elastic territorial control application overseas, particularly in terms of asserting territorial control in areas where indigenous communities already existed and exerted some form of *imperium* over territory.

As a threshold matter, theorists suggested that it was necessary for a potential colonizing state to determine whether the area targeted for colonization shared likenesses, such as cultures and customs, with the potential colonizing state.[110] This determination was deemed to be essential to the consideration of whether and how to engage in colonization processes of the targeted area.[111] For some, such as Machiavelli, the assessment was necessary for the ultimate decision as to the level of official presence and engagement required for successful colonization.[112] For others, such as Vitoria, it was necessary to go further to establish a legitimate basis for occupying and asserting title to territory overseas.[113] In the instance of Vitoria, who was instrumental in guiding Spanish colonial policy, it was necessary to assess factors such as the mental state of those already present in the territory to determine whether colonization was indeed appropriate as a matter of law and morality, since he could find no other immediate justification to divest them of their territories.[114] Even then, Vitoria found limits to the extent of colonial control over territory, noting that actions taken by the colonizers should assist those colonized.[115] For Vattel, justification could be found, among other places, in the failure of those colonized to grow crops on their territories, since agriculture in Vattel's view was regarded as "an obligation imposed by nature on mankind."[116]

---

[110] See Nicolo Machiavelli, "The Prince," in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 23 (Chicago: William Benton, 1952) at 4.
[111] *Ibid*.
[112] *Ibid*.
[113] Anthony Pagden & Jeremy Lawrence, eds, *Francisco de Vitoria, Political Writings* (Cambridge: Cambridge University Press, 1991) at On the American Indians 2.
[114] *Ibid* at On the American Indians 2 – 3.
[115] *Ibid* at On the American Indians 3.8.
[116] Vattel, *supra* note 101 at book 1 ch VII sect 80.

These justifications suggest the application of the model of legal elasticity and the *imperium* and *dominium* relationship in a way that provides for some legal elasticity in the sense of generally acknowledging that there were previously-existing systems of law and society in a territory targeted for colonization. At the same time, however, these justifications also establish boundaries to legal elasticity in the form of practices that would be so far beyond the accepted bounds of law and society as to require colonization. Within this system of justifications, there is robust *imperium* on the part of the colonizing state, coupled with the assumption of generally weak *dominium* on the part of the peoples in the territory targeted for colonization. This application – objectionable as it is – of the model of legal elasticity and the *imperium* and *dominium* relationship is necessary to the crafting of laws and policies that allowed for colonization to occur as a legal state action.

Once in possession of overseas territory that had previously been governed by an entrenched system of laws and privileges, Machiavelli asserted that there were three ways to govern.[117] The first option was to completely "ruin" the structures of government and control that had existed, including established laws and ruling families.[118] The second option was for the new ruler to take up residence in the area and impose oversight and control.[119] And the third option was "to permit them to live under their own laws, drawing a tribute, and establishing within it an oligarchy which will keep it friendly to you."[120] Between these options, Machiavelli expressed a preference for the latter due to the state of dependence that the ruling entity will have on the prince.[121] Essentially, Machiavelli outlined three different forms of asserting *imperium* and *dominium* that demonstrated the different paths of state control over territory. In each of these forms robust *imperium* was assumed, and indeed essential, and the question was whether to allow robust *imperium* or to impose measures that would ensure weak *dominium* regarding colonized territory.

[117] Machiavelli, *supra* note 110 at 8.
[118] *Ibid*.
[119] *Ibid*.
[120] *Ibid*.
[121] *Ibid*.

In terms of governance of colonial territory there were several schools of thought. For some, such as Hobbes, colonial territories were not the same for the purposes of legal status and territorial governance.[122] In this model, there existed a dichotomy between colonies that were established to function as independent states themselves, only retaining duties of "honor and friendship" to the metropolitan state,[123] and colonies that remained part of the metropolitan state.[124] Similarly, Grotius asserted that colonists should enjoy the same legal status and rights as they would in the metropolitan state and that they did not lose these rights by leaving for the colonies.[125] Here, the model of legal elasticity and the *imperium* and *dominium* relationship encountered an inherent tension in the goals of colonialism. If the colonies were intended to remain as part of the metropolitan state then the model of legal elasticity and the *imperium* and *dominium* relationship functioned to provide for legal elasticity supported by a system of robust *imperium* on the part of the metropolitan state and robust *dominium* on the part of the colony. If, however, the colonies were intended to retain very few obligations and connections to the metropolitan state then the model of legal elasticity and the *imperium* and *dominium* relationship created was one of legal elasticity supported by weak *imperium* and robust *dominium*. In both instances, the model of legal elasticity and the *imperium* and *dominium* relationship is vital to establishing the boundaries of the colonial system for the metropole and the colony.

VII. Conclusion

This chapter spans the space of centuries, continents, and a series of governmental forms, all of which comprised or envisioned a functioning state that was able to exert territorial control at some level. It also spans a series of points at which these entities, generically referred to as states in order to connote the overarching legal and administrative entity, were faced with periods of growth, development, change and challenge to legal constructs of territory and territorial control. In each of these periods, the questions of legal constructs of territory and territorial control can be translated through and answered by the model of legal elasticity and the *imperium* and *dominium* relationship.

---

[122] Hobbes, *supra* note 102 at pt II ch XXIV.
[123] *Ibid*.
[124] *Ibid*; see also Vattel, *supra* note 101 at book I ch XVIII sect 210.
[125] Grotius, *supra* note 100 at book II ch IX art IX.

As a fundamental premise, across the discussions in this chapter there is a general understanding and assertion that a state needs territory to exist but that the state does not need to control all aspects of quotidian life and functioning in its territory provided that it can exercise legal authority over the territory. This understanding is reflected in the often-changing yet symbiotic relationship between *imperium* and *dominium*. First created in the confines of the Roman household and domestic structure, it became an imperial policy that has continued to live on through multiple legal iterations, time periods, and societies.

Across the historical practices, theorists and philosophies presented in this chapter there is a consistent theme – sometimes quite obvious and often quite subtle – of the place and importance of the *imperium* and *dominium* relationship to the construction and boundaries of legal elasticity. This is indeed the very reason that the model of legal elasticity and the *imperium* and *dominium* relationship elucidated in this thesis presents these concepts as part of one larger model-based unit.

For the Romans, rapid and continuous expansion over large swaths of territory that housed a multitude of peoples – with a multitude of legal and societal systems – was best handled through the model of legal elasticity and the robust *imperium* and robust *dominium* relationship. While the Romans asserted primacy of status as a matter of law, by allowing conquered or tributary entities to continue using territory for their own legal and societal practices provided the flexibility needed to control and govern a large and disparate empire.

In the aftermath of Roman disintegration, the model of legal elasticity and the *imperium* and *dominium* relationship continued to be used in the East and the West, although often the insecurity of the time period allowed the state to harden its territorial control for a sustained period of time. The model of legal elasticity and the *imperium* and *dominium* relationship remains a critical way in which legal control of territory can be construed and translated, particularly in terms of newly prominent territorial areas such as commercial cities and villages.

For the Ottomans, there was no concerted effort at asserting control over every aspect of territorial function or use. Indeed, to do so as a matter of law and policy would have been unmanageable and would have required doing away with a highly valuable tax structure within the empire. The Ottomans in a way perfected the application of the model of legal elasticity and the robust *imperium* and robust *dominium* dichotomy by allowing minority communities to function as largely self-sustaining units within the boundaries of imperial territory.

Overall, the state practices and writers discussed in this chapter provide an image of a state that is elastic in terms of some elements of territorial control – robust or weak *dominium* – and yet also exercises exclusive control over its territory in a way that no other person or entity has the ability to do – robust *imperium*. Even in the parameters of international law, these basic rules are to be respected as part of the spoils of statehood and the concomitant ability to exercise sovereignty over territory.
The model of legal elasticity and the *imperium* and *dominium* relationship is also evident in the constructs of colonization theory and justification, which supported a colonial system of state practice. This is not to say that the model of legal elasticity and the *imperium* and *dominium* relationship should be discounted because of the taint of its application to colonial justifications, but rather to illustrate that, at key moments in decision-making regarding territorial control as a matter of law, the model of legal elasticity and the *imperium* and *dominium* relationship can be observed as serving an essential function. The model of legal elasticity and the *imperium* and *dominium* relationship itself is agnostic, existing as a method of explanation rather than of justification.

This chapter ends with the advent of colonial theory and the following chapter delves into the model of legal elasticity and the *imperium* and *dominium* relationship in colonial practice. In order to arrive at this point, the chapter has discussed the origins of *imperium* and *dominium* in Roman law and then chartered the growth of the model of legal elasticity and the *imperium* and *dominium* relationship.

Chapter 3 – Colonialism and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

I. Introduction

This chapter applies the model of legal elasticity and the *imperium* and *dominium* relationship to the centuries-long phenomenon of colonization. While this entire period and the laws developed to support and perpetuate it are morally difficult to examine, it is nevertheless necessary to conduct such an examination because of the tremendous impact that colonization had in terms of the model of legal elasticity and the *imperium* and *dominium* relationship and in terms of how constructs of territory, sovereignty and statehood were derived.

This chapter also highlights the obvious and subtle ways in which robust *dominium* was claimed and exerted in terms of territorial control by local populations in the colonies despite the presence of their colonizers. It also notes instances in which local colonial agents sought and obtained robust *dominium* for the territory they administered despite the continued robust *imperium* of the metropolitan state. More than demonstrating personal ambition or a sense of sympathy toward the local population, these occurrences also framed the ways in which local colonial populations understood their own *dominium* potentials in relation to the metropolitan state's robust *imperium*. This set the stage for future efforts by colonial populations to seek robust *dominium* and the levels to which metropolitan states would apply legal elasticity before the colonial system snapped and the metropolitan state ceased, or altered, its colonizing activities and presence.

Conceiving of colonization as a monolithic process is erroneous as a matter of law, policy and practice. Such a misconception also discounts the shifting *imperium* and *dominium* relationships that occurred over the course of nearly 500 years of history and the extent to which legal elasticity was necessary in order for the metropolitan state to remain in control of its territorial possessions. It also fails to elucidate the many forms of colonization that existed and the applicability of the model of legal elasticity and the *imperium* and *dominium* relationship to them. In order to remedy such issues, this thesis breaks colonization into temporal stages. This method of examination allows for a

comparison of the ways in which the model of legal elasticity and the *imperium* and *dominium* relationship applied across states and geographic regions. Since the majority of colonizing states used similar – if not the same – laws and practices throughout their colonization policies, this is an insightful method of examination.

The first stage discusses the time segment from the first overseas forays of Portugal and Spain into the establishment of colonial bases through the year 1541. The latter year is significant because it marks the end of Portuguese and Spanish dominance of overseas colonization and the open profession of intent to colonize by other European states regardless of the religious authority that had purportedly been granted to the Portuguese and Spanish. This framed the ways in which the colonizers established the *imperium* and *dominium* relationship within their colonies, and namely in ways that were not as concerned with religion *per se* as with operating firm in the knowledge that they had unquestioned authority to do so. Application of the model of legal elasticity and the *imperium* and *dominium* relationship across this period allows a deeper understanding of the legal and societal boundaries in which the colonizing states were operating, particularly the dynamic between religious claims and legal practices.

The second stage discusses the time segment between the first concerted entry of other European states into colonization in 1541 and 1848, when governments across Europe – and their legal constructions of colonies – changed dramatically. This period saw the entrance of many new European states into the world as colonizers, bringing with them a variety of laws and mores. Despite this, a series of common legal practices that defined the ways in which legal elasticity and the *imperium* and *dominium* relationship functioned and changed emerged during this period. Here, the application of the model of legal elasticity and the *imperium* and *dominium* relationship informs an understanding of the technical and political climates in which colonization operated throughout and how these in turn affected the legal elasticity of colonization practices. In particular, application of the model to the evolution in allowable constructions of the *imperium* and *dominium* relationship between state-based colonization and private, albeit state sanctioned, colonization provides an understanding of when there was some sense of legal hardening as well as the parameters of legal elasticity.

Finally, the third stage discusses the time segment between1848 and1914, ending with the commencement of World War I. During this stage, the identities and goals of colonizing states changed in dramatic ways as relatively new states in the international community attempted to strengthen their *imperium* and international standing through the acquisition of colonies. At the same time, perennial metropolitan states saw shifts in their own legal constructs of the relationship between the metropolitan state and its colonies. These shifts required legal elasticity and also attempted to relocate and strengthen at least some forms of *dominium* within the ambit of robust *imperium*. Application of the model of legal elasticity and the *imperium* and *dominium* relationship to this stage provides insights into an emerging dichotomy between established colonial states that generally were more amenable to legal elasticity and robust *imperium*, as well as increasingly robust *dominium* relationships, and new colonial states that tended to favor legal hardening and robust *imperium* and weak *dominium* relationships.

At the outset of the colonization discussion, it should be established that this thesis and the model of legal elasticity and the *imperium* and *dominium* relationship focus on state sponsored, state organized or ultimately state endorsed acts and forms of colonialism. Thus, neither the thesis nor the mode of legal elasticity and the *imperium* and *dominium* relationship proposed in it attempt to address overseas programs for proselytizing by any particular religious group even if that group received some financial support from the state.

II. Early Colonization and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

This section covers the time period from the first overseas colonial endeavors taken by Portugal and Spain in the fifteenth century to 1541, when other European states expressed their intent not to respect the papal bulls upon which both Portugal and Spain had based their exclusive claims to colonizing authority.[126] In practical parlance this meant that other states would begin colonization efforts in earnest. The emphasis in this section is

[126] See AR Disney, *A History of Portugal and the Portuguese Empire*, vol 1 (Cambridge: Cambridge University Press, 2009) at 172 – 176 [Disney, "History of Portugal I"].

squarely on the colonial trends and undertakings of the Portuguese and Spanish, as they were the predominant agents of colonialism during the time period.

It is important to highlight Portuguese and Spanish experiences in the realm of internal colonization on the Iberian Peninsula prior to discussing their external colonial activities. Portugal and Spain were among the few European colonizing states that had been the recent subject of colonial control as part of the Muslim-based Gharb al-Andalus area conquered in the eighth century.[127] Within this system, legal pluralism was generally condoned and non-Muslim communities were allowed to adjudicate legal matters within their own communities provided they paid taxes for these freedoms.[128] From this experience, the Portuguese and Spanish took practical lessons that informed many of their own future colonial laws and practices. As a result, they experienced the model of legal elasticity and the *imperium* and *dominium* relationship in a different sense than did future European colonizers.

When the Portuguese and Spanish conquered territory in the Iberian Peninsula, they imposed the same forms of religious-based communal taxation requirements on the remaining non-Christian populations, while also allowing them to exercise juridical authority within their communities.[129] Additionally, the Portuguese established a sophisticated system of judicial process and juridical control over all facets of law within the state at a state and local level – again, this would become important as a guide for colonial governance creation.[130]

Thus, by the time the Portuguese and Spanish states undertook their first colonial endeavors, they had developed similar yet nuanced understandings of the legal elasticity of territorial control and the *imperium* and *dominium* relationship. Ultimately, these states would receive permission to divide the yet-to-be colonized world between themselves in the form of a papal bull and then enshrined this understanding in the 1494 Treaty of

[127] *Ibid* at ch 4.
[128] *Ibid* at 55, 59.
[129] *Ibid* at 82 – 83.
[130] *Ibid* at 138.

Tordesillas.[131] These treaty-based boundary lines were largely respected, and subsequent revisions to the treaty still honored the overall tenor of the papal bull.[132] The duality of religious and state-based intent plays heavily in any assessment of Portuguese and Spanish colonial law and practices at this time. These states found themselves under the divine – and politically robust – *imperium* of the Catholic Church and in possession of robust *imperium* as colonizers, leading to a potential clash in law and policy that required legal elasticity.

There were areas of divergence between the states in terms of colonial practices, however there were also many areas of coalescence. From the outset, there was a discernible trend toward the establishment of limited forts and trading posts as territories of overseas settlement.[133] The commercial aspects of this were most often established through the granting of a monopoly over a certain trading area to a designated person or business.[134] The successes of the monopoly system were mixed, however it was highly successful in terms of developing territorial interests and outposts along the coast of West Africa.[135] Indeed, these successes were more influential on the Portuguese and began their creation of a largely trading post-focused empire.[136] This trading post-focus was also the foundation for Portuguese settlement in and claimed rights over Brazil prior to its legal designation as a "royal colony" of Portugal in the face of increasing threats from other European colonial traders and states.[137]

There were many forms of territorial takings by conquest throughout this phase of colonization. One prevalent form of conquest involved agents of a colonial power entering into agreements with local leaders of a territory and effectively taking title to that territory.[138] In this situation, there was typically an agreement with the local leader to the effect that the colonizing state would protect them from outside threats and that the

[131] *Ibid* at 152.
[132] *Ibid*.
[133] See AR Disney, *A History of Portugal and the Portuguese Empire*, vol 2 (Cambridge: Cambridge University Press, 2009) at 30 – 33 [Disney, "History of Portugal II"].
[134] *Ibid*.
[135] *Ibid* at 34.
[136] *Ibid*.
[137] *Ibid* at 206, 211 – 213.
[138] *Ibid* at 66 – 67; AJR Russell-Wood, *The Portuguese Empire, 1415 – 1808: A World on the Move* (Baltimore, MD: Johns Hopkins University Press, 1992) at 11.

local leader would retain some residual legal rights as well as certain governance rights regarding his own communities.[139] The territory involved was, however, placed under the administration of a designated colonizer and was parceled out to other colonizers through leases that had the effect of being leases with the state.[140] Another prevalent form of conquest involved a more violent set of circumstances – or at least the legitimate threat of violence – that resulted in a local leader directly transferring power and legal authority to the colonizing state and its agents.[141]

A related but somewhat different form of territorial taking existed in the form of "treaties of friendship," typically treaties between local leaders and colonial entities that left the local leader largely in place and allowed for relatively lax colonial government unless the area became difficult to control.[142] In this system, local leaders generally retained much of their powers in terms of the local population and in terms of enforcing customary norms.[143] The level of force used in order to obtain these treaties was dependent upon the value of the territory and the level of resistance to the colonizers.[144]

To provide a legal and administrative system in which colonies would exist, the Portuguese created the Estado da India.[145] The territories within the Estado da India were governed individually according to the terms of the agreement under which they came into the Portuguese orbit, although ultimate oversight was vested in an overarching governing administrative body based in Portugal.[146] Generally, oversight of these territories tended toward laxity and a pluralistic view of local laws and customs provided these did not threaten the stability or fundamental legal systems of the colonizers, particularly in the Portuguese context.[147] Within the territorial areas controlled by the

---

[139] Disney, "History of Portugal II," *supra* note 133 at 71.
[140] *Ibid* at 71 – 75.
[141] See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400 – 1900* (Cambridge: Cambridge University Press, 2002) at 81 – 82 [Benton, "Law & Colonial Cultures"]; John H Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492 – 1830* (New Haven: Yale University Press, 2006) at 4 – 5; Maurice Collis, *Cortes & Montezuma* (New York: New Directions Books, 1954) at 21.
[142] Disney, "History of Portugal II," *supra* note 133 at 133.
[143] *Ibid* at 138 – 139.
[144] *Ibid* at 133.
[145] Russell-Wood, *supra* note 138 at xvi.
[146] Disney, "History of Portugal II," *supra* note 133 at 146.
[147] Russell-Wood, *supra* note 138 at xvi.

Estado da India were myriad religious and ethnic communities.[148] Over time the various territories within the Estado da India were granted their own forms of legislative bodies that exercised the essential legislative functions that would be found within Portugal, albeit under the supervision of the larger Estado da India.[149]

When a Spanish colonial administration had been established it would handle colonial governance as an extension of the crown's authority.[150] However, in instances where settlement occurred and there was no immediately created administration, there was a vacuum of authority.[151] In Spanish practice, therefore, the monarchs would typically grant a "capitulation" to the captain or other chief officer of a colonial expedition, allowing him to take control of territory, begin the process of land distribution and perform standard administrative functions in the name of the crown.[152] Once incorporated into the official legal system of Spanish colonization, however, a robust colonial administration subject to oversight from Spain would be placed in the area.[153]

The legal definitions of and nomenclature for colonizers are telling for future relations and strife with the metropole and questions of the bounds of the concept of legal elasticity and the *imperium* and *dominium* relationship. While the issue was not as prevalent in Portugal, it took on early significance in the Spanish colonial setting. Indeed, the overall goals of Spanish colonial endeavors are telling in terms of the relationship cultivated toward territory. Spanish colonialism and its results were intended to be ""empires of conquest.""[154] There is perhaps no better method of illustrating the importance of conquest in the Spanish colonial plan than in the terminology used for those who were colonizers – "conquistadores."[155] It was only after their families had been present in the colonies for a generation or more that the terminology changed to make

[148] Disney, "History of Portugal II," *supra* note 133 at 164.
[149] *Ibid*.
[150] Elliott, *supra* note 141 at 59.
[151] *Ibid*.
[152] *Ibid*.
[153] *Ibid*.
[154] Elliott, *supra* note 141 at xv. In contrast, the English colonial patterns of colonization have been described as "empires of commerce." *Ibid*. See also Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500 – c. 1800* (New Haven: Yale University Press, 1995) at 66 [Pagden, "Lords of All the World"].
[155] Elliott, *supra* note 141 at 9.

these new generations into "settlers,"[156] implying a subtle shift in the concept of colonial territories from those newly taken to those traditionally held.

The development and use of leases and monopolies for exploration and trading rights became standard during this period, protecting the crown from the full financial risk of such undertakings. This highlights that as a general matter the Portuguese sought to use exploration and colonization as a means of promoting trade rather than as a more conquest-focused endeavor, while the Spanish tended to be more focused on permanent conquest rather than for solely trade-based gains. These forms of authority demonstrate that elasticity of state control was a necessary element of colonization from the first instance and that, while robust *imperium* was maintained throughout the colonial system, robust *dominium* could be granted or maintained without disturbance in the status of metropolitan territorial control in the colonies. Thus, the construct of *imperium* as being that control and command ability exercised by the colonizing state and *dominium* as being control and authority exercised subject to another's *imperium* was preserved.

The same was also true in the instances of treaties or agreements of "friendship." As a matter of course, colonial areas founded through treaties or agreements of "friendship" with local leaders meant that these leaders were not displaced as much as they were converted into puppet-like leaders who largely maintained the ability to apply their own laws. There was overall an obvious pattern toward the quick establishment of a local administrative entity modeled on domestic entities and subject to a larger domestic overseer at home. Thus, legal and cultural pluralism was preserved to some extent and there was space for elasticity and at the very least weak yet firm *dominium* within the treaty or agreement of "friendship" context.

Overall, both Portugal and Spain offer important lessons on the creation of European colonialism and the evolution of constructs of state control of territory in the colonies. In many ways, these two states were similar to each other and unique to other European states because they were both shaped by their experiences as colonies and the subsequent the Reconquest. Perhaps most importantly, both states prefaced their colonization

[156] *Ibid* at 9.

endeavors on the validity of papal bulls and treaty agreements that stemmed from them. Thus, their construction of colonization had a legal basis that future colonizers could not claim. There was also a sense of duality in this relationship that other states would not experience, in that Portugal and Spain were subject to the robust *imperium* of the divine – or the divine as exercised through the papacy – at the same time that they exerted robust *imperium* as colonizers. In this situation, application of the model of legal elasticity and the *imperium* and *dominium* relationship provides an understanding of how this duality could function, as legal elasticity allowed each state to hold robust *dominium* in one situation and robust *imperium* in the other situation.

The realities of finance and government resulted in Portugal and Spain using several forms of colonization that demonstrated legal elasticity rather than legal hardening in terms of territorial control. Financial concerns resulted in the grant of exploration leases and monopolies to private individuals and businesses that undertook these endeavors in the name of the granting state. Trading posts stemmed from these grants of authority, resulting in the establishment of different colonies than those that were strictly based in religion. Applying the model of legal elasticity and the *imperium* and *dominium* relationship in this context reveals a situation in which legal elasticity was a vital part of establishing the parameters for each individual lease or monopoly grant. In this context, legal elasticity was supported by the exercise of robust *imperium* on the part of the granting state and also robust *dominium* on the part of the grant holders, who controlled the administration of these territories subject to the legal terms of the grant.

The legal status and administration of territories received through treaties, and particularly through treaties of friendship, contain many similar elements when examined through the lens of the model of legal elasticity and the *imperium* and *dominium* relationship. Although the establishment of state-based administrative entities such as the Estado da India could have resulted in legal hardening and the weakening of *dominium* within each territory held, this generally was not the case. Typically, significant latitude was granted to the colonial administration within each territory by the state and also to local leaders in terms of administering laws and customs within their communities. Thus, application of the model of legal elasticity and the *imperium* and *dominium* relationship

to these forms of territorial administration and governance reveals a situation in which legal elasticity was in fact necessary for the establishment of functional relationships between state law and local law within the colonies. This legal elasticity was enabled through the retention of robust *imperium* and the allowance of robust *dominium* unless actions of the local population threatened to undermine the stability of state legal control.

The exception to the general trend of legal elasticity supported by robust *imperium* and robust *dominium* was in the largely Spanish concept of an empire based on conquest rather than on settlement. This is an exception in that the language of conquest implied a hardened system of overwhelming the existing legal and territorial structures in place and imposing the overarching legal and territorial framework of the metropolitan state. In this system, the implication is that there was robust *imperium* and very weak *dominium*. Settlement, in contrast, does not necessarily imply the same level of usurpation of existing local laws and customs, and by implication would allow room for robust *imperium* and robust *dominium*. Even within this setting, however, application of the model of legal elasticity and the *imperium* and *dominium* relationship is insightful in that it establishes theoretical conditions in which legal elasticity constricts and results in legal hardening.

Overseas colonization in the early stage was a response to changes and challenges from within Portugal and Spain once the Reconquest was complete, as well as to the new opportunities for growth and development that manifested themselves in papal grants of authority. From these initial starting points, the system of colonization established by each state was such that it provided some space for legal elasticity and the assertion of strong – if not robust – *dominium* for the local population in terms of maintaining certain local laws and norms. This is in no way to insinuate that colonial practices during this time were respectful of the areas that were taken as colonies, particularly when they were taken with a largely religious motivation. However, these findings demonstrate that applying the model of legal elasticity and the *imperium* and *dominium* relationship to early colonial law and practice provides a lens through which to understand the legal policies and practices used.

III. Mid-Stage Colonization and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The mid-stage colonization stage spans from 1541, when even Catholic states began to overtly challenge the sanctity of the papal bulls delegating colonial monopoly to Portugal and Spain, to 1848, when a rash of governmental upheavals and popular revolutions changed the face of European governance and, in turn, governance in the colonies. This stage includes new colonizers, primarily Britain, France, the Netherlands and Russia, who undertook colonial projects and reinforced trends in the relationship between law and territory while at the same time introducing new practices into this relationship.

During this time, the Spanish continued to develop their colonies, seeking to convert indigenous communities, extract and utilize natural resources, and create a settler-based colonial system in many locations.[157] Their methodology and justification for doing so remained largely untouched as a matter of law. From 1580 – 1640, full Portuguese independence was suspended due to the merger of the crowns of Spain and Portugal.[158] Throughout this time, the Portuguese nominally maintained their overseas possessions and continued to make further colonial inroads in the Asian region, continuing to follow their established trend of seeking commercial ports and areas rather than creating large settlements.[159]

In 1807, Portugal found itself confronted with invasion by Napoleon.[160] The response to this was to relocate the Portuguese court to Brazil while the metropolitan territory was occupied.[161] While this move did in fact protect the Portuguese monarchy, it set the world of colonization and colonial governance on its head in that the seat of power for the entire empire had been shifted to a colony.[162] This opened the Brazilian colony to prestige and powers it had heretofore not known, allowed for the internationalization of trade from Brazil and the opening of markets, and altered the construct of empire between colony

[157] *Ibid*.
[158] Disney, "History of Portugal I," *supra* note 126 at 196 – 197.
[159] *Ibid* at 206.
[160] *Ibid* at 328 – 333.
[161] *Ibid*.
[162] Russell-Wood, *supra* note 138 at 26.

and metropolis.[163] From a political point of view, Brazil exerted power as a quasi-metropole and also was able to earn pride of place and concomitant benefits from the Portuguese government. From a territorial view, this shift in metropole-colony relationship desanctified the myth of the elevated metropolis in that the Brazilian territory was equally functional for the purposes of metropolitan governance, proving that there was nothing that set Portuguese – or European for that matter – soil apart from colonial soil in terms of functional value.

This moment of crisis and its aftermath represented a clear schism in metropole-colony identity as a matter of law and social construction. Examination through the model of legal elasticity and the *imperium* and *dominium* relationship, however, provides a clearer understanding. The flight of the Portuguese court from metropolitan Portugal to colonial Brazil is understandable through the lens of legal elasticity since the required geographic and societal boundaries of legal elasticity have the potential to be extremely broad. In this instance, legal elasticity is supported through a combination of retained robust *imperium* by the Portuguese governing system regardless where it was located and the increase in robust *dominium* exercised by the Brazilian colony itself.

a. Colonial Justifications

One of the underlying assumptions of the papal bulls was a belief in the powers of the papacy to issue such statements. This assumption was not shared by Protestant states, and even other Catholic states such as France were not comfortable with this assertion of power and temporal *imperium* on the part of the Church or the states which had benefitted from these grants of power. Thus, much energy was expended to generate alternate means of justification for overseas colonial endeavors.

Early British authors came to rely heavily on legal ideas exported from Roman law, particularly those relating to the need to occupy territory as well as to simply make a nominal claim to it in order to assert valid possession and, therefore, legal title over the

[163] *Ibid*.

territory.[164] By using these arguments, it was asserted that, although Spain laid claim to all of North America under the terms of the papal bull, since it had not occupied large tracts of the claimed area it could not maintain effective title to them.[165] This, then, rendered these territories *res/terra nullius* and open for the taking by subsequent states that would occupy them.[166] Additionally, the British arguments regarding *res nullius* as applied against American Indian ownership of land echoed Vattel's assertions that since the indigenous communities did not use the land to its fullest extent for cultivation they were not in true possession of it.[167] Similarly, when the British arrived in Australia they declared that the land was *terra nullius* and open for settlement.[168] Similarly, the French made ample use of the concept of *res nullius* to justify their colonial activities in what would become French America.[169] The Russian government adopted the concept of *terra nullius* in terms of its own neighbor-focused colonizing practices by asserting that nomadic areas of the Steppe that were not permanently occupied were to be considered as *terra nullius* and subject to potential colonization.[170]

Throughout the time period, the focus of legal justifications for colonization shifted from spreading a religious message and acting as of divine right to acting as a matter of historically established law. At least in theory this brought greater uniformity to the colonial system at the international level, although each state attempted to use constructions of *res/terra nullius* for territorial advantage. This shift toward *res/terra nullius* as a significant colonial justification itself demonstrates pragmatic legal elasticity in justifications for state control of territory, as well as the state's robust *imperium* in crafting self-serving justifications for the taking of territory. At the same time, this type of robust *imperium*, which was used to subsume the existing holders of *imperium* in a

---

[164] Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576 – 1649* (Cambridge: Cambridge University Press, 2006) at 61 – 62 [MacMillan, "Sovereignty & Possession"]; LC Green & Olive P Dickason, *The Law of Nations and the New World* (Winnipeg: University of Alberta Press, 1993) at 11 – 13.
[165] MacMillan, "Sovereignty & Possession," *supra* note 164 at 70 – 72; Pagden, "Lords of All the World," *supra* note 154 at 76 – 80.
[166] *Ibid*.
[167] Pagden, "Lords of All the World," *supra* note 154 at 76 – 80.
[168] Matt K Matsuda, *Pacific Worlds: A History of Seas, Peoples and Cultures* (Cambridge: Cambridge University Press, 2012) at 164 – 165.
[169] Pagden, "Lords of All the World," *supra* note 154 at 76 – 81.
[170] Michael Khodarkovsky, *Russia's Steppe Frontier: The Making of a Colonial Empire 1500 – 1800* (Bloomfield, IN: Indiana University Press, 2002) at 215 – 217.

given territory, typically resulted in weak *dominium* as a matter of legal theory if not always practice.

b. Corporations as Agents of Territorial Control

During this period there was a dramatic rise in and place for government-chartered corporations as agents of colonization through increased territorial control and territorial span overseas. Overall, the relationship between these corporations and their home states was elastic as a matter of law and demonstrated the shifting nature of the *imperium* and *dominium* relationship.

Regardless the state involved, a corporation was not a natural actor at law and needed state authorization, usually in the form of chartering, to undertake any form of territorial conquest or other activity.[171] The goals and purposes of these corporations clustered around similar areas, namely to generate profit for individuals, to generate tax revenue for the state,[172] and to create settlements in newly discovered or claimed territories.[173] In addition to settlement, many corporations were granted specific monopolies over territory or natural resources to encourage exploration and exploitation of resources.[174]

In addition to acquiring territory for the chartering state, corporations began to acquire territory for themselves.[175] While this caused legal and diplomatic difficulties, it was a power granted to at least the most robust corporations within the terms of their original charters or charter renewals.[176] Similarly, the ability of corporations to wage war was common for major corporate charter terms and was acted on by these corporations to advance territorial conquest and control.[177] This led to issues of conflation between state

[171] Stephen R Bown, *Merchant Kings: When Companies Ruled the World, 1600 – 1900* (New York: Thomas Dunne Books, 2009) at 9, 199; Matsuda, *supra* note 168 at 73; Elliott, *supra* note 141 at 7; Yuri Slezkine, *Arctic Mirrors: Russia and the Small Peoples of the North* (Ithaca, NY: Cornell University Press, 1994) at 13.
[172] Bown, *supra* note 171 at 9 – 10.
[173] Elliott, *supra* note 141 at 7; MacMillan, "Sovereignty & Possession," *supra* note 164 at 3; Bown, *supra* note 171 at ch 5.
[174] Bown, *supra* note 171 at 199; Slezkine, *supra* note 171 at 13.
[175] Bown, *supra* note 171 at 14, 106 – 108; Matsuda, *supra* note 168 at 77.
[176] *Ibid*.
[177] *Ibid*.

military entities and the private corporate militaries.[178] Concomitant to this was the ability of powerful corporations to enter into treaties and diplomatic negotiations on behalf of the state that chartered them.[179]

Some vagaries of law existed from the outset despite the parameters of state charters. The primary example of this related to the Dutch East India Company, legally established as a Dutch corporate entity, however not subject to Dutch extraterritorial jurisdiction or law *per se* for actions taken overseas.[180] This resulted in an entire class of people working for or otherwise affiliated with the Dutch East India Company who existed and operated in a state of questionable legal status.[181] A similar vacuum of law existed in the territories controlled by Hudson's Bay Company in Canada, as British law was technically not extended to the area until it was officially included in the Dominion of Canada.[182] Further, the British East India Company established court systems within its territorial holdings, although the relationship of these courts and their decisions to English law was questionable.[183]

From the outset, chartered corporations offered states an easy and affordable vehicle through which to enjoy the potential economic and diplomatic benefits of colonization with minimal financial and military risk. The allowance of corporations to undertake these forms of colonization itself demonstrates the applicability of the model of legal elasticity and the *imperium* and *dominium* relationship. The extensive state powers granted to chartered corporations and exercised by these corporations as private undertakings demonstrates the shift from robust *imperium* and weak *dominium* in the classical law based justifications for colonization to robust *imperium* and robust *dominium* in corporation administered colonies. At this point, states were largely willing to allow the accumulation of robust *dominium* in corporations because of the benefits to

[178] See Bown, *supra* note 171 at 134 – 139; H V Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756 – 1833* (Cambridge: Cambridge University Press, 2006) at 1; Philip J Stern, "Politics and Ideology in the Early East India Company-State: The Case of St. Helena, 1673 – 1709" (2007) 35 J Imperial and Commonwealth History 1 at 1 – 23.
[179] Bown, *supra* note 171 at 28.
[180] *Ibid* at 50.
[181] *Ibid*.
[182] *Ibid* at 226, 235.
[183] Benton, "Law and Colonial Cultures," *supra* note 141 at 132 – 133.

the larger metropolitan community and the state itself. However, since these corporations were still legal persons subject to the jurisdiction of a state, the state maintained robust *imperium* over them.

Corporations were thus essential tools in the extension of vast overseas empires that benefitted from their success. These corporations ultimately became victims of their own prominence, however, some by creating economic downturns at home and others by becoming so entrenched in the economy and apparatus of the state that they were identified as part of the state itself rather than as private entities. In either situation, there was a resurgence of state power and legal control over corporations and their territories toward the end of the mid-stage of colonization, bringing about the end of corporate agency as an untethered proxy for state agency in overseas territories and establishing that there were boundaries to the legal elasticity which had supported the use and growth of chartered corporations.

A critical example of this was the Dutch East India Company. In the end, it was the failed attempt to ensure private profitability that caused the Dutch East India Company's 1799 bankruptcy and dissolution.[184] When this happened, its territories were appropriated by the state as Dutch colonial property.[185] In Britain, the East India Company (EIC) was embroiled in a long-standing argument with the crown regarding the true nature of the property interests it possessed in India.[186] The EIC vehemently asserted that the treaty under which it acquired much of its territory from local Indian leaders had designated the EIC alone as the entity that would hold property rights.[187] However, the crown increasingly argued that "since British subjects could only acquire territory on behalf of the Crown" the EIC's position was erroneous.[188] At the same time, wars and domestic financial concerns prompted many in Britain to see the EIC as the holder of important "national interests," rendering the EIC subject to greater amounts of public scrutiny by

[184] Bown, *supra* note 171 at 53 – 55; Matsuda, *supra* note 168 at 199.
[185] *Ibid*.
[186] Bowen, *supra* note 178 at 10 – 11.
[187] *Ibid*.
[188] *Ibid*.

the late eighteenth century.[189] This resulted in Parliamentary actions that eroded the EIC's independence as a matter of law.[190] The 1813 Charter Act subsequently confirmed that all territorial rights in India belonged solely to the British Crown.[191] Less than fifty years later, the EIC was legislatively dissolved.[192]

In the African context, the typical method of colonial acquisition of territory involved the execution of deeds between the tribe and the metropolitan state.[193] Under the terms of the deeds, the state allowed a designated chartered corporation to use the land for certain purposes, such as the creation of trading centers.[194] In some cases, this was accompanied by a series of transfers of land use rights from the state to the corporation, however there was no question that the ultimate holder of sovereignty over territory was the state.[195] Here, metropolitan states drew on earlier experiences with chartered corporations and established firmer boundaries in terms of territorial control and the state's retained robust *imperium* power from the outset.

Despite the popularity of corporations as agents of territorial acquisition during this stage, states were still active colonizing forces in their own right. Legal methods of colonization included the conclusion of formal treaties with local leaders, such as the Treaty of Waitangi between Britain and many Maori chiefs in New Zealand.[196] They also included treaties concluded between colonizing states to resolve boundary and territorial differences peaceably rather than through sustained conflict.[197]

---

[189] *Ibid* at 37 – 52, 69 – 78; Ulrike Hillemann, *Asian Empire and British Knowledge: China and the Networks of British Imperial Expansion* (New York: Palgrave Macmillan, 2009) at 35 – 36.
[190] Bowen, *supra* note 178 at 72; Hillemann, *supra* note 189 at 35 – 48.
[191] *Ibid* at 10 – 11. The impact of this decision, and of the governmental backlash against the EIC's territorial claims, went beyond the EIC itself and impacted other British chartered corporations that controlled territory across the globe. See George Cawston & AH Keane, *The Early Chartered Companies (AD 1296 – 1858)* (London: Edward Arnold, 1896) at 85.
[192] Bown, *supra* note 171 at 148; Hillemann, *supra* note 189 at 172 – 176.
[193] See e.g. Edward Hertslet, *The Map of Africa By Treaty*, vol 2 (London: Harrison and Sons, 1894) 832 – 833; Martin Lynn, "Britain's West Africa policy and the island of Fernando Po, 1821 – 1843" (1990) 18 J Imperial and Commonwealth History 191.
[194] Cawston, "*supra* note 191 at 229 – 231.
[195] Lynn, *supra* note 193 at 193; LC Duly, "The Failure of British Land Policy at the Cape, 1812 – 1828" (1965) 6 Journal of African History 357.
[196] Matsuda, *supra* note 168 at 191, 202 – 206.
[197] Disney, "History of Portugal I," *supra* note 126 at 300. The primary example of this was the 1750 Treaty of Madrid, which effectively settled the land boundaries between the two states throughout South America. *Ibid*.

Frequently, the new states on the colonial scene were motivated by fears of becoming inferior powers in the European context if they failed to acquire territory overseas and expand their economic bases.[198] The use of state-based chartered corporations was a pragmatic response to state desire to engage in colonization balanced against the inherent financial and military risks associated with colonial undertakings. Application of the model of legal elasticity and the *imperium* and *dominium* relationship reveals that legal elasticity was necessary, and easily granted, in order to achieve these state goals. While the state technically retained robust *imperium* over the chartered corporations and the territories they held – at least in the state viewpoint – it allowed the chartered corporations to exercise robust *dominium* in these territories. However, when the powers of the chartered corporations increased to the point where they were perceived as threatening the robust *imperium* of the state itself, states responded with a form of legal hardening. This was not systemic but rather targeted at chartered corporations that had generally been created at a time when the state was willing to concede more power to chartered corporations. Indeed, at the same time that legal hardening was used to rein in corporations such as the EIC, new chartered corporations were created by states, albeit with fewer powers and more restrictions. This can be seen as the somewhat circumscribed use of legal elasticity to foster continued colonization through the assertion of robust *imperium* over new territories and the ceding of robust *dominium* under the threat of weakening at the will of the state. At the same time, metropolitan states continued to engage in direct acts of colonization that reasserted their supremacy within the *imperium* and *dominium* relationship.

c. Lost Colonies and Colonial Identities

As colonists arrived in the colonies, they retained their identities from the metropole but also became connected with their new territories in different ways. Previous mention was made of the initial conception of Spanish colonists as conquerors first and settlers only after generations had established a connection to the territory. In opposition to that was the British concept of creating plantations on overseas territories and populating them

[198] See MacMillan, "Sovereignty & Possession," *supra* note 164 at 18 – 25.

with settlers – a construction of colonialism that was more permanent in nature.[199] However, there were similarities that led to descendants of the original colonists seeing themselves as wronged by the metropolitan state because of legal differences imposed on them based on birthplace.[200] In turn, these experiences informed revolutions that resulted in colonies breaking away and successfully asserting their own *imperium* in the international realm.

Key to arguments between states and colonial populations was the idea of what laws should be applied in the colonies, and to the colonists, as well as whether colonies should be governed under separate codes that reflected the pluralistic legal systems which existed.[201] Additionally, issues of the status to be accorded children of the original colonists became highly contentious, as subsequent generations still tended to see themselves as, for example, Spanish or English, while those in the metropole tended not to view them as having equal citizenship status due to their birthplace.[202] This is a phase where we see the metropolitan state becoming more defensive of its exclusivity by placing focus on the territory of the metropole for legitimacy as opposed to parentage.

A further issue involved the establishment of distinctive colonial patterns of law and governance during times when the metropole was at war and unable to provide these services to the colonies. For example, the overall value of colonies to the French state – be it monarchical, revolutionary or democratic in orientation – waxed and waned during the course of French colonial history.[203] As a result, the engagement of the state in its colonies fluctuated, leading to situations in which colonists were apt to create their own legal and governance institutions and to take responsibility for their own defense and supplies.[204] This, in turn, fostered a sense of colonial identity that was unique to the

---

[199] *Ibid* at 9.
[200] Anthony Pagden, *Spanish Imperialism and the Political Imagination* (New Haven: Yale University Press, 1990) at 10, ch 4 [Pagden, "Spanish Imperialism"].
[201] MacMillan, "Sovereignty & Possession," *supra* note 164 at 120 – 122, 127 – 128.
[202] See *ibid* at 234 – 245; Anthony Pagden, "Spanish Imperialism," *supra* note 200 at 10, ch 4; Elliott, *supra* note 141 at ch 8.
[203] See Frederick Quinn, *The French Overseas Empire* (Westport, CT: Praeger Publishers, 2002) at 2.
[204] *Ibid*.

particular colony and also meant that, when metropolitan governments asserted greater power over the colonies, there were tensions between the metropole and the colonists.[205]

The question of colonial identities presented a simmering crisis for metropolitan states throughout Europe. Application of the model of legal elasticity and the *imperium* and *dominium* relationship here indicates that the heart of the crisis was the challenge posed by differing views on how far legal elasticity could be taken until it resulted in breaks to the colonial system. These views were informed by alternate constructions of the *imperium* and *dominium* relationship in which the allowance of robust *dominium* would either result in weak *imperium* and undo the colonial system or would allow for continued robust *imperium* within a different view of the colonies themselves, thus preserving the colonial system. Ultimately, metropolitan states tended to opt for the reassertion of their superior status through legal hardening and attempts to weaken *dominium* in the colonies. This, in turn, pushed many colonial societies too far and resulted in revolution against the metropolitan state and assertions of colonial *imperium* as new state actors.

d. Conclusions

Taken as a whole, application of the model of legal elasticity and *imperium* and *dominium* relationship to mid-stage colonization demonstrates several iterations of territorial control over time.

The colonial practices of the metropolitan states discussed share similarities and pronounced differences. Whether as a result of divine authorization or *terra nullius*, in the end metropolitan states agreed on the value of colonialism. These states also agreed – in practice if not theory – that legal elasticity on the part of the state and in its constructions of territorial control and the *imperium* and *dominium* relationship were key to establishing a colonial system of any sort. When attempting to craft theories of colonial justification, legal elasticity supported by a robust *imperium* and weak *dominium* relationship proved to be essential.

[205] See Denise Bouche, *Histoire de la Colonisation Francaise* (Paris: Fayard, 1991) at 14 – 15.

Metropolitan states engaged in many forms of colonial endeavors but nearly all used official charters to provide private corporations legal authorization to acquire territories and colonies. The exact terms of these charters may have differed, however they typically authorized the designated corporations to engage their own military forces for the protection of their missions and to claim newly found territories on behalf of the charter granting state. Additionally, chartered corporations typically had the ability to function as diplomatic actors, to bind the charter granting state through treaties and agreements and to engage in warfare. However, over time states became wary – if not outright jealous – of the power wielded by private corporate actors. Thus began a governmental and public sense of concern regarding the operations of these companies and their abilities to undo the legal, diplomatic and economic standing of the metropolitan regimes through their tactics. These concerns manifested themselves in legal hardening regarding the powers of chartered corporations and the continued existence of some of these corporations overall. This cycle of state/corporation relationship tested the boundaries of permissible legal elasticity before some form of legal hardening was necessary in order to maintain an *imperium* and *dominium* relationship in which robust *imperium* was guaranteed to the state. Although a measure of legal hardening was applied to early-formed corporations, metropolitan states continued to allow the creation of new corporations as colonial instruments. These corporations were subject to legal elasticity in terms of overall operations provided that they maintained a relationship in which robust *imperium* dominated the *imperium* and *dominium* relationship.

Once overseas settlement colonies were established, they tended to produce second and third generations of elites who had been born in the colony but regarded themselves as citizens of the metropole. However, in nearly all situations the metropole, and metropolitan law, did not share the same view and regarded this group as second-class citizens. This, in turn, created resentment among the colony-born, who continued to assert their metropolitan identity and rights, whether it be Spanish, French or British. In most scenarios, the metropolitan response to this was to harden the concept of metropolitan identity and to confirm that territory was an essential link to identity, thus depriving those born in the colonies of their ability to assert a true claim to metropolitan

identity. Seeing this as a rejection of a rightful claim, the colonial-born began their own process of tying identity to territory, molding new constructs of identity in law and society that would ultimately cause them to assert political independence and become new states in the international system. This demonstrates the inherent tension in allowing elasticity of territorial control to harden quickly, as the reaction can be a backlash against the state that results in damage to the overall *imperium* and *dominium* relationship.

IV. Late-Stage Colonization and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Late-stage colonization is defined as the stage between 1848 and 1914. As noted previously, 1848 coincides with the often successful revolutionary movements throughout Europe and 1914 marks the beginning of World War I and a shift in the concepts of colonization in the metropolitan and international system. While Britain, France and Russia remained essential metropolitan states during this period, they were joined by new states, namely Germany, Japan and Italy. These new states sought out colonies for many reasons, central to all of them was a belief that colonies would advance their standing internally and as part of the international community. By this point, regardless the metropolitan state involved, the need to have a religious base for the justification of colonialism had been eroded, and instead it was necessary to have a legal, or sometimes quasi-moral, justification instead.[206]

a. Corporations as Agents of Territorial Control

Corporations were still used by metropolitan states throughout this period, albeit with different levels of legal control than they had previously been granted. This was particularly so in the British case, where corporations continued to be used as central pieces of state acquisition and governance of territory in Africa.[207] Most often this

[206] Sebastian Conrad, *German Colonialism: A Short History* (Cambridge: Cambridge University Press, 2008) at 3, 16 – 17.
[207] See "Concession granted by the Sultan of Zanzibar to the British East African Association (1887)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 110; "Royal Charter of Incorporation granted to the British South Africa Company (1889)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 174; Bown, *supra* note 171 at ch 6; FV Parsons, "The North-West African Company and the British Government, 1875 – 1895" (1958) 1 The Historical Journal 136.

relationship was cemented through concession agreements that involved a local leader transferring the majority of his rights to govern a territory to a designated British corporation for a set period of time subject to extensive oversight by the British government.[208] In these relationships, British law was generally to be applied within the territory however the local leaders retained the ability to implement local laws that related to the local population itself.[209] In some instances, corporations were also used by the state as a gap-filler of sorts in their official relationships with other African states.[210] Metropolitan state laws regarding corporations engaged in colonial activities during this period were very much informed by the lessons of the mid-stage colonization stage in that they attempted to provide a balance between legal elasticity that was based on robust *imperium* and robust *dominium* relationship – a spur to the interests of potential corporate backers – and robust *imperium* and weakened *dominium* – a method of reining in the activities of corporations before they became a threat to the stability of the colonial system as a whole. The exact parameters of this balance varied based on the context and the needs of the metropolitan state.

Throughout this time period, there was a notable shift in preferred methods of state territorial acquisition toward the use of protectorates rather than outright use of force and full acquisition of territory. This represented a subtle shift in language and legal constructs of the dependency relationship that had been created, although in fact the

---

[208] "Concession granted by the Sultan of Zanzibar to the British East African Association (1887)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 110; "Royal Charter of Incorporation granted to the British South Africa Company (1889)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 174; Bown, *supra* note 171 at ch 6; "Royal Charter granted to the National African Company, 10th July 1886" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 446 – 447.

[209] "Concession granted by the Sultan of Zanzibar to the British East African Association (1887)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 110; "Agreement between the British East Africa Company and the Italian Government, respecting the proposed Concession by the Sultan of Zanzibar to the Company of Territories, etc, on the East African Coast, including Kismayu, Brava, Meurka, Magadisho, and Warsheikh, and the Transfer of those Territories to Italy (1889)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 137; "Royal Charter of Incorporation granted to the British South Africa Company (1889)" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 174; Bown, *supra* note 171 at ch 6.

[210] "Notes on the British South Africa Company and Nyasaland, 1890, 1891" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 183 – 185; "Notification of the British Protectorate of the Niger Districts. The National African Company now called the Royal Niger Company, Foreign Office, 18th October 1887" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 449.

majority of these agreements still had the effect of permanent transfer of territorial rights and control from local leaders to the metropolitan states.[211] Other traditional forms of territorial acquisition such as cession and purchase agreements and treaties of friendship were also used.[212]

These methods were traditional in the sense that many of them had been employed throughout the three stages of colonization, although in different locations and by a multitude of states. The variety of legal methods used for colonization reflected the place of legal elasticity in metropolitan and colonial law as well as the several options for balance in the *imperium* and *dominium* relationship provided that robust *imperium* was used as a foundation.

b. Legal Status of Territory and Colonies

In the mid-stage of colonization, legal status in the colonies tended to cluster around issues of citizenship and identity for colonists, particularly those in the elite who regarded themselves as citizens of the metropole. By the late-stage of colonization, however, there was a shift in focus to the legal status of the colonies themselves and how they were to function in relation to metropolitan identity. Concomitant to this were the essential issues of the aims of colonial administration and the legal instruments of colonial administration. These areas of legal and societal tension revealed important questions regarding the boundaries of legal elasticity and the *imperium* and *dominium* relationship as well as the place of the colonies in determining these boundaries.

---

[211] See "Provisional Agreement concluded between the Sultan of Zanzibar, and Her Britannic Majesty's Agent and Consul-General (subject to the approval of Her Majesty's Government), respecting the British Protectorate of the Sultan's dominions, Succession to the Throne o f Zanzibar, etc, 1890" in Edward Hertslet, *The Map of Africa by Treaty*, vol 2 (London: Harrison and Sons, 1894) 768; Quinn, *supra* note 203 at 113, 129 – 131; Bouche, *supra* note 205 at 58 – 64, 122 – 124 (explaining that "le bey hereditaire demeurait le soverain absolu d'un pays controle par la France); Conrad, *supra* note 206 at 38 – 40, 50 – 51.
[212] "Notes on the Gambia, 1783 – 1894" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 365; "Notes on the Gambia, 1783 – 1894" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 371; "Notes on the Gambia, 1783 – 1894" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 373; "Notes on the Somali Coast, 1840 – 1889" in Edward Hertslet. *The Map of Africa by Treaty*, vol 2 (London: Harrison and Sons, 1894) 832; Bouche, *supra* note 205 at 33.

Throughout the French colonial experience there was a palpable tension as to the status of the colonies in relationship to metropolitan France.[213] In some instances, this metropolitan interest in the colonies was actually a way of transferring more power to the metropolitan government, such as the policy of *rattachement* under which most administrative decisions for colonies such as Algeria were transferred from the colonial governor-general to the designated metropolitan colonial authority.[214] Throughout the course of French colonial history the concept of status of colonial territories and indigenous peoples changed constantly. The two leading philosophies on this topic were those of assimilation and association.[215] Both of these theories must be viewed against the general assertion that colonialism was part of the French *mission civilatrice*,[216] although both of these theories incorporated different aspects of the *mission civilatrice* in their core underpinnings and methodology.[217]

Assimilation policies sought to incorporate indigenous colonial peoples into France as a matter of law, society and culture.[218] This meant not only extending French culture and education to the colonies but also assimilating indigenous colonial populations into mainstream metropolitan France through legal measures such as providing a place for them in the French government, making them citizens of France and extending the terms of French laws to them.[219] These proposals raised a fundamental tension as to what it meant to be French under this system and how to translate the legal, cultural and societal

---

[213] Quinn, *supra* note 203 at 155; Raymond F Betts, *Assimilation and Association in French Colonial Theory, 1890 – 1914* (Lincoln, Nebraska: University of Nebraska Press, 2005) at x; "Notes on the Boundaries of Egypt, 1840 – 1894" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 264; "Convention between France and the Danakils, for the Cession of Obock and its Territory to France, Paris, 11th March 1862" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 269; "Notes on Dahomey (Kotonou, Whydah, Porto Novo, etc), 1847 – 1893" in Edward Hertslet, *Map of Africa by Treaty*, vol 1 (London: Harrison & Sons, 1894) at 248 – 254; CM Andrew & AS Kanya-Forstner, "The French 'Colonial Party': Its Composition, Aims and Influence, 1885 – 1914" (1971) 14 The Historical Journal 99.
[214] Betts, *supra* note 213 at 20 – 21.
[215] See Quinn, *supra* note 203 at 176 – 181.
[216] Betts, *supra* note 213 at 28 – 29; JP Daughton, *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880 – 1914* (Oxford: Oxford University Press, 2006) at 5; Bouche, *supra* note 205 at ch V; Mathew Burrows, "'Mission Civilatrice': French Cultural Policy in the Middle East, 1860 – 1914" (1986) 29 The Historical Journal 109 at 109 – 135; HL Wesseling, *The European Colonial Empires, 1815 – 1919* ((New York: Pearson Longman, 2004) at 30.
[217] See Wesseling, *supra* note 216 at 40.
[218] Quinn, *supra* note 203 at 176; Wesseling, *supra* note 216 at 40 – 41.
[219] Quinn, *supra* note 203 at 176.

practices that were traditional to many indigenous colonial peoples within the constructs of French citizenship and the French metropolitan entity.[220]

The theory of association argued against attempting to fully incorporate indigenous colonial populations into metropolitan France.[221] Instead, the theory of association sought to preserve and incorporate indigenous laws and systems in order to slowly assist in their development rather than incorporating them into the metropole.[222] The ultimate goal was to create a political and territorial entity that was associated with metropolitan France rather than being made a part of it.[223]

Regardless the theory used, this period saw an increased bureaucratization of colonial administration in France as well as in Britain. Each state used different forms of administrative assignment for colonial issues, however these differences were bridged by an increasing acknowledgment of the importance of centralized management.[224] Once in possession of overseas colonies, the German government granted enormous legal powers to colonial administrators and officials, who were charged with creating and implementing laws and rules for the colonies since German metropolitan laws were not extended outside the metropole.[225] This resulted in a lack of clear vision and policy for the German colonies as a matter of law and practice, making the implementation of laws and the treatment of indigenous communities, as well as the promotion of German interests, heavily dependent on the individuals associated with the administration of a particular colony.

Debates regarding the relationship between metropole and colony throughout this period further highlight the importance of the model of legal elasticity and the robust *imperium* and robust *dominium*. Regardless the theory used, the core issues raised focused on the place of the metropolitan in the colonial and the colonial in the metropolitan that evinced

---

[220] See *ibid* at 177 – 178.
[221] Betts, *supra* note 213 at 106; Bouche, *supra* note 203 at 300 – 301.
[222] Betts, *supra* note 213 at 106 – 107.
[223] See generally *ibid* at ch 5.
[224] Quinn, *supra* note 203 at 116 – 118; JA Cross. "The colonial office and the dominions before 1914" (1966) 4 Commonwealth & Comparative Politics 138.
[225] Conrad, *supra* note 206 at 37; Woodruff D Smith, "The Ideology of German Colonialism, 1840 – 1906" (1974) 46 Journal of Modern History 641 at 652 – 662.

a robust legal quality in both systems. Naturally the greater power was in the metropolitan state in terms of law and the potential for the use of force, however these debates served to legitimate the concept of robust *dominium* in ways that were often unintended yet still legally and societally significant.

Legal status became an essential area of tension in metropolitan states new and old and led to increasing use of colonial administration bodies to create a core of bureaucratized systems for addressing these tensions, regardless their overall success. The increasing bureaucratization of colonization itself suggests an element of legal hardening within the metropolitan state's colonial legal and governance theories, as this implied a certain amount of uniformity between colonies and colonial theory. In reality, however, these administrations did not function uniformly, and were often ineffective on the ground, undermining the application of legal hardening in practice. As examples such as those from Germany suggest, the model of legal elasticity and the robust *imperium* and robust *dominium* relationship was still possible in the face of bureaucratization.

c. Extraterritoriality

In the nineteenth and early twentieth centuries, the predominant locations for the usage of extraterritoriality and extraterritorial jurisdiction by European states were in the Ottoman Empire, China and Japan.[226] This concept of extraterritoriality and extraterritorial jurisdiction over foreign state nationals expanded over time conceptually and geographically.[227] Conceptually, these ideas became more refined and were incorporated into a quasi-bureaucratic system that was responsible for administering the ex-patriot community of a particular state.

Geographically, there were two forms of extraterritoriality. The first form was that of the legation or concession territory, the bounded area in which foreigners might live, operate, worship and police themselves separate from the legal system of the state in which they

[226] See Par Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2012) at 15; Yitzhak Nakash, *The Shi'is of Iraq* (Princeton: Princeton University Press, 1994) at 17.
[227] Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010) at 1.

were physically located.[228] Initially established for the purposes of housing traders and allowing trade with foreigners to be conducted in a limited manner, these areas often underwent radical changes and became entire cities unto themselves.[229] For example, the Chinese government experimented with allowing greater intermingling of foreign and domestic residents, however it became concerned at the impact that this would have on domestic citizens and so began to establish specific areas in which foreigners could reside.[230] Foreign states were required to enter into lease agreements with the Chinese government for these areas and, thus, the territory was not officially ceded to them.[231] However, although this territory still legally remained part of China *per se*, there were specific clauses in the lease agreements that required the applicable foreign government to bar Chinese citizens from renting land in the leased territories.[232]

The second form was the unbounded concept that foreigners would be subject to the laws and protections of the foreign state throughout the entirety of the host state's territory.[233] Under this construction of extraterritoriality, it proved possible for the host state to overcome the asserted need for extraterritoriality to begin with if – and ultimately when – the host state reformed its legal system to the extent that it became normatively and administratively acceptable to the foreign states involved after reformation and modernization.[234]

In terms of the content of extraterritorial law applied by many Western states, this law was not a simple copy of the legal regime found at home.[235] Instead, some states developed legal systems specifically excluding certain metropolitan law rights and privileges for citizens living in the overseas territories.[236] These laws were not typically

[228] See generally Cassel, *supra* note 226; FE Hinckley, "Extraterritoriality in China" (1912) 39 Annals of the American Academy of Political and Social Science 97.
[229] See Odd Arne Westad, *Restless Empire: China and the World Since 1750* (New York: Basic Books, 2012) at 73.
[230] Cassel, *supra* note 226 at 64.
[231] *Ibid*.
[232] *Ibid*.
[233] See *ibid* at 40 – 41.
[234] Kayaoglu, *supra* note 227 at 50 – 61; Hinckley, *supra* note 228 at 97.
[235] Kayaoglu, *supra* note 227 at 18; Hinckley, *supra* note 228 at 97.
[236] Kayaoglu, *supra* note 227 at 18.

lenient on citizens in the overseas territories, particularly in terms of criminal law, and were geared toward discouraging bad behavior while away from the home.[237]

The Chinese system of extraterritoriality would last until the 1920s.[238] During this time, the Chinese government began to reform its legal system with the goal of modernizing it to Western standards, thus undermining the asserted need for extraterritoriality.[239] The revolution of 1911 – 1912 interrupted these attempts at paced reform and the victories of the Nationalist forces in China ultimately resulted in most Western states renouncing extraterritorial jurisdiction, with many members of the ex-patriot communities leaving the geographically bounded areas of extraterritorial jurisdiction.[240]

By the mid-eighteenth century, European states began to exert political, military and increasing economic power over the Ottomans.[241] By the nineteenth century, another form of extraterritoriality emerged with respect to the Ottoman Empire, that of certain European states claiming to act as juridical protectors of various minority religious populations in the empire.[242] This represented a significant legal change in that foreign states no longer sought to control and protect only their own nationals overseas. Finding itself under legal, political, and societal pressures that resulted from internal fragmentation and external attempts at control, the Ottoman Empire unilaterally declared that extraterritorial jurisdiction would end shortly before World War I.[243]

Extraterritoriality represents the model of elastic territorial control and the *imperium* and *dominium* relationship at the level of the host state and the foreign state. At the host state level, although extraterritoriality came to be deeply distasteful to many as a symbol of inferiority, these states allowed for a more robust *dominium* within legation areas as a way of using foreign states for the economic benefit of the state as a whole. Thus, by applying legal elasticity to the system of territorial control – even if this was not

[237] *Ibid*.
[238] Cassel, *supra* note 226 at 174 – 175.
[239] *Ibid* at 175.
[240] *Ibid* at 178.
[241] Finkel, *supra* note 62 at 363; Dale, *supra* note 64 at 279 – 280.
[242] Finkel, *supra* note 62 at 370, 378; Dale, *supra* note 64 at 279 – 280.
[243] Kayaoglu, *supra* note 227 at 104 – 105.

volitional – the host state found ways to balance the *imperium* and *dominium* relationship such that the state was not destroyed or made into a colony as a result.

At the foreign state level, extraterritoriality filled a legal and political gap that resulted in otherwise difficult outcomes for the foreign state and diplomatic tensions with the host state. Without extraterritoriality, economic expansion on the part of foreign state citizens would either have left them completely within the control of the host state and resulted in diplomatic issues or would have resulted in attempts to make the host state a colonial possession to protect its citizens and economic interests. Neither of these options was politically or practically appealing in most instances, especially those involving powerful states such as China and the Ottoman Empire. As a result, extraterritoriality was a method through which foreign states could fill the gap. This gap filling quality would not have been available in the model of hardened territorial control due to the level of inflexibility that was typically generated as a result.

d. Conclusion

The late-stage of colonization can be characterized by the entrance of new metropolitan states at the same time that the existing metropolitan states began efforts to better define metropole-colony relations and to bureaucratize the metropole-colony relationship as a matter of law and administration. Despite this, the legal elasticity was essential for the functioning of colonial systems.

The trend of metropolitan state use of corporations to implement many aspects of colonization continued during this stage, although again it was tempered by existing within the model of legal elasticity and the robust *imperium* and generally robust *dominium* that gave the metropolitan state greater control over the level of *dominium* exercised. The lessons of extremely powerful corporate colonial actors thus continued to inform this relationship. This was coupled with the use of traditionally used methods of direct territorial acquisition by the metropolitan state, such as treaties of cession and treaties of friendship, in which legal elasticity was a key component and was supported by a robust *imperium* and robust *dominium* relationship in which robust *imperium* was still acknowledged as the essential legal component.

The increase in metropolitan bureaucratization of the colonies did not result in legal hardening to the extent that would be imagined since the application of administration on the ground in the colonies was far from uniform. In this system, legal elasticity supported by the robust *imperium* and robust *dominium* relationship provided the framework in which the bulk of colonial administrations continued to function. Similarly, the different theories for framing metropole-colony legal and societal relations were diffuse however they coalesced around legal elasticity that was supported by robust *imperium* and robust *dominium* in the sense that these theories did not entirely seeks to subsume *dominium* but rather sought to create a mixture of different systems.

At the same time, the lifespan of extraterritoriality and extraterritorial jurisdiction provides an example of legal elasticity that resulted from weakened (if not totally weak) *imperium* on the part of the host state and robust *dominium* on the part of the state exercising jurisdiction over the designated bounded area and/or over its citizens throughout the host state. These practices came to life during periods of change and challenge for both the host state and the state seeking to exercise jurisdiction and resulted in divergent yet similarly elastic systems of law and governance.

V. Conclusion

This chapter spanned five centuries of colonization, charting its growth and spread as a matter of law and practice, the shifts in colonial actors, practices, locations and methodologies that occurred throughout this time, and metropolitan shifts in the place of the colonies within the laws and identities of the metropolitan state and its citizens. All of these are key illustrations of the importance of legal elasticity and the *imperium* and *dominium* relationship in periods of growth, development, change and challenge to legal constructs of territory and territorial control.

A discussion of "colonization" tends to assume that this was a monolithic act, created in a legal vacuum that lacked nuance and that remained static throughout stages of colonial activity and legal changes in the metropole. While certainly the conflating of all aspects of colonial undertakings into one general construct is understandable from a moral

perspective, to do so from a legal perspective ignores important developments in this relationship that have carried on past colonization and into modern day territorial constructs.

Throughout the combined stages of this chapter, colonization has been demonstrated to have played an important role in defining the metropolitan legal and social identity, to say nothing of the myriad impacts that colonization had on definitions of legal and social identity used by local communities. This understanding would not have been possible in a model of hardened territorial control and the *imperium* and *dominium* relationship, or even in a model that emphasized legal hardening and the *imperium* and *dominium* relationship. Instead, application of the model of legal elasticity and the *imperium* and *dominium* relationship provides a lens through which to understand the role of the metropolitan state throughout these stages as well as the many instances in which the exercise of robust *dominium* on the part of local leaders and communities allowed at least some space for the preservation of their legal and cultural norms.

A review of the forms of colonization used across states and stages indicates that these colonial undertakings, or the constructs of law they fostered, would not have been possible in a model of hardened territorial control and the *imperium* and *dominium* relationship. These forms of colonization ranged from conquest and occupation for military and/or commercial purposes to conquest and settlement to treaty agreements and cession to annexation to corporate control to protectorates – naming only the particularly popular methods – and yet there was little question as to the ability of the metropolitan regime to use any of these to craft colonial policies and holdings within the confines of existing metropolitan and international law.[244] These many forms existed as a legally elastic response to the periods of growth, development, change and challenge to legal constructs of territory and territorial control in which they occurred. Perhaps inadvertently, the incorporation of legal elasticity also created spaces for local political

[244] Throughout the colonial project, there were of course those who disagreed with colonization, particularly from a moral view once the effects of colonization on indigenous populations were seen. The objections raised by these groups, however, were not based in territorial laws as much as in religious and moral laws. For an examples see Abbe Raynal, *A Philosophical and Political History of the Settlements and Trade of the Europeans in the East and West Indies* (London: T Cadell, 1777).

entities to exert control over their own populations in ways that were often similar to those employed in the Ottoman *millet* system.

What emerged from colonization *in toto* was a system of territorial and metropolitan control that required elastic territorial control and the *imperium* and *dominium* relationship. Attempts to apply a more hardened model of territorial control would have yielded an entirely different system, as the legal, political and economic relationships fashioned would not have met the needs of the different states involved across such a broad spectrum of time. Further, the ability of metropolitan actors to understand the utility of these different forms of colonization and to deploy them in strategic ways and circumstances as the laws and political culture of the metropole allowed were made possible by using legal elasticity rather than within a system of legal hardening.

Thus, by the beginning of World War I, the global understandings of territorial control and the forms it could take had been shaped by colonialism as much as colonialism had shaped the map of territorial holdings throughout the world. These relationships might change in the future, however the ways in which legal elasticity allowed such relationships to exist and develop would continue to exist and underpin the generally accepted constructions of territorial control and the *imperium* and *dominium* relationship.

Chapter 4 - Territory, Sovereignty, Statehood and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship Post- World War I

I. Introduction

World War I brought change and upheaval to multiple facets of law, politics and society throughout metropolitan states, the colonies, and the colonial structure. From devastating new forms of weapons and warfare to changes in constructs of social standing to changes in legal, political and social ideas of citizenship and equality, World War I inaugurated a new era that was unfathomable when the bullets first rang out in June 1914.

Among the changes brought by the war were changes in territorial control, the concept of how territory was to be divided at the end of the war, who would be in control of this division, and how territory and sovereignty would evolve in the future, particularly for former Ottoman and Germany territories. These changes did not organically occur at Versailles, Sevres or Lausanne, nor did they originate in the Paris Peace Conference, although many of them matured during the 1919 negotiations. Instead, they were traceable to wartime and the realities on the ground as well as work conducted by planning offices throughout Europe and in the United States. The war and the peace that followed were a dramatic periods of growth, development, change and challenge to legal constructs of territory and territorial control.

After the war, the system of mandates created for administering former Ottoman and German territories was novel in its conception if not always in its application. The mandatory states were faced with changing concepts of territory and the impact of administering territory that was not technically within their full sovereignty. This was a different method of conceptualizing overseas territory for the metropole and also resulted in colonies being exposed to new potentials for independence from the metropole. At the same time, the mandate territories themselves were in a process of transition that often saw their borders changed to fit within the mindset of the mandatory state. The mandate territories were also learning how to adjust to their new place in the international law system, just as international law was learning how to adapt to the concept of mandate territories. Concomitant to this was the need to develop a method of outside oversight for

these areas, another innovation in the construct of the relationship between a state and the overseas territory it controlled. Application of the model of legal elasticity and the *imperium* and *dominium* relationship in this context is critical to providing overarching insights into how the mandate system worked.

The development of the mandate system did not mean the end of new colonial possessions coming into existence, and indeed states that felt slighted by the Treaty of Versailles began a concerted effort at taking new colonial territories as compensation for their efforts or to prove their value to the international community. In the context of Italy and Japan this involved targeted overseas colonization efforts; in the German context, where the intent was to restore national prestige in the face of the despised Treaty of Versailles, new territorial takings were largely limited to the European continent.[245]

Overall, World War I and the interwar years demonstrated the vital place of legal elasticity in territorial control. Throughout the conduct of war and of the peace, it was nearly impossible for states to use a hardened model of territorial control and the *imperium* and *dominium* relationship without risking severe internal damage and also international rebuke. The exceptions to this existed in Germany, Italy and Japan, and even then they did not remain unscathed in the international arena as a result of their actions. As previously discussed, these states already used the hardened territorial control model for internal and external colonization efforts in the decades prior to World War I.

In the face of the mandate system, a new construct that was at once international in nature and a puzzle to the international community, legal elasticity was vital to navigating the uncertain terrain for mandatory states and mandate territories alike. Although definitions of the *imperium* and *dominium* relationship within the mandate system were complex to

[245] See Ali Abdullatif Ahmida, "State and Class Formation and Collaboration in Colonial Libya," in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) at ch 5; Federico Cresti, "The Early Years of the Agency for the Colonization of Cyrenaica (1932 – 1935)," in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) at ch 6; Haile Larebo, "Empire Building and Its Limitations: Ethiopia (1935 – 1941)," in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) at ch 7; WG Beasley, *Japanese Imperialism, 1894 – 1945* (Oxford: Clarendon Press, 1987) at chs 10, 13; Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Vintage Books, 1989) at 333 – 343; Robert L Hess, "Italy and Africa: Colonial Ambitions in the First World War" (1963) 4 Journal of African History 105.

craft they were also essential to support the functioning of the mandate system. At the same time, legal elasticity and the *imperium* and *dominium* relationship supported the existing colonial system. Indeed, some colonies were able to use the forms of legal elasticity at work in the mandate states as leverage in their own progress toward independence.

II. Territory, War and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

War came to the territories of the combatants in many different forms. In the European metropolitan states territory was the subject of contest and occupation from the first instance and would change hands during the war.[246] In the midst of the contest for territorial control at home, metropolitan states also sought to maintain control over their colonies and to use them for supplies and fighting forces. Early in the conflict, Ottoman territories began to fall and became sites of contest between the allied powers in addition to attempts by Ottoman forces to reassert control.[247] Throughout the war, each side made a multitude of agreements and side-agreements with actors seeking to create their own independent or quasi-independent states at the end of the war, particularly within Ottoman territories.[248] In war, territorial control stretched the boundaries of legal elasticity and the *imperium* and *dominium* relationship in many ways and directions.

There were serious legal issues involved in administering and governing non-European areas once they fell to Allied forces during the war, particularly in terms of the status of these territories after the war was over.[249] Even within European governments, there was a constant tension between those who favored complete annexation and incorporation of these territories into existing colonial structures, those who favored the creation of colonial protectorates in these territories, and those who favored national independence for the peoples in these territories.[250] This inability to craft a central policy for handling

[246] Margaret MacMillan, *The War That Ended Peace: The Road to 1914* (New York: Random House, 2013) at ch 20, epilogue.
[247] David Fromkin, *A Peace to End All Peace* (New York: Henry Holt and Company, 1989) at 85 – 87, 94 – 95.
[248] See generally *ibid*.
[249] See generally *ibid*.
[250] See generally *ibid*.

territory during the war, and the concomitant inability to craft a unified vision for after the war, was not only the doing of the Allied states but also of the many different groups within the Ottoman Empire.[251] Seeing the prospect of their control by the Ottomans ending, these groups tended to jockey for attention and authority, espousing nationalist or other rhetoric without necessarily embracing such concepts as anything other than methods of gaining favored status from European states.

After the United States became a late entrant in the war, its President, Woodrow Wilson, delivered a speech containing what have become universally referred to as the "Fourteen Points" that were to influence the peace when it was won.[252] Through these, Wilson attempted to target colonization as the relic of a bygone era.[253] This was among the more controversial elements of the Fourteen Points and would engender much debate and ill will at the Peace Conference.[254] The Fourteen Points would also influence other Allies in their rhetoric regarding territorial status and the post-war division of territories.[255] Within these diverse, diffuse, and often confused conditions emerged the construct of "self-determination" that became both a key consideration and a hollow construct as a matter of law and territorial understanding.[256]

Legal elasticity is an essential element in wartime, as the exigencies of combat and political planning have historically caused plans to shift or face collapsing. In the political machinations during World War I, it is easy to discern the importance of legal elasticity to territorial control and to the future construct of the state. While no one in London, Paris or Washington knew what the future would hold, there was universal acceptance that an Allied victory would necessarily result in the territorial dismantling of the Ottoman Empire and the Austro-Hungarian Empire, as well as alienation of German

[251] See generally *ibid*.
[252] President Woodrow Wilson's Fourteen Points (1918)
[253] *Ibid*.
[254] See generally Margaret MacMillan, *Paris 1919: Six Months That Changed the World* (New York: Random House, 2003) [MacMillan, "Paris 1919"].
[255] See generally *ibid*; Fromkin, *supra* note 247.
[256] From the outset, there were many questions as to what the concept entailed and how far it was meant to go; indeed, Wilson himself could not articulate a functional definition of the term when his own advisors sought guidance from him. MacMillan, "Paris 1919," *supra* note 254 at 11.

overseas territories.[257] The forms that the newly freed territories would take were unresolved, however it was clear that these issues could only be solved using legal elasticity in order to meet the demands of such a disparate group of territories and peoples. The extent that this post-war legal elasticity could stretch before it broke, however, was severely tested in the post-war Paris Peace Conference and subsequent negotiations of the Ottoman peace treaty.[258]

The concept of territory during wartime as legally elastic is perhaps self-evident since territory constitutes the theatre of war. The same can be said of the shifting nature of the *imperium* and *dominium* relationship during wartime, as *dominium* often assumes primacy for some periods during which the holder of *imperium* is contested between the sides to the conflict. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to the World War I context demonstrates the ways in which the war was a catalyst for change of the territorial basis for the international system and community until that point. What was different in the context of World War I was the persistent knowledge that the war would change accepted forms of territorial status as well as the holders of *imperium* over territory and that these changes could shift those who held *dominium* of any form into those who held *imperium*. In this way, the territorial changes and challenges presented by World War I differed from prior conflicts in that they would change the accepted standards of state practice and territorial identity.

III. Bounding the Peace through the Lens of Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The end of hostilities had an important meaning for the soldiers involved firsthand in new and inhumane forms of combat. Many of these soldiers were indigenous citizens of the colonies, who would return home with a different sense of identity due to their wartime experiences.[259] These soldiers would start a trend of seeking a different legal relationship with the metropolitan states, one that recognized their role in defending the metropole and its colonial empire and rewarded it with more robust *dominium* and status.[260] In

[257] See generally *ibid*.
[258] See generally *ibid*.
[259] *Ibid* at xxv.
[260] *Ibid*.

many instances this feeling was mirrored by a larger colonial society, which viewed its involvement in the war as validating its status as part of metropolitan society rather than as a secondary overseas entity and in comparison to the robustness of colonial *imperium*. These issues impacted the war settlement treaties negotiations in myriad ways, perhaps most obviously in the place that Britain's dominions held in the negotiation process and the mandate system.[261] Legal elasticity was necessary in order for these ideas to be enunciated and for the state to attempt crafting methods of accommodating these ideas.

At the same time, there was the essential issue of allocating swathes of territory – areas over which, in many instances, at least some of the victorious states had excised influence that amounted to quasi-colonization prior to the war.[262] In addition to the sheer geographic complexities involved, issues of ensuring that territorial transfers did not result in genocidal acts due to inter-communal tensions, the rekindling of entrenched rivalries, and the creation of new states that could destabilize surrounding regions all had to be addressed.[263] Although in many ways modeled on historic practices regarding treaty negotiation, the Paris Peace Conference was thus a different form of diplomacy that reflected the evolution of international law and territorial constructs.[264]

When negotiations were underway, there was a clear dichotomy regarding territorial allocation and boundary creation for territories in Europe and those outside of it. The territories within Europe were either allocated to specific states or designated as "free" or internationalized zones.[265] In addition to outright determinations of statehood and territorial boundaries, the Paris Peace Conference also created several Special Territorial

---

[261] *Ibid* at 44.
[262] *Ibid* at xxvi. This was particularly true in the case of Ottoman territories. *Ibid*.
[263] See generally *ibid*.
[264] *Ibid*.
[265] Examples of the former include Yugoslavia. *Ibid* at ch 9 (noting, in the context of Yugoslavia "the borders drawn through the region left in their wake unhappy minorities and resentful neighbors. And at its heart was the new Yugoslavia. . . What was involved, as so often at the Peace Conference, was not merely land and the fate of its inhabitants, but the future web of alliances on which the peace of Europe would depend."). Key examples of the latter include Danzig (Gdansk) and Memel. See *Treaty of Versailles*, 28 June 1919, 1920 ATS 1 at pt III sects X, XI.

Commissions tasked with deciding particular territorial claims for which the Paris Peace Conference was unable to render a decision.[266]

Yet even within newly created European states, there was a constant theme of often sizeable ethnic and national minority groups that continued to exist despite attempts at neutralizing these issues.[267] Thus, territorial anomalies were reinforced in pockets of distinctive ethnic and other minority groups that often controlled the physical areas in which they lived although not the overall framework of the state. While those at the Paris Peace Conference tried to minimize such areas and potential issues, they in no way indicated that such territorial anomalies would create questions of sovereignty, sovereign rights, or authority in the states where they were located. Indeed, their inclusion seemed to be another aspect of legal elasticity and the *imperium* and *dominium* relationship sanctioned by the Paris Peace Conference.

For territories outside continental Europe, self-governance, self-determination and statehood were not accepted as the appropriate course of action in the short term. However, unlike in prior practice, it was generally not acceptable for these territories to simply be awarded or annexed to victorious states as part of their sovereign jurisdiction.[268] Instead, the resolution created at the Paris Peace Conference and enshrined in the Treaty of Versailles was the mandate system, under which these territories were divided into classifications based on their potential for self-governance and were awarded to different member states of the newly created League of Nations for the purposes of oversight and assistance in preparation for future self-government.[269]

The background system and principles for the mandate system were established under article 22 of the Treaty of Versailles, providing

> [t]o those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the

[266] MacMillan, "Paris 1919," *supra* note 254 at 131 – 132. Examples of such commissions included the Commission on Rumanian and Yugoslav Affairs. *Ibid*.
[267] See *ibid* at 134 – 135.
[268] *Ibid* at 98 – 99.
[269] *Treaty of Versailles*, 28 June 1919, 1920 ATS 1 at pt I.

> modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.[270]

Thus, the focus was shifted from the colonial administrative system of an individual metropolitan state to mandatory states under the supervision of the larger international community through the League of Nations.[271] However, issues of day-to-day administration were still left largely to the discretion of the newly designated mandatory states.

Under the scheme developed for administering the mandate territories, Class A mandates were comprised of

> certain communities formerly belonging to the Turkish Empire [that] have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.[272]

Next were Class B mandates, occurring where

> other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.[273]

Finally, Class C mandates were

> territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their

[270] *Ibid* at art 22.
[271] *Ibid*.
[272] *Ibid*.
[273] *Ibid*.

> small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.[274]

The process of negotiating and implementing the war settlement treaties was legally and politically arduous. Within both spheres, the process could not have been completed without the model of legal elasticity and the *imperium* and *dominium* relationship. Settling borders in Europe was quite a difficult political process and legal elasticity was used in the creation of internationalized zones such as Danzig and Memel. While this solution might not have been fully satisfying to all involved in the negotiations, it demonstrated the ability to stretch the definition of what could be an independent territorial entity as a matter of international law.

The most important examples of legal elasticity and the *imperium* and *dominium* relationship created through the post-war negotiations were, however, the mandate system and the mandate territories. The concept of the mandate system as a matter of law could not have worked in a hardened territorial control system with extremely robust *imperium* and weak *dominium* because the very nature of the mandate system required flexibility on the part of the administering states. Thus, the designation of different mandates according to their assessed viability for self-governance could not be accommodated in a system characterized by legal hardening and indeed required a system of legal elasticity. This was very much akin to the need for legal elasticity in colonization practices that resulted in the use of more than one mechanism for the acquisition of colonies. Similarly, legal elasticity in this context was supported by *imperium* and *dominium* relationships, although the parameters of these relationships varied depending on the mandate classification involved.

IV. Mandate System and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

While the mandates were provided for in the Treaty of Versailles, they were as a matter of law contracts that had to be entered into between the mandatory states and the

[274] *Ibid*.

territories over which they were to exercise mandate control.[275] Additionally, each of these agreements had to be submitted to and approved by the League of Nations.[276] After this process was completed, the mandate system in place for a particular territory was then subject to non-binding oversight from by the Permanent Mandates Commission entity within the League of Nations.[277] Class A mandates were split between French and British control.[278] Class B mandates were also split largely between France and Britain, although Belgium also held some mandatory functions.[279] In the African context, Class C mandates were administered by the South African dominion.[280] In the Pacific, Class C mandates were split between Australia and New Zealand as dominion territory, with a small amount of authority also vested in Japan.[281]

a. Class A Mandates

In 1922, the mandate agreement between Britain and Iraq went into effect.[282] More than anything, the agreement established the British role as providers of advice and guidance to the Iraqi monarch and his government as they transitioned the territory into a sovereign entity that would be ruled over by a Constituent Assembly as well as the monarchy.[283] The Iraqi mandate was one of the more successful mandates and ended in 1932, when the British and Iraqi governments agreed to the termination of the mandate as a matter of law and recognized Iraq as an independent state.[284]

---

[275] See *ibid*.
[276] See "Letter from the Secretary-General to the Members of the League Concerning the Terms of "C" Mandates" in *League of Nations Official Journal*, 2 League of Nations OJ 84 (1921).
[277] Michael D Callahan, *Mandates and Empire: The League of Nations and Africa, 1914 – 1931* (Brighton, UK: Sussex Academic Press, 2008) at 58 – 59 [Callahan, "Mandates and Empire"].
[278] Fromkin, *supra* note 247 at 410 – 411; James Crawford, *The Creation of States in International Law*, 2d ed (Oxford: Oxford University Press, 2006) at 568 – 570.
[279] Callahan, "Mandates and Empire," *supra* note 277 at 3.
[280] Shaw, *supra* note 95 at 224 – 227.
[281] Edward I-te Chen, "The Attempt to Integrate the Empire: Legal Perspectives" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895 – 1945* (Princeton, Princeton University Press, 1984) at 242 – 246; "Letter from the Secretary-General to the Members of the League Concerning the Terms of "C" Mandates," *supra* note 276.
[282] See *Treaty Between Great Britain and Iraq*, *League of Nations Official Journal*, 3 League of Nations OJ 1505 (1922).
[283] *Ibid*.
[284] "Mandates" in the *League of Nations Official Journal*, 14 League of Nations OJ 152 (1933).

Britain was granted a Class A mandate over Palestine, a territory which had been the subject of intense debate and planning before and during the war years, particularly in terms of the possibility of relocating Jewish populations to the area.[285] At the outset, the mandate terms established that the British administration should act

> in favor of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine.[286]

As a recognition of the diverse communities and legal systems existing within the Palestinian territory, it was required that "the Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights. Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed."[287] In this way, legal elasticity supported by robust *imperium* and robust *dominium* at the communal level was intended to serve as the bridge between Ottoman laws and governance systems and the ultimate goal of independence for the territory.

Within the mandate territory, British administrators were faced with issues that plagued those attempting to craft coherent self-governing entities out of former Ottoman territories, namely issues associated with the legal and communal pluralism that had become the hallmark of Ottoman government.[288] This was a challenge not only for those seeking to administer the territory and prepare it for self-government but also for the communities within the territory, which were faced with a drastically different system of law than they had previously functioned under and thus created a vacuum of legal identity for the territory they controlled.[289] Over time the British slowly changed their policy of allowance of the continuing *millet*-styled legal and communal structures into a policy that established legal and cultural identity and rights based on shared concepts of ethnicity.[290] The evolution of these practices can be seen as legal hardening to some

---

[285] See generally Fromkin, *supra* note 247.
[286] *Mandate for Palestine*, 24 July 1922 at preamble.
[287] *Ibid* at art 9.
[288] See Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC: University of North Carolina Press, 2006) at 2.
[289] *Ibid* at 4.
[290] *Ibid* at 38.

degree, although it was coupled with the intent to use hardened policies in a way that would result in robust *dominium* for the territory as a whole such that ultimately it could become independent and exercise robust *imperium*.

French administration of the Syria and Lebanon mandates involved swift action to create multiple administrative districts within the mandate territory.[291] There were notable protests and overt anti-French actions in the Syrian territories, resulting in the use of force at first, and then the promise of the mandate administration to grant the territory – with Lebanon as a separate territorial and political – independence in 1936.[292] These agreements might have been preferable to the administration on the ground in the mandate, however the metropolitan French government subsequently refused to ratify them as binding law.[293] In this instance, there was a clash between legal elasticity within the mandatory regime and legal hardening on the part of the metropolitan government. This can be seen as a clash between the robust *imperium* of the state and the robust *dominium* exercised by the mandatory government within the territory even though this was part of the same metropolitan government. This reveals the tensions within the mandate system from the perspective of the mandatory state. In addition, it demonstrates that despite such clashes and the attempts of the mandatory state to rein in expectations within the mandate, legal elasticity was essential for the fluid and evolving mandate system to function.

While Class A mandates were intended to be the most governmentally advanced of the mandate territories, this does not mean that they could be governed with a uniform policy even by the same mandatory state. Indeed, Britain and France governed each of the Class A mandates with legal elasticity – particularly due to the entrenched *millet*-based system of governance and communal legal and societal identity that had been tradition aspects of Ottoman government in the region – and in terms of the robustness of the *imperium* and

[291] Quinn, *supra* note 203 at 198 – 199; Bouche, *supra* note 205 at 93 – 94; see also William I Shorrock, "The Origin of the French Mandate in Syria and Lebanon: The Railroad Question, 1901 – 1914" (1970) 1 International Journal of Middle East Studies 133
[292] Quinn, *supra* note 203 at 199; Bouche, *supra* note 205 at 327.
[293] *Ibid*.

dominium relationship, notably when decisions were made regarding the ability of the mandate territories to function as independent states.

b. Class B Mandates

There were many issues attendant in the creation and implementation of Class B mandates in what had formerly been German East Africa, including the very name of the territory itself.[294] One of the most complex issues raised was the French assertion that mandates were not necessary for certain German colonial territories such as Togo and Cameroon, which they believed should be placed under their sovereign control rather than exist as mandates.[295] Eventually, these issues were settled in favor of incorporating the contested territories into the mandate system.[296] It is important to note these disagreements, however, because they indicate that legal elasticity was vital to the construction of the mandate system after the Treaty of Versailles.

Under the terms of the British Mandate for the Tanganyika Territory, "the Mandatory shall be responsible for the peace, order and good government of the territory, and shall undertake to promote to the utmost the material and moral well-being and social progress of its inhabitants. The Mandatory shall have full powers of legislation and administration."[297] Similar terms were used for the British Mandate for Togo and Cameroon, although that mandate contained far more expansive terms regarding administration of the territory.[298] Specifically, the Mandate for Togo and Cameroon provided that the territory was to be administered "in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions. The Mandatory shall therefore be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions."[299] These terms underscore the tensions felt by the mandatory states in terms of how mandate territories were to be conceived of within the framework of their traditional metropolitan and

[294] Callahan, "Mandates and Empire," *supra* note 277 at 46 – 52.
[295] *Ibid* at 54 – 55.
[296] *Ibid*.
[297] *Ibid* at appendix B art 1.
[298] *Ibid* at appendix C art 9.
[299] *Ibid*.

colonial territory dichotomy. Such terms indicate the importance of legal elasticity that was supported by robust *imperium* – even if this was a different construct of *imperium* than that used in the colonies – and increasingly robust *dominium*.

Part of the essential differences between mandate territories and colonies in Britain and France involved the bureaucratic machinery responsible, as these eventually became separate entities with separate motivating philosophies.[300] This was reflected in the creation of new forms of law and administrative rules for the mandates as opposed to those used in the colonies.[301] As a mandatory state, the French government tended to provide greater legal rights to citizens of mandate territories than to citizens of French colonies.[302] Similar dichotomies existed within the British legal system as well.[303]

Applying the model of legal elasticity and the *imperium* and *dominium* relationship to Class B mandates demonstrates that legal elasticity supported by the *imperium* and *dominium* relationship was necessary for the mandate system to function. The legal elasticity used was different than in Class A mandates, however, since there was the potential for greater mandatory state governance and assertions of control in Class B mandates. In this scenario, the parameters of legal elasticity were tighter than those in Class A mandates and support was centered on the robust *imperium* and weak *dominium* relationship that was intended to change over a significant period of time.

c. Class C Mandates

In the Pacific, the Class C mandates were technically agreed to by the British government acting on behalf of the Australian and New Zealand dominion governments that would carry out the functions of a mandatory state.[304] The vast difference between the terms of Class A, B and C mandate agreements was palpable from the very outset in the terms of these agreements. The New Guinea agreement providing that

---

[300] Michael D. Callahan, *A Sacred Trust: The League of Nations and Africa, 1929 – 1946* (Brighton, UK: Sussex Academic Press, 2004) at 23 – 25 [Callahan, "Sacred Trust"].
[301] See *ibid* at 23.
[302] *Ibid* at 104 – 106.
[303] *Ibid* at 107.
[304] See "Letter from the Secretary-General to the Members of the League Concerning the Terms of "C" Mandates," *supra* note 276.

> the Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Commonwealth of Australia, and may apply the laws of the Commonwealth of Australia to the territory, subject to such local modifications as circumstances may require"[305]

is a quintessential example of these differences in mandates and was used in the other British dominion-administered Pacific mandate territories.[306] The Japanese mandate for former German territories in the Pacific included the same language.[307] In Africa, the British government undertook the mandate for Southwest Africa on behalf of the government of South Africa in an agreement with the same terms and requirements.[308] Ultimately, this would become the scene of several international arguments regarding the use of mandatory power, particularly in the years after World War II.[309]

Class C mandates were in many ways the least elastic in that the mandatory state retained the most extensive ability to use existing laws and rules in the metropole for mandate governance. At the same time, the presumption of governmental inability on the part of the mandate territory required Class C mandate holders to administer the area far more closely than Class A or even Class B mandates. Class C mandates required legal elasticity supported by the robust *imperium* and weak *dominium* relationship. Unlike in contexts such as colonization, it was intended that the *dominium* relationship would shift from weak to robust under the oversight of the mandatory state. This necessitated legal elasticity in the conception and administration of these territories as non-colonial and yet non-metropolitan entities.

---

[305] *Mandate for the German Possessions in the Pacific Ocean Situated South of the Equator, Other than German Samoa and Nauru*, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 85 (1921) at art 2; see also *Nauru Island Agreement 1919* (UK), 1919.
[306] *Ibid*.
[307] *Mandate for the Former German Possessions in the Pacific Ocean Lying North of the Equator*, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 87 (1921) at art 2.
[308] *Mandate for German South-West Africa*, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 89 (1921) at art 2.
[309] See *International status of South-West Africa*, Advisory Opinion, [1950] ICJ Rep 128; *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase Judgment, [1966] ICJ Rep 6.

V. New Colonialisms and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The 1933 election of the Nazi regime in Germany brought with it severe impacts for Germans themselves, continental Europe, overseas Germans and the League of Nations.[310] At the League of Nations level, the election was followed by German withdrawal of membership and renunciation of obligations.[311] The impact on colonialism was immediate in that the official justifications for withdrawal targeted the loss of German colonies under the Treaty of Versailles and stressed German overseas colonies were necessary to the health of the nation.[312]

Germany began its territorial conquests when it reoccupied the Rhineland in direct violation of the terms of the Treaty of Versailles.[313] As with overseas colonies, the arguments offered for this occupation centered on the inherent rights of Germany to the territory and on the impropriety of it being stripped through the Treaty of Versailles.[314] Another threat to the stability of the League of Nations came from the Italian proposal to make Ethiopia, a legally recognized state and League of Nations member, into a mandate territory under Italian control.[315] This proposal was rejected on many levels, not the least because it attempted to revoke the sovereignty of a legally recognized state and place it at the disposal of another state.[316] Undeterred, the Italian regime proceeded to invade and conquer Ethiopia in 1936 and withdrew from the League of Nations in 1938.[317]

Prior to, during and after World War I, the Chinese government was in a state of disarray following the overthrow of the monarchy.[318] China's legal and political instability was of particular interest to Japan before the war and was perhaps more so after the war, when Japan believed it had been slighted by the Treaty of Versailles because it had not been

[310] Callahan, "Sacred Trust," *supra* note 300 at 63.
[311] *Ibid*.
[312] *Ibid* at 65 – 66.
[313] *Ibid* at 88.
[314] *Ibid*.
[315] *Ibid* at 76 – 84.
[316] *Ibid*.
[317] *Ibid* at 82 – 83.
[318] Westad, *supra* note 229 at 137 – 170; Jonathan D Spence, *The Search for Modern China* (New York: WW Norton & Company, 1990) at chs 11, 12; Beasley, *supra* note 245 at 101 – 102.

allowed to take possession of territories in China.[319] By the 1930s, the Japanese conception of their relationships within the Asian region began to coalesce around the idea of "co-prosperity," through which Japan would be the leader over the interests of other states in the region that would benefit economically from this relationship.[320] The lynchpin to this concept was Manchuria, over which Japan asserted many claims and interests and which the Japanese legal and political community came to identify as a separate territorial and legal entity from China.[321] These goals were achieved through military force in 1932 and the territorial and governance entity known as Manchukuo was officially established in Manchuria.[322] Over time, the laws and juridical structures in Manchukuo were transitioned from the traditional Chinese laws in effect at the time to Japanese based concepts and strictures.[323] This was accompanied by governmental and societal changes that were made in other Japanese colonial territories, as well as the creation of a near military state in many respects, one that was under the authority of a governor with exhaustive powers.[324]

Following World War I, the Japanese began to exert a more visible and controlling military presence in Korea and Taiwan.[325] Throughout the interwar period, there was a debate in metropolitan Japan as to how far assimilation of colonial populations, particularly those in Korea and Taiwan, should be taken.[326] This met with mixed results and was often accompanied by the use of force to compel assimilation and cooperation on

---

[319] See Edward I-te Chen, *supra* note 281 at 242 – 246.
[320] Beasley, *supra* note 245 at 175; Peter Duus, "Imperialism without colonies: The vision of a greater east Asian co-prosperity sphere" (1996) 7 Diplomacy & Statecraft 58 – 69.
[321] *Ibid* at 186; Westad, *supra* note 229 at ch 7.
[322] Beasley, *supra* note 245 at 195; Westad, *supra* note 229 at ch 7.
[323] Beasley, *supra* note 245 at 195; Louise Young, "Imagined Empire: The Cultural Construction of Manchukuo," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) at 79 – 80; Ramon H Myers, "Creating a Modern Enclave Economy: The Economic Integration of Japan, Manchuria, and North China, 1932 – 1945," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) at 139 – 140.
[324] Beasley, *supra* note 245 at 195 – 196; Y Tak Matsusaka, "Managing Occupied Manchuria, 1931 – 1934," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) at 97.
[325] Mark R Peattie, "Introduction," in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895 – 1945* (Princeton: Princeton University Press, 1984) at 27.
[326] See Mark R Peattie, "Japanese Attitudes Toward Colonialism, 1895 – 1945," in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895 – 1945* (Princeton: Princeton University Press, 1984) at 96 – 109.

the part of the indigenous communities.[327] At the end of the interwar period, and throughout the early years of World War II, Japan instituted a more targeted assimilationist policy in Taiwan and Korea, although this was aimed at social integration and identity building rather than the creation of colonial peoples that were legally or politically on par with those in the metropole.[328]

During the interwar period, states that had previously been viewed as second class states, notably Italy and Japan but also Germany after the war, saw opportunities for growth and development as well as change and challenge for themselves and the larger international system of territorial control and sovereignty. These states responded to the crisis of perceived maltreatment in the Treaty of Versailles and the domestic challenges that stemmed from World War I by adopting new patterns of colonization and colonialisms.

The new colonialisms of the interwar years were generally examples of hardened territorial control and an inflexibly robust *imperium* that allowed only weak *dominium* in the colonial territories. In many ways, this was entirely new in terms of the metropole – colony relationship, even among far more entrenched colonizing states in the international system. Indeed, the new colonialisms were seemingly far more focused on imposing robust *imperium* without seeking a *dominium* balance due to the role of ideology in their colonial undertakings rather than more traditional colonial justifications such as profit and economic protection. However, these relationships can be seen as a natural outgrowth of German, Japanese and Italian colonial practices prior to World War I. These practices were also hardened and lacked the legal elasticity as well as an attempt to create a balanced *imperium* and *dominium* relationship that characterized entrenched colonizing states such as Britain and France. Thus, in the new colonialisms of the interwar years we see a continuation of these hardened regimes of territorial control and, concomitantly, hardened regimes of state control.

---

[327] *Ibid* at 96 – 109, 120 – 122.
[328] Wan-yao Chou, "The *Kominka* Movement in Taiwan and Korea: Comparisons and Interpretations," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945 (*Princeton: Princeton University Press, 1996) at 41.

VI. Conclusion

In addition to the territorial and sovereignty-based impacts of the mandate systems on the mandate territories, it must be noted that the mandates had a distinct impact on the mandatory states and their colonies. Throughout World War I, particularly prior to the entrance of the United States, the main Allied powers intended to create a post-war system in which German overseas territories and the territories of the Ottoman Empire outside of Turkey were divided and annexed directly to the victors. These plans were built on the entrenchment of Britain and France in colonialism, as well as the many years of influence these states had exerted on particularly Ottoman territories prior to the war through of extraterritoriality, alliances with various religious groups, and trade and commerce.

The entrance of the United States in the conflict required a changed tenor in at least overt discussions of how to handle these territories in light of the principles enunciated in the Fourteen Points. As an end result, the primary European Allies became mandatory states within the newly created and legally nebulous mandate system. It is perhaps easy to see the impact of this on thwarted political and economic plans for the future of Britain and France. What is more important, however, is to examine what the status of being a mandatory state did to the construct of territory – and overseas territory in particular – within the mandatory state itself.

The mandates were not colonies, and this created a strange dichotomy for mandatory states that were administering colonies on one hand and mandates on the other. In some ways, colonies were superior territorial entities because they were part of a defined state that administered them and incorporated them into its sovereign governing structure. On the other hand, territory that was separated by nothing more than a border was now subject to greater freedom and civil rights allowances – in the mandate states – as opposed to those that were used and guaranteed in the colonies. Thus, to the colonial sense of understanding, the dichotomy could easily be viewed as troublesome. The same troubles plagued metropolitan administrators. In order to reconcile these forms of territorial control and governance, it was essential that metropolitan states that were also

mandatory states utilize legal elasticity that was supported by a balanced *imperium* and *dominium* relationship. To do otherwise would have resulted in the implementation of territorial controls that either were so robust in terms of *dominium* that they resulted in weak *imperium* – by implementing the standards expected for the mandate states in all colonies – or so robust in terms of *imperium* that they resulted in a weak *dominium* – by implementing the standards used for colonies to mandate territories. Even in the latter situation, it would have been difficult for the metropolitan states to craft a hardened form of territorial control given that they used multiple forms of territorial control throughout the colonies themselves.

The emergence of new colonialisms during this period was marked by the use of hardened territorial control and an *imperium* and *dominium* relationship characterized by the assertion of robust *imperium* over colonies that were granted a very weak *dominium*. However, the legal hardening implemented during the interwar years was to become excessive and inspire dissent among the colonized that sought to exercise greater *dominium* if not *imperium*.

The interwar years were characterized by uncertainty and upheaval in the legal, political and societal contexts. They offered immense changes and challenges to states and individuals alike, and also offered the potential for growth and development in terms of legal mores regarding territorial control in the form of anti-colonization undertakings. At the same time, this was the period during which other members of the international community began to embrace a hardened form of territorial control and colonial expansion. Applied to the mandate system as a whole, the legal elasticity of the period was supported by a robust *imperium* and moderately robust *dominium* relationship, although some mandates experienced weaker *dominium* than others. Overall, application of the model of legal elasticity and the *imperium* and *dominium* relationship to the response to World War I and the years that followed it demonstrates that legal elasticity was essential even for systems that began to harden, as they stretched legal elasticity as the boundary beyond which they would not go in future legal and political relations.

Chapter 5 – Territory, Sovereignty, Statehood and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship Post-World War II

I. Introduction

World War II permanently altered the international system at the state and societal level. Legal and political power structures changed, senses of identity and place were forever upended, and constructs of allowable force and the place of the international community in policing the use of state force were relocated.

World War I was a global war in the sense that there was combat in Europe, in the vestiges of the Ottoman Empire, and briefly in areas such as the German African colonies. What gave it a truly global nature was not the number of territories involved but the presence of nearly all colonial populations in the war effort. While certainly the same was true of World War II in terms of the involvement of colonial and mandate state populations, this was a more geographically expansive conflict, one that left very few areas untouched.

The war settlement agreements for World War I were negotiated amidst a tense Paris Peace Conference set against overall coalescence on the part of the major allies to implement the agreements once they were complete. In contrast, World War II saw cracks in the relationships between the Allies emerge early on and become more entrenched as a matter of law and political philosophy. The result was the creation of war settlement agreements that were in many cases difficult to enforce due to the tensions between the Allies, such as those relating to Germany.

When the war settlement agreements were created for World War I, two of the three key defeated states no longer existed as such, and the remaining German state was thought to be capable of governing itself subject to the terms of the Treaty of Versailles. In contrast, at the end of World War II the defeated states continued to exist, although the loss of their governing systems and the devastation caused by the war resulted in questions as to their ability for self-government in the short term. The result of this was the temporary use of military governance or governance through Allied committees until the legal and political situations were considered sufficient for self-governance.

As part of World War II's upheaval, constructs of territory, sovereignty and statehood also changed, necessarily incorporating elastic territorial control. The period after World War II saw an increase in the importance of decolonization and the turning of former mandate territories into independent states. In itself, this represented a break with the trends of international acceptance of territorial conquests and with acceptance of metropolitan arguments regarding the importance of colonization.

Additionally, decolonization provided many important steps in the current status of territory in relationship to sovereignty and statehood, steps that are essential to understanding how and why absolute control and sovereignty over territory is elastic in the modern construction of territorial control and the *imperium* and *dominium* relationship and, concomitantly, sovereignty and statehood. For all of these reasons, this was a period of growth, development, change and challenge to legal constructs of territory and territorial control. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to this period of incertitude provides insights into how these issues were handled in a way that builds on past legal constructs of territorial control while also breaking new ground based on the legal and political conditions of the time.

II. Territory, War and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

World War II began in different ways on different continents. In Europe, it officially began in 1939 with the German takeover of Poland and the subsequent declarations of war by Britain and France.[329] In Asia, it began in 1937 with the war between Japan and China and spread outward as Japan sought to expand its territorial holdings and the scope of the Greater East Asia Co-Prosperity Sphere.[330] From the outset of the war, despite arguments that the mandate territories should not be involved in the conflict, it was clear that these territories would be part of the war efforts and sites of contestation.[331] In addition, it became clear that the war could result in the alteration of the legal

[329] Kennedy, *supra* note 245 at 339.
[330] Beasley, *supra* note 245 at 226 – 227; Peter Duus, "Introduction," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945 (*Princeton: Princeton University Press, 1996) at xxi – xxii [Duss, "Introduction"].
[331] Callahan, "Sacred Trust," *supra* note 300 at 178 – 179.

classification of mandates within a metropolitan state's structure for the duration of the war, as well as the imposition of new laws by the mandatory state during wartime.[332] This was in itself an example of legal hardening during wartime, supported by increasingly robust *imperium* and weakened *dominium*.

The duality of the metropole/colony and mandatory state/mandate territory relationship in the conflict was highlighted by the fall of France to Nazi forces and the installation of the Vichy metropolitan government, placing French colonies and mandate territories under Vichy control.[333] This fact alone brought the war to French overseas territories. Throughout the course of the war, many colonies and mandate territories switched allegiances to the Free French government.[334] What is interesting is that decisions regarding allegiances were made by a colonial or mandate territory leader, typically a governor,[335] thus giving these colonies and territories and their leaders a new sense of power and independence from the metropole. This also vested them with additional ideas of control over and rights to territory. As was seen in the mid-stage of colonization, situations in which conflict interrupts the metropole's established governmental function and causes the colony to engage in increased self-government is an example of at least temporary legal elasticity that is supported by a shift to a weakened *imperium* and robust *dominium* relationship. As was also seen in the mid-stage of colonialism, metropolitan efforts to impose legal hardening in the colonies at the end of the conflict are often met with challenges and this was to be the case in the aftermath of World War II as well.

In Asia and the Pacific, the focus of the Japanese wartime government shifted from securing Manchuria and other parts of China to expanding territorial control throughout the Pacific region.[336] This was made easier by the vulnerability of European colonies in the region that had been affiliated with a metropolitan regime deposed by the Nazi

[332] *Ibid* at 179.
[333] Quinn, *supra* note 203 at 217 – 218.
[334] Bouche, *supra* note 205 at 357 – 359.
[335] *Ibid*.
[336] See generally Peter Duus, "Introduction," *supra* note 330.

government.[337] Eventually, some areas were allowed to enter into formal agreements with the Japanese government that granted them measures of independence in exchange for continued political and military support and assistance to the Japanese state.[338] However, the general pattern was for direct Japanese military control over the territories it held, with limited involvement of local communities in some but not all instances.[339] For preexisting Japanese colonies and protectorates the war had many impacts. In Korea, there was an official act making Korean territory part of Japan proper, thus removing its colonial status and shifting the administrative entities that oversaw it.[340] Among other implications, this resulted in a more concerted effort to do away with the vestiges of Korean culture and tradition in order to create cultural uniformity with Japan.[341] Throughout the war, Japanese colonial policy continued to stress legal hardening that was supported by robust *imperium* and weakened *dominium*. When measures of independence were granted to some territories, they were still subject to hardened territorial control in that independence came with residual obligations to Japan and with the knowledge that the territories involved could be retaken by the Japanese.

Just as the war changed the lives and outlooks of those in Europe and Asia so too did it change the lives and outlooks of those in the colonies and the mandate states. What began at the end of World War I as a belief that those who had fought for the metropole should have greater standing and value as a matter of law rapidly grew into a belief that colonies and/or mandates should have greater legal autonomy altogether.

Throughout the conduct of the war, there was a practical legal elasticity in that colonies and mandate territories were lost – and sometimes regained – by metropolitan states. There was also the practicality of the colonial and mandate territories existing in an elastic situation in which they essentially lost the metropole to enemy forces and were

---

[337] See Beasley, *supra* note 245 at 226, 232; E Bruce Reynolds, "Anomaly or Model? Independent Thailand's Role in Japan's Asia Strategy, 1941 – 1943," in Peter Duss, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945 (*Princeton: Princeton University Press, 1996) at ch 8.
[338] See *ibid*.
[339] See Beasley, *supra* note 245 at 233 – 243.
[340] Marius B Jansen, "Japanese Imperialism: Late Meiji Perspectives," in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895 – 1945* (Princeton: Princeton University Press, 1984) at 77.
[341] *Ibid*.

then required to decide whether to surrender or mount resistance efforts. In many French colonies and mandate territories, the initial decision to accept control by the metropolitan Vichy government changed over time to overt and covert stances against the Vichy government, resulting in territories loyal to a deposed government. As a result of these situations, the true nature of legal elasticity emerged in that there was still a sense of loyalty to and willingness to be under the control of a particular metropolitan state, at least to a point.

III. Bounding the Peace through the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

In 1941, the United States and Britain issued the Atlantic Charter to reaffirm the general principles upon which the Allies fought and their goals for the post-war years.[342] Included in the terms of the Atlantic Charter was language somewhat similar to the Fourteen Points providing that both states "seek no aggrandizement, territorial or otherwise,"[343] "desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned,"[344] and "respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them."[345] As in World War I, the Allies took these terms to mean different things, with Roosevelt advocating for a broader definition of self-determination and its relationship to empire than Churchill.[346] Ultimately, however, the discussions and legal instruments that most impacted on the concept of territory, sovereignty and statehood were the war settlement agreements and the Charter of the United Nations.

The terms of post-war occupation and governance for Germany established in the 1945 Potsdam Agreement reflected the military and practical reality of the German territory

[342] *Atlantic Charter*, 14 August 1941, (1941) *AJ Supp* 191. See also Callahan, "Sacred Trust," *supra* note 300 at 182.
[343] *Atlantic Charter*, 14 August 1941, (1941) *AJ Supp* 191 at art I.
[344] *Ibid* at art II.
[345] *Ibid* at art. III; Callahan, "Sacred Trust," *supra* note 300 at 182.
[346] Callahan, "Sacred Trust," *supra* note 300 at 182.

being occupied by the Allies in zones.[347] The ultimate authority within the German territory was to be a combined council of designated military commanders from each Allied state's zone.[348] The underlying goal of these administrations was guaranteeing order while at the same time ensuring that the machinery of Nazism was dismantled and publicly discredited.[349] At heart, much of the Potsdam Agreement was an open relationship between Britain, the Soviet Union, and the United States, one in which it was envisioned that issues of territorial governance would eventually be handled amicably and that this situation would terminate at a certain point in the future when Germany was ready to regain full legal control of its territory.[350] However, as a result of the confrontation between East and West in the years following the Potsdam Agreement this did not occur. Instead, the German state was divided into East and West, and the City of Berlin became a territorial island that provoked disputes between the former allies.[351] Forty-five years after the Potsdam Agreement, the final treaty relating to Germany was agreed to in 1990 after Germans had voted in favor of reunification and establishing a centralized territorial unit under the rubric of exercising the German right to self-determination.[352]

The war settlement agreement with Japan was formalized in the 1951 Treaty of San Francisco.[353] By this time, Japan had surrendered and was being governed through an American military administration.[354] The treaty ensured that the Allied states recognized Japanese territorial sovereignty while Japan explicitly renounced claims to territories it had taken as colonial possessions or occupied during the war, including territories it

---

[347] See generally *Potsdam Agreement*, United State Government Printing Office, 1945 at arts 1, 2.; see also Roger H Wells, "Interim Governments and Occupation Regimes" (1948) 257 Annals of the American Academy of Political and Social Science 57 at 61 – 63.
[348] *Potsdam Agreement*, United State Government Printing Office, 1945 at sect II, A, 1; see also Wells, *supra* note 347 at 61 – 63.
[349] *Ibid* at sect II, A, 3.
[350] See generally *ibid*.
[351] Crawford, *supra* note 278 at 459 – 465; Wilson Miscamble, "Deciding to Divide Germany: American policymaking in 1949" (1991) 2 Diplomacy & Statecraft 294; Albert Legault, "La crise de Berlin de 1962" (1979) 10 Etudes internationales 91, 91 – 104; Philip E Mosely, "The Occupation of Germany: New Light on How the Zones Were Drawn" (1950) 28 Foreign Affairs 580.
[352] See *Treaty on the Final Settlement with Respect to Germany*, 5 May 1990, (1990) 29 ILM 1187; Karl Kaiser. "Germany's Unification" (1990 – 1991) 70 Foreign Affairs 179.
[353] See *Treaty of San Francisco*, 1 September 1951, 136 UNTS 45.
[354] Bernhard Knoll, *The Legal Status of Territories Subject to Administration by International Organizations* (Cambridge: Cambridge University Press, 2008) at 236.

claimed through the League of Nations mandate.[355] The intension of the treaty was for this system of governance to continue on until the Japanese government was functional again.[356]

Separate war settlement treaties were entered into with Bulgaria, Finland, Hungary, Italy, and Romania, states initially allied with the Axis powers that entered into armistice instruments with the Allies before the end of the war.[357] An essential part of these agreements was that they settled the borders of the signatory states as well as other contested borders in the area.[358] Under the terms of the war settlement agreement with Italy, Italian colonial possessions were renounced and the combination of Britain, the Soviet Union and the United States were to determine the future of these territories.[359] During the war, Ethiopia's sovereignty and independence had been reestablished and recognized by the British government after it was liberated from Italian control in 1943, thus it was not part of the war settlement agreements except to the extent that Italy was required to renounce any claims to it.[360]

Following the surrender or capitulation of Axis and former Axis powers, the Allies were faced with the issue of how to govern and administer the territories over which they now had nominal control.[361] In 1943, the Allied powers addressed this issue through governing commissions.[362] These commissions were responsible for maintaining order

---

[355] *Treaty of San Francisco*, 1 September 1951, 136 UNTS 45 at arts 1(b), 2.
[356] See *ibid*; see also Wells, *supra* note 347 at 66 – 69; Philip H Taylor, "The Administration of Occupied Japan" (1950) 267 Annals of the American Academy of Political and Social Science 140; Jack P Napier, "Military-Civilian Relations in the Occupation of Japan and Korea" (1954) 8 Journal of International Affairs 151.
[357] See *Treaty of Peace with Bulgaria*, 10 February 1947, 41 UNTS 21 at preamble; *Treaty of Peace with Finland*, 10 February 1947, 48 UNTS 203 at preamble; Treaty of *Treaty of Peace with Hungary*, 10 February 1947, 41 UNTS 135 at preamble; *Treaty of Peace with Italy*, 10 February 1947, 49 UNTS 3 at preamble; *Treaty of Peace with Romania*, 10 February 1947,42 UNTS 3 at preamble; see also Wells, *supra* note 347 at 57 – 60.
[358] *Treaty of Peace with Bulgaria*, 10 February 1947, 41 UNTS 21 at art 1; *Treaty of Peace with Hungary*, 10 February 1947, 41 UNTS 135 at art 1; *Treaty of Peace with Italy*, 10 February 1947, 49 UNTS 3 at arts 1 – 14; *Treaty of Peace with Romania*, 10 February 1947,42 UNTS 3 at arts 1 – 2.
[359] *Treaty of Peace with Italy*, 10 February 1947, 49 UNTS 3 at art 23.
[360] Saul Kelly, *Cold War in the Desert: Britain, the United States and the Italian Colonies, 1945 – 1952* (London: MacMillan Press, Ltd, 2000) at 6.
[361] See Wells, *supra* note 347 at 57.
[362] Kelly, *supra* note 360 at 6.

throughout the appropriate territory as well as for political matters with the territory.[363] In Italy, the committee functioned through the 1947 Italian war settlement agreement.[364] The committees for Bulgaria, Hungary and Romania functioned until the terms of war settlement agreements had been ratified.[365]

The 1945 Charter of the United Nations created a new international organization to replace the League of Nations. As with its predecessor, one of the central goals of the United Nations was – and continues to be – the maintenance of international peace and security, and thus the prevention of warfare.[366] Members of the United Nations agreed to respect the territorial sovereignty of other member states in their own dealings and to act in collective self-defense should the territory of another member state be attacked.[367] In terms of admissions criteria, the Charter provides that membership "is open to all peace loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations," although membership must be ratified by other member states through an organizational process.[368] These provisions are silent, however, on how to determine what constitutes a state.[369]

Additionally, the Charter of the United Nations established the Trusteeship Council to oversee former mandate and colonial territories that were to be administered as "trust territories" under a new international regime.[370] The foundation of the trust territories system and the basis for the Trusteeship Council was a revamped version of the mandates system, under which

> member states . . . which have or assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognize in principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within

[363] *Ibid*; see also Wells, *supra* note 347 at 57 – 60.
[364] *Ibid* at 57 – 60.
[365] *Ibid* at 59 – 61.
[366] See *Charter of the United Nations*, 26 June 1945, Can TS 1945 No7 at preamble.
[367] *Ibid* at arts 2, 51.
[368] *Ibid* at art 4.
[369] See *ibid*.
[370] *Ibid* at art 7.

> the system of international peace and security . . . the well-being of those inhabitants of these territories, and . . . (b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.[371]

Included in the essential purposes of the trusteeship system overall is the promotion of inhabitants' "progressive development toward self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned."[372]

There were three ways in which territory could be designated as trust territory under this system. First, territory that had been subject to a League of Nations mandate could be converted to a trust territory.[373] Second, territories which had been part of or acquired by the Axis powers were eligible for trust status in the same way that German and Ottoman territories were made subject to mandates at the end of World War I.[374] Finally, the metropolitan state could voluntarily agree to designate a territory over which it had authority as subject to the trust system.[375] The Trusteeship Council was established as a separate United Nations organ charged with overseeing trusteeship administration and comprised of representatives from trust administering states as well as from the overall membership of the General Assembly.[376]

Throughout the war and in its immediate aftermath, there was disagreement between the Allies as to how to settle issues of former colonies and territories of enemy states, as well as enemy states themselves, and the territories that had been transferred between states as the result of combat. In deciding the fate of these states and territories, the Allies were themselves required to handle these issues in an elastic manner that reflected the realities of wartime as well as the need to craft an environment that would lead to a lasting peace. In these situations, robust *imperium* and typically weak *dominium* were used to support legal elasticity that allowed for the maintenance of these territories although it was

[371] *Ibid* at art 73.
[372] *Ibid* at 76(b).
[373] *Ibid* at art 77(1)(a).
[374] *Ibid* at art 77(1)(b).
[375] *Ibid* at art 77(1)(c).
[376] *Ibid* at art 86.

acknowledged that these situations would not be permanent and would require a shifting *imperium* and *dominium* relationship.

The very nature of attempting to govern the German state and the City of Berlin within a quadripartite system of states, particularly those that began to experience severe political cleavages, required legal elasticity in all elements of state control and territorial administration and operated within a delicate and shifting version of the *imperium* and *dominium* relationship that was frequently made into a political tool. The situation was different in Japan, where post-war administration was handled largely through the American military structure, although this too required the use of elastic constructs of territorial control and state control in order to craft a constitutional and governmental system that would be acceptable to the Japanese population and the international community. Applying the model of legal elasticity and the *imperium* and *dominium* relationship here demonstrates that there was a steadily expanding system of legal elasticity that began in military administration and then became more elastic in the years after the war. During the military administration, legal elasticity was supported by a robust *imperium* and relatively weak *dominium* relationship that was intended to – and did – shift over time as *imperium* was returned to the Japanese state and issues of *dominium* became an internal matter.

The use of commissions to govern Italy and other states that were occupied during and after the war was not novel *per se*, yet required similar legal elasticity to that needed in Japan in order to provide for the immediate functioning of legal and governmental institutions while at the same time expanding the involvement of the local population as wartime threats disappeared. As in the Japanese context, legal elasticity was supported by robust *imperium* and a shifting *dominium* relationship that was administered with an eye toward re-establishing state *imperium*.

At heart, the trusteeship concept embodied the requirement of legal elasticity and the *imperium* and *dominium* relationship in that it encouraged decolonization on a widespread scale. This required the trust administering states to incorporate a variety of different governing mechanisms and legal systems throughout the decolonization process.

It also required that the boundaries of law and territorial control be elastic and that the *imperium* and *dominium* relationship used be geared toward strengthening *dominium* within the trust territories to the point that they were able to exercise theoretically robust *imperium* as independent states in the international system.

IV. Trusteeship System and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Unlike the mandate system, there was no enunciated territorial classification system used within the trusteeship system. Thus, trust territories were technically equal within the international system, although the parameters of their relationship to the trust administering state depended on the agreements that were used. In fact, it was possible for mandate and colonial territories to be joined together as a new territorial entity under the same trust administering state provided that all sides agreed[377] or for mandate territories to be split and administered as separate trust territories, even by different trust administering states.[378]

An example of the standard terms used in trusteeship agreements involving both Britain and France is from the agreement between the British government and Togoland.[379] In terms of legal and administrative measures, the agreement provided the British government

> shall have full powers of legislation, administration and jurisdiction

[377] "Trusteeship and Related Questions" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 755, 766 (discussing British handling of the areas comprising Togoland and Cameroon as trust territories in relationship to the British Nigerian colony); "Conditions in Individual Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1956) at 336, 345 – 348.

[378] See "Trusteeship Agreement for the Territory of Togoland Under British Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).

[379] See *ibid*. See also "Trusteeship Agreement for the Territory of the Cameroons Under British Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947); "Trusteeship Agreement for the Territory of Tanganyika (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947); "Trusteeship Agreement for the Territory of New Guinea (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947); "Trusteeship Agreement for the Territory of Western Samoa (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947); "Trusteeship Agreement for the Territory of Togoland Under French Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947); "Trusteeship Agreement for the Territory of the Cameroons Under French Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).

> in the Territory, and shall administer it in accordance with his own laws as an integral part of his territory with such modification as may be required by local conditions and subject to the provisions of the United Nations Charter and of this Agreement.[380]

One of the key requirements was that the trustee government assist the local population through increasing involvement in governance issues and with the creation of political and legal institutions within the territory.[381] Similarly, in Western Samoa, the New Zealand government introduced a legislative system that heavily involved members of the indigenous communities from the beginning.[382] According to this system, the local legislative bodies were able to create laws that related to "peace, order and good governance" provided that they did not directly violate the laws of New Zealand.[383] Where there existed offenses or other issues that were not regulated by New Zealand law, the indigenous community was able to use local courts and customs.[384]

Typically, the decision to grant independence to a particular trust territory was made by the trust administering state following a territory-wide vote on the issue.[385] Approval from the Trusteeship Council was not strictly necessary, however the metropolitan parliament of the trust administering state generally had to enact legislation to effect the formal transfer of power and *imperium*.[386]

Following the war, Italy was granted a trusteeship agreement over its former Somaliland colony with the proviso that the territory must be prepared for independence within ten

---

[380] "Trusteeship Agreement for the Territory of Togoland Under British Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947) art 5(a).
[381] *Ibid* at art 6.
[382] "Trusteeship and Related Questions" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 755, 797.
[383] *Ibid* at 798.
[384] *Ibid*.
[385] See e.g. "The Future of the Togolands" in *Yearbook of the United Nations* (New York: UN, 1956) at 368, 373; see also Brian Digre, "The United Nations, France, and African Independence: A Case Study of Togo" (2004) 5 French Colonial History 193.
[386] "The Future of the Togolands" in *Yearbook of the United Nations* (New York: UN, 1956) at 368, 368 – 370; "Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1960) at 451, 471 – 473; "Questions Concerning the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1950) at 699, 762; "Questions Concerning Non-Self Governing Territories" in *Yearbook of the United Nations* (New York: UN, 1950) at 673, 702; *Papua New Guinea Independence Act 1975* (Cth).

years of the trusteeship grant.[387] However, under the terms of the trusteeship grant, Italy was required to consult with the United Nations Council for Somaliland for all essential domestic and international legal and administrative matters.[388] This reflected the underlying support for the idea of allowing Italy to serve as a trusteeship administrator, namely that this should be allowed "in order to encourage Italy to become 'a bastion of democracy' in the Mediterranean" while at the same time limiting the powers of Italy as a trust administering state.[389] By the mid-1950s, the Italian administration in Somaliland established an inclusive legislature for the state and oversaw elections in which the majority of seats were dedicated to and filled by members of the indigenous Somali population.[390] By 1960, in accordance with the terms of the trusteeship agreement, Somaliland became an independent state.[391]

There was another way to subject a territory to the oversight of the United Nations – through metropolitan designation of a particular territory as non-self-governing.[392] Over time, the majority of colonial possessions were designated as non-self-governing territories although not all of these territories became independent.[393] In some instances,

---

[387] "Questions Concerning the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1950) at 699, 797.
[388] "Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1952) at 558, 692.
[389] Kelly, *supra* note 360 at 10.
[390] "Conditions in Individual Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1956) at 336, 342.
[391] "Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1960) at 451, 469 – 470.
[392] *Charter of the United Nations*, 26 June 1945, Can TS 1945 No7 at ch XI.
[393] See "Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1976) at 675; "Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1977) at 817; "Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1978) at 809; "Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1979) at 999; ""Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1980) at 1035; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1981) at 1096; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1982) at 1257; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1983) at 1011; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1984) at 993; ""Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1985) at 1059; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1986) at 895; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1987) at 955; "Questions relating to decolonization" in

independence was relatively easy to achieve.[394] In many instances, however, these territories were the site of protracted disagreements between the metropolitan state, other states – often influenced by other considerations such as their place within the East/West power dichotomy – and United Nations organs regarding practices and timing for increased self-government and independence.[395] What was notable was that there seemed to be different focuses for the determination of whether self-government and independence was appropriate.[396] More often than not, the metropolitan states argued about the pragmatic elements of this debate – essentially the appropriateness of the conditions on the ground – while other states and United Nations organs tended to argue about the more theoretical elements of the debate – essentially the philosophy behind the idea of promoting self-government and independence.[397]

In terms of British colonies, efforts at decolonization were undertaken in earnest from the 1950s onward and were largely unremarkable in their process.[398] Indeed, although the decolonized states no longer could be classed as official British territorial holdings, they were eligible for and generally did accept membership in the Commonwealth of Nations, an amalgam of now independent former British colonies and dominions that pledged loyalty to the Crown.[399] This is not to suggest that the decolonization process was without violence or bloodshed in the British context, as certainly this was not the case in prominent examples such as India and Kenya.[400] However, as Spruyt notes, the British example of decolonization demonstrates that pragmatism was an essential aspect of the

---

Yearbook of the United Nations (New York: UN, 1988) at 719; "Questions relating to decolonization" in *Yearbook of the United Nations* (New York: UN, 1989) at 753; "Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1990) at 905"Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1991) at 777; "Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1992) at 945; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1993) at 152; "Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1994) at 182.

[394] See *ibid*.

[395] See generally *ibid*.

[396] See generally *ibid*.

[397] See generally *ibid*.

[398] Hendrik Spruyt, *Ending Empire: Contested Sovereignty and Territorial Partition* (Ithaca, NY: Cornell University Press, 2005) at 117 – 120 [Spruyt, "Ending Empire"].

[399] See *Charter of the Commonwealth* (2012); see also Lorna Lloyd. "'Us and Them': The Changing Nature of Commonwealth Diplomacy, 1880 – 1973" (2001) 39 Commonwealth & Comparative Politics 9; David W McIntyre. "The admission of small states to the commonwealth" (1996) 24 Journal of Imperial & Commonwealth History 244.

[400] Spruyt, "Ending Empire," *supra* note 398 at 117 – 118.

process, and that in some instances it overshadowed the interests of British overseas settlers who had much to lose from decolonization itself.[401]

Immediately after the war ended, the French government attempted to formulate a post-war system for France and her colonies that was more inclusive of colonial rights yet still under the legal and political control of metropolitan France's robust *imperium*.[402] This effort was set against increasing nationalistic sentiments throughout the French colonies that had been exposed to wartime hardship, as well as different political theories from communism to self-determination, and were unable to revert back to their pre-war existence and status.[403] At the same time, while there was general agreement that there should be some form of representative status for the colonies, many in the metropole were unwilling to cede control over the metropole to this body.[404] The creation of the French Union for colonial entities was intended to create a space in which there were colonial-based legislative entities and an overarching representative body.[405] The French Union terminated in 1958, at which point the majority of the former-colonial territories it had created to include and control had already become independent states.[406]

Internally, the trust administering states faced the requirement that they administer the trust territories while at the same time creating the legal and political institutions that would serve as the frame upon which new states would be built in these areas. Thus, the trust administering states incorporated legal elasticity and a shifting balance of the *imperium* and *dominium* relationship domestically and in the trust territories.

Domestically, these states had to legislate in order to allow the delegation of powers to create, fund and support the newly emerging legal and political institutions in the trust territories. This required legal elasticity and a shifting balance between robust *imperium* and weak *dominium* when the trust was first created and the intended strengthening of *dominium* that would ultimately result in the transfer of *imperium* to the leaders of the

[401] *Ibid* at 120.
[402] Quinn, *supra* note 203 at 222 – 223; Bouche, *supra* note 205 at 378 – 379.
[403] See Quinn, *supra* note 203 at 223.
[404] *Ibid* at 224 – 225. As stated during metropolitan discussions, "France must not become the colony of its former colonies." *Ibid* at 224.
[405] *Ibid* at 224 – 225; Bouche, *supra* note 205 at 394 – 395.
[406] Bouche, *supra* note 205 at 482.

territory. Legal elasticity and a shifting balance in the *imperium* and *dominium* relationship were also necessary for envisioning the future relationship between the trust administering state and the trust territory.

In the trust territories, the actors involved in the newly emerging legal and political institutions also used legal elasticity supported by a shifting balance in the *imperium* and *dominium* relationship. As these legal systems and political institutions were increasingly fashioned with territorial independence in mind, the focus became taking control of the territory over time and establishing the territory as an independent state with its own political identity. This implicated elastic territorial control in that these measures required the accommodation of different viewpoints and plans for shaping the state after independence. Such concerns were particularly important in the situation of merging different territorial administration units into one larger independent state entity. Legal elasticity and a shifting balance in the *imperium* and *dominium* relationship was necessary to accommodate the change in identity from the territory as having *dominium* of some form within the larger *imperium* system of the trust administering state to the territory as the independent holder of *imperium*.

Essentially, the same considerations regarding elasticity in territorial control and the *imperium* and *dominium* relationship existed throughout the decolonization process for non-mandate trust territories as well as for mandate territories. If anything, the need for elasticity was even greater in the context of the metropolitan states involved because decolonization of colonies designated as trust territories rather than mandate territories struck a deeper and more resonant legal and societal chord within the metropole. For example, the process of determining how to handle the French colonial possessions from the end of World War II onward was difficult as a matter of law and society due to the important place that the colonies held in the French state system.[407]

[407] Quinn, *supra* note 203 at 222 – 223. As noted by one official, "without the Empire France is nothing but a liberated country, thanks to the Empire, she is a conquering country." *Ibid*. at 223; see also Bouche, *supra* note 205 at 377 (stating simply "[a]u debut de 1945, pour les Francais, la decolonization n'etait tout simplement pas imaginable."); Spruyt, "Ending Empire," *supra* note 398 at 46 – 50.

From the beginning of the Trusteeship Council onward, there was controversy and disagreement over the scope of the trusteeship concept and how to determine what territories should be put into it.[408] In particular, there was a question as to whether full independence and autonomy of the trust territory was always the goal to be attained, or whether self-governance by the trust territory while it still remained part of the larger trusteeship administering state territory was sufficient.[409]

For years, the Trusteeship Council – and the General Assembly – sought to craft a legal definition of when it would be appropriate, if not required, for a trust territory to be deemed a self-governing entity.[410] The response tended to imply that only the trust administering state itself was in the legal and factual position to make such a determination, but that the Trusteeship Council could provide advice and guidance on the issue.[411] In that vein, the Trusteeship Council endorsed a number of factors that could be taken into account when assessing the self-governance status of a trust territory.[412] All of these factors together demonstrate that the need for legal elasticity and the *imperium* and *dominium* relationship had been translated into international concerns and evaluations as well even if this was not acknowledged outright.

While the United Nations, its organs and their declarations were important to the decolonization process, the bulk of the decolonization process – and its terms and motivations – occurred outside of the organizational parameters of the United Nation nations. Instead, decolonization happened in many ways and took on many forms, from high-level legal and political policy making to local protests and insurgencies. Decolonization theory and the overall attitude of the international community toward the

[408] See "The Trusteeship Council Including the United Nations Functions under Chapter XI of the Charter" in *Yearbook of the United Nations* (New York: UN, 1946 – 47) at 569; "International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1947 – 48) at 725.
[409] See "Trusteeship and Related Questions" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 755, 763.
[410] "Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1951) at 604, 605.
[411] *Ibid*.
[412] See "Trusteeship and Related Questions" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 755.

validity and appropriateness of decolonization in terms of allowing colonized territories and peoples their own self-determination rights, came to the fore of the discussion. The concept of significant international oversight during the decolonization process was controversial whether it involved trust territories or pure colonies. There are many reasons for this, no doubt one of the most prevalent being concerns over the maintenance of state sovereignty in the face of international inquiry into sensitive matters such as colonial divestment. Being subject to such oversight prompted several reactions on the part of trust administering and colonizing states. In some examples, this resulted in legal hardening in which the state refused to provide information to the Trusteeship Council or otherwise to cooperate with the United Nations on the topic of decolonization. In other examples, this resulted in legal elasticity in that trust administering and decolonizing states cooperated with the oversight actions and requests of the Trusteeship Council and the United Nations generally while protesting many findings and statements that were issued by both. Given the latitude of powers for trust administering and decolonizing states, this was seemingly the preferable method in that it allowed the state to function at the international level by using legal elasticity while at the same time retaining the robust *imperium* and less robust/weak *dominium* relationship depending on the territory at issue.

V. Conclusion

The final acts of colonization and the concept of the metropole-colony dynamic played out during World War II and the years that followed. The impacts of the war were felt in every corner of the world, across every facet of society, and sounded in domestic and international law. Within these confines, the model of legal elasticity and the *imperium* and *dominium* relationship became essential to the functioning of states, especially colonial states and new states emerging from the colonial system.

During the war, the occupation of France and the Netherlands by Nazi forces brought implications not only for the metropolitan states themselves but also for the colonies. In the French colonies in particular, this led to initial occupation by metropolitan-based Vichy forces, followed by colonial and mandate-actor based decisions as to supporting and fighting for the Free French government. The result was an upside down situation in

which the colonies were fighting for themselves and the future of the metropole. In itself, this relationship required legal elasticity in terms of territorial control as well as in the concept of state control and identity within the constructs of the state system. Legal elasticity in this context was supported by a weakened yet still robust *imperium* – or at least the idea of it as espoused through the resistance forces – and a robust *dominium*.

Negotiating the peace and the war settlement agreements was a nuanced undertaking, one in which the boundaries of the post-war world were established through a series of treaties. Germany generally and Berlin in particular became the site of partition by the four Allied powers, followed swiftly by further partition based on ideology and politics between the Allies. Within this situation, legal elasticity in territorial and state control supported by a robust *imperium* and robust *dominium* relationship with each sector allowed functioning systems to be created and enforced. The war settlement agreement with Japan endorsed the re-creation of the Japanese governmental system through the military command. This necessitated legal elasticity in that the military government was required to ensure order throughout the state and then transfer territorial control back to the state as it regained its ability to function. This system also necessitated legal elasticity in the requirement to work with Japanese representatives to craft a constitution that allowed the state to function as part of the international community and then transfer designated powers to the newly constituted governing structure until the handover of the state was complete. This would have been nearly impossible in a hardened system, as the entire process required flexibility and a shifting *imperium* and *dominium* relationship. Similar legal elasticity requirements were imposed in the settlement agreements for Italy and other former Axis states, particularly in terms of the use of a joint governing body in Italy.

The international system inaugurated through the Charter of the United Nations ushered in an era of decolonization that depended on the model of legal elasticity and the *imperium* and *dominium* relationship at the level of the metropole or trust administering state as well as at the level of the colony or trust territory. In both instances, there was a shift of territorial and state control over time that required accommodation through the model of legal elasticity and the *imperium* and *dominium* relationship. At the same time,

legal elasticity and the *imperium* and *dominium* relationship were vital to ensuring that metropolitan and trust administering states withstood international oversight of their practices in a productive way that also allowed them to continue in their roles as the holders of *imperium* domestically and in the trust territory or colony.

Chapter 6 – Anomalies of Economy and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

This serves as the first of three chapters studying different forms of anomalies of territory that exist in current law and practice. As noted in Chapter 1, these studies will apply the model of legal elasticity and the *imperium* and *dominium* relationship in order to analyze areas of anomaly that have the potential to undermine territorial sovereignty and statehood in the modern international law system. Each of the anomalies examined occurs in a situation characterized as having the potential for growth and development as well as change and challenge that at least facially poses a threat to balance within the *imperium* and *dominium* relationship. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to the examined anomalies demonstrates its utility as a legal theory in current law and state practice.

I. Introduction

As the international economy has become part of modern life, it offers states opportunities for growth and development as well as for change and challenge in the domestic sphere. Indeed, some globalization theorists posit that the international economy and its instruments diminish the state.[413] Regardless the accuracy of this, it is true that recent and current internationalizing of economies across the globe has resulted in concomitant growth, development, change and challenge to legal constructs of territory and territorial control. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to this situation is then necessary in order to assess the continued applicability of the model to anomalies of economy in the present day.

This chapter focuses on ways in which the territorial control and overall *imperium* of the state ("host state") have been challenged by the presence of foreign corporations engaging in economic activities within designated territorial areas of the host state. These are, in essence, areas of potential foreign dominance within the larger territory of the host state. The chapter examines the legal regimes that govern foreign corporate presence in, and relationship to, the host state in terms of territorial control and sovereignty. What

[413] See e.g. O'Rourke & Williamson, *supra* note 8; Andreff, supra *note* 6; Tonnesson, *supra* note 6.

emerges is a series of situations in which the model of legal elasticity and the *imperium* and *dominium* relationship allows these anomalies of economy to exist – and indeed benefit the host state – without undermining the territorial sovereignty of the host state. What also emerges is an understanding that these anomalies, while incorporating new technologies and using new terminologies, are in fact part of an historical continuum of state incorporation of the model of legal elasticity and the *imperium* and *dominium* relationship to respond to periods of growth, development, change and challenge while preserving the territorial primacy of the state.

The first study examines special economic zones ("SEZs") across host states encompassing a broad spectrum of development statuses and legal structures. SEZs are potentially problematic for host state territorial control in that they not only are bounded areas to which foreign corporations are encouraged to relocate due to benefits such as favorable tax laws but they also are subject to different legal regimes than those used in the overall territory of the host state.

As a corollary, the second study examines the impacts of foreign state and foreign corporation purchases of large land tracts within a host state. The reasons for these purchases take many forms, from agricultural development to natural resource extraction to the creation of industrial areas in cooperation with host state based businesses. Regardless the reason for these purchases, the ability of foreign states or corporations to impact host state laws and host state access to vital agricultural products for domestic markets has become an issue of concern.

The third study examines internationalized ports and airports – areas that are controlled or administered by privatized/potentially privatized foreign corporations or partnerships between domestic and foreign corporations – within a host state. As vital areas in terms of access to host states, areas of national security concern, and drivers for economic development, ports and airports in general hold a special place in the host state. The issue becomes whether privatization involving foreign actors undermines an essential function of the host state and erodes the host state's sovereign legitimacy while causing a shift in balance in the *imperium* and *dominium* relationship.

Finally, the fourth study examines the emerging trend of host states reapplying forms of extraterritoriality to areas with large concentrations of foreign populations that share vastly different legal and social mores than used by the host state. In doing so, these states have resurrected concepts that were formerly created for the benefit of the host state in terms of societal and economic protections and yet fell out of favor when they came to be viewed as tools of oppression by foreign states.

II. Special Economic Zones and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Special Economic Zones ("SEZs") are deceptively simple in theory. In exchange for some form of benefit within a designated territorial area of the host state – typically tax breaks, reduced legal requirements or an entirely different economic system – foreign corporations bring capital and jobs to the host state.[414] Generally, the successes enjoyed by these corporations attract other foreign corporations to the area, essentially creating a form of chain investment and development both within the bounded territory of the SEZ and the host state.[415]

The use of SEZs has increased since the concept was pioneered in China during the 1970s and 1980s.[416] In China, the SEZ was used as an important tool for growth and experimentation at a time when the Chinese government was seeking to reconcile the dictates of traditional communist economic theory with a perceived need to become part of the international capitalist economy for state survival.[417] Against this background,

[414] See Thomas Farole & Gokhan Akinci, "Introduction," in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 3; Nicolas Papadopoulos, "The Role of Free Trade Zones in International Strategy" (1987) 5 European Management Journal 112 at 115.
[415] Farole & Akinci, "Introduction," *supra* note 414 at 2 – 3. Development within the host state often extends to feeder industries located outside the SEZ area. *Ibid*.
[416] *Ibid* at 5 – 6; George Fitting, "Export Processing Zones in Taiwan and the People's Republic of China" (2006) 22 Asian Survey 732.
[417] Richard Auty, "Early Reform Zones: Catalysts for Dynamic Market Economies in Africa," in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 217; Henry R Zheng, "Law and Policy of China's Special Economic Zones and Coastal Cities" (1987) 8 NYUJ Int'l & Comp Law 193 at 196.

SEZs in China were used as test sites from which important legal systems have emerged.[418]

In the beginning, there were four SEZ sites in China that were carefully selected for their strategic economic locations, including their ability to feed off neighboring areas such as Hong Kong.[419] The number of SEZs throughout China has progressively increased as their successes became apparent.[420] Governance of Chinese SEZs is somewhat unlike that of other SEZs due to their existence within a communist governmental structure, which requires that Chinese SEZs are governed by designated local administrative authorities at the most basic level.[421] Above this is the provincial government, followed by the national Office of Special Economic Zones, which exists as part of the Chinese State Council.[422]

Throughout the Chinese SEZ system, there is a delicate tension between the ideology of the state and economic development. This has, in some instances, resulted in SEZs that are subject to laws created under capitalistic economic theories and at their very core a challenge to the underlying Chinese communist state. However, applying the model of legal elasticity and the *imperium* and *dominium* relationship to Chinese SEZs allows for this tension to exist without undermining the state. Here, legal elasticity has been carefully and pragmatically applied in order to allow for economic growth while at the same time establishing the bounding parameters of the SEZ within the overall Chinese communist governmental system. Legal elasticity in Chinese SEZs has been and remains supported by a balance of robust *imperium* and *dominium* that is robust to the extent allowed by the state.

Outside of China, India has played an important role in the development of SEZs.[423] At the national level in India, SEZs are authorized either as projects between national and

---

[418] See Zheng, *supra* note 417 at 203; Yue-Man Yueng et al, "China's Special Economic Zones at 30" (2009) 50 Eurasian Geography and Economics 22 at 23.
[419] *Ibid*.; Victor SF Sit, "China's Export-Oriented Open Areas: The Export Processing Zone Concept" (1988) 28 Asian Survey 661.
[420] See Zheng, *supra* note 417 at 197.
[421] *Ibid* at 210.
[422] *Ibid*.
[423] See generally Amitendu Palit & Subhomoy Bhattacharjee, *Special Economic Zones in India: Myths and Realities* (New York: Anthem Press, 2008); KR Gupta, "Introduction," in KR Gupta, ed, *Special Economic*

regional governments or solely by the regional government with approval from the national government.[424] The national government is charged with establishing oversight for SEZs within the nation as a whole,[425] although regional governments are empowered to allow the construction and operation of medical, educational and recreational services and installations as part of the SEZ in addition to basic commercial facilities and housing facilities.[426] The provision of infrastructure and resources to and within the SEZ is either undertaken by the corporation developing the SEZ or arranged for in conjunction with the appropriate governmental entities.[427] In some regional states there are allowances for the establishment of special courts within the SEZ to hear matters that solely relate to conduct occurring inside the SEZ.[428]

Indian SEZs do not share the same inherent theoretical tensions as Chinese SEZs in that they exist within a capitalist economic structure. They do, however, highlight the need to balance the national and the regional in terms of law and governance systems extended to SEZs. In a hardened system of territorial control this relationship would not be possible, as power sharing between the national and regional governments would not be supported. However, applying the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that it is possible for both national and regional governments to share legal power within the SEZs with support from a robust *imperium* and robust *dominium* relationship, just as it is possible for there to be robust *dominium* in the SEZs themselves without undermining national or regional *imperium*.

China and India set the initial standards for SEZ development, governance and, crucially, relationship between the host state, its territory and the corporations operating within

---

Zones: Issues, Laws and Procedures, vol 1 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008) at 3 – 4.

[424] India, *Special Economic Zones Act*, 2005 at art 3(1)(2).

[425] *Ibid* at arts 11, 31.

[426] See India, *U.P. Special Economic Zone* (Amended Policy) – 2007 at art 6.2.1; India, *Kerala SEZ Policy*, 2005 at art 5; Ramakrishna Nallathiga, "The Role of Special Economic Zones in Regional and National Development," in KR Gupta, ed, *Special Economic Zones: Issues, Laws and Procedures*, vol 1 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008) at 55.

[427] See India, *SEZ Policy*, Chandigarh Administration, 2005 at art V (1), (2); *Act No. 11*, India, *Act No. 11*, Gujarat 2004 at ch VI; India, *Resolution No. SEZ 2001/(152)/IND – 2*, Government of Maharashtra 2001 at arts 3 – 4.

[428] India, *No 2460*, Government of Jharkhand 2003 at art 9.

SEZs. Since the 1970s, many states have created SEZs for a variety of economic purposes. Within these SEZs, there are discernible trends of law and governance that require further examination through the lens of the model of legal elasticity and the *imperium* and *dominium* relationship.

One of the first steps in the development of a SEZ is legislative authorization *per se* as well as the creation of an administrative entity charged with developing and overseeing the SEZ territory.[429] Across most legal systems, the administrative entity created is distinct and is often tasked with providing infrastructure such as electricity and water in the SEZ and surrounding areas.[430] In many instances, the powers of the administrative entity extend to the creation of zoning, land use and environmental laws and rules for the area, provided these are in compliance with essential provisions of the host state's laws.[431]

Generally, the essential benefit of operating within a SEZ, at least from the standpoint of a foreign corporation, is a taxation and customs holiday of some sort. Many of these taxation holidays are quiet lenient.[432] While the number of states embracing SEZs is impressive, it should be noted that many of these states do no intend for the tax and other incentives initially offered to foreign investors in the SEZ area to last in perpetuity.[433]

There are many different systems for land control and leasing used within SEZs, which tend to reflect the level of host state concern regarding foreign land ownership.[434] In this

[429] See Mustafizul Hye Shakir & Thomas Farole, "The Thin End of the Wedge: Unlocking Comparative Advantage through EPZs in Bangladesh" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 27; *Bangladesh Economic Zones Act*, Bangladesh 2010, preamble; Jean-Marie Burgaud & Thomas Farole, "When Trade Preferences and Tax Breaks Are No Longer Enough" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 165; Antigua & Barbuda, *Free Trade and Processing Zone Act*, 1994 at sects. 3, 5 – 8, 11.
[430] Indonesia, *Law Number 39 of 2009 Regarding Special Economic Zones*, 2009 at arts 7, 13 – 15.
[431] Kingdom of Jordan, *Aqaba Special Economic Zone Law no 32*, 2000 at arts 8, 52; Lao People's Democratic Republic, *Law on Investment Promotion*, 2009 at art 33.
[432] Andrew Tarbuck & Chris Lester, *Dubai's Legal System* (Dubai, UAE: Motivate Publishing, 2009) at 9.
[433] Burgaud & Farole, *supra* note 429 at 217 – 219; Madagascar, *Loi No 89-027 relative au regime de Zone franche industrielle a Madagascar*, 1989 at art 32.
[434] Shakir & Farole, *supra* note 429 at 35; Lao People's Democratic Republic, *Law on Investment Promotion*, 2009 at art 42; Madagascar, *Loi No 89-027 relative au regime de Zone franche industrielle a Madagascar*, 1989 at art 46.

situation, leases are often used to allow foreign corporations land access within SEZs. These leases are typically for a set term of years, as it is uncommon for land within the SEZ to be directly sold to a foreign corporation or individual.[435] In addition, business operations within the SEZ are typically authorized through licenses from the host state government or designated host state agency.[436]

Within the SEZ, it is common for the governing administrative authority to provide separate security and policing and for the host state and the administrative entity to determine the extent to which the host state's laws will apply within the SEZ and to those affiliated with the SEZ.[437] Typically, there are import restrictions on certain goods into and out of the SEZ area – most often these restrictions are on items that pose a risk to public safety.[438] Indeed, in some SEZ systems there are strict border policing requirements to ensure that there is as little interaction of goods and persons as possible.[439] Further, some SEZ laws require that certain essential national industries and natural resources not be extracted, processed or conducted within SEZ boundaries.[440]

Critical examples of host state legal regimes that are stringently applied to foreign corporations operating in the SEZs, and to SEZs administering entities, include environmental laws and environmental protection regimes and planning laws.[441] In many instances, the host state's penal law is extended to operations within the SEZ, although in some instances there is a separate penal code in place to govern the SEZ itself.[442]

---

[435] Shakir & Farole, *supra* note 429 at 35; Romania *Free Zones Law No 84/1992*, 1992 at arts 10, 12.
[436] Antigua & Barbuda, *Free Trade and Processing Zone Act*, 1994 at sect. 14; Lao People's Democratic Republic, *Law on Investment Promotion*, 2009 at art 33.
[437] Shakir & Farole, supra note 429 at 35; Michael Engman, "Success and Stasis in Honduras' Free Zones," in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 62.
[438] See Chile, *Aprueba el Texto Refundido, Coordinado y Sistematizado del Decreto con Fuerza del Ley No 341, de 1977, del Ministerio de Hacienda, Sobre Zonas Francas* at art 7.
[439] Romania *Free Zones Law No 84/1992*, 1992 at arts 1 – 3; US, USAID, *Customs Guide: Customs Project and Business Environment that Promote Commerce and Investment* (USAID Program Customs and Business Climate to Promote Trade and Investment – El Salvador, 2008) at 35.
[440] See Russian Federation, *Federal Law No 116-FZ of July 22, 2005 on Special Economic Zones in the Russian Federation*, 2005 at art 4; Guatemala, *Decree No 65-89, Free Trade Zones Law*, 1989 at art 41.
[441] Bangladesh, *Bangladesh Economic Zones Act*, 2010 at sects 6 – 13, 33; Republic of Mozambique, *Decree No 42/2009*, 2009 at art 23; Antigua & Barbuda, *Free Trade and Processing Zone Act*, 1994 at sect 17.
[442] Kingdom of Jordan, *Aqaba Special Economic Zone Law no 32*, 2000 at art 54.

Among the legal regimes in SEZ territory that are typically permitted to vary from host state regimes are wage and labor laws.[443] This has caused criticism of SEZs, particularly where there are concerns over wages and working conditions in SEZ factories.[444] Where these concerns have become problematic, it is not uncommon for host states to enact legislation that seeks to remedy these issues and to place additional requirements on the designated administrative agencies for the SEZs.[445] Banking laws are an area in which host states have generally extended their laws within the SEZ territorial area as well.[446]

Perhaps one of the most unique SEZ regimes exists in the Democratic People's Republic of Korea, where despite the communist and inherently closed economic and political system in the host state itself, several capitalist based SEZs have been created.[447] Generally, territorial rights within the North Korean SEZs are restricted to leases of no more than fifty years and it is clear that this territory is legally territory of the host state regardless of the lease.[448] Foreigners who are in the territory of the North Korean SEZs are considered to be under the jurisdiction of their home states, while the territory of the SEZ itself is solidly considered to be within North Korea.[449] However, in at least one of the North Korean SEZs separate legislative and judicial bodies exist and apply law without the strictures of standard North Korean law.[450]

SEZs represent pragmatic efforts by host states to craft novel economic policies and allow for overseas investors to receive tax and other benefits from the host state without altering the legal regime applicable throughout the host state. Technically, SEZs can be

---

[443] See Burgaud & Farole, *supra* note 429 at 163.
[444] See Sheba Tejani, "The Gender Dynamics of Special Economic Zones" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) at 262 – 266; William Milberg & Matthew Amengaul, *Economic development and working conditions in export processing zones: A survey of trends* (Geneva: International Labor Organization, 2008).
[445] See Shakir & *Farole*, supra note 429 at 39.
[446] Dominican Republic, *Law 8-90*, 1990 at art 41.
[447] Patricia Goedde, "The Basic Law of the Sinuiju Special Administrative Region: A Happy Medium Between the DPRK Constitution and Hong Kong Basic Law" (2003) 3 Journal of Korean Law 77 at 83 – 85.
[448] *Ibid* at 98.
[449] Eric Yong-Joong Lee, "Development of North Korea's Legal Regime Governing Foreign Business Cooperation: A Revisit Under the New Socialist Constitution of 1998" (2000) 21 Nw J Int'l L & Bus 199 at 223 [Lee, "Development"].
[450] Eric Yong-Joong Lee, "The Special Economic Zones and North Korean Economic Reformation with a Viewpoint of International Law" (2004) 27 Fordham Int'l LJ 1343 at 1350 – 1351.

considered territorial anomalies because they are sites of changed law within a host state as well as sites of heavy foreign investment and corporate involvement, often to the exclusion of the host state. In this way, SEZs have the potential to undermine the sovereign territorial control exercised by the host state because they operate under different laws than the majority of the host state.

Such a view forgets that SEZs and the legal mechanisms used within them are the result of host state law and constitute an example of the host state's robust *imperium*. These laws set the parameters for the SEZs, parameters that are monitored and enforced by host state oversight entities for the SEZs. Regardless the state involved, governmental oversight of SEZ activities is an essential component of SEZs law and governance. The use of leases for landholding within SEZ territory further emphasizes the status of the SEZ as existing at the will of and through the laws of the host state by disallowing foreign corporations permanent land tenure interests in SEZ.

It is true that there are special taxation, customs, labor and even penal law provisions applicable to the SEZs and to those inside them. Within this setting, it is certainly possible to envision an atmosphere in which foreign legal mores are brought into the host state although they do not reflect the laws of the larger host state itself. Indeed, the North Korean SEZs are primary examples of this although there is extremely limited interaction with the host state itself. Prior examples of these forms of activities can be found by analogizing modern day SEZs to the legation and extraterritorial areas designated by states such as China and the Ottoman Empire in order to allow important foreign trade to occur but to restrict where foreigners and foreign entities could conduct such trade. As discussed in Chapter 3, the concept of extraterritoriality had many negative connotations and associations for host states. Here, there is an inverse situation in that host states have opened themselves up to foreign corporations and investment in designated areas through systems that require legal elasticity that is supported by a robust *imperium* and robust *dominium* relationship.

Criticisms and concerns regarding the impact of SEZs as anomalous territorial areas within a state echo in legal hardening and the *imperium* and *dominium* relationship, as

well as hardened state control *per se*, because they assume that deviations from the standard legal mechanisms established by the state necessarily imply a weakened ability of the state to control domestic territory and thus weak *imperium*.[451] Through this lens, the SEZ then becomes a site of powerful and robust *dominium* that threatens to undermine the host state's abilities as the holder of *imperium* because deviations from the standard host state laws and rules are not accommodated well in the hardened model.

This disregards, however, the essential core of SEZs as host state-based and host state-enforced creations that operate pursuant to legal parameters allowed by the host state within its function as the sovereign and holder of *imperium*. Applying the model of legal elasticity and the *imperium* and *dominium* relationship allows a better understanding of SEZs as areas of territorial anomaly. Although SEZs are by their nature anomalous areas of territory for taxation and customs purposes they exist as an exercise of the state's sovereign power, which includes the ability to grant *dominium* to sub-units. *Dominium* in this case is quite robust, however the state was responsible for the creation of the SEZs and SEZs were not forced upon the host state by foreign corporations.

III. Foreign State/Corporation Land Purchasing and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

In contrast to SEZs, foreign state land purchases involve concerted efforts by states to purchase land overseas and insinuate themselves into the host state through large-scale territorial investment that is often likened to a form of neo-colonial undertaking.[452] Although the motivations for these activities are myriad, many of them center on securing access to resources that the foreign state is otherwise unable to provide in sufficient supply or must import for its citizens.[453] A variant on this trend occurs where the investor

[451] See e.g. Tejani, *supra* note 444; Milberg & Amengaul, *supra* note 444.
[452] See W Anseeuw et al, *Transnational Land Deals for Agriculture in the Global South: Analytical Report based on the Land Matrix Database* (Berne: Land Matrix Database, 2012) at 24; Michael Kugelman, "Introduction," in Michael Kugelman & Susan L Levenstein, eds, *Land Grab? The Race for the World's Farmland* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009). 3; Chido Makunike, "Large-Scale Agricultural Investment in Africa: Points to Ponder," in Michael Kugelman & Susan L Levenstein, eds, *Land Grab? The Race for the World's Farmland* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009) at 85.
[453] Semahagn Gashu Abebe, "The Need to Alleviate the Human Rights Implications of Large-scale Land Acquisitions in Sub-Saharan Africa" (2012) 4 Goettingen Journal of International Law 873 at 875; Chin-shian Liou, "Bureaucratic Politics and Overseas Investment by Chinese State-Owned Oil Companies:

is a large foreign corporation that, although private, still has the potential to yield immense power over the territory and government of host states that are in need of financial investments and other resources.[454] By far the emphasis on these forms of land purchases has occurred in the African context, although other areas such as South-East Asia, South America and Eastern Europe have also become destinations for these investments.[455]

Often included in the land offering and sale or lease agreement for these transactions is a value judgment on the part of the host state relating to the importance of the territory – and the resources located on it – as well as the importance of real and potential hardships faced by those who occupy or lay some form of private or indigenous claims to the territory.[456] However, it must be remembered that decisions regarding the use of territory and the potential for exercising eminent domain, while they might sound in morally unpalatable terms due to their impacts on affected populations, are essentially decisions of the sovereign over its territory. Thus, the involvement of the state in making these decisions does not *per se* obviate its jurisdiction and control over the territory at issue or the applicability of the host state's laws to the purchasers of land.

Another concern that is frequently raised centers on the exportation of agricultural goods produced on the territory purchased for the overall economic health of the host state because these are goods that formerly might have been available on the domestic market to feed the domestic population but are instead exported and there is a potential that the domestic market suffers from that loss.[457] While this is undoubtedly important from a human rights standpoint, in terms of territorial control and anomaly the impact is essentially minimal, as it is within the state's sovereign authority to regulate the market.

Illusory Champions" (2009) 49 Asian Survey 670; Eckart Woert, "The Governance of Gulf Agro-Investments" (2013) 10 Globalizations 87 at 88 – 92; Anseeuw et al, *supra* note 452 at 24.

[454] Abebe, *supra* note 453, at 875; Smita Narula, "The Global Land Rush: Markets, Rights and the Politics of Food" (2013) 49 Stan J Int'l L 101 at 103; Chris Alden & Christopher R Hughes, "Harmony and Discord in China's Africa Strategy: Some Implications for Foreign Policy" (2009) 1999 China Quarterly 563, at 566 – 567; Olivier De Schutter, "The Green Rush: The Global Race for Farmland and the Rights of Land Owners" (2011) 52 Harv Int'l LJ 503 at 512 – 517.

[455] Abebe, *supra* note 453 at 875; Anseeuw et al, *supra* note 452 at vii.

[456] See Narula, *supra* note 454 at 103 – 104.

[457] *Ibid* at 118.

Some have posited that these new trends in overseas land acquisition constitute a change in the ways that territory is viewed and valued in the host state and in foreign states.[458] According to one strand of thought, such acquisition patterns result in a "re-territorialization" on the part of foreign states in that they/their corporation acquire new rights to territory and place a new value on these pieces of territory, value that is more commensurate with valuation of domestic territory. Conversely, the host states experience a "de-territorialization" because they "surrender land . . . for export."[459] This reflects a hardened view of territorial control and the *imperium* and *dominium* relationship. It ignores the host state's retention of regulatory authority over the territory purchased and that under most legal regimes the host state may exert eminent domain over privately held lands if needed for an established public good. Whether the extant political regime in a host state would have the desire to use such legal tools as are at its disposal implicates issues of good governance but does not implicate the overall impact of these land sales on the legal regulation of territories within its borders.

Sassen has argued that these patterns of land acquisition and the concomitant sale of land rights to foreign entities represent a transformation of pieces of land within the national territory to land that has been detached from sovereignty and results in "accelerated disassembling of the national sovereign territory."[460] While not agreeing that these transfers of territory entirely do away with the existence of the nation at the international level, she asserts that this process has taken land concerns from the sovereign to the global level and subjects them to globalization forces more than national sovereignty.[461] Again, this argument is based on a hardened construct of territorial control and the *imperium* and *dominium* relationship within a state, and seems to imply that the sale of land to a foreign state or foreign corporation means that the land is no longer within the legal jurisdiction or control of the host state. It is, however, extremely doubtful that any land sale agreement will contain terms that render the host state completely disinterested

[458] Phillip McMichael, "Land Grabbing as Security Mercantilism in International Relations" (2013) 10 Globalizations 47 at 48.
[459] *Ibid*.
[460] Saskia Sassen, "Land Grabs Today: Feeding the Disassembling of National Territory" (2013) 10 Globalizations 25 at 27.
[461] *Ibid* at 28, 29 ("[w]hat was once a part of the national sovereign territory is increasingly repurposed for a foreign firm or government.").

in and unable to assert legal jurisdiction over the land. As noted previously, while some host states might lack the political will to intercede in matters relating to land use this does not mean that the host state has lost legal control over the territory.

Indeed, examining trends in legislation and rulemaking across several states targeted for large-scale land acquisitions by foreign states and foreign corporations illustrates that these states have often become proactive in establishing legal protections relating to land rights.

As an essential premise, many of the states recently targeted for foreign purchases of land have enacted – or already had created – laws restricting the alienability of land, notably land containing natural resources, frequently including alienability restrictions for foreigners and foreign corporations.[462] Even under legal systems that allow outright land sales to foreigners, there is no implication that the state would lose jurisdiction over land as a result of the sale.[463] In some systems, while agricultural land may be sold to foreigners, there are limitations on the sales and on how the land and its products can be used to ensure that agricultural products are not completely shifted away from the domestic market.[464] Also of note are the legal restrictions placed on alienation of indigenous community lands and natural resources located on them, including prohibitions and restrictions on the rights of the state itself to alienate these lands without permission from the impacted indigenous community.[465]

When applied to large-scale land sales to foreign states and/or foreign corporations, the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that these sales do not in fact undermine the territorial control or sovereignty of the state. Certainly, these land sales allow for the existence of foreign owners and foreigners as

[462] Cambodian Const art 58 (2010); Ethiopia Const art 40 (1995); Argentina, *Tierras Rurales, Ley No. 26.737*, 2011 at art 3; Cambodia, *Law NS/RKM/0801/14*, 2002 at chs 1, 16; Argentina Const art 75(17) (2013).
[463] See Kazakhstan, *Land Code of the Republic of Kazakhstan*, 2003 at art 6(6).
[464] See Jessica Ball, "A Step in the Wrong Direction: Increasing Restrictions on Foreign Rural Land Acquisition in Brazil" (2011 – 2012) 35 Fordham Int'l LJ 1743 at 1766; Nicolas Marcello Perrone, "Restrictions to Foreign Acquisitions of Agricultural Land in Argentina and Brazil" 10 (2013) Globalizations 205 at 207.
[465] Argentina Const art 75(17) (2013); Chile, *Ley No 19.253*, 1993.

employees for land use operations, which can result in the areas sold becoming anomalies in that they exist as an informal foreign enclave within a host state. However, foreign ownership and even foreign operation of agricultural or industrial lands does not mean that these lands are alienated from the host state or that the host state's laws no longer apply. Instead, what these land sales demonstrate is that, through legal elasticity, the host state retains the power to be flexible in determining how to use land and to whom to alienate this land. Further, there is no requirement that the land sales involve the full cession of rights and legal control over the land to the foreign purchaser – indeed little available evidence supports this idea. Rather, this is an example of the host state using its sovereign power over territory in an elastic way in order to sanction the exercise of robust *dominium* by foreign states or foreign corporations while still holding and exercising robust *imperium* over the land at issue.

IV. Internationalized Ports and Airports and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Throughout the globe, port facilities and airports represent essential *entrepots* for economic resources and viability at the national and international level.[466] The importance of ports spans the spheres of legal, development, and economic systems, yet the practice of allowing ports to be run by entities from the private sector and/or foreign corporations is common throughout nearly all of them.[467] This is particularly notable since there is no coordinated international system for the operation of ports.[468] Just as forms of port privatization vary distinctively so too do the motivations behind privatization, with economic incentives and the belief that private industry can better administer and govern the specific needs of ports among the chief factors.[469]

Like ports, airports have come to a place of commercial and security prominence throughout the world. Due to their security functions as well as commercial functions, airports are typically regarded as special places as a matter of law; places in which state

[466] See Eric van Hooydonk, *The Law Ends Where the Port Begins: on the Anomalies of Port Law* (Portland, OR: Maklu Publishers, 2010) at 9.
[467] *Ibid* at iv.
[468] *Ibid* at 7.
[469] *Ibid* at 27.

policing authorities have greater latitude than they necessarily would elsewhere within the state.[470] Given the prominence of airports within the national domain, it is perhaps surprising that many major airports may be operated through concessions to semi-privatized or privatized entities, including those operated directly by or in conjunction with foreign corporations.[471] However, such concessions and arrangements are allowed for many major airports and in many of the larger international air travel hubs throughout the world.[472]

The complexity of governing a port as a territorial matter touches on a number of disparate domestic laws such as "general national administrative law, criminal law, tax law, labour law, environmental law [and] competition law."[473] While some have argued that this form of regulatory and legal overlap creates a situation of near anarchy, implying a loss of sovereign control over the port territory,[474] there is another argument to be made. This claimed gap has been created by the state through explicit legal regimes that contain restrictions, oversight systems and penalties, and ultimately are accountable to the state apparatus and even penal authority where appropriate. Thus, rather than anarchy, this situation is an example of the model of legal elasticity and the *imperium* and *dominium* relationship in application because it allows the state to be flexible in creating a legal regime that takes into account the special facets of port operations in order to vest robust *dominium* in port areas while at the same time retaining robust *imperium* over these areas through the application of multiple aspects of state law.

A review of the essential aspects of port and airport privatization laws across jurisdictions is insightful in this context. The port states discussed were selected because of their continued status as having the highest global volume of container traffic annually over

[470] See Robert Latham, "Border formations: security and subjectivity at the border" (2010) 14 Citizenship Studies 185.
[471] Germa Bel & Xavier Fageda, "Privatization, regulation and airport pricing: an empirical analysis for Europe" (2010) 37 Journal of Regulatory Economics 142 at 144; Hans-Martin Niemeier. *Regulation of Large Airports: Status Quo and Options for Reform* (Paris: OECD, 2009) 5.
[472] It is important to note that discussions of privatization and/or foreign entity involvement in the context of airports does not extend to the field of customs and immigration law and law enforcement, as these functions are carried out by state actors in airports regardless of the privatized status of the airport itself. See Latham, *supra* note 470.
[473] van Hooydonk, *supra* note 466 at 8.
[474] *Ibid* at 43.

the past ten years, as provided by the United Nations Conference on Trade and Development in its annual *Review of Maritime Transport*.[475] The airport states discussed were selected due to their designation as being home to some of the top thirty busiest airports in the world according to industry standards since this demonstrates the importance of the airport industry to the state in terms of economics and in terms of a territorial location over which to assert sovereignty.[476]

There are three essential forms of relationship between the host state and the port in current practice. The first, referred to as the "operating ports" model, exists where the designated "port authority supplies and operates the [port] facilities."[477] The second, referred to as the "landlord ports" model, exists "where the port authority supplies and manages the facilities but does not operate them."[478] Finally, the "tool ports" model exists where "the port authority supplies the users with fully equipped facilities," but does not engage in any further managerial or operational aspects.[479] While there are many iterations of port model and port lease or concession agreements, ultimately the policy and control interest and claim to these areas is firmly vested in the state as part of the sovereign function of the state and the state's ability to control its territory.[480]

Generally, there are five forms of jurisdiction and administration over airports throughout the world.[481] The first, and perhaps most classic, occurs where there is state ownership and control over airports, which are directly controlled by a governmental entity.[482] The

---

[475] See *Review of Maritime Transport 2005*, UNCTADOR, UN Doc UNCTAD/RMT/2005 (2005) at 74; *Review of Maritime Transport 2006*, UNCTADOR, UN Doc UNCTAD/RMT/2006 (2006) at 75; *Review of Maritime Transport 2007*, UNCTADOR, UN Doc UNCTAD/RMT/2007 (2007) at 85; *Review of Maritime Transport 2008*, UNCTADOR, UN Doc UNCTAD/RMT/2008 (2008) at 91; *Review of Maritime Transport 2009*, UNCTADOR, UN Doc UNCTAD/RMT/2009 (2009) at 109; *Review of Maritime Transport 2010*, UNCTADOR, UN Doc UNCTAD/RMT/2010 (2010) at 93; *Review of Maritime Transport 2011*, UNCTADOR, UN Doc UNCTAD/RMT/2011 (2011) at 85; *Review of Maritime Transport 2012*, UNCTADOR, UN Doc UNCTAD/RMT/2012 (2012) at 79.
[476] "World Top 30 Airports," (2 August 2014), online: World Airport Codes <http://www.world-airport-codes.com/world-top-30-airports.html>.
[477] *Legal Aspects of Port Management*, UNCTADOR, UN Doc UNCTAD/SHIP/1993 (1993) at 10.
[478] *Ibid*.
[479] *Ibid*.
[480] See *Guidelines for Port Authorities and Governments on the privatization of port facilities*, UNCTADOR, UN Doc UNCTAD/SDTE/TIB/1 (1998) at 16.
[481] Anil Kapur, *Airport Infrastructure: The Emerging Role of the Private Structure* (Washington, DC: World Bank, 1995) at 7.
[482] *Ibid*.

second occurs where the state owns and controls airports but operates them on a commercial model.[483] The third occurs where some form of regional or municipal government is granted ownership and control interests over airports located within their territorial jurisdiction.[484] The fourth, and perhaps most common, occurs where the state retains ultimate ownership and control over the airport but leases or contracts out the rights to operate the airport to some form of private entity.[485] The final form occurs where the state allows outright privatization of airport ownership and control.[486]

The levels of governmental control of ports vary with the legal system of a particular state. In a federal state such as Argentina, there are layers of national, provincial and sub-provincial entities through which powers over ports may devolve, however there is always some layer of governmental oversight involved.[487] Chinese practices are insightful due to the level of state control involved. The Chinese government has increasingly allowed foreign entities to invest in ports[488] and has undertaken a concerted effort to loosen direct state control over ports by allowing many municipal entities to exercise control over and manage port facilities, as well as allowing foreign investors to operate them.[489] In this system, there are still significant national restrictions on municipal port policies, including national security, environmental issues, placement of the port within larger urban planning systems, connection of the port with other mechanisms of transportation and compliance with the national port design policy.[490]

In some systems, classes of ports are created based on the significance of the port to the state, and regulatory requirements stem from the assigned class. For example, South

[483] *Ibid*.
[484] *Ibid*.
[485] *Ibid*.
[486] *Ibid*.
[487] See Argentina, *Ley No 24.093, Ley de Puerto*, 1992 at tit III, cap I, II.
[488] People's Republic of China, *Port Law of the People's Republic of China*, 2003 at art 5; Kimberley A Crusey, "Time for Growth" (2006) Int'l Fin L Rev 60 – 61.
[489] Kevin X Li et al, "Maritime Policy in China after WTO: Impacts and Implications for Foreign Investment" (2005) 36 J Mar L & Com 77 at 88 – 89.
[490] People's Republic of China, *Port Law of the People's Republic of China*, 2003 at arts 7 – 9.

Korea has two forms of ports, international trading ports and local ports, each of which implies different levels of development and commercial activities.[491]

Reflecting their status in terms of security and economic development, many states with vital airports have established levels of airports that are concomitant with their functions. Many states have created airport authorities that are similar to port authorities in terms of facility oversight and governance, and the ability to enter into license, lease or concession agreements with private entities.[492] For example, in Australia, airports are divided into categories based on function and importance. Those airports designated as "commonwealth airports," indicating their national importance, cannot be fully alienated from the state or privately owned, and instead can only be leased to private entities through a concession agreement.[493] Within Brazil there are national airports run by an agency that has been subdivided into regions as well as a number of smaller, local airports that are administered by the states in which they are located.[494] As with many states, Japan divides its airports into three categories based on whether the airports serve an international, domestic or regional function.[495] While private ownership of airports is prohibited, privatization has been allowed for the major international airports in Japan.[496] In the allowed privatization system, while the concession terms are granted to private companies, the Japanese government is a significant shareholder in these companies.[497]

In less complex national systems, there is typically a designated port authority that has jurisdiction over national port activities even when conducted under license or lease to a non-state actor.[498] These port authorities do not have to be official state actors, however

---

[491] Dong-Wook Song & Sung-Woo Lee, "Port Governance in Korea" (2007) 17 Devolution, Port Governance and Port Performance Research in Transportation Economics 357 at 359.
[492] India, *Airports Authority of India Act*, 1994 at art 3; 49 USC §44706 (2014); Brazil, *Lei No 12.462*, 2011 at art 11.
[493] *Airports Act 1996*, (Cth) at art 4.
[494] ICAO, *Case Study on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Service Providers: Brazil* (Montreal: ICAO, 2013) 1.
[495] *Ibid*.
[496] Isaku Shibata, "Airfield Management of High-Density Airports in Metropolitan Areas – A Study of Narita International Airport" (2010 – 2011) 10 Issues in Aviation Law & Policy 321 at 328.
[497] *Ibid*.
[498] See Bahamas, *Port Authorities Act*, 2006 at arts 3, 6, 8; Cameroon, *Decret no 99/126*, 1999; Cameroon, *Decret no 99/128*, 1999 at art 4; Jamaica, *Port Authority Act*, 1972 at arts 4, 5; Kenya, *Kenya Ports*

they are legislatively created and under the supervision of the port state.[499] There are some practices, notably port facilities expansion or activities involving public safety that are consistently under the jurisdiction of the port state rather than a non-state actor operating a port facility.[500] Britain has gone further than many other states by allowing port authority organizations to convert their identities and become corporate entities.[501] Similar provisions and privatizations of port operations have occurred in the United States.[502]

There has been a trend toward allowing the privatization of port facilities and port operations in many states, often through the use of licensing or leasing systems.[503] Generally, these systems allow foreign corporations to obtain licenses and leases provided they can meet the terms, typically subjecting themselves to the jurisdiction of port state oversight and port state law.[504] Within these general trends there are several notable cases. In Mexico, concessions may be allowed for the administration of ports, however the concessions are subject to strict time limits and termination controls.[505] States such as Spain and Slovenia have created lease and concession arrangements for port operations, although they are under the supervision of governmental entities.[506] The Tanzanian Port Act establishes the national port authority as a "landlord"[507] entity with a number of responsibilities that connect to private and public functions. Notably, the port authority provides for port management and operations, port safety, contracting with other entities to ensure that the port functions properly, regulation and administration of

---

Authority Act, 2012 at arts 3 – 4; Mexico, *Ley de Puertos*, 2012 at art 16; *Port Companies Act 1988* (NZ), 1988; Panama, *Ley 56*, 2008.

[499] Kingdom of Jordan, *Law No 46*, 2006 at art 3; *Port Authorities Act 1963*, Malaysia, *Port Authorities Act 1963*, 1963 at arts 2, 3; *Port Companies Act 1988* (NZ), 1988; Panama, *Ley 56*, 2008.

[500] Bahamas, *Port Authorities Act*, 2006 at art 11.

[501] See generally *Ports Act 1991* (UK), 1991.

[502] 19 USC §1501 (2014).

[503] Republic of Korea, *Harbor Act*, 2010 at art 18; Malaysia, *Ports (Privatization) Act 1990*, 1990; Kingdom of Bahrain, *Regulations Pertaining to Operating a Port, Jetty or Similar Facility in the Kingdom of Bahrain*, 2010; Brazil, *Decreto 8033/13*, 2013; Chile, *Ley Puerto No. 19,542*, 1997 at art 7; Costa Rica, *Ley general maritima y portuaria de la Republica de Costa Rica*, 2011; OECD, *OECD Reviews of Regulatory Reform, Indonesia: Regulatory and Competition Issues in Ports, Rail and Shipping* (Paris: OECD, 2012) 14.

[504] *Ibid*.

[505] Mexico, *Ley de Puertos*, 2012 at cap IV.

[506] Slovenia, *Maritime Code*, 2001 at art 32, 47; Spain, *Ley de Puertos del Estado y de la Marina Mercante*, 2011 at art 87.

[507] Tanzania, *The Ports Acts*, 2004 at art 1.

port functions, environmental protection, leasing and concessions to private entities, and promoting domestic and international investment in the port/associated entities.[508]

Where a specific status has been given to an airport, that status governs the form of license or lease available to private entities seeking to operate it, particularly foreign private entities.[509] For example, the Mexican government has created several systems that allow for concession holding by private airport operators.[510] In addition to nationality requirements for ownership, these concession agreements are authorized for fifty years and stipulate that it is prohibited to transfer the concession to another entity.[511] Further, the concession holder is required to follow all federal/state/local laws regarding construction and general operation of the airports.[512] Concession holders can sub-contract commercial rights – such as the operation of parking lots and shops in the airport – as long as these are in conformity with terms of concession and have approval.[513]

In terms of policing, there are mixed views regarding whether policing at the port is conducted directly by state police agents, by port authority agents, or by other persons to whom the authority has been delegated.[514] Regardless of identity, however, police existence and functions are established within the terms of the laws and rules that craft the functioning of the ports, thus making them state decisions and within the sovereign authority to delegate. The same considerations generally apply at airports, although it is important to highlight that these policing and security functions are generally subsumed by and unrelated to the state's jurisdiction over customs and immigration enforcement.[515]

Applying the model of legal elasticity and the *imperium* and *dominium* relationship to privatized/potentially privatized internationalized ports and airports demonstrates that legal elasticity supported by robust *imperium* and generally robust to robust *dominium* is

---

[508] *Ibid* at part III.
[509] *Airports Authority Act 1966* (NZ), 1966 at arts 4, 6.
[510] Mexico, *Ley de Aeropuertos*, 1995 at art 15.
[511] *Ibid*.
[512] *Ibid* at art 41.
[513] *Ibid* at art 48.
[514] *Legal Aspects of Port Management*, UNCTADOR, UN Doc UNCTAD/SHIP/1993 (1993) at 41, 43 – 44.
[515] Latham, *supra* note 470.

essential to their functioning. Rather than demonstrating the existence of a near state of anarchy in the concept of port state legal control over ports and their operations, this study reveals quite the opposite – while there are differences in port operations and the impact of foreign actors within port operations, there are also essential similarities in patterns of port laws, regulations and operations. In these situations, there is legal elasticity that is supported by a robust *imperium* and generally robust *dominium* relationship, however this legal elasticity does not imply that the state has lost territorial control or that the *imperium* and *dominium* relationship has become inverse. Instead, the model of legal elasticity and the *imperium* and *dominium* relationship allows the state and its designated regulatory authorities to flexibly respond to the needs of a specific industrial and territorial sector while maintaining sovereignty over the territory on which that sector is located.

Many of the same concerns regarding anarchy in port regulation could easily be advanced regarding the regulation of airports, as a number of legal areas are involved in the operation of even the most basic airport. Using the model of legal elasticity and the *imperium* and *dominium* relationship, however, allows an alternate view of this situation. Examined through the lens of legal elasticity, privatization of airports in any form – with or without the presence of foreign entities – is simply another extension of the state's lawmaking and regulatory powers that takes into account the benefits of flexible airport operations for the state. Rather than adopting a hardened view that states should operate such important centers of commerce and security themselves and that to do otherwise threatens the sovereignty of the state, legal elasticity allows the state to be flexible in its assessment of current goals and needs, as well as the overall capacity of the state to fulfill these goals and needs without outside assistance. Where that finding is negative, legal elasticity then allows the state to incorporate privatization, and foreign corporations, in a way that fulfills the goals and needs of the state and the airports within it but does so in a way that retains the state's robust *imperium* over its entire territory while granting generally robust *dominium* capabilities to the entity that is operating airport facilities.

V. Foreign Resident Zones and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

As noted in Chapter 3, the practice of creating special territorial zones for foreigners within a host state and allowing extraterritorial jurisdiction for foreigners within a host state existed for centuries. Traditionally, the creation of foreign resident zones and the concomitant use of extraterritoriality was motivated by the commercial interests of the host state combined with some perceived threat from foreigners if allowed to live and mix with the general citizenry.[516] Over time, extraterritoriality took on a historically negative connotation from the perspective of the host state, which viewed it as a form of law-based colonization rather than accommodation.[517] The trend of citizens residing abroad has not changed despite the abolition of extraterritoriality in the early twentieth century. Neither has the commercial motivation behind decisions to live abroad or behind host state allowance of these ex-patriot communities.

In some instances, foreign residents are confined to the boundaries of SEZs by agreement or informal practice.[518] In other instances, however, there are designated areas in which foreign – largely Western – residents live in order to avail themselves of more lenient laws than those applied to the standard citizenry of the host state.[519] This is of note in commercial hubs such as the United Arab Emirates, where a large influx of non-Emirati and largely non-Muslim residents has located itself within the territory of a religious society in which Shar'ia law is applied.[520] The clash caused by the mixing of different legal and social mores has resulted in legal misunderstandings on the part of foreign residents and visitors that caused legal and diplomatic tensions.[521]

---

[516] See generally Cassel, *supra* note 226; Kayaoglu, *supra* note 227; Westad, *supra* note 229.
[517] See generally *ibid*.
[518] See Lee, *supra* note 449 at 223.
[519] See Dubai, *Dubai Code of Conduct*, 2009.
[520] *Ibid*.
[521] See e.g. "British man loses Dubai kiss appeal" *BBC.Com* (24 May 2010), online: BBC.Com <http://news.bbc.co.uk/2/hi/uk_news/england/london/8700999.stm>; "Newly-wed couple win Dubai car sex appeal" *BBC.Com* (4 May 2010), online: BBC.Com < http://news.bbc.co.uk/2/hi/middle_east/8660305.stm>; "UK couple charged with illegal sex released in Dubai" *BBC.Com* (28 January 2010), online: BBC.Com <http://news.bbc.co.uk/2/hi/middle_east/8486086.stm>.

In an effort to address these issues, some states have established differing legal and social expectations and requirements for foreigners and non-Muslims within designated zones. A primary example of this is Dubai, which created the Dubai Code of Conduct in order to "set[] the standards for social ethics and mutual respect that shall be followed by all of Dubai's citizens, residents and visitors in respect of the Emirate's culture, religion and habits."[522] A portion of the Dubai Code of Conduct is aimed at Emiratis as well as foreigners, stressing the need to preserve their culture as well as exercise tolerance to promote economic growth.[523] Thus, although there is an allowed mixing of cultures and peoples, it is within not only the territorial boundary of Dubai but also in the sub-boundaries of malls, restaurants, cafes and streets that are generally shared by foreigners and residents alike.[524]

This situation results in some sense of anomaly of territory. However, it is best thought of as a quintessential display of the model of legal elasticity and the *imperium* and *dominium* relationship in application. The Dubai Code of Conduct is a very flexible response from a government that is at once seeking to protect the sensibilities and rights of its citizens and to protect the economic status of the state by ensuring that foreigners will continue to be comfortable there. A hardened model of territorial control and the *imperium* and *dominium* relationship would not allow for this practice and would not permit the flexibility needed by the state to these responding circumstances.

Additionally, the government in Abu Dhabi has announced the formation of a separate court system that will apply different laws to contract disputes between non-citizens, notably in areas of free commerce.[525] This decision was the result of the increasing number of contracts claims brought before local courts that do not have legal authority to decide them.[526] The concept that will be enshrined in these courts is very similar to the

[522] See Dubai, *Dubai Code of Conduct*, 2009 at 1.
[523] See generally *ibid* at 2.
[524] *Ibid* at § 1.
[525] Hall, Camilla. "UAE unveils separate court system for Abu Dhabi financial hub," Financial Times (2 May 2013), online: FT.Com <http://www.ft.com/intl/cms/s/0/c2c79a5c-b2fb-11e2-95b3-00144feabdc0.html?siteedition=intl#axzz38zHLWcRv>; UAE (Abu Dhabi), *Federal Decree No 15 of 2013*, 2013.
[526] Hall, *supra* note 525.

basic tenets of extraterritoriality as it applies only to foreigners in limited settings.[527] It is not a blanket assertion of extraterritorial jurisdiction for all foreigners for all legal matters, nor is it a cession of legal authority over the entire territorial area to foreign law and foreign courts. Rather, it is an elastic response to an issue that has become a problem to the judiciary. In that sense, this is an example of the model of legal elasticity and the *imperium* and *dominium* relationship being applied to ensure that the state retains robust *imperium*, however there is a cession of a small aspect of *dominium* over legal issues that do not in fact have a translation to the legal system of the state and do not directly involve state citizens.

V. Conclusion

The studies examined in this chapter vary widely in legal, economic and territorial scope. However, these studies are linked in that they relate to important economic activities within states – economic activities that require interaction between the host state and either foreign states, foreign corporations, or a combination of the two. These economic activities often require that new or different laws and legal systems be adopted by the host state, at least within certain territorial areas, and often these laws and systems vary dramatically from the standard laws of the host state.

Application of the model of legal elasticity and the *imperium* and *dominium* relationship to SEZs demonstrates the importance of using state laws and rules to create new areas for law and economic growth that are at the same time subject to the *imperium* of the host state. In this way, the host state retains robust *imperium* while at the same time allowing for the existence of robust *dominium* within the SEZ territories. Similarly, the large scale sale of land to foreign states or foreign corporations, while it has the potential for serious human rights concerns, is another instance in which the application of the model of legal elasticity and the *imperium* and *dominium* relationship allows for the land sales themselves without requiring the host state to surrender jurisdiction and legal rights over the land as a matter of private property located within the national, sovereign territory.

[527] *Ibid*.

Ports and airports share many of the same qualities of importance for economic and national security interests, and yet have been the target of increasing privatization, including privatization involving foreign corporations. The application of the model of legal elasticity and the *imperium* and *dominium* relationship to this situation demonstrates that there is no problem in maintaining territorial sovereignty on the part of the state while vesting potentially robust *dominium* in foreign corporations as operators of ports or airports because these facilities are still heavily regulated by the state itself, allowing the state to retain robust *imperium*.

Finally, newly emerging areas of contact between cultures and legal systems in territories such as Dubai and Abu Dhabi have generated host state reactions in the form of attempting to set legal boundaries for interactions between foreigners and citizens. These legal boundaries attempt to ensure respect for each constituency. There are certainly aspects of these practices that sound in extraterritoriality, and this thesis asserts that extraterritoriality itself could be facilitated within the model of legal elasticity and the *imperium* and *dominium* relationship. In the current instance, the application of the model of legal elasticity and the *imperium* and *dominium* relationship allows states to craft laws and instruments that address certain segments of the foreign population without losing *imperium* or sovereignty because these laws and instruments have not been forced upon them by foreign states and also are not explicit exceptions to the laws and rules of the host state.

Thus, while emerging economic practices, including those that are directly linked with globalization, have and will continue to present states with challenges to their legal policies, it is not necessary for these challenges to be viewed as threats that can or will undermine state sovereignty or the international state system. Instead, application of the model of legal elasticity and the *imperium* and *dominium* relationship presents the state with the ability to adapt to new and emerging issues and practices through flexibility in terms of *dominium* while at the same time preserving its territorial control and *imperium*, as well as its inherent sovereignty.

Chapter 7 – Anomalies of Politics and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

I. Introduction

In this chapter, the focus shifts to current anomalies of politics. Politics, in this context, refers specifically to areas within a sovereign state's territory where another political unit is allowed to function as either a largely self-governing entity or as an entity that exists in tension with the sovereign state government. In each of these studies, the anomalies have arisen from periods of growth, development, change and challenge within the territory of the state and without the territory of the state in terms of the influence of outside legal practices. As such, anomalies of politics have the potential to pose a challenge to state sovereignty and territory control, and offer situations in which to evaluate the model of elastic territorial control and the *imperium* and *dominium* relationship in modern practice.

The first study examines the relationship between indigenous communities and territory within the state. This study is split between indigenous communities in former British dominion states – Australia, Canada and New Zealand – and the United States, where different yet related constructs of the this relationship have been established. The tension between the state and its indigenous communities has existed for centuries in each of these examples. And yet, recent changes to the ways in which indigenous community rights and identity have been viewed as a matter of law present the potential for new challenges and/or growth in the *imperium* and *dominium* relationship balance. Given this, application of the model of legal elasticity and the *imperium* and *dominium* relationship is important to understanding the current and future status of the state and the indigenous communities and separate and interlocking legal entities.

The second study examines the Kaliningrad oblast.[528] Kaliningrad presents an unusual remnant of Cold War statecraft that has now become of increasing importance to Russia, of which it is legally a part, as well as the states that surround it and the European Union.

[528] Oblast is translatable into "region," and signifies that Kaliningrad as an administrative unit is comprised of more than the city of Kaliningrad *per se*. For the purposes of this thesis, the term oblast is retained for legal and geographical accuracy.

Traditionally, Kaliningrad is viewed from the perspective of impacts on neighboring states, Europe and Germany, of which it was formerly a part. However, this thesis examines Kaliningrad with a view to the impact of the exclave on the Russian state and its ability to exert territorial control and sovereignty across the Baltic Sea. This examination is facilitated through applying the model of legal elasticity and the *imperium* and *dominium* relationship.

The third study examines areas of disagreement between national and local governments regarding a particular political issue that results in the local government establishing its own policy regardless of national approval. There are of course many such examples, however two have been selected for further examination. The first is groups of American states taking collective measures to implement cap-and-trade programs for carbon emissions control in the face of the national government's failure to enact policy in the area. The second is the monetary policy of the Swedish resort town of Hoganas, which has announced that the Euro will be accepted as legitimate currency despite Swedish national laws requiring that the only currency used within the state be the Swedish krona. In each instance, the study examples were chosen because they represent the future of contests over state power and territorial implications, as environmental and monetary policy issues gain in national and international importance.

Finally, the fourth study addresses the issue of leasing territory to another state. Leasing is well established in international law and has been engaged in for centuries. Yet the issue is not only what leasing territory of a state to another state means in terms of sovereignty and statehood for the duration of the lease. As has been seen in prominent examples such as Hong Kong and Macau, when these territorial leases end there is a need to reintegrate territory that has been under the rule of a foreign set of laws and mores for a significant time period into the main state's legal and social system. The impacts of this on the main state itself as well as the former leased territory are still unfolding but contain important considerations for the relationship between territory, statehood and sovereignty. The application of the model of legal elasticity and the *imperium* and *dominium* relationship in this context proves to be essential for understanding how to navigate these uncertainties.

II. Indigenous Communities and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

As discussed in Chapter 3, initially there were different bases of legal justification for European acts of colonization. For Protestant states such as Britain the ease of a papal bull was not available, and thus different legal theories were developed to justify colonization.[529] Some of these theories were heavily based in treaty and contract law at the outset, such as in what would become the United States and New Zealand. In other instances, however, different forms of legal justification were used, such as the assertion that the island of Australia constituted *terra nullius* when the British first arrived. Over time, courts within Australia, Canada, New Zealand and the United States have recognized and crafted theories of rights and status for indigenous communities, in some instances repudiating the initial justifications altogether and in other instances working around them.

a. Australia

The issue of indigenous rights to territory in Australia, where title was asserted by the British government under the doctrine of *terra nullius*, was framed within the context of aboriginal title by indigenous groups and Australian courts alike. As a theory, aboriginal title asserts that the traditional rights of indigenous communities to their property were not extinguished by the presence of British colonizers or by the imposition of British law in the Australian territory.[530]

The construct of aboriginal title in Australia was enshrined in *Mabo v Queensland* ("*Mabo*").[531] This case was brought by indigenous inhabitants of the Murray Islands who asserted that their traditional native title had not been extinguished by the Crown and that the Crown's rights to this territory were held subject to the existing indigenous rights and interests over it.[532] The *Mabo* Court expressly rejected the assertion that Australia had

[529] See Chapter 3.
[530] PG McHugh, *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford: Oxford University Press, 2011) at 1.
[531] See *Mabo v Queensland*, (1992), 175 CLR 1; see generally McHugh, *supra* note 530.
[532] McHugh, *supra* note 530 at 4 – 5.

been *terra nullius* at the time of its colonization on human rights as well as factual grounds.[533] This finding, in turn, allowed the Court to delve further into the question of aboriginal title rights without automatic preemption due to Crown sovereignty.[534] One of the first aspects of ownership interests the Court addressed was the difference between the interest gained by the Crown when it acquired the right to the territory – which was identified as a matter of international law concern, so as to exclude other states – and when it acquired the right to the land of the colonial area – which was identified as a matter of domestic law concern under common law.[535] Using property law, the Court noted that it was impossible for the Crown to assert a full property right in land that had been "already occupied by another," thus calling into question the strict application of pure Crown sovereignty claims.[536]

The *Mabo* decision was followed by the enactment of the Australia Native Title Act in 1993 to establish the system for evaluating aboriginal title as a matter of law and to quiet concerns over ownership rights in lands and natural resources throughout the state.[537] In itself, the Australia Native Title Act was a response that used the model of legal elasticity and the *imperium* and *dominium* relationship to craft methods of settling land issues. At the sub-national level in Australia, *Mabo* prompted the enactment of hardened laws at these levels that sought to declare the extinguishment of all aboriginal title within the appropriate jurisdiction. Such laws were subsequently struck down by the Australian high courts, while the elastic Australia Native Title Act has remained valid law.[538]

Since the creation of a system to allow indigenous peoples and communities to bring claims regarding aboriginal title rights – including the right to resources and also to non-exclusive use of lands, such as for cultural practices and grazing rights – thousands of

---

[533] *Ibid* at 42; Shirley V Scott. "*Terra Nullius* and the *Mabo* Judgment of the Australian High Court: A Case Study of the Operation of Legalist Reasoning as a Mechanism of Political-Legal Change" (1996) 42 Australian Journal of Politics and History 385.
[534] McHugh, *supra* note 530 at 42.
[535] *Ibid* at 44 – 45; *Western Australia v Commonwealth*, (1995), 183 CLR 373 at 427, 428.
[536] *Mabo v Queensland*, (1992), 175 CLR 1 at 45. See also *The Wik Peoples v Queensland*, (1997) 187 CLR 1; *Western Australia v Ward*, (2002), 213 CLR 1; *Commonwealth of Australia v Yarmirr*, (2002), 208 CLR 1.
[537] *Australia Native Title Act 1993* (Cth) at art 4.
[538] See *Western Australia v Commonwealth*, (1995), 183 CLR 373.

claims were brought and hundreds were settled outside of the litigation process.[539] Throughout this process, it has been agreed that lands granted to indigenous communities through aboriginal title, be it exclusive or non-exclusive, are still subject to the full laws of Australia and the applicable localities, as are the people located within them, as well as their own community laws.[540]

At the same time, although the aboriginal communities are entitled to exercise robust *dominium* in terms of aboriginal title rights, the laws of Australia and the aboriginal title settlements themselves are explicit in the requirement that all holders of aboriginal title are also under the jurisdiction of the state and applicable localities at all times. While it might be possible for the aboriginal communities to also require that their members follow the dictates of community laws that accord with national and local laws, aboriginal title rights do not themselves extinguish national jurisdiction across the

---

[539] See Malcolm Allbrook & Mary Anne Jebb, *Implementation and Resourcing of Native Title Act and Related Agreements* (Perth: Commonwealth of Australia, 2004). For examples of these claims, see Austl, Commonwealth, National Native Title Tribunal, *Djabugay People's Native Title Determination* (Perth: National Native Title Tribunal, 2004); Austl, Commonwealth, National Native Title Tribunal, *Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Native Title Determinations* (Perth: National Native Title Tribunal, 2013); Austl, Commonwealth, National Native Title Tribunal, *Yankunytjatjara/Antakirinja Indigenous Land Use Agreements* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Western Yalanji Native Title Determination* (Perth: National Native Title Tribunal, 2006); Austl, Commonwealth, National Native Title Tribunal, *Strathgordon Mob Native Title Determination* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Patta Warumungu Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Githabul People Native Title Determination* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Ngadjon-Jii People Native Title Determination* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Eastern Kuku Yalanji Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2007); Austl, Commonwealth, National Native Title Tribunal, *Kuuku Ya'u Peoples Native Title Determination* (Perth: National Native Title Tribunal, 2009); Austl, Commonwealth, National Native Title Tribunal, *Kowanyama People's Native Title Determination* (Perth: National Native Title Tribunal, 2009); Austl, Commonwealth, National Native Title Tribunal, *Combined Malanbarra Yidinji Native Title Determination* (Perth: National Native Title Tribunal, 2009); Austl, Commonwealth, National Native Title Tribunal, *Gangalidda and Garawa Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2010); Austl, Commonwealth, National Native Title Tribunal, *Jirrbal People's Native Title Determination* (Perth: National Native Title Tribunal, 2010); Austl, Commonwealth, National Native Title Tribunal, *Quandamooka People's Native Title Determination* (Perth: National Native Title Tribunal, 2011); Austl, Commonwealth, National Native Title Tribunal, *Jura People's Native Title Determination* (Perth: National Native Title Tribunal, 2011); Austl, Commonwealth, National Native Title Tribunal, *Djiru People's Native Title Determination* (Perth: National Native Title Tribunal, 2011); Austl, Commonwealth, National Native Title Tribunal, *Muluridji People's Native Title Determination* (Perth: National Native Title Tribunal, 2011); Austl, Commonwealth, (Perth: National Native Title Tribunal, 2011); Austl, Commonwealth, National Native Title Tribunal, *Gunggari People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).

[540] See *ibid*.

entirety of Australia. This is a further example of elasticity and the model of elastic territorial control and the *imperium* and *dominium* relationship existing to allow for accommodation of a robust *dominium* and yet the maintenance of a robust *imperium*.

Thus, aboriginal title exists as a form of *dominium* that, while it may have pre-dated the extension of British and later Australian *imperium*, does not negate this *imperium*.[541] Indeed, it can be analogized to the Roman practice of recognizing existing kingdoms in conquered territories as retaining *dominium*.[542] By its very nature, the application of the model of legal elasticity and the *imperium* and *dominium* relationship to issues of aboriginal title demonstrates the importance of the model because a hardened model would not allow the possibility that there could be two co-existent title holders under a system in which the superior title holder is the Crown.

b. New Zealand

The colonization of New Zealand was vastly different than of Australia. Initially, individual citizens and missionary groups established settlement areas throughout the North and South Islands of New Zealand, acting largely on their own.[543] Indeed, there was some reluctance on the part of the Crown to undertake a formal colonization project in the area, however, infighting among settlers and concerns over their actions toward the indigenous Maori communities motivated the Crown to begin the formal colonization process.[544] These efforts culminated in the 1840 Treaty of Waitangi between the Crown and many of the Maori tribes.[545] Under the terms of the Treaty of Waitangi, the Maori tribes ceded their territories to the Crown in exchange for protection and the right to use these lands in the future.[546] Essentially, the relationship established between the Crown and the Maori was that of sovereign and subjects, with special protections guaranteed to

[541] McHugh, *supra* note 530 at 2 – 3; see also Laurelyn Whitt, *Science, Colonialism, and Indigenous Peoples* (Cambridge: Cambridge University Press, 2009) at 202].
[542] See Whitt, *supra* note 541 at ch 2.
[543] David Hackett Fischer, *Fairness and Freedom: A History of Two Open Societies, New Zealand and the United States* (Oxford: Oxford University Press, 2012) at pt 1.
[544] Matthew SR Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution* (Wellington, NZ: Victoria University Press, 2008) at 37 – 38.
[545] *Treaty of Waitangi* (1840).
[546] See *ibid*; Palmer, *supra* note 544 at 51 – 55.

the Maori and their land such that the government could purchase land from the Maori but potentially avaricious settlers could not.[547]

In the late nineteenth century, the passage of the Native Lands Act in New Zealand allowed the Maori to present claims to land as individuals and obtain a form of legal recognition of their right and title to the land.[548] In this sense, aboriginal title holding as such existed in New Zealand for well over a century. However, contrary to the initial intent of the Crown, these forms of recognition allowed the Maori to sell their lands to settlers as well as the Crown, resulting in mass land alienation.[549] Eventually, these practices were halted through new legislation, however the shift for and against Maori land alienation practices occurred several times more into the twentieth century.[550]

The 1975 Treaty of Waitangi Act was an attempt to use the Treaty of Waitangi as a guide to settle land claims issues.[551] The Treaty of Waitangi Act created the Waitangi Tribunal as a mixed Maori and non-Maori entity charged with reviewing individual and community claims to land as well as the application of the Treaty.[552] Instances of Maori land claims were to be transmitted to the Maori Land Court and Maori Appellate Court.[553] Through the Waitangi Tribunal system, the state has entered into agreements with a number of Maori communities for land claim settlement instruments that establish the rights of both parties to territory and natural resources in Crown lands.[554] As in the

---

[547] See Alan Ward, *National Overview*, vol 1 (Wellington, NZ: Waitangi Tribunal, 1997) at 2.
[548] *Ibid* at 7, es5; see generally, Christopher Hilliard, "The Native Land Court: Making Property in Nineteenth-Century New Zealand," in Saliha Belmessous, ed, *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) at ch 9.
[549] Ward, *supra* note 547 at 7, es5.
[550] *Ibid* at 7 – 8, es5 – es6.
[551] See *Treaty of Waitangi Act of 1975* (NZ), 1975; Palmer, *supra* note 544 at 90.
[552] *Treaty of Waitangi Act 1975* (NZ), 1995 at art 5(1).
[553] *Ibid* at art 6A; Bryan D Gilling. "The Maori Land Court in New Zealand: An Historical Overview" (1993) 13 Canadian J Native Studies 17.
[554] See *Ngai Tahu Claims Settlement Act 1998* (NZ), 1998 at preamble; *Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008* (NZ), 2008; *Central North Island Forests Land Collective Settlement Act 2008* (NZ), 2008; *Maraeroa A and B Blocks Claims Settlement Act 2012* (NZ), 2012; *Ngaa Rauru Kiitahi Claims Settlement Act 2005* (NZ), 2005; *Ngai Tamanuhiri Claims Settlement Act 2012* (NZ), 2012; *Ngati Apa North Island Claims Settlement Act 2010* (NZ), 2010; *Ngati Awa Claims Settlement Act 2005* (NZ), 2005; *Ngati Manawa Claims Settlement Act 2012* (NZ), 2012; *Ngati Manawa Claims Settlement Act 2012* (NZ), 2012; *Ngati Mutunga Claims Settlement Act 2006* (NZ), 2006; *Ngati Pahauwera Claims Settlement Act 2012* (NZ), 2012; *Ngati Porou Claims Settlement Act 2012* (NZ), 2012*; Ngati Ruanui Claims Settlement Act 2003* (NZ), 2003; *Ngati Turangituka Claims Settlement Act 1999* (NZ), 1999; *Ngati Tuwharetoa Claims Settlement Act 2005* (NZ), 2005; *Ngati Whare Claims Settlement Act 2012* (NZ), 2012; *Ngati*

Australian context of exclusive title grants, the Maori communities that take title to lands under these settlement agreements take it subject to the domestic laws of New Zealand and with an express statement that the territory remains part of the state.[555]

Throughout the attempts to craft Maori land rights laws, and particularly the aspects of these laws relating to the ability of Maori communities to alienate their lands, there have been many instances in which a hardened construct of territorial control and the *imperium* and *dominium* relationship have been applied. Laws allowing individual Maori to lay claim to rights to identified pieces of land reflected an ideology of homologizing land holding patterns around the concept of individual land holding, making it more difficult for Maori communities to continue to possess robust *dominium* and instead seeking to create an even more robust *imperium*.

In the Treaty of Waitangi Act, there was a shift in policy away from hardened constructs of territorial control and toward the model of legal elasticity and the *imperium* and *dominium* relationship. Through this process of land claims settlement, the state recognized the legitimacy of the Maori community's land claim and land rights, resulting in agreed upon robust *dominium* in the Maori communities. The state does so while maintaining a robust *imperium* over the entirety of the state's territory and explicitly reserving the ability to exert that right over Maori lands in the same way that it may exert it over non-Maori lands throughout the state.

c. Canada

Colonial settlement of Canada by the British and French governments involved a combination of conquest and treaties of cession.[556] In addition, the British enacted the

---

Whatua o Kaipara Claims Settlement Act 2013 (NZ), 2013; *Port Nicholson Taranki Whanui ki Te Upoko o Te Ika Claims Settlement Act 2009* (NZ), 2009 *Pouakani Claims Settlement Act 2000* (NZ), 2000; *Rongowhakaata Claims Settlement Act 2012* (NZ), 2012; *Te Arawa Lakes Claims Settlement Act 2006* (NZ), 2006; *Te Roroa Claims Settlement Act 2008* (NZ), 2008; *Te Uri o Hau Claims Settlement Act 2002* (NZ), 2002; *Waikato Raupatu Claims Settlement Act 1995* (NZ), 1995; *Waikato-Tainui Raupatu Claims Settlement Act 2010* (NZ), 2010; *Waitaha Claims Settlement Act 2013* (NZ), 2013.

[555] See generally *ibid*.

[556] See generally Canada, Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol 1 (Ottawa: Royal Commission on Aboriginal Peoples, 1996); Canada, Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol 2 (Ottawa: Royal Commission on Aboriginal Peoples, 1996).

Royal Proclamation of 1763 for all North American colonies in order to guide policies and interactions with the indigenous communities.[557] The Royal Proclamation of 1763 recognized at least some element of autonomy vested in the indigenous tribes within the larger construct of their status as part of British colonial territory.[558]

Over time, Canadian laws became highly discriminatory and also sought increasingly to relocate indigenous communities to state-designated reserve areas.[559] For many years, issues of autonomy and self-government for Canadian indigenous communities were largely dormant.[560] However, recent decades have seen a dramatic increase of assertions of these rights by indigenous communities, at the same time that various Canadian governments became somewhat more willing to act on these topics.[561] It has been expressly recognized that the assertion of rights and identities stemming from indigenous status in Canada is intended to allow these communities to participate in the Canadian governance and social structure rather than to challenge these structures and the larger Canadian governmental authority.[562]

Aboriginal title has been recognized by the highest courts in Canada, although it also has been found to have been extinguishable in many ways, particularly regarding the Western Canadian territories that were not subject to the Royal Proclamation's provisions regarding tribal status.[563] The key factor for Canadian courts is the occupation of the claimed lands by indigenous communities "at the time at which the Crown asserted sovereignty over the land subject to the title."[564] Further, Canadian courts have crafted the concept of a "duty to consult" with indigenous communities on licensing and other issues that will impact on their lands for all levels of Canadian government.[565]

---

[557] *Royal Proclamation 1763 (UK), 1763*; Royal Commission, *supra* note 556 at vol 1.
[558] *Ibid*.
[559] See Royal Commission, *supra* note 556 at vol 1.
[560] *Ibid*.
[561] *Ibid*.
[562] *Ibid*.
[563] See *Calder v British Colombia*, [1973] SCR 313. Since this distinction was established, a separate process for land settlement agreement promulgation was created for tribal areas in British Colombia. See Canada, Indian and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Hull, QC: Department of Indian and Northern Affairs Canada, 2010).
[564] McHugh, *supra* note 530 at 119 (quoting the *Delgamuukw* case).
[565] McHugh, *supra* note 530 at 153 – 154.

Under the terms of the revised Canadian Constitution Act, the national government recognized a right to self-government for indigenous communities and that this right may be expressed and upheld through treaties or agreements establishing the parameters of the right.[566] As is expressed in the official government negotiation policy "recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources."[567] In an effort to avoid litigating the self-government claims of indigenous communities, the Canadian government has established a negotiation system through which self-government agreements and land rights agreements can be entered into by mutual consent, in a manner similar to those used in Australia and New Zealand.[568] The Canadian government

---

[566] *Constitution Act, 1982*, art 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11; Canada, Indian and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Hull, QC: Department of Indian and Northern Affairs Canada, 2010) at pt 1.

[567] *Ibid*.

[568] See *ibid*; Canada, Indian and Northern Affairs Canada, *James Bay and Northern Quebec Agreement* (QC, 1975); Canada, Indian and Northern Affairs Canada, *Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada Concerning the Eeyou Marine Region* (2011); Canada, Indian and Northern Affairs Canada, *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (1993); Canada, Indian and Northern Affairs Canada, *Agreement in Principle of General Nature between the First Nations of Mamuitun and Nutsshkuan and the Government of Quebec and the Government of Canada* (2004); Canada, Indian and Northern Affairs Canada, *Anishinabek Nation Agreement in Principle with Respect to Governance* (2007); Canada, Indian and Northern Affairs Canada, *Anishnaabe Government Agreement in Principle* (2010); Canada, Indian and Northern Affairs Canada, *Canada/Prince Edward Island/Mi'kmaq Partnership Agreement* (2007); Canada, Indian and Northern Affairs Canada, *Carcross/Tagish First Nation Final Agreement among the Government of Canada, the Carcross/Tagish First Nation and the Government of the Yukon* (2005); Canada, Indian and Northern Affairs Canada, *Comprehensive Agreement in Principle between the Meadow Lake First Nations and Her Majesty the Queen in Right of Canada* (2001); Canada, Indian and Northern Affairs Canada, *Comprehensive Agreement in Principle between the Sioux Valley Dakota Nation and Her Majesty the Queen in Right of Canada* (2001); Canada, Indian and Northern Affairs Canada, *Champagne and Aishihik First Nations Final Agreement* (1992); Canada, Indian and Northern Affairs Canada, *Comprehensive Land Claim Agreement between Her Majesty the Queen in Right of Canada and the Gwich'in as Represented by the Gwich'in Tribal Council*, vol 1 (1992); Canada, Indian and Northern Affairs Canada, *Deh Cho First Nations Framework Agreement* (2001); Canada, Indian and Northern Affairs Canada, *Deline Self-Government Agreement in Principle for Sahtu Dene and Metis of Deline* (2004); Canada, Indian and Northern Affairs Canada, *First Nation of Nacho Nyak Dun Final Agreement* (1993); Canada, Indian and Northern Affairs Canada, *First Nation of Nacho Nyak Dun Self-Government Agreement* (1993); Canada, Indian and Northern Affairs Canada, *Gwich'in and Inuvialnuit Self-Government Agreement in Principle for the Beaufort-Delta Region* (2003); Canada, Indian and Northern Affairs Canada, *Land Claims and Self-Government Agreement Among the TLICHQ and the Government of the Northwest Territories and the Government of Canada* (2003); Canada, Indian and Northern Affairs

is adamant that it relinquishes no aspect of its standing as a territorially sovereign state with full jurisdiction over the territory in which the indigenous communities are located as a matter of law.[569] The Canadian government does, however, establish criteria for legal and policy matters that may fall within the ambit of indigenous self-government jurisdiction – such as marriage practices – and those that are exclusively reserved for the national government – such as national security matters.[570]

The Canadian negotiating platforms for these agreements is somewhat harder than New Zealand's in that it repeatedly states that the actions taken by the Canadian state in terms of land claim settlements do not in any way derogate from the ability of Canada to exert full territorial sovereignty over these areas. This position is an enshrinement of robust *imperium*. There is, however, legal elasticity throughout the terms of the land claim settlement agreements and the self-governance agreements. Indeed, applying the model of legal elasticity and the *imperium* and *dominium* relationship to the situation that exists

---

Canada, *Kluane First Nation Self-Government Agreement* (2003); Canada, Indian and Northern Affairs Canada, *Kwanlin Dun First Nation Final Agreement* (2005); Canada, Indian and Northern Affairs Canada, *Kwanlin Dun First Nation Self-Government Agreement* (2005); Canada, Indian and Northern Affairs Canada, *Labrador Innu Land Claims Agreement in Principle* (2012); Canada, Indian and Northern Affairs Canada, *Lheidl T'ennwh Agreement in Principle* (2003); Canada, Indian and Northern Affairs Canada, *Little Salmon/Carmacks First Nation Final Agreement* (1998); Canada, Indian and Northern Affairs Canada, *Little Salmon/Carmacks First Nation Self-Government Agreement* (1998); Canada, Indian and Northern Affairs Canada, *Nisga'a Final Agreement* (1999); Canada, Indian and Northern Affairs Canada, *Northwest Territories Lands and Resources Devolution Agreement in Principle* (2011); Canada, Indian and Northern Affairs Canada, *Nunavik Inuit Land Claims Agreement* (2006); Canada, Indian and Northern Affairs Canada, *Nunavut Land Claims Agreement Act* (1993); Canada, Indian and Northern Affairs Canada, *Sahtu Dene and Metis Comprehensive Land Claim Agreement*, vol 1 (1993); Canada, Indian and Northern Affairs Canada, *Sechelt Indian Band Self-Government Act* (1986); Canada, Indian and Northern Affairs Canada, *Selkirk First Nation Self-Government Agreement* (1998); Canada, Indian and Northern Affairs Canada, *Sliammon First Nation Agreement in Principle* (2003); Canada, Indian and Northern Affairs Canada, *Ta'an Kwach'an Council Self-Government Agreement* (2002); Canada, Indian and Northern Affairs Canada, *Teslin Tinglin Council Final Agreement* (1993); Canada, Indian and Northern Affairs Canada, *Tr'ondek Hwech'in Final Agreement* (1998); Canada, Indian and Northern Affairs Canada, *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* (1993); Canada, Indian and Northern Affairs Canada, *Vuntut Gwitchin First Nation Final Agreement* (1993); Canada, Indian and Northern Affairs Canada, *Vuntut Gwitchin First Nation Self-Government Agreement* (1993); Canada, Indian and Northern Affairs Canada, *Westbank First Nations Self-Government Agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation* (2003); Canada, Indian and Northern Affairs Canada, *The Western Arctic Claim, the Inuvialut Final Agreement* (1984); Canada, Indian and Northern Affairs Canada, *Yekooche First Nation Agreement in Principle* (2003); Canada, Indian and Northern Affairs Canada, *Yukon First nations Self-Government Act* (1994).

[569] Canada, Indian and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Hull, QC: Department of Indian and Northern Affairs Canada, 2010) at pt 1.

[570] *Ibid*.

between Canada and its indigenous communities demonstrates that there is room for legal elasticity even in a system characterized by legal hardening where legal elasticity is supported by a well-articulated and agreed upon balance between robust *imperium* and robust *dominium*.

d. United States

As part of the British North American colonial system, the colonies comprising what would be the early United States were subject to the terms of the Royal Proclamation of 1763.[571] Following independence and the implementation of the federal Constitution, the United States' laws established that matters relating to indigenous communities, particularly treaties with them as tribal nations, were within the jurisdiction of the federal government.[572] From the point of constitutional ratification onward, the system established was and continues to be a dual system in which approved and identified tribes exist in designated territories and function as "independent entities with inherent powers of self-government," subject to federal regulation and law.[573] Concomitantly, the United States government has assumed responsibilities of protection for the tribes, their citizens and their properties through administrative oversight mechanisms.[574]

A form of aboriginal title was recognized in the United States in the 1823 United States Supreme Court case of *Johnson v McIntosh*.[575] In this case, Justice Marshall recognized that, in the American context, the discovering European state gained sovereignty to that territory as against other sovereigns but that the indigenous tribes within the territory still "retained a right of occupancy, which only the discovering sovereign could extinguish, either 'by purchase or by conquest.'"[576] Justice Marshall again opined on the status of the Indian tribes in *Cherokee Nation v Georgia*, in which it was found that the tribes were "domestic dependent nations," meaning that the tribes "occupy a territory to which we

[571] See *Royal Proclamation of 1763*, (UK).
[572] US Const art I, § 8; Stephen L Pevar, *The Rights of Indians and Tribes*, 4th ed (Oxford: Oxford University Press, 2012) at 5.
[573] William C Canby, Jr, *American Indian Law in a Nutshell*, 5th ed (Minnesota, MN: West Publishing, 2009) at 1 – 2.
[574] *Ibid* at 2.
[575] *Ibid* at 15; Pevar, *supra* note 572 at 24.
[576] Canby, *supra* note 573 at 15 – 16; see also Pevar, *supra* note 572 at 24 – 25.

assert a title independent of their will, which must take effect in point of possession, when their right of possession ceases. Meanwhile, they are in a state of pupilage; their relation to the United States resembles that of a ward to his guardian."[577] This is one of the earliest pronouncements of the relationship between *imperium* and *dominium* in the context of the United States government and the indigenous communities located within its borders, and is notable in that it does not completely extinguish the concept of *dominium* residing in indigenous communities.

Over time, this trend shifted toward attempts to establish independent identities and governments within the indigenous communities, although this was not done in preparation for any formal grant of more independent status.[578] There was also an attempt at terminating the special status of Indian tribes under federal, state and local law, however this proved unpopular and ineffective.[579] Additionally, the tribes have increasingly established forms of legislative and executive entities under their tribal constitutions,[580] which also establish tribal courts that apply the tenets of tribal law throughout the territory of the tribe.[581]

As recently restated by the United States Supreme Court, the legal and societal relationship between the United States and the individual Indian tribes is that of a trusteeship.[582] Part of the modern day iteration of this relationship involves the requirement that "the federal government . . . support and encourage tribal self-government, self-determination, and economic prosperity."[583] The recent statutory enactments relating to many tribes confirm the shift toward self-government and self-determination as the guiding practice for US policy within the confines of the larger principles of the trust relationship.[584]

---

[577] Canby, *supra* note 573 at 16 – 17 (quoting *Cherokee Nation v Georgia*, (1831) 30 US 1, 17).
[578] See *ibid* at 21 – 26.
[579] Canby, *supra* note 573 at 61 – 64.
[580] *Ibid* at 65 – 70; Pevar, *supra* note 572 at 84 – 86, 88 – 90.
[581] Canby, *supra* note 573 at 70 – 72.
[582] Pevar, *supra* note 572 at 29.
[583] *Ibid* at 32.
[584] See 25 USC § 741 *et seq* (2014)(relating to the Catawba Indian Tribe of South Carolina); 25 USC § 1799 *et seq* (2014) (relating to the Catawba Indian Tribe).

The United States shares as do other states essentially the same practice of applying the model of legal elasticity and the *imperium* and *dominium* relationship into its relationship with indigenous communities. It demonstrates the importance of establishing this relationship not only with the indigenous communities themselves but also with national sub-units, such as American states, in order to ensure that there is an understood standard for how each layer of government is able to legally interact with indigenous groups, in this case insisting on the exertion of a robust *imperium* over the American states as well as the indigenous communities. Legal elasticity functions in the American context because it is supported by an *imperium* and *dominium* relationship in which there is robust *imperium* that is legally charged with ensuring robust *dominium* and also legally created robust *dominium* rights for the indigenous communities.

III. Kaliningrad Oblast and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Historically, Kaliningrad's identity was largely German.[585] After World War I, Kaliningrad avoided incorporation into Polish territory, however it was separated from the post-war German territory and was neighbored by Poland and Lithuania.[586] After World War II, the territory was placed under the control of the Soviet Union, which sought a Baltic port.[587] Early Soviet policy sought to remake the area forcing out or causing the death of most of Kaliningrad's German population.[588] The Soviets then engaged in a colonization scheme through which Russian and other selected groups were relocated to the territory.[589] The importance of Kaliningrad from a strategic point of view, coupled with the lack of a traditional society or ethnicity residing in the territory, resulted in the Soviet decision to make the area part of the larger Soviet territory under the direct administration of a designated Russian administration.[590]

---

[585] Alexander C Diener & Joshua Hagen, "Russia's Kaliningrad Exclave," in Alexander C Diener & Joshua Hagen, eds, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State* (Lanham, MD: Rowman & Littlefield Publishers, Inc, 2010) at 123.
[586] *Ibid* at 125 – 128.
[587] *Ibid*.
[588] *Ibid* at 128 – 130; Evgeny Vinokurov, *A Theory of Enclaves* (Lanham, MD: Lexington Books, 2007) at 119 – 120; Ingmar Oldberg, "Kaliningrad: Problems and Prospects" in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998) at 4.
[589] Diener & Hagen, *supra* note 585 at 128; Vinokurov, *supra* note 588 at 120.
[590] Diener & Hagen, *supra* note 585 at 128 – 129.

During the Cold War, Kaliningrad was a vital port city for military presence in the Baltic region.[591] In the post-Cold War period, Kaliningrad – and Russian sovereignty over it – has gone through several iterations of questions regarding its existence and status. For a while there was concern over the intensions of unified Germany toward Kaliningrad, however it renounced any potential historical claims to the territory in favor of Russian sovereignty.[592] The presence of a significant military force in Kaliningrad has continued to cause unease with neighboring states, particularly as many of these states have joined the European Union and the North Atlantic Treaty Organization.[593] At the same time, with Russia losing military bases in the former Soviet republics, Kaliningrad's military location and function took on greater significance.[594]

Part of the post-Cold War reforms that swept through Kaliningrad involved the designation of the non-military portions of the oblast as a Special Economic Zone.[595] Currently, the SEZ has become important to the Russian economy as well as to preserving the civilian functionality of Kaliningrad.[596] Unlike traditional SEZs, which are located within a typically smaller, designated area and have a limited number of residents at the most, the Kaliningrad SEZ includes nearly the entire Kaliningrad oblast and residents as well.[597]

As a matter of official Russian law and policy, Kaliningrad is an extension of Russian soil and matters relating to it are viewed as domestic matters.[598] The Russian government

---

[591] *Ibid* at 129; Vinokurov, *supra* note 588 at 70 – 71.
[592] Diener & Hagen, *supra* note 585 at 133; Algirdas Gricius, "Russia's Exclave in the Baltic Region," in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998) at 161 – 163.
[593] Diener & Hagen, *supra* note 585 at 133 – 135; Oldberg, *supra* note 588 at 4 – 6.
[594] Oldberg, *supra* note 588 at 4 – 5.
[595] Vinokurov, *supra* note 588 at 259; Gennady M Fyodorov, "The Social and Economic Development of Kaliningrad" in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998) at 41 – 42.
[596] Vinokurov, *supra* note 588 at 259 – 262.
[597] Russian Federation, *The Federal Law on the Special Economic Zone in the Kaliningrad Region*, 2005 at ch 4.
[598] See Hanne-Marget Birckenbach & Christian Wellmann, "Managing asymmetric interdependence: A comparative approach on the Kaliningrad policies of core actors" in Kari Liuhto, ed, *Kaliningrad 2020: Its future competitiveness and role in the Baltic Sea economic region* (Turku, Finland: Pan-European Institute, 2004) at 6; Romuald Misiunas, "Rootless Russia: Kaliningrad – Status and Identity" (2004) 15 Diplomacy & Statecraft 385.

controls Kaliningrad and the officials who oversee the oblast are reportable to the Russian government as well. This is disconcerting to neighboring states and the EU, for whom Kaliningrad is an unwelcome assertion of Russian authority on their borders. However, it should also be remembered that the issue of Kaliningrad as an exclave and thus a territorial anomaly has ramifications for Russia as well.

Within Russian law, there is generally a hardened relationship regarding Kaliningrad in that the oblast is regarded as a standard piece of Russian soil, on which there is a SEZ – which does imply the potential for a more robust *dominium* – and also a significant military complex – in which robust *imperium* takes precedence over weak *dominium*. However, the identity of Kaliningrad as an exclave, and one that is relatively difficult to reach from the Russian Federation itself, adds an additional element to the discussion. Kaliningrad's exclave status means that, in the event of an emergency or some form of conflict involving Russia, it could function as a target. This status also means that it is necessary for Russia to contemplate the possibility that Kaliningrad will have to exercise more robust *dominium* in such circumstances. Thus, although on the outside there is a hardened construct of territorial control and the *imperium* and *dominium* relationship, it is possible for this situation to change by forces other than those from Russia or Kaliningrad itself. In this, we see one of the few forms of anomalies of territory that is truly able to threaten the state that holds *imperium*. This situation is due to the hardened status of territorial control exerted by Russia over Kaliningrad as well as the basic geographic vulnerability of Kaliningrad as an exclave.

IV. Areas of Disagreement and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

Policy disagreements between states and sub-state entities are certainly not rare. However, the two examples discussed below are highlighted because of the extremes to which the sub-state entities have taken these disagreements and the potential for the reactions to these disagreements to be seen as divisive or undermining of the state's territorial authority. These examples were also selected because they relate to two policy areas – environmental protection and monetary policy – that are of increasing importance to state authority and sovereignty at the national and international level. Thus, they are

instances in which applying the model of legal elasticity and the *imperium* and *dominium* relationship is insightful in order to determine the parameters to which legal elasticity might be stretched before it begins to undermine the state's *imperium*.

a. Cap-and-Trade in the United States

The cap-and-trade system is essentially a system for making a commodity out of intangible units of carbon or other pollutants.[599] In this way, unlike other forms of commodity trading, the cap-and-trade system seeks to use the market system to create a disincentive for the use of inefficient pollutants and an economic incentive to reduce carbon usage or use more efficient carbon source points.[600] The principles of cap-and-trade systems were established on the global scale in the combination of the United Nations Framework Convention on Climate Change (UNFCCC) and the subsequent Kyoto Protocol to the UNFCCC.[601] In the years after the Kyoto Protocol, the European Union has created by far the most advanced cap-and-trade system.[602]

Although the United States ratified the UNFCCC and signed the Kyoto Protocol, it has never ratified, and is not bound by, the Kyoto Protocol.[603] This has ramifications in many policy areas, including in the reluctance of many political actors to embrace the concept of a cap-and-trade system within the United States.[604] While there have been periodic attempts to create a cap-and-trade system for the United States as a whole, these attempts have failed.[605] According to the terms of the United States Constitution, decisions

---

[599] See Alice Kaswan, "Decentralizing Cap-and-Trade? The Question of State Stringency" (2009) 1 San Diego J Climate & Energy Law 103 at 110 – 111.
[600] See *ibid*.
[601] *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107; *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 16 March 1998, 37 ILM 22.
[602] EU, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance) *Official Journal L 275 , 25/10/2003 P. 0032 – 0046.*
[603] United Nations Framework Convention on Climate Change, Status of Ratification of the Convention, online: United Nations Framework Convention on Climate Change <http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php<; Kyoto Protocol on the United Nations Framework Convention on Climate Change, online: United Nations Framework Convention on Climate Change <http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php>; Susan R Fletcher, *Global Climate Change: The Kyoto Protocol* (Washington, DC: Congressional Research Service, 2004).
[604] See Fletcher, *supra* note 603.
[605] US, Bill HR 2454, *American Clean Energy and Security Act*, 111th Cong, 2009.

regarding foreign policy and many matters of domestic environmental policy are solely within the jurisdiction of the federal government, however, this is not the case with all matters of environmental and energy policy.[606]

Federal reluctance to enact national cap-and-trade legislation does not indicate an overall reluctance or opposition to these programs in various parts of the United States. With this in mind, a number of states from the Northeastern and Mid-Atlantic United States created the Regional Greenhouse Gas Initiative (RGGI) as a way for states to establish a cap-and-trade system.[607] The RGGI cap-and-trade system within the territories of these states is enabled by individual state laws implementing the cap-and-trade system and establishing rules for it's functioning.[608] It is clear, however, that the RGGI member states are willing to participate in a national cap-and-trade system should it exist in the future.[609]

The environmental policy aspects of RGGI are beyond the scope of this thesis. What is important to note is that the RGGI states have created what is arguably an area of territorial anomaly through the implementation of the cap-and-trade system within their jurisdictions. As a matter of law, these individual states have done nothing illegal or

---

[606] See US Const art I sects 8, 10. See also Matthew Schaefer, "The 'Grey Areas' and 'Yellow Zones' of Split Sovereignty Exposed by Globalization: Choosing Among Strategies of Avoidance, Cooperation, and Intrusion to Escape an Era of Misguided 'New Federalism'" (1998) 24 Can-US LJ 35 (discussing the ability of US states to enter into agreements and compacts); Maher, *supra* note 1.

[607] *Regional Greenhouse Gas Initiative Memorandum of Understanding* (2005). See also Katie Maxwell, "Multi-State Environmental Agreements: Constitutional Violations or Legitimate State Coordination?" (2006 – 2007) 15 Penn State Envtl L Rev 355 at 363 – 365; Tsemin Yang, "The Problem of Maintaining Emissions 'Caps' in Carbon Trading Programs Without Federal Government Involvement: A Brief Examination of the Chicago Climate Exchange and the Northeast Regional Greenhouse Gas Initiative" (2005 – 2006) 17 Fordham Envtl LJ 271 at 282 – 286.

[608] *Ibid*; Conn Stat § 22a-174l-446c (2014); Conn Stat § 22a-174-31 (2014); Conn Stat § 22a-174-31 (2014); Del Stat tit 7 ch 60 (2014); Del Stat tit 38 ch 3-B (2014); Md Code Ann Envtl § § 1-101 – 1-104 (2014); Md Code Ann Envtl § 2-103 (2014); Md Code Ann Envtl § -1002g (2014); Mass Gen Laws c 21A § 22 (2014); NH RSA §125-O:19-28p (2014); NY Envtl Cons L §1-0101 (2014); NY Envtl Cons L §1-0303 (2014); NY Envtl Cons L §3-0301 (2014); NY Envtl Cons L §11-0303 (2014); NY Envtl Cons L §11-0305 (2014); NY Envtl Cons L §11-0535 (2014); NY Envtl Cons L §13-0105 (2014); NY Envtl Cons L §15-0109 (2014); NY Envtl Cons L §15-1903 (2014); NY Envtl Cons L §16-0111 (2014); NY Envtl Cons L §17-0303 (2014); NY Envtl Cons L §19-0103 (2014); NY Envtl Cons L §19-0105 (2014); NY Envtl Cons L §19-0107 (2014); NY Envtl Cons L §19-0301 (2014); NY Envtl Cons L §19-0303 (2014); NY Envtl Cons L §19-0305 (2014); NY Envtl Cons L §24-0103 (2014); NY Envtl Cons L §25-0102 (2014); NY Envtl Cons L §34-0108 (2014); NY Envtl Cons L §49-0309 (2014); NY Envtl Cons L §71-2103 (2014); NY Envtl Cons L §71-2105 (2014); NY Energy L § 3-101 (2014); NY Energy L § 3-103 (2014); RI Gen Laws § 42-17.1-2(9) (2014); RI Gen Laws § 42-23-23 (2014); RI Gen Laws § 42-23-28 (2014); Vt Stat Ann tit § 30 55 (2014). See also Kaswan, *supra* note 599 at 103.

[609] *Regional Greenhouse Gas Initiative Memorandum of Understanding* (2005) at art 6(C).

outside the scope of the limitations placed upon them through the United States Constitution or federal laws. However, their actions are such that they have created more robust *dominium* for themselves and also a regional grouping that has robust *dominium* over a significant aspect of policy and territorial control. While these actions do not constitute an overreach into federal jurisdiction, they do represent an instance in which the individual states have taken a policy area into the parameters of their own legislative and territorial domains. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to this situation demonstrates the place of legal elasticity in an already elastic system such as the federal/state system used in the United States. The RGGI example pushes the parameters of legal elasticity within the federal/state system and demonstrates that there is room for additional elasticity in such a flexible system. Legal elasticity is supported by the robust *imperium* and robust *dominium* relationship that operates within the confines of a strong yet elastic constitution.

b. The Euro in Hoganas[610]

National currencies and the policies and tangible value they transmit have become "pure manifestations of sovereignty."[611] This is certainly true of the economic value assigned to currencies as a reflection of their issuing state's strength and capabilities.[612] The same "manifestation of sovereignty" classification also extends to national monetary policy, which – at least in theory – is squarely within the jurisdiction of the state.[613]

The decision of a European Union member state to join the Eurozone and use the Euro as national currency is not automatic with European Union membership, and European Union member states are required to go through a further screening and preparation process prior to attaining membership in the Eurozone.[614] Similarly, not all European

[610] This section draws from Alexandra R Harrington, "Sovereignty, Territory and Fluidity: Lessons from Hoganas" SSRN Working Paper Series (2009).
[611] Steil & Hinds, *supra* note 10 at 9 – 10.
[612] *Ibid*.
[613] See *ibid* at 72 ("We take it for granted today that monetary policy is not only the prerogative of the government but one of its primary responsibilities. . . having no monetary policy is anarchy, and having it dictated from abroad is imperialism.").
[614] *Treaty on European Union* (Maastricht Treaty), 7 February 1992, 1757 UNTS 3 (1993) at art 4a; European Central Bank, *Convergence Report, May 2008* (Frankfurt: European Central Bank, 2008).

Union member states join the Eurozone. Notably, the United Kingdom, Sweden and Denmark have publicly stated their intention to remain outside of the Eurozone.[615]

The decision of successive Swedish governments to retain the Swedish krona as the national currency and avoid entanglement with the Euro is enshrined in Swedish law.[616] This law and the policy behind it were decided through a national referendum in which Swedish voters opted to retain the krona as the national currency.[617] Under the terms of the Swedish Riksbank Act, "Sweden's monetary unit is the krona."[618] In keeping with Swedish constitutional structure, while powers and responsibilities have devolved to municipalities and localities, it is clear that monetary decisions have not been devolved.[619]

Facially, then, the laws in both the Eurozone and Sweden are clear – Sweden is not part of the Eurozone and does not use the Euro within its borders. The simplicity of this situation was challenged in 2008, when the Swedish resort town of Hoganas – a popular vacation destination for tourists from Eurozone member states – announced that it would allow merchants to accept Euros as valid methods of payment rather than requiring tourists to exchange Euros for kronas in order to make payments.[620] Despite media coverage of this decision, the Swedish government has not taken official action to prevent the use of Euros as a trading currency in Hoganas.

At first, this might seem to be a rather unimportant event – private merchants can theoretically accept payment in any currency they wish, provided that they are able to record the appropriate monetary value of their transactions for taxations and other purposes. However, by making the ability to accept Euros as payment an official municipal policy, the currency dynamic in Hoganas changes and there is a direct act of disagreement between a small sub-state unit and the larger state's monetary policy.

---

[615] See *Treaty on European Union* (Maastricht Treaty), 7 February 1992, 1757 UNTS 3 (1993) at art 4a.
[616] Sweden, *The Sveriges Riksbank Act*, 1998 at ch 5 art 1.
[617] "Sweden says No to euro" *BBC.Com* (15 September 2003), online: BBC.Com <http://news.bbc.co.uk/2/hi/europe/3108292.stm>.
[618] Sweden, *The Sveriges Riksbank Act*, 1998 at ch 5 art 1.
[619] See Sweden Const ch 9 art 12 (1974).
[620] See Michael Buchanan, "Swedish town aims to be 'euro city'" online: *BBC.Com* (29 December 2008), online <http:www.bbc.co.uk/2/hi/business/7798060.stm>.

This example might seem to be of relatively little consequence to Swedish economic policy or sovereignty, particularly as there has not been a public outcry in favor of or against Hoganas' actions. However, this example is mentioned as an illustration of how a small state sub-unit can defy national law in a policy area that the state has firmly occupied. In a hardened construct of territorial control and the *imperium* and *dominium* relationship, the official reaction from the state to Hoganas' announcement would have been swift and clear since Swedish currency laws are simple and explicit. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to the Hoganas example further demonstrates the ways in which legal elasticity is accommodated even in legal systems that appear to be hardened. Legal elasticity here is supported by a robust *imperium* and robust *dominium* relationship in which the state retains the ability to act against the sub-state unit's policies although it passively fails to do so.

V. Leased Territories, Reintegration and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The use of territorial leases between states is not new and is well-accepted as a matter of international law.[621] Leases in international law essentially represent a compromise of sovereign rights for a set duration of time – or potentially indefinitely – in much the same way that they represent a compromise of the fee owner's rights in common law property regimes.[622] Under the standard territorial lease terms used in international law, the lessee assumes complete legal control over the leased territory during the lease, however this control ends with the termination of the lease.[623] When the lease terminates, sovereignty and legal rights revert to the sovereign lessor and, at least in theory, the leased territory is completely reintegrated into the legal system of the sovereign lessor.[624] As such, territorial leases between sovereigns are relatively straightforward. What is more important for the purposes of this thesis is not the territorial lease *per se* but rather the impact of leased territory reversion and reincorporation on issues of territory, sovereignty and statehood for the sovereign lessor.

---

[621] See Shaw, *supra* note 95 at 538 – 540.
[622] See *ibid*.
[623] *Ibid*.
[624] *Ibid*.

In some instances, the reversion is a point of national pride and economic value with little variance in law applied by the sovereign lessee and sovereign lessor and does not cause a great deal of disruption. For example, when the Panama Canal Zone lease ended and that territory reverted from the United States to Panama, there was a small population involved but a massive amount of economic value and national pride in having ousted what were increasingly viewed as unwelcome American forces.[625] The terms of the reversion back did stipulate that the US would have the ability to enter into the zone for commercial purposes – as was afforded to other states – and to assist the Panamanian government with threats to the defense of the Canal Zone itself.[626] However, there were very few issues attendant in reintegrating this commercial base into Panamanian law. Indeed, there were arguably greater problems suffered by the vacating Americans in terms of the need to relocate the military forces that had been stationed at the Canal Zone.[627]

The same ease of reversion and reincorporation did not occur with the 1997 termination of the British lease over Hong Kong.[628] This reversion represented a challenge for all parties, as it involved the reversion of a territory which had been part of the Chinese Empire when it was ceded to the British through the initial treaty of cession and subsequent lease, became part of a booming capitalist system under British control, and was about to revert to the legal control of a now communist Chinese state.[629] Beyond the implications for Hong Kong, there were also legal, political and social implications for China, which has been slowly transitioning through capitalist-based market reforms while still retaining a strong sense of governmental control by the state.[630]

---

[625] See Brownlie, *supra* note 95 at 265 – 266.
[626] See *ibid*.
[627] See Christopher Sandars, *America's Overseas Garrisons: The Leasehold Empire* (Oxford: Oxford University Press, 2007) at 133 – 135.
[628] Shaw, *supra* note 95 at 1008; Crawford, *supra* note 278 at 245 – 246.
[629] Westad, *supra* note 229 at 441 – 443; Anthony BL Cheung, Rebureaucratization of Politics in Hong Kong: Prospects after 1997" (1997) 37 Asian Survey 720; Baohui Zhang, "Politics Paralysis of the Basic Law Regime and the Politics of Institutional Reform in Hong Kong" (2009) 49 Asian Survey 312.
[630] Westad, *supra* note 229 at 442 – 443; Suzanne Pepper, "Hong Kong, 1997: East v West and the Struggle for Democratic Reform within the Chinese State" (1997) 37 Asian Survey 683; Wu Jianfan, "Several Issues Concerning the Relationship between the Central Government of the People's Republic of China and the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 65; Hungdah Chiu, "Legal Problems with the Hong Kong Model for Unification with China and Their Implications for Taiwan" (1988) 2 J

Official negotiations prior to 1997 resulted in the creation of the Hong Kong Special Administrative Region (HKSAR), to which the majority of governmental powers were devolved.[631] The HKSAR was given a great deal of domestic and international independence with the exception of critical matters to China such as foreign affairs and defense.[632] One of the first stipulations of the Basic Law establishing the HKSAR is "the National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law."[633] Additionally, the Basic Law establishing the HKSAR is explicit that "the land and natural resources within the Hong Kong Special Administrative Region shall be State property."[634]

Within the HKSAR there is a locally-based, tripartite system of government and a number of laws that had been in place under British rule continue to apply, including a free port system that allows Hong Kong to maintain its status as a preeminent financial and trading center.[635] The dual yet unequal system of sovereignty over the HKSAR is not permanent and is scheduled to expire in 2047, at which time it is expected that there will be a full reversion of the HKSAR to Chinese law and sovereignty.[636] Additionally, the appointment of high-ranking governmental officials for the HKSAR, such as the chief executive, is reserved for the Chinese government itself and the Chinese government has oversight authority for the laws promulgated by the HKSAR legislative body.[637]

Chinese L 83; Wai Kit Choi. "(Post) coloniality as a state of Chines exception" (2007) 10 Postcolonial Studies 391.

[631] Spence, *supra* note 318 at 710 – 711; Westad, *supra* note 229 at 441 – 443; Zhang Youyu, "The Reasons for the and Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and its Essential Contents and Mode of Expression" (1988) 2 J Chinese L 5; Liu Yiu Chu, "Interpretation and Review of the Basic Law of the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 49.

[632] Shaw, *supra* note 95 at 1008; Crawford, *supra* note 278 at 245 – 246; Wang Shuwen, "The Basic Rights and Obligations of the Residents of the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 123.

[633] People's Republic of China, *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, 1997 at ch 1 art 2.

[634] *Ibid* at ch 1 art 7.

[635] Shaw, *supra* note 95 at 1008 – 1009; Crawford, *supra* note 278 at 245 – 248.

[636] Shaw, *supra* note 95 at 1009; Crawford, *supra* note 278 at 248.

[637] Wu Jianfan, *supra* note 630 at 69.

Essentially the same situation and legal arrangements were made in Macau, which reverted to Chinese control in 1999 after being under the lease-based control of the Portuguese.[638] Macau has been designated as the Macau Special Administrative Region (MSAR) and is also under the same fifty-year system of dual yet unequal sovereignty with the Chinese government that is used in Hong Kong.[639] Although not as important a financial center as Hong Kong, prior to the lease reversion Macau enjoyed a strong economy – including an active gaming industry – that has been retained and largely supported by the Chinese government.[640]

The issue of international territorial lease reversions is often discussed from the aspect of the entity that had been subject to the lease and less commonly discussed from the perspective of the state that is re-taking the leased territory. However, it is clear that there are impacts on both states involved, and that in situations such as the reversions of Hong Kong and Macau, the potential for legal disruption exists. Particularly in the context of Hong Kong and Macau reverting to a legal system that is essentially foreign in many ways to the legal Chinese system, these impacts are not only real but also cannot be accommodated through a hardened construct of territorial control and the *imperium* and *dominium* relationship.

Under a hardened construct, the Basic Law for the HKSAR and MSAR would not have been suitable for the slow reincorporation of Hong Kong and Macau to Chinese law and *imperium*, as they require flexibility in reconciling the communist legal system with the capitalist systems of law that largely underscored the administration and operation of Hong Kong and Macau during the term of the British lease. Seen through this lens, applying the model of legal elasticity and the *imperium* and *dominium* relationship was essential for the creation of the Basic Laws of the HKSAR and the MSAR and continues

---

[638] See People's Republic of China, *Basic Law of the Macao Special Administrative Region of the People's Republic of China*, 1999; Sonny Lo & Herbert S Yee, "Legitimacy-Building in the Macau special administrative region: Colonial legacies and reform strategies" (2005) 13 Asian J Political Science 51 at 51 – 53; Richard Louis Edmonds & Herbert S Yee, "Macau: From Portuguese Autonomous Territory to Chinese Special Administrative Region" (1999) 1999 China Quarterly 801.
[639] See People's Republic of China, *Basic Law of the Macao Special Administrative Region of the People's Republic of China*, 1999.
[640] *Ibid* at 65; Lo & Yee, *supra* note 638.

to be essential to the reintegration efforts of Hong Kong and Macao into full Chinese authority and sovereignty. Legal elasticity in this context is supported by a shifting balance in the *imperium* and *dominium* relationship, one that anticipates a slow diminishing of currently robust *dominium* in favor of robust *imperium*. Whether this is achieved in 2047 is impossible to predict, however if it is it will be the result of legal elasticity rather than legal hardening.

V. Conclusion

This chapter focused on the ways in which areas of anomaly exist in relation to political control over territory within a state. The studies examined focus on instances where a sub-state entity located within a state's territory is able to exist and function as a largely self-governing entity or exists in a form of tension with the laws of the state. In each of these studies, the state-sub-state relationship has resulted in opportunities for growth, development, change and challenge that incorporate the model of legal elasticity and the *imperium* and *dominium* relationship.

The first study examined the role of indigenous communities as areas of territorial anomaly in the former British dominion states of Australia, Canada and New Zealand as well as the United States. Although each of the former British dominion states and the United States has recognized aboriginal title, these states did so in different ways and as the result of different historical mechanisms. Regardless, in each of these jurisdictions there were governmental processes established to facilitate the settlement of land claims between indigenous communities and the state. In each of these states there was also an explicit relationship of robust *imperium* and robust *dominium* established such that territorial areas that are vested in indigenous communities in terms of property rights are still subject to the larger national laws of the state. Overall, it was established that the evolution of the relationship between indigenous communities and the state in each of these jurisdictions demonstrates the importance of the model of legal elasticity and the *imperium* and *dominium* relationship.

The second study examined Kaliningrad oblast, a Russian exclave located between Poland, Lithuania and the Baltic Sea. Included in the discussion was not only the impact

of Kaliningrad on its neighbors but also on the Russian state that is faced with directly administering an exclave in often hostile conditions. It was asserted that, although a hardened relationship exists between Russia and the Kaliningrad oblast in terms of purely statutory law, the potential need to adopt the model of legal elasticity and the *imperium* and *dominium* relationship to respond to threats and emergencies in the future exists and indeed causes a quandary for Russian policy.

The third study examined the RGGI in the United States and the town of Hoganas in Sweden, both of which have opted to pursue policies that are contrary to those officially embraced by their national governments. In the RGGI example, the policy area at issue is the adoption of a cap-and-trade program and in the Hoganas example the policy area at issue is the use of the Euro in addition to or as a replacement for the Swedish krona. The RGGI system does not directly violate the laws of the United States, however Hoganas' actions are contrary to official Swedish currency law. Both examples demonstrate the ability to use different aspects of the applicable state law to act in ways that are contrary to established policy through the model of legal elasticity and the *imperium* and *dominium* relationship where that relationship is supported by a robust *imperium* and robust *dominium* relationship in which the state retains the ability to act against the sub-state unit's policies although it passively fails to do so.

Finally, the fourth study examined the impact of the reversion of international leased territories on the law used in the leased territory and the state to which the territory is reverting. Through the examples of the reversion of Hong Kong and Macau to China, this study applied the model of legal elasticity and the *imperium* and *dominium* relationship to demonstrate the model of legal elasticity and the *imperium* and *dominium* relationship's utility where legal elasticity is supported by a shifting balance in the *imperium* and *dominium* relationship that anticipates a slow diminishing of robust *dominium* in favor of robust *imperium*.

Thus, this chapter has demonstrated that it is possible for areas of politically based anomaly of territory to exist, and that the application of the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates mechanisms through which these

anomalies can co-exist with state *imperium*. These mechanisms focus on ensuring that there is a retained robust *imperium* – and with it territorial control on the part of the state – while at the same time allowing for fluctuating forms of robust *dominium*.

Chapter 8 – Anomalies of Military and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

I. Introduction

In this chapter, the focus shifts to the impact of foreign military and military-associated installations on the territorial sovereignty of the host state. Among the myriad functions that are or have the potential to be exercised by modern states there is arguably no more fundamentally sovereign function than that of controlling and overseeing a state's military. This chapter readjusts the typical lens through which military and military-associated installations are seen by examining the impact of these quintessential functions of statehood and sovereignty when they are exercised by foreign states within the territory of a host state.

The first study examines the impact of overseas military bases located within a host state on the territorial control and sovereignty of the host state itself and applies the model of legal elasticity and the *imperium* and *dominium* relationship to demonstrate the forms of relationships created in this situation. This study examines American overseas military basing practices from the end of World War II onward. The decision to study this state and time period stems from the fact that, with the exception of the Philippines and to a certain extent immediate post-war Japan, these bases were acquired through leases in states with which the United States had no established territorial relationships. This differs from European states that established bases in former colonies. Thus, the American leases were quintessentially new constructs in the relationship between the states involved and in the *imperium* and *dominium* relationship crafted by the host state.

Within the pattern of overseas military basing, there is an issue of territorial sovereignty for base acquiring states in that they need to acquire bases under agreements that allow them to treat the base areas as part of their national territorial and legal system for the safety and success of their operations and personnel. As a standard matter, the lease terms used reflect this. Throughout recent history there have been examples of calls from local populations to shut down foreign military bases, usually as the result of a particular off-base crime committed by foreign forces or because of environmentalist opposition to the

use of weaponry on the bases.[641] Many of these movements have been couched in nationalistic parlance, and indeed some have involved national governments supporting the protests, however these arguments tend to omit the importance of examining the impacts of foreign military bases on state territorial sovereignty.

The second study examines the impact of overseas military bases for international organizations performing an international peacekeeping function. From the point of view of international organizations that engage in peacekeeping operations, particularly the United Nations, basing represents the need for a physical staging area for military operations as well as a place from which to launch civilian outreach and other programs that have become standard in the evolving model of international peacekeeping. However, many of the same issues regarding the impact of foreign bases on host state territorial sovereignty apply in this context as well. Indeed, it is often more important to examine the issue of foreign basing and territorial sovereignty in this context because the presence of international organization associated bases often means that there is a contest for the political existence of the host state itself. Thus, these bases present the opportunity to examine the model of legal elasticity and the *imperium* and *dominium* relationship in a setting of questionable political control.

The third study examines zones of military occupation, particularly post-conflict military occupation. While the essential legal aspects of occupation are well established under international law there are more subtle aspects to this issue, particularly when the initial conflict has ceased and there is a designated host state in which these zones are located. Perhaps the best example of this is the "Green Zone" in Iraq, in which foreign troops, personnel and non-military personnel such as contractors and journalists live and work separated from the rest of the state of Iraq. Using Iraq and the Green Zone area as a lens, this study applies the model of legal elasticity and the *imperium* and *dominium* relationship and demonstrates that the situation presents an opportunity to understand the

[641] See Sandars, *supra* note 627 at 11; Makota Takizawa, "Okinawa: Reversion to Japan and Future Prospects" (1971) 11 Asian Survey 496; Arasaki Morteru. "The struggle against military bases in Okinawa – its history and current situation" (2001) 2 Inter-Asia Cultural Studies 101.

continued territorial sovereignty of the host state in which the zone of military occupation is located.

The fourth study examines the impact of foreign war dead cemeteries on the host state's territorial sovereignty. Within this chapter, the issue of foreign war dead cemeteries is perhaps the most truly anomalous in that the practice of creating these cemeteries was only used throughout a short span of wars, as states have generally expressed a preference for repatriating the bodies of those military forces. However, this was impossible and impractical in earlier wars such as World War I and World War II. In these situations, states such as Britain, France and the United States entered into agreements with states housing large numbers of foreign war dead to create and maintain cemeteries and memorials for the fallen. There is seemingly little controversy in this act of humanity on the part of the host state, and indeed some states, such as France and Belgium, have shown great pride in being home to foreign war dead cemeteries. However, as the attacks on British foreign war dead cemeteries outside Benghazi during the Libyan revolution demonstrate, the feelings that these cemeteries engender within the host state are not always positive. With this in mind, the study applies the model of legal elasticity and the *imperium* and *dominium* relationship to determine the balance of *imperium* and *dominium* necessary to facilitate this relationship without undermining the sovereign territorial control exercised by the host state.

II. Overseas Military Bases[642] and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The use of overseas military bases was not a new phenomenon at the outset of World War II. Indeed, one of the key practices within early colonial policy was to establish

[642] A portion of this section on overseas military bases and their territorial implications was presented as *Bases Abroad: The Territorial Relationship Between Military Base and Host State*, at the 2012 Association for Law, Property and Society Annual Meeting in Washington, D.C. on March 3, 2012 and as *All that You Leave Behind: The Territorial Relationship of Heritage Defence Sites and Military Bases*, presented at the Defence Sites: Heritage and Future 2012 conference, sponsored by the Wessex Institute of Technology, in Portsmouth, United Kingdom on June 6, 2012. Some of the research performed for this section was then published as Alexandra R Harrington, "All that You Leave Behind: The Territorial Relationship of Heritage Defence Sites and Military Bases" in C Clark & CA Brebbia, eds, *Defence Sites: Heritage and Future* (Wessex Institute of Technology, 2012) at 257.

some form of military base in an area intended for colonization.[643] What set the practices of the United States during World War II apart was the use of leases to obtain basing areas rather than the outright use of military force.[644] This inaugurated an era during which the Americans found themselves increasingly inclined to use leases for military bases overseas.[645] While it is certainly possible to view this increase in overseas base leasing as the imposition of the will of the dominant state on less powerful and often quite vulnerable host states, it should be highlighted that these agreements were not uniform and did take into account local needs and preferences.[646] In this way, from the beginning the modern practice of overseas base leasing has applied the model of legal elasticity and the *imperium* and *dominium* relationship in that it maintains the host state's robust *imperium* while also vesting the leasing state with robust *dominium* over the leased territories.

At the outset, one outlier in the standard practice of American base leasing patterns should be noted. American military basing – and general American presence – in the Philippines represented a different situation because the Philippines were technically an American territorial possession from the end of the Spanish-American war in 1898 until Philippine independence in 1946.[647] During this time, the American military established several military bases throughout the Philippines, especially during World War II in the Pacific.[648] The terms of official transfer of sovereignty from the United States to the Philippine state reserved the territories that were occupied by American military forces until an additional agreement could be made, and that agreement provided that the majority of existing bases would be kept and operated by the United States pursuant to the terms of a ninety-nine year lease.[649] Under the terms of this lease, American law would be applicable to Americans and Filipinos who worked or were present on the base

[643] See Chapter 3.
[644] See US, *Naval and Air Bases Arrangement between the United States of America and Great Britain*, (1940) Executive Agreement Series No 181, 181 UST i; US, *Leased Naval and Air Bases Agreement and Exchanges of Notes between the United States of America and Great Britain and Protocol between the United States of America, Great Britain and Canada Concerning the Defense of Newfoundland*, (1941) Executive Agreement Series No 235, 237 UST i; Sandars, *supra* note 627 at 3 – 4.
[645] Sandars, *supra* note 627 at 4 – 5, 13.
[646] See *ibid* at 15.
[647] *Ibid* at 105 – 109.
[648] *Ibid* at 106 – 109.
[649] *Ibid* at 109.

and also for Americans connected with the base who committed crimes outside the base against other Americans.[650] Over time, the American military basing agreements with the Philippines were revised with regard to essential terms such as lease duration and the bases to be used.[651] Eventually, the bases in the Philippines lost a good deal of strategic value and also suffered infrastructural damages due to a volcanic eruption.[652] Combined with an increasingly erratic political situation, this confluence resulted in the end of American military basing presence in the Philippines.[653]

The example of basing arrangements in the Philippines is an outlier from the standard overseas military basing arrangements used by the United States in that there was a pre-existing and largely colonial relationship between the two states prior to Philippine independence. As a result, the lease agreements reflected a shift in sovereign identity and the territorial control exercised by the Philippine state. In this way, although the former colonial state was present on Philippine soil, application of the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that the Philippines used these bases for the military protection of its citizens, resulting in robust *imperium* despite the grant of robust *dominium* to the overseas military base.

While the Philippines represented an outlier in basing policy, there were many other base leases created during this time that demonstrate the relationship between legal elasticity and the *imperium* and *dominium* relationship in practice. The lease regarding the base in St. Lucia, amended when the United States had little practical need for the base, allowed the government of St. Lucia to use the existing base facilities and essentially act as a sub-lessee of the United States until or unless the United States provided it with notice of intent to re-engage the base area for its own purposes.[654] This allowance of use of base facilities by the home state became standard throughout many lease terms.[655]

---

[650] *Ibid* at 110.
[651] *Ibid* at 112 – 117.
[652] *Ibid* at 116 – 126.
[653] *Ibid* at 116 – 126.
[654] US, *Agreement Concerning the Utilization of Leased Base Areas in St. Lucia*, TIAS 2673 (1952) at arts I – IV.
[655] See US, *Agreement Under Article VI of the Mutual Defense Treaty between the United States and the Republic of Korea, Regarding Facilities Areas and the Status of United States Armed Forces in the*

Additionally, some agreements allowed for the development of commercial facilities on designated portions of the base for the benefit of the host state.[656]

Leases often contained terms stating that the host state would purchase the area to be used by the United States for military basing and would expressly hold title to that territory although the United States would retain control and jurisdiction over the area for the duration of the lease.[657] Indicia of host state territorial sovereignty was sometimes required on the base, as in the requirement that the Spanish flag be flown on base.[658] Under the terms of the agreement between the United States and Japan for military basing, the Japanese government agreed to purchase whatever lands necessary to complete the agreed upon military facilities and the United States government agreed to sustain the costs of maintaining the facilities and associated areas for the duration of the agreement.[659]

Later military basing agreements, including revisions to existing basing agreements, have included a concerted focus on environmental protection and conservation within the military operations carried out by the 30United States.[660] Another relatively new trend in basing agreements involves the provision of fire aide to the bases and also by those on the base to the host state, including to the host state's military installations if needed.[661]

Republic of Korea, 17 UST 1677 (1966); US, *Leased Naval Bases Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland*, 30.3 UST 2683 (1978 – 1979).

[656] See US, *Agreement effected by exchange of notes, Kindley Air Force Base, Bermuda: Additional Civil Airport Facilities*, 19.4 UST 5059 (1968).

[657] See US, *Defense Agreement between the United States and Spain, 4.2 UST 1895 (1953)*; US, *Agreement in Implementation of Chapter VIII of the Agreement of Friendship and Cooperation between the United States of America and Spain*, 21.3 UST 2259 (1970).

[658] US, *Defense Agreement between the United States and Spain, 4.2 UST 1895 (1953).*

[659] US, *Agreement Under Article VI of the Treaty of Mutual Cooperation and Security between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan*, 11.2 UST 1652 (1960).

[660] See US, *Agreement between the Government of the United States of America and the Government of the Commonwealth of the Bahamas Concerning United States Defense Facilities in the Commonwealth of the Bahamas*, 35.6 UST 6491 (1983 – 1984); US, *Memorandum of Agreement between the United States Forces, Korea (USFK) and the Republic of Korea, Ministry of National Defense (ROK MND) Concerning the Construction, Operation and Maintenance of a Munitions Demilitarization Facility (DEFAC) in the Republic of Korea*, TIAS 13032 (1999).

[661] See US, *Memorandum Agreement FB52CX-MOA-3019 for Mutual Aid in Fire Protection between the USAF Fire Department at Daegu Air Base and Headquarters of Daegu Fire Department, ROK*, TIAS 04-1005 (2004); US, *Memorandum of Understanding FB52CX-6158-2001between the United States Air Force and the Republic of Korea Air Force Concerning Combined Disaster Management*, TIAS 06-607 (2006).

While there are variants in overseas military basing agreements and leases granted to the United States, and while these bases are located throughout different legal and political systems, they evince the ability of the host state to actively assert its voice rather than simply agreeing to the terms desired by a more powerful state in the international community. Throughout the history of these basing agreements, there has been a steady assertion of robust *imperium* on the part of the host state in the extent of territorial control ceded through the lease, the protections granted to foreign troops and host state citizens, and the requirement that the basing agreements and leases include protections such as emergency assistance guarantees. More recent basing agreements and leases have incorporated environmental protection provisions, which are of particular import not only for the host state's environmental integrity during the basing agreement and lease but also when the lease ends and there is an attempt to integrate the base territory into the larger cache of useable property in the host state.[662]

A hardened construct of territorial control would not allow legal space for the presence of foreign military bases at all because this would require the allowance of foreign state control and imposition of its laws within a portion of the host state's territory. However, applying the model of legal elasticity and the *imperium* and *dominium* relationship to these practices demonstrates that legal elasticity was and continues to be necessary in order for basing agreements and leases to be sustained. In this situation, legal elasticity is supported by retained robust *imperium* by the host state and the grant of robust *dominium* to the base leasing state. This is particularly true where the host state has used the expiration of an existing basing agreement or lease to add new terms and conditions for the extension of the lease, conditions that tend to mirror sovereign territorial concerns such as environmental protection.

[662] See Alexandra R Harrington, *supra* note 642 at 257; Jennifer Gannon, "Renegotiation of the Status of Forces Agreements between the United States and the Republic of Korea" (2001) 12 Colo J Int'l Envtl L & Pol'y 263.

III. International Peacekeeping Bases[663] and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

International peacekeeping bases share many similarities and dissimilarities with foreign overseas military bases. Both forms of basing involve the use of a designated base area within a host state, both forms of basing may only be present with the consent of the host state, and both exist as a result of legal agreements between the host state and a designated entity that is sponsoring the presence of the foreign troops and the creation of a base.[664] In the standard foreign overseas military basing agreement, this designated entity is the sending state. In the context of international peacekeeping bases, the designated entity is the international organization undertaking the supply of military forces and some form of assistance to the area.[665] Direct agreements between the international organization and the states providing troops to the peacekeeping operation are undertaken separate from the basing agreements and typically do not include the host state.[666]

There are, however, critical differences between overseas military bases and international peacekeeping bases. Operationally, the concept of an overseas military base involves containing a foreign state's troops to a bounded base area under the jurisdiction of the foreign state for the duration of the basing agreement. Thus, military training exercises and drills, as well as actual operations, start and finish in the base area and generally do not involve activity in the host state unless it explicitly requests or agrees. The major forms of foreign interaction with the host state tend to occur through the employment of host state citizens on-base, the ability of the troops stationed at the base to take leave and

[663] The research for this section draws in part from the following publications: Alexandra R Harrington, "Policing Against the State: United Nations Policing as Violative of Sovereignty" (2008) 10 San Diego International Law Journal 155; Alexandra R Harrington, "Prostituting Peace: The Impact of Sending State's Legal Regimes on U.N. Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard" (2008) 17 Fla St J Transnat'l L & Pol'y 217; Alexandra R Harrington, "A Tale of Three Nations?: The role of United Nations peacekeepers and missions on the concept of nation-state, nationalism, and ownership of the state in Lebanon, the Democratic Republic of the Congo, and Kosovo" (2006) 21 Conn J Int'l L 213; Alexandra R Harrington, "Victims of Peace: Current Abuse Allegations against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future" (2005) 12 ILSA J Int'l & Comp L 125.
[664] *United Nations Peacekeeping Operations: Principles and Guidelines* (New York: United Nations Department of Peacekeeping Operations, 2008) at ch 3.
[665] See generally *ibid*.
[666] See generally *ibid*; Harrington, "Prostituting Peace," *supra* note 663.

enter the host state, the abilities of accompanying military families to do the same, and, potentially, issues of criminal liability for incidents off-base that involve military personnel.[667] In this sense, overseas military bases represent enclaves within the host state.[668]

In contrast, the presence of international peacekeeping bases and associated military forces is typically in response to a request that foreign military forces be placed on the ground in the host state to prevent the escalation of conflict or during attempts at diplomatic negotiations.[669] Once the conflict has stopped, international peacekeeping forces – and the bases that house them – have often remained in a host state in order to ensure that peace is maintained.[670] In this sense, international peacekeeping bases are intended as a launching point from which – depending on the exact terms of the status of forces agreement – foreign troops are to directly enter the host state, providing civilian protection, policing, investigations, and other forms of services for and on behalf of the sending international organization.[671] While the international peacekeeping base may be thought of as an enclave in the sense of barracking, administration and coordination, the purpose of the base is exactly the opposite of an overseas military base.[672]

Another important difference, at least in theory, is the intended duration of the overseas military basing agreement versus the international peacekeeping presence and base agreement. The former is intended to be a long-duration agreement, typically renewable at certain intervals. Theoretically, the latter is intended to serve a relatively quick function and should end once the conflict or threat has ended.[673] However, especially in

---

[667] See generally basing agreements and accompanying text in *supra* notes 642, 652 – 659; Alexander Cooley & Kimberly Marten, "Base Motives: The Political Economy of Okinawa's Antimilitarism" (2006) 32 Armed Forced & Society 566.
[668] Vinokurov, "Theory of Enclaves," *supra* note 598 at 9 – 14.
[669] See United Nations Peacekeeping Operations, *supra* note 664.
[670] See *ibid*; Harrington, "Tale of Three Nations," *supra* note 663; Harrington, "Policing Against the State," supra note 663.
[671] See United Nations Peacekeeping Operations, *supra* note 664 at ch 2 (establishing the parameters of United Nations peacekeeping operations and the forms of interactions peacekeepers are empowered to undertake as part of their mission).
[672] See United Nations Peacekeeping Operations, *supra* note 664; Christopher Dandeker & James Gow, "The Future of Peace Support Operations: Strategic Peacekeeping and Success" (1997) 23 Armed Forces & Society 327.
[673] See United Nations Peacekeeping Operations, *supra* note 664.

the context of United Nations peacekeeping operations, this has not been the case. The initial resolution from the United Nations Security Council establishing an international peacekeeping operation will be finite, as will initial agreements with the host state and Status of Forces Agreements with troop contributing states.[674] However, United Nations Security Council resolutions are renewable – in some cases resulting in the presence of international peacekeeping bases and forces in the host state for decades – provided the host state does not require the international peacekeepers to withdraw or the United Nations does not decide to remove the international peacekeepers.[675]

A facial reading of the opening portions of the authorizing provisions of United Nations Security Council resolutions establishing or continuing international peacekeeping operations tends to pay homage to the territorial and political sovereignty of the host state.[676] Thus, it would seem that there are few issues associated with the presence of international peacekeeping bases in terms of host state territorial sovereignty. However, a closer reading of these authorizing resolutions, especially the more modern resolutions, casts a shadow over this appearance. Activities such as border conflicts and dispute settlement, policing, electoral monitoring and policing, the re-creation – or in some instances creation – of security infrastructure, the training of military forces, and ensuring that the host state and its citizens comply with international law have been included in agreements that also authorize the creation of bases for international peacekeeping forces.[677]

Each international peacekeeping operation is of course quite complex, and a study of these operations is outside of the scope of this thesis. However, the use of international peacekeeping forces is vital to the discussion of areas of military-based anomalies of territory and the model of legal elasticity and the *imperium* and *dominium* relationship.

---

[674] See *ibid* sect 1.4.
[675] *Ibid* sects 2.3, 2.4
[676] See generally *ibid*. See also SC Res 1996, UNSCOR, 6576th Mtg, UN Doc S/Res/1996 (2011) (establishing the mandate for the United Nations Peacekeeping mission in South Sudan); SC Res 1546, UNSCOR, 4987th Mtg, UN Doc S/Res/1546 (2004) (establishing the mandate for the United Nations peacekeeping mission in the Cote D'Ivoire); SC Res 1925, UNSCOR, 6324th Mtg, UN Doc S/Res/1925 (2010) (establishing a new mandate for the United Nations peacekeeping mission in the Democratic Republic of the Congo); SC Res 1509, UNSCOR, 4830th Mtg, UN Doc S/Res/1509 (2003) (establishing the mandate for the United Nations peacekeeping mission in Liberia's renewal).
[677] United Nations Peacekeeping Operations, *supra* note 664 at ch 2.

By implication, the request that international peacekeeping forces be deployed and an international peacekeeping base be established, or the acquiescence of a host state to these measures, indicates that the host state cannot exercise full and effective territorial control. In this situation, while the host state retains its *imperium*, it is a weakened *imperium*, and those involved in the particular conflict are seeking to co-opt robust *dominium* – if not full *imperium* – for themselves. Although couched in prefatory language to the contrary, the agreements and United Nations Security Council resolutions that establish international peacekeeping operations for a host state in fact recognize this weakened *imperium* and may unintentionally contribute to weakened *imperium* by allowing for international peacekeeping operations that encroach on many sovereign functions.

Further, the establishment of an international peacekeeping base and the deployment of international peacekeeping forces, although intended to stabilize the host state and bolster the host state's *imperium*, in fact creates an enclave from which international peacekeeping forces enter the territory of the host state with the goal of promoting peace and protecting the civilian population. These actions potentially have an immediate humanitarian value but have the equal potential of creating robust *dominium* in the area of the international peacekeeping base – from which administrative decisions are made and assistance is provided to the local population – at the same time that the host state's *imperium* is weakened and its ability to exert territorial control has waned.

International peacekeeping bases have been discussed in this chapter because they present a potential for a truly disruptive military-based anomaly of territory. In a situation where a host state experiences weak *imperium*, the presence of an international peacekeeping base can fill the vacuum of robust state *imperium* by creating a site of robust *dominium* that is in fact controlled by laws that are not the laws of the host state, thus introducing an entirely different legal regime to the host state and its population.

Despite this potential for disruption of the sovereignty of the host state, the application of the model of legal elasticity and the *imperium* and *dominium* relationship provides a way

to understand the presence of international peacekeeping bases and operations in a less destructive manner.

A hardened construct of territorial control operates on a bi-polar vision, in which the state – here the host state – either is able to exert territorial control and robust *imperium* over its sovereign territory or it is not, in which case the concept of statehood and sovereignty for the host state are called into question. In this situation, international peacekeeping bases and operations are not necessary and provide little utility other than to further break down sovereign territorial control. By applying the model of legal elasticity and the *imperium* and *dominium* relationship to the situation, however, it is possible to allow for a temporary disruption in robust *imperium* and sovereign territorial control provided that this is indeed a temporary occurrence. Legal elasticity allows flexibility within the host state's levels of territorial control, and for weakened *imperium* with robust international *dominium*, provided that the situation in the host state has not become so flexible that all indicia of sovereignty was lost.

IV. Areas of Occupation and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

It is a basic tenet of international law that territory occupied by the enemy during wartime does not automatically become the occupier's permanent territory.[678] While the occupying state has obligations in terms of protecting the civilian population in the occupied territory and ensuring basic civic functions, this does not confer a permanent transfer of jurisdiction over the territory.[679] Instead, issues of territorial holdings and rights are to be decided after the hostilities have stopped.[680]

It has also become a relatively well-established principle in international law that, following a conflict, it is possible for the international community to place a piece of

[678] Brownlie, *supra* note 95 at 107; Crawford, *supra* note 278 at 73; Eyal Benvenisti, *The International Law of Occupation*, 2d ed (Oxford: Oxford University Press, 2012) at 1.
[679] *Convention (IV) Relative to the Protection of Civilian Persons in Time of War,* 12 August 1949, 75 UNTS 287; *Protocol II additional to the Geneva Conventions*, 10 June 1977, 1125 UNTS 17512 at arts 13, 14; Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Leiden: Martinus Nijhoff Publishers, 2009) at 5 – 6; Benvenisti, *supra* note 678 at 1.
[680] Crawford, *supra* note 278 at 73; Benvenisti, *supra* note 678 at 56.

territory under international control.[681] Post-World War I examples such as Danzig and Memel demonstrate the ways in which this could be done for restricted time periods.[682] Post-World War II examples such as the division of the City of Berlin demonstrate the ways this could be achieved for a far longer period of time.[683] In all of these examples, the international administration for the territory was required to provide governmental services and infrastructure to the civilian citizens of the designated territories and to help them rebuild following war and devastation.[684] These administrations were also required to assist in the creation of equality within the designated territory such that there was no persecution of a particular group residing in the territory.[685] Certainly, this required the presence of foreign troops and foreigners to act as governmental officials, as well as attendant civil administrators.[686] However, the target group for which these international administrations governed was the citizenry of the designated territory rather than a collection of foreigners living in a particular area.

The existence of the internationalized territories was indeed important to the construct of territorial sovereignty for the German state following World War I in that they became a rallying cry and source of national pride as well as anger.[687] There was no question that the German state existed as a full territorial sovereign without these internationalized territories, and was indeed sovereign within the entirety of its post-war borders.[688]

---

[681] Eric De Brabandere, *Post-Conflict Administrations in International Law: International Territorial Administrations, Transitional Authority and Foreign Occupation in Theory and Practice* (Leiden: Martinus Nihoff Publishers, 2009) at 2 – 3.
[682] *Treaty of Versailles*, 28 June 1919, 1920 ATS 1 at arts 99 – 108; De Brabandere, *supra* note 681 at 16 – 18; MacMillian, "Paris 1919," *supra* note 254 at 216 – 219; John A Gade. "The Memel Controversy" (1923 – 1924) 2 Foreign Affairs 410.
[683] De Brabandere, supra note 681 at 2 – 3; *see* also Roger H Wells, supra note 347 at 61 – 64.
[684] See *Treaty of Versailles*, 28 June 1919, 1920 ATS 1 at arts 99 – 108.
[685] *Ibid.*
[686] See e.g. *Treaty of San Francisco*, 1 September 1951, 136 UNTS 45 (under which a military regime was allowed to exercise governmental functions in Japan until a new civil government apparatus could be put into place).
[687] See MacMillan, "Paris 1919," *supra* note 254 at 224 – 225.
[688] Indeed, the post-World War I German state was reinforced as a defined state by the international community following the war. See *Treaty of Versailles*, 28 June 1919, 1920 ATS 1; see also MacMillan, "Paris 1919," *supra* note 254 at ch 13.

Standing in direct contrast to these examples is the so-called "Green Zone" located in Iraq and created after the Allied invasion of Iraq in 2003.[689] Prior to the war, the "Green Zone" had been the location of an elite neighborhood in which members of the regime and others lived apart from the rest of Baghdad, separated by class rather than by force.[690] After the invasion, the Green Zone was reconstituted as the military-focused area in Baghdad where Westerners began to congregate because it was theoretically the nerve center of military operations for the war theatre and also safer for Westerners and those associated with the Allied forces.[691]

When the focus of foreign presence in Iraq shifted away from purely combat operations, the Green Zone continued to maintain its separate status in practice if not in law. Under the original agreements between the new Iraqi authorities and the Allied forces after the war, there was no official internationalization of the Green Zone as there had been with Danzig, Memel or even Berlin. Rather, as a staging ground for Allied forces and diplomatic operations, the area was generally allowed to function under the authority of the Allied forces that guarded it but without formalized arrangements *per se*.

Indeed, it was not until the 2009 Status of Forces Agreement between the Iraqi government and the American government that the Green Zone was addressed in a significant way as a matter of law. Pursuant to the Status of Forces Agreement, the Green Zone is under the legal control of the Iraqi government.[692] Also pursuant to the terms of this agreement, however, "the Government of Iraq may request from the United States Forces limited and temporary support for the Iraqi authorities in the mission of security for the Green Zone."[693] This should be read with earlier portions of the Status of Forces

---

[689] See James Holbrook, "Reports from Baghdad" (2010) 34 LS 351; Benvenisti, *supra* note 678 at 249 – 250.
[690] *Ibid*; see also Charles Tripp. *A History of Iraq* (Cambridge: Cambridge University Press, 2007) at 259 – 267.
[691] See James Holbrook, "Reports from Baghdad" (2010) 34 Legal Studs F 351; Tripp, *supra* note 690 at ch 7.
[692] US, *Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq*, 855 KAV I (2009) at art 28.
[693] *Ibid*.

Agreement that provide for jurisdiction over military facilities and personnel within American military occupied areas of Iraq.[694]

Slowly, the terms of the Status of Forces Agreement have been implemented and there is an increased Iraqi role in administering the Green Zone territory, although this shift has largely been from the Allied military forces to the Iraqi military forces.[695] However, the Green Zone is still maintained as a highly fortified area for which special permissions must be received prior to entry.[696] Thus, the Iraqi government is in a situation where foreign military forces were – and to some extent still are – occupying an area for the protection of those in the area, and those in the area are not civilians but rather a largely foreign group of those associated with war and peace building operations, as well as the new Iraqi government and military leadership.[697] When the Green Zone was fully governed by foreign forces this made it possible to see the area as a temporary enclave of persons that would eventually leave and restore territorial control to the Iraqi government. Now, however, the involvement of the Iraqi government and Iraqi forces themselves in perpetuating a zone of separateness from their own citizens shifts the focus of discussion.

The Green Zone presents an unusual military-based anomaly of territory in that it was regarded as a removed area to the average Iraqi citizen prior to the war, and in many ways, regardless whether administered by foreign forces or Iraqi forces, continues to retain this status. As the site of some key Iraqi military facilities, the Green Zone will likely exist as a national area of military exclusion once the last of the foreign forces and associated civilians leave. The model of legal elasticity and the *imperium* and *dominium* relationship applies in an unusual yet insightful way in this context.

Prior to the war, the Iraqi state exerted robust *imperium* and allowed for generally weak *dominium* within the Green Zone.[698] The area of the Green Zone at that time was a

---

[694] *Ibid* at art 12.
[695] See Ned Parker, "The Iraq We Left Behind: Welcome to the World's Next Failed State" (2012) 91 Foreign Affairs 94 at 100 – 101.
[696] *Ibid*.
[697] *Ibid*.
[698] See Tripp, *supra* note 690 at ch 6.

location of privilege and power and thus as a territory exerted somewhat stronger *dominium* because of those who resided within it and the protections they insisted upon. This was not, however, the result of statutory law but rather of political and social understandings that became customary law. During and after the war, *imperium* and *dominium* essentially merged in the form of the Allied command and then *imperium* was vested in the new Iraqi government as a matter of law, although robust *dominium* over the Green Zone was maintained by the Allied command. Finally, under the terms of the 2009 Status of Forces Agreement, *dominium* over the Green Zone was returned to the Iraqi government, although this is weakened *dominium* in the sense of the reserved powers and abilities for foreign forces.

In this context, legal elasticity was essential to expanding the parameters of state territorial control and to ensuring that these parameters were expanded in a way that did not ultimately result in the dissolution of the state. For this reason, legal elasticity provided for robust *imperium* and robust *dominium* to merge in the form of the Allied forces during the active combat portions of the war. For the same reasons, legal elasticity allowed for the gradual shifting of the *imperium* and *dominium* relationship after the end of active combat operations such that the Iraqi government was able to exert some form of imperium even of the Allied command still exercised robust *dominium* over areas such as the Green Zone. The continued shifting of *imperium* and *dominium* relationship balance within Iraq over time – and particularly in the Green Zone – supports the viability of the model of legal elasticity and the *imperium* and *dominium* relationship.

V. Foreign War Dead Cemeteries[699] and the Model of Legal Elasticity and the *Imperium* and *Dominium* Relationship

The burial of military casualties of overseas conflicts is a sensitive matter. When wars were fought relatively close to home, this tended not to be an issue, although in the United States the practice of maintaining cemeteries for "enemy" war dead began during

[699] A portion of this section on foreign war dead cemeteries and their territorial implications was presented as Alexandra R Harrington, *Honors Abroad: The Commemoration and Memorialization of Foreign War Dead*, presented at the 10th Annual Hawaii Conference on Arts & Humanities in Honolulu, Hawaii on Jan. 13, 2012. Additionally, this research resulted in the writing of Alexandra R Harrington, "Uncertain Rest: The Nebulous Legal Status of Overseas Military Cemeteries," SSRN Working Papers Series.

the Civil War.[700] The British were vaguely involved with the practice during the Crimean War, although this did not continue in earnest until World War I.[701] The issues associated with allowing the war dead to remain overseas tended to cluster around the practical – the extreme costs and public health concerns associated with safely transporting bodies home – as well as the emotional –bereaved families wishing to have their loved ones home or know where their loved one was buried.[702]

During World War I, the number of troops from the colonies, particularly the British dominions, who fought and died in Europe was very large, necessitating overseas cemeteries rather than attempts at repatriation.[703] The same occurred during World War II, when foreign war dead were scattered across the globe and it was essentially impossible to repatriate them.[704] The process by which these cemeteries were created was by no means quick, as it involved locating those who had died throughout the world, making arrangements with host state governments to locate sites for cemeteries and crafting a legal regime that enabled the construction and maintenance of these cemeteries.[705] Another key issue was that these agreements allow family and friends of the war dead to access these sites, thus implicating the immigration policy of host states.

A full review of land grant terms illustrates that legal elasticity has been used throughout the creation of international agreements for foreign war dead cemeteries and the balance between maintaining robust *imperium* while allowing a robust *dominium* that indicates respect for the foreign state and its sacrifices. From the outset, it should be noted that there was no standard land grant from a host state for the establishment of foreign war dead cemeteries.[706] As a matter of courtesy, the majority of foreign war dead cemeteries

[700] G Kurt Piehler, *Remembering War the American Way* (Washington, DC: Smithsonian Books, 1995) at ch 2.
[701] Harrington, "Uncertain Rest," *supra* note 699.
[702] See *ibid*.
[703] Philip Longworth, *The Unending Vigil: The History of the Commonwealth War Graves Commission* (Barnsley, UK: Pen & Sword Military, 2010) at 11 – 28, 107 – 115.
[704] Longworth, *supra* note 703, at 177 – 186.
[705] See generally Longworth, supra note 703; Netherlands War Graves Foundation, *Military War Cemetery Grebbeberg* (The Hague: Netherlands War Graves Foundation, 2012); Netherlands War Graves Foundation, *Netherlands war cemeteries in Indonesia* (The Hague: Netherlands War Graves Foundation, 2012).
[706] UK, *Agreement between the governments of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, India and Pakistan of the One Part and the Imperial Ethiopian*

were provided to the troop sending states rent-free, although the troop sending states were responsible for upkeep.[707] In a minority of instances, either the host state purchased the territory for the cemetery and then was reimbursed by the troop sending state or the troop sending state directly purchased the territory for the cemetery from private landowners.[708] Regardless the method of purchase or donation of the territory for the cemetery, it was still a standard requirement that the territory remain part of the host state's national territory.[709]

Despite the differences in land grant terms used, there is a discernible trend toward grants of territorial use to the troop sending state in perpetuity.[710] Where the agreements used

---

Government of the Other Part, Respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Ethiopian Territory, 1967 ATS No 26; UK, *Exchange of Notes Constituting an Agreement Between the Government of the United Kingdom of the Netherlands and the Government of the Federal Republic of Germany Concerning the Transfer of the Management and Maintenance of the German Military Cemetery at Yssel-Steyn*, 258 UNTS 15204 (1977); US, *Agreement Between the United States and the Grand Duchy of Luxembourg concerning the establishment of a permanent World War II Cemetery in Luxembourg*, 3.2 UST 2745 (1952); US, *Agreement Concluded Between the Governments of the United States of America and Belgium Covering the Erection by the American Battle Monuments Commission of Certain Memorials in Belgium*, 5 Bevans 551 (1968).

[707] US, *Agreement Between the Republic of the Philippines and the United States Concerning Military Bases*, 272 UNTS 673 (1949); *Agreement between the Governments of the United Kingdom and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Government of the French Republic regarding British Commonwealth War Graves in French Territory*, 1951 ATS No 19 (1951); UK, *Agreement between the Royal Hellenic Government of the one part and the Governments of Australia, Canada, India, New Zealand, Pakistan, South Africa and the United Kingdom of Great Britain and Northern Ireland of the other part concerning the Graves of Members of the Armed Forces of the Commonwealth in Greek Territory*, 1969 ATS No 16 (1969).

[708] UK, *British Commonwealth-Netherlands War Graves Agreement*, 1951 ATS No 13 (1951).

[709] See UK, *Agreement between the Royal Hellenic Government of the one part and the Governments of Australia, Canada, India, New Zealand, Pakistan, South Africa and the United Kingdom of Great Britain and Northern Ireland of the other part concerning the Graves of Members of the Armed Forces of the Commonwealth in Greek Territory*, 1969 ATS No 16 (1969); UK, *Agreement between the Governments of the United Kingdom and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Government of the French Republic regarding British Commonwealth War Graves in French Territory*, 1951 ATS No 19 (1951); US, *Agreement Between the Republic of the Philippines and the United States Concerning Military Bases*, 272 UNTS 673 (1949).

[710] See Harrington, "Uncertain Rest," *supra* note 99. See also UK, *Agreement Between the Governments of the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and India and the Government of Iraq Regarding British Cemeteries in Iraq*, 1936 ATS No 4 (1936); UK, *Agreement Between His Majesty's Governments in the United Kingdom, Canada, the Commonwealth of Australia, New Zealand and the Union of South Africa and the Government of India and the Egyptian Government Regarding British War Memorial Cemeteries and Graves in Egypt*, 1937 ATS No 8 (1937); UK, *Agreement Between the Governments of the United Kingdom of Great Britain and Northern Ireland, Australia, Canada, India, New Zealand, Pakistan, and the Union of South Africa and the Government of Belgium respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Belgian Territory*, 1951 ATS No 14 (1951); UK, *Agreement Between the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the*

were not land grants in perpetuity, they contained land grants for significant periods of time and were intended to be renewable.[711] A more recent issue is the issue of the need – or at least the desire on the part of the host state – to relocate foreign war dead cemeteries in the face of modern pressures regarding space and land use.[712]

Overall, these cemeteries stand as a testament to the fallen of a certain time, however they retain a sense of national importance. Indeed, these spaces represent an emotive element that continues to cast an influence over states, as the recent desecration of British graves in Libya during the conflict demonstrates.[713] These sites stand as military-based anomalies of territory in that they are areas in which a foreign state is granted robust *dominium*, although the goals of the territories are such that the actual threat to the territorial control and robust *imperium* of the host state is quite low. Application of the model of legal elasticity and the *imperium* and *dominium* relationship to these sites demonstrates that legal elasticity is necessary for the host state to respect the underlying intent of the land grant agreements while also attempting to meet the current needs of its citizens, particularly in terms of land development as well as security for the cemeteries. In this study, legal elasticity is supported by a robust *imperium* and robust *dominium* relationship that is generally balanced by respect for the sacrifices of the war dead, although the emotive aspect of foreign war dead cemeteries can cause tensions when there are issues regarding land use or the perceived failure to protect the cemeteries.

Federal Republic of Germany Regarding the War Graves, Cemeteries and Memorials of the British Commonwealth in the Territory of the Federal Republic of Germany, 326 UNTS 181 (1959); UK, *Agreement Between the Governments of Australia, Canada, India, New Zealand, Pakistan and the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia Respecting the War Cemeteries, Graves and Memorials of the Commonwealth in Indonesian Territory*, 1964 ATS No 12 (1964); UK, *Agreement between the governments of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, India and Pakistan of the One Part and the Imperial Ethiopian Government of the Other Part, Respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Ethiopian Territory*, 1967 ATS No 26 (1967); US*, US & Luxembourg Agreement, Agreement Between the Government of the United States of America and the Government of Panama Concerning Use of the Corozal Cemetery*, TIAS 13043 (1999); UK, *Agreement Between the Governments of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Government of Italy Relative to the Graves in Italian Territory of Members of the Armed Forces of the British Commonwealth*, 1955 ATS No 7 art 3 (1955); UK, *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia Concerning Netherlands War Cemeteries*, 390 UNTS 13923 (1970).

[711] Harrington, "Uncertain Rest," *supra* note 699.

[712] See Harrington *ibid*.

[713] "Fury over attack on British war graves in Benghazi" *BBC.Com* (March 4, 2012), online: BBC.Com <http://www.bbc.co.uk/news/uk-17244211>.

VI. Conclusion

This chapter focused on military-based anomalies of territory and the application of the model of legal elasticity and the *imperium* and *dominium* relationship, primarily within the host state of these areas. The studies presented spanned a broad spectrum of legal areas, yet were united by their use of territory within a host state to create an area that has the potential to undermine the host state's sovereign territorial control and exercise of robust *imperium*.

The first study examined the impact of American overseas military bases on the host state. Although the potential exists for this impact to be detrimental to the host state's sovereign territorial control and exercise of robust *imperium* under a hardened construct of territorial control, applying the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that host states have crafted base agreements and leases that protect and promote their interests. In this way, although base agreements and leases typically provide for robust *dominium* on the part of the foreign state within the base area, they do not abrogate the host state's territorial control or robust *imperium*.

The second study examined the impact of international peacekeeping bases on the host state. This situation is in many ways far more dynamic and fluid than the situation of overseas military basing by one state, and creates an enclave with robust *dominium* at the same time that the overall host state has weakened *imperium* and often a tenuous grip on territorial control of the state *per se*. The study highlighted the potential pitfalls of this situation from the standpoint of state sovereignty and territorial control and applied the model of legal elasticity and the *imperium* and *dominium* relationship to demonstrate that this situation can result in a temporary weakening of *imperium* for the host state and robust *dominium* on the part of an international peacekeeping base as the seat of international peacekeeping operations. The caveat to this, as noted in the study, is that legal elasticity cannot protect the state's territorial control and possession of some measure of *imperium* if the state truly disintegrates. As has been noted throughout this thesis, there are indeed limits to the extent of elasticity before the entire structure breaks.

The third study examined internationalized areas of occupation, discussing post-World War I and post-World War II examples before using the Iraqi "Green Zone" as a prism through which to review the issue in a modern context. The Green Zone presents a unique situation in that it was largely inaccessible to the majority of Iraqis prior to the war, and that trend has continued not only throughout the control of the area by Allied forces but also now that the area has been explicitly incorporated under Iraqi sovereignty. In this context, legal elasticity was essential to expanding the parameters of state territorial control and to ensuring that these parameters were expanded in a way that did not ultimately result in the dissolution of the state. The continued shifting of *imperium* and *dominium* relationship balance within Iraq over time – and particularly in the Green Zone – supports the viability the model of legal elasticity and the *imperium* and *dominium* relationship.

Finally, the fourth study examined the issue of foreign war dead cemeteries. This is an emotionally and politically evocative issue, which has the potential to complicate the legal agreements entered into between the foreign state and the host state regarding the siting, creation and maintenance of these cemeteries. Application of the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that there is a tension between the modern views of some host states on cemetery siting and the emotive views of the troop sending states that requires the use of legal elasticity that is supported by flexibility in the robust *imperium* and robust *dominium* relationship.

.

Overall, this chapter has provided insights into the ways in which modern issues of anomalies of territory that are based on military operations and affiliations can be analyzed and understood through the model of legal elasticity and the *imperium* and *dominium* relationship. Each of the situations studied is different in legal ramifications and yet each allows an understanding of how the application of the model of legal elasticity and the *imperium* and *dominium* relationship provides a method of mediating between tensions at the level of *imperium* and *dominium* in order to ensure that state control over territory – and thus sovereignty – is maintained unless it becomes entirely impractical to maintain the *imperium* and *dominium* relationship balance.

Chapter 9 – Conclusion

This thesis opened with the observation that territory on its own is static and assumes dynamism when it is paired with issues of territorial control. As the preceding chapters have demonstrated, the growth and nuance of issues of territory, sovereignty and statehood is indeed far from static. The thesis also opened with a series of questions. How is territory to be conceived of as a matter of law? What are the parameters of the relationship between territory, sovereignty and statehood itself? And how does territorial control affect state sovereignty and legitimacy?

The central assertion of this thesis is that, despite the alleged potentially destabilizing effects of shifts in territorial parameters such as those asserted through globalization theory, applying the model of legal elasticity and the *imperium* and *dominium* relationship provides a way to preserve the integrity of state territorial control and sovereignty. Regarding the opening questions, under the model of legal elasticity and the *imperium* and *dominium* relationship territory can be conceived of as fluid and flexible in terms of legal control, allowing for several layers of authority to be imposed over it. In this way, territory can further be conceived of as analogous to the household in Roman law – an existing entity that is subject to multiple forms of control that intersect rather than undermine each other. The model of legal elasticity and the *imperium* and *dominium* relationship establishes that the parameters of the territory, sovereignty and statehood relationship can – and often must – be flexible, however there are instances in which this flexibility can be taken too far, weakening state *imperium* and imperiling state control over a territory. While a state may lose a piece of territory and still remain both sovereign and legitimate, the model of legal elasticity and the *imperium* and *dominium* relationship demonstrates that both weakened *imperium* and legal hardening can threaten the legitimacy of state sovereignty.

The model of legal elasticity and the *imperium* and *dominium* relationship is not simply a new way of looking at territory in the modern context, nor is it another way of arguing against globalization theory that heralds the demise of the state. Rather, it is supported throughout this thesis by applying it across a continuum of time periods, jurisdictions,

and territorial questions. Each of these periods experienced growth, development, change and challenge to legal constructs of territory and territorial control and each responded in different ways that demonstrate a flexible and forward moving continuum in the legal construct of territory itself and of the relationship between territory, sovereignty and statehood.

The model of legal elasticity and the *imperium* and *dominium* relationship, and the theory behind it, asserts that territorial control can be flexible and not harm the sovereignty of the state exercising *imperium* over it unless that state is completely unable to exert some form of *imperium*-based territorial sovereignty at all.

For support in these assertions, Chapter 1 offered the necessary definitions of the terminology associated with the model of legal elasticity and the *imperium* and *dominium* relationship, as well as the concomitant concept of legal hardening and hardened territorial control. Throughout this thesis, instances in which state territorial control and ultimately sovereignty have been undermined through the application of hardened territorial control have been highlighted in order to demonstrate the contrast between hardened and elastic territorial control in the larger relationship between territory, sovereignty and statehood. Chapter 1 provided the basic background in which the *imperium* and *dominium* dichotomy emerged within the confines of the City of Rome as well as its expansion throughout the Roman Empire as a tool to assist in crafting methods through which to assert control over a variety of smaller legal and political entities.

In addition, Chapter 1 presented definitions of and arguments relating to globalization theory in terms of its impact on the overall construct of the state, territory and territoriality, and sovereignty. It noted that, despite claims to the contrary, much globalization theory requires or is necessarily set against a background of robust *imperium* in that it assumes that states will provide a firm legal background over their territories and that this background forms an essential element of globalization. While the realities of globalization might require legal elasticity supported by some sense of a shifting balance in the *imperium* and *dominium* relationship, Chapter 1's discussion revealed that globalization theory does not, practically, stretch the parameters of

territorial control to the point where legal elasticity can no longer rein them into the state structure.

Chapter 2 examined the classical tenets of Roman law in relationship to *imperium* and *dominium* and the expansion of this relationship throughout the Empire over time. The legal theories and practices of Rome's successors were discussed in order to illuminate how *imperium* and *dominium* were expanded as territorial constructs and the place that legal elasticity took in creating new systems of law and statehood. Applying the model of legal elasticity and the *imperium* and *dominium* relationship to the post-Roman period that faced its own changes and challenges, as well as opportunities for growth and development, demonstrated the ways in which the parameters of *dominium* were often expanded and strengthened although a robust *imperium* was maintained.

The chapter then applied the model of legal elasticity and the *imperium* and *dominium* relationship to Ottoman legal practices regarding the place and functions of *millet*, or non-Muslim, communities within the overarching legal system of empire. Rather than requiring religious conversion and social assimilation on the part of newly conquered peoples, the Ottomans pioneered the *millet* system under which non-Muslim peoples were able to live as part of their religious communities, subject to the laws of these communities in most instances and largely undisturbed by Ottoman presence, in exchange for the payment of certain taxes and continued loyalty to the empire. The chapter discussed the ways in which the millet system functioned in order to highlight the changing contours of legal elasticity and the *imperium* and *dominium* relationship. In the last section, Chapter 2 presented key aspects of classical and modern legal theory regarding issues essential to the construct of the state, the relationship between territory, sovereignty and statehood, and the role of the state as part of the overall international state system. Understanding these key components of legal theory is vital to understanding the methodology behind the creation of many modern legal aspects of the relationship between territory, sovereignty and statehood as well as understanding how these theories have evolved to meet the pressures put upon them by domestic and international actors and systems.

In Chapter 3, the thesis discussed the application of the model of legal elasticity and the *imperium* and *dominium* relationship to various stages within the colonial period – a shameful period for human rights that should never be replicated yet shaped many of the contours of modern international law and state practice such that it must be addressed. Through the application of the model of legal elasticity and the *imperium* and *dominium* relationship to the three designated phases of colonial undertakings – the mid-1400s to 1541, 1541 to 1848, and 1848 to 1914 – the chapter charted the ways in which the parameters of the relationship between territory and sovereignty changed and the points at which these boundaries were strained. Application of the model also identified ways in which there was a tacit resistance to weak *dominium* within colonial systems even where robust *imperium* remained in place.

Chapters 4 and 5 addressed World War I and the years thereafter and World War II and the process of decolonization that followed. The peace that followed World War I was marked by many new transitions in states and the international system. Key among them was the mandate system which, as the chapter explained, inaugurated a period of potential for growth, development, change and challenge within the territorial understandings of the mandatory states and the mandate territories, as well as within the colonial possessions of mandatory states. Applying the model of legal elasticity and the *imperium* and *dominium* relationship, the chapter demonstrated that the mandate system offered mechanisms through which the *imperium* of a mandatory/metropolitan state could be retained despite the growth and legal elasticity of *dominium* within the mandate system. Chapter 4 also discussed the use of legal hardening within the new colonial institutions and practices implemented by Germany, Italy and Japan during this time and noted that this use of legal hardening in territorial construction would ultimately prove unsustainable in the future.

Ultimately, these and other causes would lead to World War II and additional pressures on states and the international system in terms of growth, development, change and challenge. As Chapter 5 identified, key territorial issues in the post-war period focused on the shift from the mandate system under the auspices of the League of Nations to the more open and robust trusteeship system formed under the auspices of the United

Nations. The trusteeship system involved not only the administration and eventual independence of former mandate territories and territories that had been under Axis control during the war but also the dismantlement of colonialism *per se* through the decolonization process. These topics, particularly decolonization, were highly contentious and required significant changes to constructs of territory and the balances maintained through *imperium* and *dominium*, as metropolitan and trustee states began to transition to robust systems of *dominium* at the expense of robust *imperium* and, ultimately, to granting independence to former colonies and mandate territories, recognizing their own *imperium* in the process.

Chapters 6 – 8 discussed modern examples of anomalies of territory and applied the model of legal elasticity and the *imperium* and *dominium* relationship for them in order to evaluate its functionality in the current period of growth, development, change and challenge to legal constructs of territory and territorial control. Chapter 6 analyzed anomalies of economy, so named because they occur in situations characterized as having the potential for economic growth and development as well as change and challenge for the state that at least facially poses a threat to balance within the *imperium* and *dominium* relationship. The topics selected for study presented issues surrounding the significant territorial presence of a foreign state and/or foreign corporation in the sovereign territory of a host state. The first topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was the use of Special Economic Zones. The second topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was foreign state and foreign entity purchases of large-scale land tracts within a host state. The third topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was internationalized port facilities and airports that have been fully or partially privatized by host states. Lastly, the fourth topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was areas of a host state to which the host state has agreed to extend foreign laws to non-citizens. The Chapter explained that these anomalies were able to occur without destabilizing the state or threatening its ability to control territory and exert sovereignty because of legal

elasticity supported by the ability of the *imperium* and *dominium* relationship to allow for balance shifts.

Chapter 7 analyzed anomalies of politics, so named because they occur in areas within a sovereign state's territory where another political unit is allowed to function as either a largely self-governing entity or as an entity that exists in tension with the sovereign state government. The topics selected for study presented issues of balancing – or potentially upsetting the balance – of national *imperium* and sub-national *dominium* based on increased claims to authority and ability on the part of the sub-national. The first topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was the balance between indigenous communities and the state in Australia, Canada, New Zealand and the United States in the face of legal trends that recognize greater rights for indigenous communities. The second topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was the balance in status between the Kaliningrad oblast and the Russian Federation. The third topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was the ways in which sub-units have acted in contravention of state policy with regard to environmental and monetary systems within the sub-unit's territory. Lastly, the fourth topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied was the impact of returned territory that had been subject to an international lease on the legal systems of the leased territory and reversionary home state. The Chapter explained that these anomalies too were able to occur without destabilizing the state or threatening its ability to control territory and exert sovereignty because of legal elasticity supported by the ability of the *imperium* and *dominium* relationship to allow for balance shifts.

In the last set of anomalies, Chapter 8 analyzed anomalies of military, so named because they involve foreign military and military-associated installations on the territorial sovereignty of the host state. These topics were selected because they present issues regarding jealously guarded national military issues as well as the potential of foreign military presence to have a destabilizing effect on the ability of the state to exercise imperium. The first topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied to the host state/home state relationship in overseas military

basing leases and agreements. The second topic of study to which the model of legal elasticity and *imperium* and *dominium* was applied to overseas military bases for international peacekeeping and associated missions. The third topic of study to which the model of legal elasticity and *imperium* and *dominium* was zones of military occupation in the post-conflict setting. Lastly, the fourth topic of study to which the model of legal elasticity and *imperium* and *dominium* was the use of foreign war dead cemeteries.

As a static entity, territory itself will in all likelihood outlast the states that exert sovereign territorial control over it at any given point in history. In this sense, as a geographic construct, territory is a continuum. Territory is equally a continuum at law, and this is supported through the model of elastic territorial control and the *imperium* and *dominium* relationship. What the Romans recognized through a formalized system has, like territory, continued to live long past those who defined it at a given time.

Bibliography

Legislation & Government Documents

Australia

Statutes

Airports Act 1996 (Cth).
Australia Native Title Act 1993 (Cth).
*Christmas Island Agreement Act 1949 (*Cth).
Christmas Island Agreement Act 1958 (Cth).
Nauru Act 1965 (Cth).
Papua Act 1905 – 1934 (Cth).
Papua Act 1940 (Cth).
Papua and New Guinea Act 1949 – 1960 (Cth).
Papua and New Guinea Act 1968 (Cth).
Papua and New Guinea Act 1949 – 1971 (Cth).
Papua New Guinea Act 1973 (Cth).
Papua New Guinea Independence Act 1975 (Cth).

Indigenous Community Agreements

Austl, Commonwealth, National Native Title Tribunal, *Combined Malanbarra Yidinji Native Title Determination* (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *Djiru People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Djabugay People's Native Title Determination* (Perth: National Native Title Tribunal, 2004).
Austl, Commonwealth, National Native Title Tribunal, *Eastern Kuku Yalanji Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2007).
Austl, Commonwealth, National Native Title Tribunal, *Gangalidda and Garawa Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2010).
Austl, Commonwealth, National Native Title Tribunal, *Githabul People Native Title Determination* (Perth: National Native Title Tribunal, 2007).
Austl, Commonwealth, National Native Title Tribunal, *Gunggandji People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Gunggari People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Jirrbal People's Native Title Determination* (Perth: National Native Title Tribunal, 2010).
Austl, Commonwealth, National Native Title Tribunal, *Jura People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Kowanyama People's Native Title*

Determination (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *Kuuku Ya'u Peoples Native Title Determination* (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *Kuuku Ya'u Peoples Native Title Determination* (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *Muluridji People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Ngadjon-Jii People Native Title Determination* (Perth: National Native Title Tribunal, 2007).
Austl, Commonwealth, National Native Title Tribunal, *Patta Warumungu Peoples' Native Title Determination* (Perth: National Native Title Tribunal, 2007).
Austl, Commonwealth, National Native Title Tribunal, *Quandamooka People's Native Title Determination* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *Strathgordon Mob Native Title Determination* (Perth: National Native Title Tribunal, 2007).
Austl, Commonwealth, National Native Title Tribunal, *Western Yalanji Native Title Determination* (Perth: National Native Title Tribunal, 2006).
Austl, Commonwealth, National Native Title Tribunal, *Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Native Title Determinations* (Perth: National Native Title Tribunal, 2013).
Austl, Commonwealth, National Native Title Tribunal, *Yankunytjatjara/Antakirinja Indigenous Land Use Agreements* (Perth: National Native Title Tribunal, 2007).

Indigenous Community-Related Documents

Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title June 2008* (Perth: National Native Title Tribunal, 2008).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title March 2009* (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title September 2009* (Perth: National Native Title Tribunal, 2009).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title March 2010* (Perth: National Native Title Tribunal, 2010).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title September 2010* (Perth: National Native Title Tribunal, 2010).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title February 2011* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title August 2011* (Perth: National Native Title Tribunal, 2011).
Austl, Commonwealth, National Native Title Tribunal, *National Report: Native Title February 2012* (Perth: National Native Title Tribunal, 2012).
Austl, Commonwealth, National Native Title Tribunal, *Reconciliation Action Plan 2013 – 2015* (Perth: National Native Title Tribunal, 2013).
Austl, Commonwealth, National Native Title Tribunal, *Strategic Plan 2013 – 2014* (Perth: National Native Title Tribunal, 2013).

Kaye, Stuart. "Torres Strait Native Title Sea Claim: Legal Issues Paper," National Native Title Tribunal Occasional Papers Series No 2/2004 (Perth: National Native Title Tribunal, 2004).
Wright, Lisa. "Themes Emerging from the High Court's Recent Native Title Decisions," National Native Title Tribunal Occasional Papers Series No 1/2003 (Perth: National Native Title Tribunal, 2003).

Canada

Statutes

Constitution Act, 1982, art 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
Canada Indian Act, RSC 1985, c I-5.
Department of Indian Affairs and Northern Development Act, RSC 1985, c I-6.
First Nations Land Management Act, RSC 1999, c 24.
Indian Oil and Gas Act, RSC 1985, c I-7.
Nunavut Act, SC 1993, c 28.

Indigenous Community Agreements

Canada, Indian and Northern Affairs Canada, *Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada Concerning the Eeyou Marine Region* (2011).
Canada, Indian and Northern Affairs Canada, *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (1993).
Canada, Indian and Northern Affairs Canada, *Agreement in Principle of General Nature between the First Nations of Mamuitun and Nutsshkuan and the Government of Quebec and the Government of Canada* (2004).
Canada, Indian and Northern Affairs Canada, *Anishinabek Nation Agreement in Principle with Respect to Governance* (2007).
Canada, Indian and Northern Affairs Canada, *Anishnaabe Government Agreement in Principle* (2010).
Canada, Indian and Northern Affairs Canada, *Canada/Prince Edward Island/Mi'kmaq Partnership Agreement* (2007).
Canada, Indian and Northern Affairs Canada, *Carcross/Tagish First Nation Final Agreement among the Government of Canada, the Carcross/Tagish First Nation and the Government of the Yukon* (2005).
Canada, Indian and Northern Affairs Canada, *Comprehensive Agreement in Principle between the Meadow Lake First Nations and Her Majesty the Queen in Right of Canada* (2001).
Canada, Indian and Northern Affairs Canada, *Comprehensive Agreement in Principle between the Sioux Valley Dakota Nation and Her Majesty the Queen in Right of Canada* (2001).

Canada, Indian and Northern Affairs Canada, *Champagne and Aishihik First Nations Final Agreement* (1992).
Canada, Indian and Northern Affairs Canada, *Comprehensive Land Claim Agreement between Her Majesty the Queen in Right of Canada and the Gwich'in as Represented by the Gwich'in Tribal Council*, vol 1 (1992).
Canada, Indian and Northern Affairs Canada, *Deh Cho First Nations Framework Agreement* (2001).
Canada, Indian and Northern Affairs Canada, *Deline Self-Government Agreement in Principle for Sahtu Dene and Metis of Deline* (2004).
Canada, Indian and Northern Affairs Canada, *First Nation of Nacho Nyak Dun Final Agreement* (1993).
Canada, Indian and Northern Affairs Canada, *First Nation of Nacho Nyak Dun Self-Government Agreement* (1993).
Canada, Indian and Northern Affairs Canada, *Gwich'in and Inuvialnuit Self-Government Agreement in Principle for the Beaufort-Delta Region* (2003).
Canada, Indian and Northern Affairs Canada, *Land Claims and Self-Government Agreement Among the TLICHQ and the Government of the Northwest Territories and the Government of Canada* (2003).
Canada, Indian and Northern Affairs Canada, *James Bay and Northern Quebec Agreement* (QC, 1975).
Canada, Indian and Northern Affairs Canada, *Kluane First Nation Final Agreement* (2003).
Canada, Indian and Northern Affairs Canada, *Kluane First Nation Self-Government Agreement* (2003).
Canada, Indian and Northern Affairs Canada, *Kwanlin Dun First Nation Final Agreement* (2005).
Canada, Indian and Northern Affairs Canada, *Kwanlin Dun First Nation Self-Government Agreement* (2005).
Canada, Indian and Northern Affairs Canada, *Labrador Innu Land Claims Agreement in Principle* (2012).
Canada, Indian and Northern Affairs Canada, *Lheidl T'ennwh Agreement in Principle* (2003).
Canada, Indian and Northern Affairs Canada, *Little Salmon/Carmacks First Nation Final Agreement* (1998).
Canada, Indian and Northern Affairs Canada, *Little Salmon/Carmacks First Nation Self-Government Agreement* (1998).
Canada, Indian and Northern Affairs Canada, *Nisga'a Final Agreement* (1999).
Canada, Indian and Northern Affairs Canada, *Northwest Territories Lands and Resources Devolution Agreement in Principle* (2011).
Canada, Indian and Northern Affairs Canada, *Nunavik Inuit Land Claims Agreement* (2006).
Canada, Indian and Northern Affairs Canada, *Nunavut Land Claims Agreement Act* (1993).
Canada, Indian and Northern Affairs Canada, *Sahtu Dene and Metis Comprehensive Land Claim Agreement*, vol 1 (1993).
Canada, Indian and Northern Affairs Canada, *Sechelt Indian Band Self-Government Act*

(1986).
Canada, Indian and Northern Affairs Canada, *Selkirk First Nation Self-Government Agreement* (1998).
Canada, Indian and Northern Affairs Canada, *Sliammon First Nation Agreement in Principle* (2003).
Canada, Indian and Northern Affairs Canada, *Ta'an Kwach'an Council Self-Government Agreement* (2002).
Canada, Indian and Northern Affairs Canada, *Teslin Tinglin Council Final Agreement* (1993).
Canada, Indian and Northern Affairs Canada, *Tr'ondek Hwech'in Final Agreement* (1998).
Canada, Indian and Northern Affairs Canada, *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* (1993).
Canada, Indian and Northern Affairs Canada, *Vuntut Gwitchin First Nation Final Agreement* (1993).
Canada, Indian and Northern Affairs Canada, *Vuntut Gwitchin First Nation Self-Government Agreement* (1993).
Canada, Indian and Northern Affairs Canada, *Westbank First Nations Self-Government Agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation* (2003).
Canada, Indian and Northern Affairs Canada, *The Western Arctic Claim, the Inuvialut Final Agreement* (1984).
Canada, Indian and Northern Affairs Canada, *Yekooche First Nation Agreement in Principle* (2003).
Canada, Indian and Northern Affairs Canada, *Yukon First nations Self-Government Act* (1994).

Indigenous Community-Related Documents

Canada, Indian and Northern Affairs Canada, *Achievements Under Canada's Northern Strategy, 2007 – 2011* (Ottawa: Government of Canada, 2011).
Berger, Thomas R. *Conciliator's Report, The Nunavut Project* (2006).
Canada, Indian and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Hull, QC: Department of Indian and Northern Affairs Canada, 2010).
Canada, Indian and Northern Affairs Canada, *Canada's Northern Strategy: Our North, Our Heritage, Our Future* (Ottawa: Government of Canada, 2009).
Canada, Indian and Northern Affairs Canada, *Labrador Inuit Land Claims Agreement Annual Report – 1 December 2005 to 31 March 2007* (Ottawa: Government of Canada, 2012).
Canada, Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol 1 (Ottawa: Royal Commission on Aboriginal Peoples, 1996).

Canada, Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol 2 (Ottawa: Royal Commission on Aboriginal Peoples, 1996).

New Zealand

Statutes

Airports Authority Act 1966 (NZ), 1966.
Crown Forest Assets Act 1989 (NZ), 1989.
Port Companies Act 1988 (NZ), 1988.
New Zealand Bill of Rights Act 1990 (NZ), 1990.
Ngai Tahu Claims Settlement Act 1998 (NZ), 1998.
State Owned Enterprises Act 1986 (NZ), 1986.
Treaty of Waitangi Act of 1975 (NZ), 1975.

Indigenous Community Statutes

Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (NZ), 2008.
Central North Island Forests Land Collective Settlement Act 2008 (NZ), 2008.
Maraeroa A and B Blocks Claims Settlement Act 2012 (NZ), 2012.
Ngaa Rauru Kiitahi Claims Settlement Act 2005 (NZ), 2005.
Ngati Apa North Island Claims Settlement Act 2010 (NZ), 2010.
Ngati Awa Claims Settlement Act 2005 (NZ), 2005.
Ngati Manawa Claims Settlement Act 2012 (NZ), 2012.
Ngati Manawa Claims Settlement Act 2012 (NZ), 2012.
Ngati Mutunga Claims Settlement Act 2006 (NZ), 2006.
Ngati Pahauwera Claims Settlement Act 2012 (NZ), 2012.
Ngati Porou Claims Settlement Act 2012 (NZ), 2012.
Ngaa Rauru Kiitahi Claims Settlement Act 2005 (NZ), 2005.
Ngati Ruanui Claims Settlement Act 2003 (NZ), 2003.
Ngati Tama Claims Settlement Act 2003 (NZ), 2003.
Ngai Tamanuhiri Claims Settlement Act 2012 (NZ), 2012.
Ngati Turangituka Claims Settlement Act 1999 (NZ), 1999.
Ngati Tuwharetoa Claims Settlement Act 2005 (NZ), 2005.
Ngati Whare Claims Settlement Act 2012 (NZ), 2012.
Ngati Whatua o Kaipara Claims Settlement Act 2013 (NZ), 2013.
Port Nicholson Taranki Whanui ki Te Upoko o Te Ika Claims Settlement Act 2009 (NZ), 2009.
Pouakani Claims Settlement Act 2000 (NZ), 2000.
Rongowhakaata Claims Settlement Act 2012 (NZ), 2012.
Te Arawa Lakes Claims Settlement Act 2006 (NZ), 2006.
Te Roroa Claims Settlement Act 2008 (NZ), 2008.
Te Uri o Hau Claims Settlement Act 2002 (NZ), 2002.
Waikato Raupatu Claims Settlement Act 1995 (NZ), 1995.

Waikato-Tainui Raupatu Claims Settlement Act 2010 (NZ), 2010.
Waitaha Claims Settlement Act 2013 (NZ), 2013.

Indigenous Community-Related Documents

Waitangi Tribunal Practice Note: Guide to the Practice and Procedure of the Waitangi Tribunal (Wellington, NZ: Waitangi Tribunal, 2012).
Anderson, Robyn. *Goldmining: Policy, Legislation, and Administration* (Wellington, NZ: Waitangi Tribunal, 1996).
Bennion, Tom. *Maori and Rating Law* (Wellington, NZ: Waitangi Tribunal, 1997).
Bennion, Tom. *The Maori Land Court and Land Boards, 1909 to 1952* (Wellington, NZ: Waitangi Tribunal, 1997).
Bennion, Tom & Judi Boyd. *Succession to Maori Land, 1900 – 52* (Wellington, NZ: Waitangi Tribunal, 1997).
Boast, Richard. *The Foreshore* (Wellington, NZ: Waitangi Tribunal, 1996).
Daamen, Rose. *The Crown's Right of Pre-Emption and Fitzroy's Waiver Purchases* (Wellington, NZ: Waitangi Tribunal, 1998).
Johnson, Ralph. *The Trust Administration of Maori Reserves, 1840 – 1913* (Wellington, NZ: Waitangi Tribunal, 1997).
Loveridge, Donald. *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952* (Wellington, NZ: Waitangi Tribunal, 1996).
Maar, Kathy. *Public Works Takings of Maori Land, 1840 – 1981* (Wellington, NZ: Waitangi Tribunal, 1997).
Moore, D, B Rigby & M Russell. *Old Land Claims* (Wellington, NZ: Waitangi Tribunal, 1997).
Murray, JE. *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900* (Wellington, NZ: Waitangi Tribunal, 1997).
Pond, Wendy. *The Land With All the Woods and Waters* (Wellington, NZ: Waitangi Tribunal, 1997).
Riseborough, Hazel & John Hutton. *The Crown's Engagement with Customary Tenure in the Nineteenth Century* (Wellington, NZ: Waitangi Tribunal, 1997).
Ward, Alan. *National Overview*, vol 1 (Wellington, NZ: Waitangi Tribunal, 1997).
Ward, Alan. *National Overview*, vol 2 (Wellington, NZ: Waitangi Tribunal, 1997).
Ward, Alan. *National Overview*, vol 3 (Wellington, NZ: Waitangi Tribunal, 1997).
White, Ben. *Inland Waterways: Lakes* (Wellington, NZ: Waitangi Tribunal, 1998).
Woodley, Suzanne. *The Native Townships Act 1895* (Wellington, NZ: Waitangi Tribunal, 1996).

United Kingdom

Statutes

Nauru Island Agreement 1919, (UK).
Ports Act 1991, (UK), c 52.
Royal Proclamation of 1763, (UK).

Military Basing Agreements

UK, *Agreement Between the Governments of the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and India and the Government of Iraq Regarding British Cemeteries in Iraq*, 1936 ATS No 4 (1936).

UK, *Agreement Between His Majesty's Governments in the United Kingdom, Canada, the Commonwealth of Australia, New Zealand and the Union of South Africa and the Government of India and the Egyptian Government Regarding British War Memorial Cemeteries and Graves in Egypt*, 1937 ATS No 8 (1937).

UK, *Agreement Between the Governments of the United Kingdom of Great Britain and Northern Ireland, Australia, Canada, India, New Zealand, Pakistan, and the Union of South Africa and the Government of Belgium respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Belgian Territory*, 1951 ATS No 14 (1951).

UK, *Agreement between the Governments of the United Kingdom and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Government of the French Republic regarding British Commonwealth War Graves in French Territory*, 1951 ATS No 19 (1951).

UK, *British Commonwealth-Netherlands War Graves Agreement*, 1951 ATS No 13 (1951).

UK, *Agreement Between the Governments of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Government of Italy Relative to the Graves in Italian Territory of Members of the Armed Forces of the British Commonwealth*, 1955 ATS No 7 art 3 (1955).

UK, *Agreement Between the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, India and Pakistan and the Federal Republic of Germany Regarding the War Graves, Cemeteries and Memorials of the British Commonwealth in the Territory of the Federal Republic of Germany*, 326 UNTS 181 (1959).

UK, *Agreement Between the Governments of Australia, Canada, India, New Zealand, Pakistan and the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia Respecting the War Cemeteries, Graves and Memorials of the Commonwealth in Indonesian Territory*, 1964 ATS No 12 (1964).

UK, *Agreement between the governments of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, India and Pakistan of the One Part and the Imperial Ethiopian Government of the Other Part, Respecting the War Cemeteries, Graves and Memorials of the British Commonwealth in Ethiopian Territory*, 1967 ATS No 26 (1967).

UK, *Agreement between the Royal Hellenic Government of the one part and the Governments of Australia, Canada, India, New Zealand, Pakistan, South Africa and the United Kingdom of Great Britain and Northern Ireland of the other part*

concerning the Graves of Members of the Armed Forces of the Commonwealth in Greek Territory, 1969 ATS No 16 (1969).
UK, *Agreement Between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia Concerning Netherlands War Cemeteries*, 390 UNTS 13923 (1970).
UK, *Exchange of Notes Constituting an Agreement Between the Government of the United Kingdom of the Netherlands and the Government of the Federal Republic of Germany Concerning the Transfer of the Management and Maintenance of the German Military Cemetery at Yssel-Steyn*, 258 UNTS 15204 (1977).

United States

Federal Statutes

US Const art I, § 8.
US Const art I, § 10.
19 USC §1501 (2014).
25 USC §§ 564 – 566e (2014).
25 USC §§ 593 – 594 (2014).
25 USC § 608 *et seq* (2014).
25 USC § 610 (2014).
25 USC §§ 621 – 624 (2014).
25 USC § 631 *et seq* (2014).
25 USC § 651 *et seq* (2014).
25 USC §§ 668 – 669 (2014).
25 USC § 691 *et seq* (2014).
25 USC § 711a *et seq* (2014).
25 USC § 712a *et seq* (2014).
25 USC § 713a *et seq* (2014).
25 USC § 714a *et seq* (2014).
25 USC § 715a *et seq* (2014).
25 USC § 732 *et seq* (2014).
25 USC § 741 *et seq* (2014).
25 USC §§ 762 – 766 (2014).
25 USC § 861 *et seq* (2014).
25 USC § 903a *et seq* (2014).
25 USC § 983 *et seq* (2014).
25 USC §1041 (2014).
25 USC §1300b-11 *et seq* (2014).
25 USC §1300f *et seq* (2014).
25 USC §1300g-1 *et seq* (2014).
25 USC §1300h *et seq* (2014).
25 USC §1300j *et seq* (2014).
25 USC §1300k *et seq* (2014).

25 USC §1300l *et seq* (2014)
25 USC §1300m *et seq* (2014).
25 USC §1300n *et seq* (2014).
25 USC §§1721 – 1732 (2014).
25 USC §1301 *et seq* (2014).
25 USC §1701 *et seq* (2014).
25 USC §1741 – 1750d (2014).
25 USC §1751 – 1759 (2014).
25 USC §1771 *et seq* (2014).
25 USC §1772 *et seq* (2014).
25 USC §1773 *et seq* (2014).
25 USC §1774 *et seq* (2014).
25 USC §1775 *et seq* (2014).
25 USC §1776 *et seq* (2014).
25 USC §1777 *et seq* (2014).
25 USC §1778 *et seq* (2014).
25 USC §1779 *et seq* (2014).
25 USC §1780a *et seq* (2014).
25 USC §2102 *et seq* (2014).
25 USC §2701 *et seq* (2014).
25 USC §4021 *et seq* (2014).
49 USC §44706 (2014).

US, Bill HR 2454, *American Clean Energy and Security Act*, 111th Cong, 2009.

State Statutes & Agreements

Conn Stat § 22a-174l-446c (2014).
Conn Stat § 22a-174-31 (2014).
Conn Stat § 22a-174-31 (2014).
Del Stat tit 7 ch 60 (2014).
Del Stat tit 38 ch 3-B (2014).
Md Code Ann Envtl § § 1-101 – 1-104 (2014).
Md Code Ann Envtl § 2-103 (2014).
Md Code Ann Envtl § -1002g (2014).
Mass Gen Laws c 21A § 22 (2014).
NH RSA §125-O:19-28p (2014).
NY Envtl Cons L §1-0101 (2014).
NY Envtl Cons L §1-0303 (2014).
NY Envtl Cons L §3-0301 (2014).
NY Envtl Cons L §11-0303 (2014).
NY Envtl Cons L §11-0305 (2014).
NY Envtl Cons L §11-0535 (2014).
NY Envtl Cons L §13-0105 (2014).
NY Envtl Cons L §15-0109 (2014).
NY Envtl Cons L §15-1903 (2014).

NY Envtl Cons L §16-0111 (2014).
NY Envtl Cons L §17-0303 (2014).
NY Envtl Cons L §19-0103 (2014).
NY Envtl Cons L §19-0105 (2014).
NY Envtl Cons L §19-0107 (2014).
NY Envtl Cons L §19-0301 (2014).
NY Envtl Cons L §19-0303 (2014).
NY Envtl Cons L §19-0305 (2014).
NY Envtl Cons L §24-0103 (2014).
NY Envtl Cons L §25-0102 (2014).
NY Envtl Cons L §34-0108 (2014).
NY Envtl Cons L §49-0309 (2014).
NY Envtl Cons L §71-2103 (2014).
NY Envtl Cons L §71-2105 (2014).
NY Energy L § 3-101 (2014).
NY Energy L § 3-103 (2014).
RI Gen Laws § 42-17.1-2(9) (2014).
RI Gen Laws § 42-23-23 (2014).
RI Gen Laws § 42-23-28 (2014).
Vt Stat Ann tit § 30 55 (2014).
Regional Greenhouse Gas Initiative Memorandum of Understanding (2005).

Military Basing Agreements

US, *Naval and Air Bases Arrangement between the United States of America and Great Britain*, (1940) Executive Agreement Series No 181, 181 UST i.
US, *Leased Naval and Air Bases Agreement and Exchanges of Notes between the United States of America and Great Britain and Protocol between the United States of America, Great Britain and Canada Concerning the Defense of Newfoundland*, (1941) Executive Agreement Series No 235, 237 UST i.
US, *Agreement Between the Republic of the Philippines and the United States Concerning Military Bases*, 272 UNTS 673 (1949).
US, *Agreement Between the United States and the Grand Duchy of Luxembourg concerning the establishment of a permanent World War II Cemetery in Luxembourg*, 3.2 UST 2745 (1952).
US, *Defense Agreement between the United States and Spain, 4.2 UST 1895* (1953).
US, *Agreement Concerning the Utilization of Leased Base Areas in St. Lucia*, TIAS 2673 (1952).
US, *Agreement Under Article VI of the Treaty of Mutual Cooperation and Security between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan*, 11.2 UST 1652 (1960).
US, *Agreement Under Article VI of the Mutual Defense Treaty between the United States and the Republic of Korea, Regarding Facilities Areas and the Status of United States Armed Forces in the Republic of Korea*, 17 UST 1677 (1966).
US, *Agreement effected by exchange of notes, Kindley Air Force Base, Bermuda:*

Additional Civil Airport Facilities, 19.4 UST 5059 (1968).
US, *Agreement Concluded Between the Governments of the United States of America and Belgium Covering the Erection by the American Battle Monuments Commission of Certain Memorials in Belgium*, 5 Bevans 551 (1968).
US, *Agreement in Implementation of Chapter VIII of the Agreement of Friendship and Cooperation between the United States of America and Spain*, 21.3 UST 2259 (1970).
US, *Leased Naval Bases Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland*, 30.3 UST 2683 (1978 – 1979).
US, *Agreement between the Government of the United States of America and the Government of the Commonwealth of the Bahamas Concerning United States Defense Facilities in the Commonwealth of the Bahamas*, 35.6 UST 6491 (1983 – 1984).
US, *Memorandum of Agreement between the United States Forces, Korea (USFK) and the Republic of Korea, Ministry of National Defense (ROK MND) Concerning the Construction, Operation and Maintenance of a Munitions Demilitarization Facility (DEFAC) in the Republic of Korea*, TIAS 13032 (1999).
US*, US & Luxembourg Agreement, Agreement Between the Government of the United States of America and the Government of Panama Concerning Use of the Corozal Cemetery*, TIAS 13043 (1999).
US, *Agreement between United States Air Force, as Represented by the 9th Air Force, and the Royal Bahraini Air Force Concerning Mutual Aid in Fire Protection*, TIAS 04-1201 (2004).
US, *Memorandum Agreement FB52CX-MOA-3019 for Mutual Aid in Fire Protection between the USAF Fire Department at Daegu Air Base and Headquarters of Daegu Fire Department, ROK*, TIAS 04-1005 (2004).
US, *Memorandum of Understanding FB52CX-6158-2001between the United States Air Force and the Republic of Korea Air Force Concerning Combined Disaster Management*, TIAS 06-607 (2006).
US, *Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq*, 855 KAV I (2009).

United States Government Documents

US, USAID, *Customs Guide: Customs Project and Business Environment that Promote Commerce and Investment* (USAID Program Customs and Business Climate to Promote Trade and Investment – El Salvador, 2008).
Bowman, Steve. *Iraq: US Military Operations* (Washington, DC: CRS Report for Congress, 2007).
Fletcher, Susan R. *Global Climate Change: The Kyoto Protocol* (Washington, DC: Congressional Research Service, 2004).
Garcia, Michael John et al. *Congressional Oversight and Related Issues Concerning the Prospective Security Agreement Between the United States and Iraq* (Washington, DC: CRS Report for Congress, 2008).

Katzman, Kenneth. *Iraq: Politics, Governance, and Human Rights* (Washington, DC: CRS Report for Congress, 2013).
Katzman, Kenneth & Jennifer Elsea. *Iraq: Transition to Sovereignty* (Washington, DC: CRS Report for Congress, 2004).
Mason, R Chuck. *US – Iraq Withdrawal/Status of Forces Agreement: Issues for Congressional Oversight* (Washington, DC: CRS Report for Congress, 2009).
Serafino, Nina et al. *US Occupation Assistance: Iraq, Germany and Japan Compared* (Washington, DC: CRS Report for Congress, 2006).
Sharp, Jeremy M. *Iraq: A Compilation of Legislation Enacted and Resolutions Adopted by Congress, 1990 – 2003* (Washington, DC: CRS Report for Congress, 2003).
Smith, Jane M. *The Administrative Process by Which Groups May be Acknowledged as Indian Tribes by the Department of the Interior* (Washington, DC: Congressional Research Service, 2013).
Weed, Matthew C. *US – Iraq Strategic Framework and Status of Forces Agreement: Congressional Report* (Washington, DC: CRS Report for Congress, 2008).

Other International Legislation

Constitutions

Argentina Const art 75(17) (2013).
Cambodian Const art 58 (2010).
Ethiopia Const art 40 (1995).
Sweden Const ch 9 art 12 (1974).

Statutes & Regulations

Antigua & Barbuda, *Free Trade and Processing Zone Act*, 1994.
Argentina, *Ley No 24.093, Ley de Puerto*, 1992.
Argentina, *Tierras Rurales, Ley No. 26.737*, 2011.
Bahamas, *Port Authorities Act*, 2006.
Kingdom of Bahrain, *Regulations Pertaining to Operating a Port, Jetty or Similar Facility in the Kingdom of Bahrain*, 2010.
Bangladesh, *Bangladesh Economic Zones Act*, 2010.
Brazil, *Lei No 12.462*, 2011.
Brazil, *Decreto 8033/13*, 2013.
Cambodia, *Law NS/RKM/0801/14*, 2002.
Cameroon, *Decret no 99/126*, 1999.
Cameroon, *Decret no 99/128*, 1999.
People's Republic of China, *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, 1997.
People's Republic of China, *Basic Law of the Macao Special Administrative Region of the People's Republic of China*, 1999.
People's Republic of China, *Port Law of the People's Republic of China*, 2003.
Chile, *Aprueba el Texto Refundido, Coordinado y Sistematizado del Decreto con Fuerza*

del Ley No 341, de 1977, del Ministerio de Hacienda, Sobre Zonas Francas.
Chile, *Ley No 19.253*, 1993.
Chile, *Ley Puerto No. 19,542*, 1997.
Chile, *No 341, de 1977, del Ministerio de Hacienda, Sobre Zonas Francas*, 2006.
Costa Rica, *Ley general maritima y portuaria de la Republica de Costa Rica*, 2011.
Dominican Republic, *Law 8-90*, 1990.
Dubai, *Dubai Code of Conduct*, 2009.
EU, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance) *Official Journal L 275, 25/10/2003 P. 0032 – 0046.*
Guatemala, *Decree No 65-89, Free Trade Zones Law*, 1989.
India, *Airports Authority of India Act*, 1994.
India, *Special Economic Zones Act*, 2005.
India, *SEZ Policy*, Chandigarh Administration 2005.
India, *Act No. 11*, Gujarat 2004.
India, *No 2460*, Government of Jharkhand 2003.
India, *Kerala SEZ Policy*, 2005.
India, *Resolution No. SEZ 2001/(152)/IND – 2*, Government of Maharashtra 2001
India, *U.P. Special Economic Zone* (Amended Policy) – 2007.
Indonesia, *Law Number 39 of 2009 Regarding Special Economic Zones*, 2009.
Jamaica, *Port Authority Act*, 1972.
Kingdom of Jordan, *Aqaba Special Economic Zone Law no 32*, 2000.
Kingdom of Jordan, *Law No 46*, 2006.
Kazakhstan, *Land Code of the Republic of Kazakhstan*, 2003.
Kenya, *Kenya Ports Authority Act*, 2012.
Lao People's Democratic Republic, *Law on Investment Promotion*, 2009.
Madagascar, *Loi No 89-027 relative au regime de Zone franche industrielle a Madagascar*, 1989.
Malaysia, *Port Authorities Act 1963*, 1963.
Malaysia, *Ports (Privatization) Act 1990*, 1990.
Mexico, *Ley de Aeropuertos*, 1995.
Mexico, *Ley de Puertos*, 2012.
Republic of Korea, *Harbor Act*, 2010.
Republic of Mozambique, *Decree No 42/2009*, 2009.
Panama, *Ley 56*, 2008.
Romania *Free Zones Law No 84/1992*, 1992.
Russian Federation, *Federal Law No 116-FZ of July 22, 2005 on Special Economic Zones in the Russian Federation*, 2005.
Russian Federation, *The Federal Law on the Special Economic Zone in the Kaliningrad Region*, 2005.
Slovenia, *Maritime Code*, 2001.
Spain, *Ley de Puertos del Estado y de la Marina Mercante*, 2011.
Sweden, *The Sveriges Riksbank Act*, 1998.
Tanzania, *The Ports Acts*, 2004.
UAE (Abu Dhabi), *Federal Decree No 15 of 2013*, 2013.

International Treaties, Agreements & Declarations

Treaty of Westphalia (1648).
Treaty of Waitangi (1840).
Treaty of Versailles, 28 June 1919, 1920 ATS 1.
Treaty of Sevres, 10 August 1920, 113 UKSP 652.
Treaty Between Great Britain and Iraq, *League of Nations Official Journal*, 3 League of Nations OJ 1505 (1922).
Treaty of Peace with Turkey (Lausanne), 10 August 1923, 11 UKTS 4.
Montevideo Convention on the Rights and Duties of States, 26 December 1933, 165 LNTS 19.
Atlantic Charter, 14 August 1941, (1941) *AJ Supp* 191.
Potsdam Agreement, United State Government Printing Office, 1945.
Berlin Declaration 5 June 1945, 145 BFSP 796.
Treaty of Peace with Bulgaria, 10 February 1947, 41 UNTS 21.
Treaty of Peace with Finland, 10 February 1947, 48 UNTS 203.
Treaty of Peace with Hungary, 10 February 1947, 41 UNTS 135.
Treaty of Peace with Italy, 10 February 1947, 49 UNTS 3.
Treaty of Peace with Romania, 10 February 1947, 42 UNTS 3.
Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.
Treaty of San Francisco, 1 September 1951, 136 UNTS 45.
Protocol II additional to the Geneva Conventions, 10 June 1977, 1125 UNTS 17512.
Vienna Convention on the Law of Treaties between States and International Organizations or between Organizations, 21 March 1986, Doc. A/CONF.129/15.
Treaty on the Final Settlement with Respect to Germany, 5 May 1990, (1990) 29 ILM 1187.
United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.
Treaty on European Union (Maastricht Treaty), 7 February 1992, 1757 UNTS 3 (1993).
Kyoto Protocol to the United Nations Framework Convention on Climate Change, 16 March 1998, 37 ILM 22.
Charter of the Commonwealth, 21 September 2012.

League of Nations Documents

Mandate Agreements

*Mandate for German Samoa***,** 17 December 1921, *League of Nations Official Journal*, 2 League of Nations OJ 85 (1921).
Mandate for German South-West Africa, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 89 (1921).
Mandate for the German Possessions in the Pacific Ocean Situated South of the Equator, Other than German Samoa and Nauru, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 85 (1921).

Mandate for the Former German Possessions in the Pacific Ocean Lying North of the Equator, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 87 (1921).
Mandate for Nauru, 17 December 1920, *League of Nations Official Journal*, 2 League of Nations OJ 93 (1921).
Mandate for the Tanganyika Territory, 20 July 1922, in Callahan, Michael D. *Mandates and Empire: The League of Nations and Africa, 1914 – 1931* (Brighton, UK: Sussex Academic Press, 2008).
Mandates for Togo and Cameroon, 20 July 1922, in Callahan, Michael D. *Mandates and Empire: The League of Nations and Africa, 1914 – 1931* (Brighton, UK: Sussex Academic Press, 2008).
Mandate for Palestine, 24 July 1922.

Other Documents

"Letter from the Secretary-General to the Members of the League Concerning the Terms of "C" Mandates" in *League of Nations Official Journal*, 2 League of Nations OJ 84 (1921).
"Mandates" in *League of Nations Official Journal*, 2 League of Nations OJ 331 (1921).
"Mandates" in *League of Nations Official Journal*, 2 League of Nations OJ 641 (1921).
"Mandates" in *League of Nations Official Journal*, 2 League of Nations OJ 823 (1921).
"Mandates" in *League of Nations Official Journal*, 6 League of Nations OJ 735 (1925).
"Mandates" in *League of Nations Official Journal*, 6 League of Nations OJ 1041 (1925).
"Mandates" in *League of Nations Official Journal*, 7 League of Nations OJ 374 (1926).
"Mandates" in *League of Nations Official Journal*, 7 League of Nations OJ 743 (1926).
"Mandates" in *League of Nations Official Journal*, 7 League of Nations OJ 1530 (1926).
"Mandates" in *League of Nations Official Journal*, 8 League of Nations OJ 314 (1927).
"Mandates" in *League of Nations Official Journal*, 8 League of Nations OJ 1060 (1927).
"Mandates" in *League of Nations Official Journal*, 8 League of Nations OJ 1556 (1927).
"Mandates" in *League of Nations Official Journal*, 9 League of Nations OJ 1953 (1928).
"Mandates" in *League of Nations Official Journal*, 10 League of Nations OJ 796 (1929).
"Mandates" in *League of Nations Official Journal*, 11 League of Nations OJ 1099 (1930).
"Mandates" in *League of Nations Official Journal*, 14 League of Nations OJ 152 (1933).
"Mandates" in *League of Nations Official Journal*, 20 League of Nations OJ 24 (1939).
"Mandates" in *League of Nations Official Journal*, 20 League of Nations OJ 363 (1939).

United Nations Documents

Charter of the United Nations, 26 June 1945, Can TS 1945 No7.

Trusteeship Agreements

"Trusteeship Agreement for the Territory of the Cameroons Under British Administration

(1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of the Cameroons Under French Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of New Guinea (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of Tanganyika (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of Togoland Under British Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of Togoland Under French Administration (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of Western Samoa (1946)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).
"Trusteeship Agreement for the Territory of Nauru (1947)" in *Trusteeship Agreements*, UNGAOR, 1st Sess, 66th Mtg, UN Doc T/8 (1947).

United Nations General Assembly

1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV), UNGAOR, 15th Sess, UN Doc A/4684 (1960).

United Nations Security Council

SC Res 1441, UNSCOR, 4644th Mtg, UN Doc S/Res/1441 (2002).
SC Res 1509, UNSCOR, 4830th Mtg, UN Doc S/Res/1509 (2003).
SC Res 1546, UNSCOR, 4987th Mtg, UN Doc S/Res/1546 (2004).
SC Res 1551, UNSCOR, 5001st Mtg, UN Doc S/Res/1551 (2004).
SC Res 1790, UNSCOR, 5808th Mtg, UN Doc S/Res/1790 (2007).
SC Res 1859, UNSCOR, 6059th Mtg, UN Doc S/Res/1859 (2008).
SC Res 1925, UNSCOR, 6324th Mtg, UN Doc S/Res/1925 (2010)
SC Res 1996, UNSCOR, 6576th Mtg, UN Doc S/Res/1996 (2011).

UNCTAD

Legal Aspects of Port Management, UNCTADOR, UN Doc UNCTAD/SHIP/1993 (1993).
Potentialities for regional port cooperation, UNCTADOR, UN Doc UNCTAD/SDD/PORT/5 (1996).
Guidelines for Port Authorities and Governments on the privatization of port facilities, UNCTADOR, UN Doc UNCTAD/SDTE/TIB/1 (1998).
African ports: reform and the role of the private sector, UNCTADOR, UN Doc

UNCTAD/SDTE/TLB/5 (2003).
Review of Maritime Transport 2005, UNCTADOR, UN Doc UNCTAD/RMT/2005 (2005).
Review of Maritime Transport 2006, UNCTADOR, UN Doc UNCTAD/RMT/2006 (2006).
Review of Maritime Transport 2007, UNCTADOR, UN Doc UNCTAD/RMT/2007 (2007).
Review of Maritime Transport 2008, UNCTADOR, UN Doc UNCTAD/RMT/2008 (2008).
Review of Maritime Transport 2009, UNCTADOR, UN Doc UNCTAD/RMT/2009 (2009).
Review of Maritime Transport 2010, UNCTADOR, UN Doc UNCTAD/RMT/2010 (2010).
Review of Maritime Transport 2011, UNCTADOR, UN Doc UNCTAD/RMT/2011 (2011).
Review of Maritime Transport 2012, UNCTADOR, UN Doc UNCTAD/RMT/2012 (2012).

United Nations Yearbooks

"The Trusteeship Council Including the United Nations Functions under Chapter XI of the Charter" in *Yearbook of the United Nations* (New York: UN, 1946 – 47) at 569.
"Non-Self Governing Territories" in *Yearbook of the United Nations* (New York: UN, 1947 – 48) at 707.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1947 – 48) at 725.
"Questions Concerning Non-Self Governing Territories" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 719.
"Trusteeship and Related Questions" in *Yearbook of the United Nations* (New York: UN, 1948 – 49) at 755.
"Questions Concerning Non-Self Governing Territories" in *Yearbook of the United Nations* (New York: UN, 1950) at 673.
"Questions Concerning the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1950) at 699.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1951) at 604.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1952) at 558.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1953) at 508.
"Questions Relating to Africa" in *Yearbook of the United Nations* (New York: UN, 1954) at 82.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1954) at 309.

"Question of South-West Africa" in *Yearbook of the United Nations* (New York: UN, 1954) at 324.
"Conditions in the Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1954) at 332.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1954) at 356.
"Special Questions Affecting Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1954) at 386.
"Questions Relating to Africa" in *Yearbook of the United Nations* (New York: UN, 1955) at 63.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1955) at 249.
"Question of South-West Africa" in *Yearbook of the United Nations* (New York: UN, 1955) at 263.
"Examination of Annual Reports from Administering Authorities" in *Yearbook of the United Nations* (New York: UN, 1955) at 272.
"Special Questions Affecting Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1955) at 312.
"The Question of Algeria" in *Yearbook of the United Nations* (New York: UN, 1956) at 115.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1956) at 289.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1956) at 313.
"Conditions in Individual Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1956) at 336.
"The Future of the Togolands" in *Yearbook of the United Nations* (New York: UN, 1956) at 368.
"The Question of Algeria" in *Yearbook of the United Nations* (New York: UN, 1957) at 68.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1957) at 289.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1957) at 315.
"Conditions Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1957) at 327.
"Questions Concerning Africa" in *Yearbook of the United Nations* (New York: UN, 1958) at 77.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1958) at 295.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1958) at 320.
"Conditions Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1958) at 337.
"Questions Concerning Africa" in *Yearbook of the United Nations* (New York: UN, 1959) at 51.

"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1959) at 297.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1959) at 330.
"Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1959) at 348.
"Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1960) at 44.
"Questions Relating to the Situation in the Republic of the Congo (Leopoldville)" in *Yearbook of the United Nations* (New York: UN, 1960) at 52.
"Questions Concerning Africa" in *Yearbook of the United Nations* (New York: UN, 1960) at 129.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1960) at 437.
"Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1960) at 451.
"Information on Non-Self Governing Territories Transmitted to Under Article 73e of the United Nations Charter" in *Yearbook of the United Nations* (New York: UN, 1960) at 502.
"The Situation With Regard to Implementation of Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1961) at 44.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1961) at 417.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1961) at 469.
"Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1961) at 483.
"Situation With Regard to Implementation of Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1962) at 57.
"Questions Concerning Non-Self Governing Territories and the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1962) at 407.
"Operation of the International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1962) at 448.
"Conditions in Trust Territories" in *Yearbook of the United Nations* (New York: UN, 1962) at 455.
"The Situation With Regard to Implementation of Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1963) at 118.
"Questions Relating to the International Trusteeship System, Information on Non-Self-Governing Territories, and the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1963) at 421.
"Questions Relating to Non-Self Governing" in *Yearbook of the United Nations* (New York: UN, 1963) at 435.

"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1963) at 482.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1964) at 399.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1964) at 413.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1964) at 445.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1965) at 522.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1965) at 547.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1965) at 605.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1966) at 535.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1966) at 551.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1966) at 608.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1967) at 591.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1967) at 619.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1967) at 713.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1968) at 681.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1968) at 702.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1968) at 791.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1969) at 609.
"The Situation with Regard to the Implementation of the Declaration on Granting

Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1969) at 626.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1970) at 667.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1970) at 687.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1970) at 760.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1971) at 497.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1971) at 514.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1971) at 564.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1972) at 521.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1972) at 538.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1972) at 584.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1973) at 643.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1973) at 662.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1973) at 740.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1974) at 743.
"The Situation with Regard to the Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1974) at 761.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1974) at 809.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1975) at 743.
"Implementation of the Declaration on Granting Independence to Colonial Countries and

Peoples" in *Yearbook of the United Nations* (New York: UN, 1975) at 757.
"Territories Under Portuguese Administration" in *Yearbook of the United Nations* (New York: UN, 1975) at 853.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1976) at 675.
"Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1976) at 687.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1977) at 817.
"Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1977) at 828.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1978) at 809.
"Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1978) at 820.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1979) at 999.
"Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1979) at 1010.
"Questions Relating to Trust and Non-Self-Governing Territories and the Declaration on Granting Independence" in *Yearbook of the United Nations* (New York: UN, 1980) at 1035.
"Implementation of the Declaration on Granting Independence to Colonial Countries and Peoples" in *Yearbook of the United Nations* (New York: UN, 1980) at 1048.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1981) at 1096.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1981) at 1118.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1981) at 1179.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1982) at 1257.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1982) at 1279.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1982) at 1319.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1983) at 1011.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1983) at 1033.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1983) at 1083.

"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1984) at 993.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1984) at 1020.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1984) at 1063.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1985) at 1059.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1985) at 1084.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1985) at 1132.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1986) at 895.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1986) at 917.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1986) at 961.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1987) at 955.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1987) at 976.
"Other colonial Territories" in *Yearbook of the United Nations* (New York: UN, 1987) at 1026.
"Questions relating to decolonization" in *Yearbook of the United Nations* (New York: UN, 1988) at 719.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1988) at 757.
"Questions relating to decolonization" in *Yearbook of the United Nations* (New York: UN, 1989) at 753.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1989) at 784.
"Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1990) at 905.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1990) at 944.
"Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1991) at 777.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1991) at 810.
"Questions related to decolonization" in *Yearbook of the United Nations* (New York: UN, 1992) at 945.
"International Trusteeship System" in *Yearbook of the United Nations* (New York: UN, 1992) at 973.
"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1993) at 152.

"Trusteeship and decolonization" in *Yearbook of the United Nations* (New York: UN, 1994) at 182.

Other United Nations-Related Documents

De Schutter, Olivier. *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge* (New York: United Nations, 2009).
United Nations Peacekeeping Operations: Principles and Guidelines (New York: United Nations Department of Peacekeeping Operations, 2008).

Jurisprudence

Calder v British Colombia, [1973] SCR 313.
Cherokee Nation v Georgia, 30 US 1 (1831).
Commonwealth of Australia v Yarmirr, (2002), 208 CLR 1.
International status of South-West Africa, Advisory Opinion, [1950] ICJ Rep 128.
South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa), Second Phase Judgment, [1966] ICJ Rep 6.
Mabo v Queensland, (1992), 175 CLR 1.
Western Australia v Commonwealth, (1995), 183 CLR 373.
Western Australia v Ward, (2002), 213 CLR 1.
Wik Peoples v Queensland, (1997) 187 CLR 1.

Secondary Materials

Monographs

Allbrook, Malcolm & Mary Anne Jebb. *Implementation and Resourcing of Native Title Act and Related Agreements* (Perth: Commonwealth of Australia, 2004).
Amenual, Matthew & William Millberg. *Economic development and working conditions in export processing zones: A survey of trends* (Geneva: International Labor Organization, 2008).
Anderson, Benedict. *Imagined Communities* (London: Verso, 1983).
Anderson, Malcolm. *Frontiers: Territory and State Formation in the Modern World* (Malden, MA: Polity Press, 1997).
Anseeuw, W et al. *Transnational Land Deals for Agriculture in the Global South: Analytical Report based on the Land Matrix Database* (Berne: Land Matrix Database, 2012).
Arai-Takahashi, Yutaka. *The Law of Occupation: Continuity and Change of International*

Humanitarian Law, and its Interaction with International Human Rights Law (Leiden: Martinus Nijhoff Publishers, 2009).
Arendt, Hannah. *The Origins of Totalitarianism* (New York: Harvest Books, 1976).
Bain, William. *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford: Oxford University Press, 2003).
Bartlett, Robert. *The Making of Europe: Conquest, Colonization and Cultural Change 950 – 1350* (Princeton: Princeton University Press, 1993).
Beasley, WG. *Japanese Imperialism 1894 – 1945* (Oxford: Clarendon Press, 1987).
Belmessous, Saliha, ed. *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012).
Ben-Ghiat, Ruth. *Fascist Modernities: Italy 1922 – 1945* (Berkeley: University of California Press, 2001).
Ben-Ghiat, Ruth & Mia Fuller, eds. *Italian Colonialism* (New York: Palgrave Macmillan, 2005).
Benbassa, Esther & Aron Rodrigue. *Sephardi Jewry: A History of the Judeo-Spanish Community, 14th – 20th Centuries* (Berkeley: University of California Press, 2000).
Benton, Laura. *Law and Colonial Cultures: Legal Regimes in World History, 1400 – 1900* (Cambridge: Cambridge University Press, 2002).
---. *A Search for Sovereignty: Law and Geography in European Empires, 1400 – 1900* (Cambridge: Cambridge University Press, 2010).
Benvenisti, Eyal. *The International Law of Occupation*, 2d ed (Oxford: Oxford University Press, 2012).
Betts, Raymond F. *Decolonization*, 2d ed (New York: Routledge 1998).
---. *Assimilation and Association in French Colonial Theory, 1890 – 1914* (Lincoln, NE: University of Nebraska Press, 2005).
Blustein, Paul. *And the Money Kept Rolling in (and Out)* (New York: PublicAffairs, 2005).
Bodin, Jean. *Six Livres de la Republique* (Cambridge: Cambridge University Press, 1992).
Bokenkotter, Thomas. *A Concise History of the Catholic Church* (New York: Image Books, 2004).
Borkowski, Andrew & Paul du Plessis. *Textbook on Roman Law*, 3d ed (Oxford: Oxford University Press, 2005).
Bouche, Denise. *Histoire de la Colonisation Francaise* (Paris: Fayard, 1991).
Bowen, HV. *The Business of Empire: The East India Company and Imperial Britain, 1756 – 1833* (Cambridge: Cambridge University Press, 2006).
Bown, Stephen R. *Merchant Kings: When Companies Ruled the World, 1600 – 1900* (New York: Thomas Dunne Books, 2009).
Braudel, Fernand. *Civilization & Capitalism 15th – 18th Century*, vol I (New York: Harper & Row, 1979).
---. *Civilization & Capitalism 15th – 18th Century*, vol II (New York: Harper & Row, 1979).
---. *Civilization & Capitalism 15th – 18th Century*, vol III (New York: Harper & Row, 1979).
Brower, Daniel R & Edward J Lazzerini, eds. *Russia's Orient: Imperial Borderlands and*

Peoples, 1700 – 1917 (Bloomington, IN: Indiana University Press, 2001).
Brownlie, Ian. *Principles of Public International Law*, 7th ed (Oxford: Oxford University Press, 2008).
Bull, Hedley. *The Anarchical Society: A Study of Order in World Politics*, 3d ed (New York: Columbia University Press, 2002).
Burgwyn, H James. *Italian foreign policy in the interwar period 1918 – 1940* (Westport, CT: Praeger Publishers, 1997).
Callahan, Michael D. *A Sacred Trust: The League of Nations and Africa, 1929 – 1946* (Brighton, UK: Sussex Academic Press, 2004).
---. *Mandates and Empire: The League of Nations and Africa, 1914 – 1931* (Brighton, UK: Sussex Academic Press, 2008).
Canby, William C. *American Indian Law in a Nutshell*, 5th ed (St Paul, MN: West Publishing Co, 2009).
Cassel, Par Kristoffer. *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2012).
Cawston, George & AH Keane. *The Early Chartered Companies (AD 1296 – 1858)* (London: Edward Arnold, 1896).
Clark, C & CA Brebbia. *Defence Sites: Heritage and Future* (Wessex, UK: WIT Press, 2012).
Colley, Linda. *Britons: Forging the Nation 1707 – 1837* (New Haven: Yale University Press, 1992).
Collis, Maurice. *Cortes & Montezuma* (New York: New Directions Books, 1954).
Conrad, Sebastian. *German Colonialism: A Short History* (Cambridge: Cambridge University Press, 2008).
Conrad, Sebastian & Dominic Sachsenmaier, eds. *Competing Visions of World Order: Global Moments and Movements, 1880 – 1930s* (New York: Palgrave Macmillian, 2007).
Cooley, Alexander & Hendrik Spruyt. *Contracting States: Sovereign Transfers in International Relations* (Princeton: Princeton University Press, 2009).
Cotula, Lorenzo et al. *Land grab or development opportunity? Agricultural investment and international land deals in Africa* (Rome: Food and Agriculture Organization, 2009).
Crawford, James. *The Creation of States in International Law*, 2d ed (Oxford: Oxford University Press, 2006).
Crowley, Roger. *Empires of the Sea: The Siege of Malta, the Battle of Lepanto, and the Conquest for the Center of the World* (New York: Random House, 2008).
Dale, Stephen F. *The Muslim Empires of the Ottomans, Safavids, and Mughals* (Cambridge: Cambridge University Press, 2010).
Damas, David. *Arctic Migrants, Arctic Villagers: The Transformation of Inuit Settlement in the Central Arctic* (Montreal: McGill-Queen's University Press, 2002).
Daughton, JP. *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880 – 1914* (Oxford: Oxford University Press, 2006).
Davies, Norman. *Vanished Kingdoms: The Rise and Fall of States and Nations* (New York: Penguin Books, 2011).
De Brabandere, Eric. *Post-Conflict Administrations in International Law: International*

Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice (Leiden: Martinus Nijhoff Publishers, 2009).
Deringil, Selim. *The Well-Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire, 1876 – 1909* (New York: IB Tauris Publishers, 1999).
Diener, Alexander C & Joshua Hagen. *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State* (Lanham, MD: Rowman & Littlefield Publishers, Inc, 2010).
Disney, AR. *A History of Portugal and the Portuguese Empire*, vol 1 (Cambridge: Cambridge University Press, 2009).
---. *A History of Portugal and the Portuguese Empire*, vol 2 (Cambridge: Cambridge University Press, 2009).
Dubin, Lois C. *The Port Jews of Habsburg Trieste: Absolutist Politics and Enlightenment Culture* (Stanford: Stanford University Press, 1999).
Duus, Peter, Ramon H Myers & Mark R Peattie, eds. *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996).
Elliott, John H. *Empires of the Atlantic World: Britain and Spain in America, 1492 – 1830* (New Haven: Yale University Press, 2006).
Emmerson, Charles. *1913: In Search of the World Before the Great War* (New York: PublicAffairs, 2013).
European Central Bank. *Convergence Report, May 2008* (Frankfurt: European Central Bank, 2008).
Fairweather, Wallace Cranston. *Foreign and Colonial Patent Laws* (New York: D van Nostrand Company, 1910).
Falasca-Zamponi, Simonetta. *Fascist Spectacle: The Aesthetics of Power in Mussolini's Italy* (Berkeley: University of California Press, 1997).
Farole, Thomas & Gokhan Akinci, eds. *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011).
Finkel, Caroline. *Osman's Dream: The History of the Ottoman Empire* (New York: Basic Books, 2005).
Fischer, David Hackett. *Fairness and Freedom: A History of Two Open Societies New Zealand and the United States* (Oxford: Oxford University Press, 2012).
Fuller, Mia. *Moderns Abroad: Architecture, cities and Italian imperialism* (New York: Routledge, 2010).
Friedman, Thomas L. *The Lexus and the Olive Tree* (New York: Anchor Books, 2000).
Fromkin, David. *A Peace to End All Peace* (New York: Holt and Company, 1989).
Fujitani, T. *Splendid Monarchy: Power and Pageantry in Modern Japan* (Berkeley: University of California Press, 1998).
Gardner, Jane F. *Being a Roman Citizen* (New York: Routledge, 1993).
Goldsmith, Jack L & Eric A Posner. *The Limits of International Law* (Oxford: Oxford University Press, 2005).
Green, LC & Olive P Dickason. *The Law of Nations and the New World* (Winnipeg: University of Alberta Press, 1993).
Gregory, Timothy E. *A History of Byzantium*, 2d ed (New York: Wiley-Blackwell, 2010).
Grotius, Hugo. *The Rights of War and Peace, Including the Law of Nature and Nations* (New York: Cosimo, Inc, 2007).
Guehenno, Jean-Marie. *The end of the nation-state* (Minneapolis, MN: University of

Minnesota Press, 1995).
Gupta, KR, ed. *Special Economic Zones: Issues, Laws and Procedures*, vol 1 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008).
---, ed. *Special Economic Zones: Issues, Laws and Procedures*, vol 2 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008).
Hechter, Michael. *Containing Nationalism* (Oxford: Oxford University Press, 2000).
Hertslet, Edward. *The Map of Europe by Treaty*, vol I (London: Butterworths, 1875).
---. *The Map of Europe by Treaty*, vol II (London: Butterworths, 1875).
---. *The Map of Europe by Treaty*, vol III (London: Butterworths, 1875).
---. *The Map of Africa by Treaty*, vol 1 (London: Harrison and Sons, 1894).
---. *The Map of Africa by Treaty*, vol 2 (London: Harrison and Sons, 1894).
Hess, Robert L. *Italian Colonialism in Somalia* (Chicago: University of Chicago Press, 1966).
Hillemann, Ulrike. *Asian Empire and British Knowledge: China and the Networks of British Imperial Expansion* (New York: Palgrave Macmillan, 2009).
Hopkirk, Peter. *Setting the East Ablaze: Lenin's Dream of an Empire in Asia* (London: John Murray (Publishers), 1984).
---. *The Great Game: The Struggle for Empire in Central Asia* (New York: Kodansha International, 1994).
Hourani, Albert. *A History of the Arab Peoples* (Cambridge, MA: Belknap Press, 1991).
ICAO. *Case Study on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Service Providers: Brazil* (Montreal: ICAO, 2013).
Joenniemi, Pertii & Jan Prawitz, eds. *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998).
Jones, Dorothy V. *License for Empire: Colonialism by Treaty in Early America* (Chicago: University of Chicago Press, 1982).
Kafadar, Cemal. *Between Two Worlds: The Construction of the Ottoman State* (Berkeley: University of California Press, 1995).
Kahler, Miles & Barbara F Walter, eds. *Territoriality and Conflict in an Era of Globalization* (Cambridge: Cambridge University Press, 2006).
Kapur, Anil. *Airport Infrastructure: The Emerging Role of the Private Structure* (Washington, DC: World Bank, 1995).
Karpat, Kemal & Yetkin Yildrim, eds. *The Ottoman Mosaic* (Seattle, WA: Cune Press, 2010).
Kayaoglu, Turan. *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010).
Keene, Edward. *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002).
Kelly, Saul. *Cold War in the Desert: Britain, the United States and the Italian Colonies, 1945 – 1952* (London: MacMillan Press, Ltd, 2000).
Kennedy, Paul. *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Vintage Books, 1989).
Kessides, Ioannis N. *Reforming Infrastructure: Privatization, Regulation and Competition* (Washington, DC: World Bank, 2004).
Khodarkovsky, Michael. *Russia's Steppe Frontier: The Making of a Colonial Empire, 1500 – 1800* (Bloomington, IN: University of Indiana Press, 2002).

Knoll, Bernhard. *The Legal Status of Territories Subject to Administration by International Organizations* (Cambridge: Cambridge University Press, 2008).
Korda, Michael. *Hero: The Life and Legend of Lawrence of Arabia* (New York: HarperCollins, 2010).
Krasner, Stephen D. *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).
Kugelman, Michael & Susan L Levenstein, eds. *Land Grab? The Race for the World's Farmland* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009).
Larkins, J. *From Hierarchy to Anarchy: Territory and Politics before Westphalia* (New York: Palgrave Macmillan, 2010).
Likhovski, Assaf. *Law and Identity in Mandate Palestine* (Chapel Hill, NC: University of North Carolina Press, 2006).
Liuhto, Kari, ed. *Kaliningrad 2020: Its future competitiveness and role in the Baltic Sea economic region* (Turku: Pan-European Institute, 2005).
Longworth, Philip. *The Unending Vigil: The History of the Commonwealth War Graves Commission* (Barnsley, UK: Pen & Sword Military, 2010).
Loukacheva, Natalia. *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (Toronto: Toronto University Press, 2007).
Macartney, Maxwell HH & Paul Cremona. *Italy's Foreign and Colonial Policy* (Oxford: Oxford University Press, 1938).
MacMillan, Ken. *Sovereignty and Possession in the English World: The Legal Foundations of Empire, 1576 – 1640* (Cambridge: Cambridge University Press, 2006).
MacMillan, Margaret. *Paris 1919: Six Months That Changed the World* (New York: Random House, 2003).
---. *The War That Ended Peace: The Road to 1914* (New York: Random House, 2013).
Maine, Henry Sumner. *Ancient Law* (New York: Cosimo Classics, 2005).
Malcolm, Noel. *Bosnia: A Short History* (New York: New York University Press, 1996).
Matsuda, Matt K. *Pacific Worlds: A History of Seas, Peoples, and Cultures* (Cambridge: Cambridge University Press, 2012).
McCullough, David. *The Path Between the Seas: The Creation of the Panama Canal 1870 – 1914* (New York: Simon Schuster, 1977).
McHugh, PT. *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford: Oxford University Press, 2011).
McManners, John. *The Oxford History of Christianity* (Oxford: Oxford University Press, 2002).
Milberg, William & Matthew Amengaul. *Economic development and working conditions in export processing zones: A survey of trends* (Geneva: International Labor Organization, 2008).
Morgan, Philip. *Italian Fascism 1919 – 1945* (New York: St Martin's Press, 1995).
Mousaourakis, George. *A Legal History of Rome* (New York: Routledge, 2007).
Mumford, Lewis. *The City in History: Its Origins, Its Transformations, and Its Prospects* (New York: Mariner Books, 1968).
Myers, Ramon H & Mark R Peattie, eds. *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984).

Nakash, Yitzhak. *The Shi'is of Iraq* (Princeton: Princeton University Press, 1994).
Ndahinda, Felix Mukwiza. *Indigenousness in Africa: A Contested Legal Framework for Empowerment of 'Marginalized' Communities* (The Hague: TMC Asser Press, 2011).
Netherlands War Graves Foundation. *Military War Cemetery Grebbeberg* (The Hague: Netherlands War Graves Foundation, 2012).
---. *Netherlands war cemeteries in Indonesia* (The Hague: Netherlands War Graves Foundation, 2012).
Niemeier, Hans-Martin. *Regulation of Large Airports: Status Quo and Options for Reform* (Paris: OECD, 2009).
OECD. *OECD Reviews of Regulatory Reform, Indonesia: Regulatory and Competition Issues in Ports, Rail and Shipping* (Paris: OECD, 2012).
Pagden, Anthony. *Spanish Imperialism and the Political Imagination* (New Haven: Yale University Press, 1990).
---. *Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500 – c. 1800* (New Haven: Yale University Press, 1995).
Pagden, Anthony & Jeremy Lawrence, eds. *Francisco de Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991).
Palmer, Matthew SR. *The Treaty of Waitangi in New Zealand's Law and Constitution* (Wellington, NZ: Victoria University Press, 2008).
Palit, Amitendu & Subhomoy Bhattacharjee. *Special Economic Zones in India: Myths and Realities* (New York: Anthem Press, 2008).
Palumbo, Patrizia. *A place in the sun: Africa in Italian colonial culture from post-unification to present* (Berkeley: University of California Press, 2003).
Pevar, Stephen L. *The Rights of Indians and Tribes*, 4th ed (Oxford: Oxford University Press, 2012).
Piehler, G Kurt. *Remembering War the American Way* (Washington, DC: Smithsonian Books, 1995).
Plakans, Andrejs. *A Concise History of the Baltic States* (Cambridge: Cambridge University Press, 2011).
Pomeranz, Kenneth. *The Great Divergence: China, Europe and the Making of the Modern World Economy* (Princeton: Princeton University Press, 2000).
Pritchard, James. *In Search of Empire: The French in the Americas, 1670 – 1730* (Cambridge: Cambridge University Press, 2004).
Pufendorf, Samuel. *Two Books of the Elements of Universal Jurisprudence* (Indianapolis, IN: Liberty Fund, 2009).
Quinn, Frederick. *The French Overseas Empire* (Westport, CT: Praeger, 2002).
Raynal, Abbe. *A Philosophical and Political History of the Settlements and Trade of the Europeans in the East and West Indies* (London: T Cadell, 1777).
Robinson, OF. *Ancient Rome: City Planning and Administration* (New York: Routledge, 2004).
Russell-Wood, AJR. *The Portuguese Empire, 1415 – 1808* (Baltimore, MD: Johns Hopkins University Press, 1992).
Said, Edward. *Orientalism* (New York: Vintage Books, 1979).
Sandars, Christopher. *America's Overseas Garrison: The Leasehold Empire* (Oxford: Oxford University Press, 2007).

Sassen, Saskia. *Cities in a World Economy* (Los Angeles: Sage Publications, Inc, 2012).
---. *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2008).
Sauer, E & B Rajan, eds. *Imperialisms: Historical and Literary Investigations, 1500 – 1900* (New York: Palgrave Macmillan, 2004).
Schnapp, Jeffrey T, ed. *A Primer of Italian Fascism* (Lincoln, NE: University of Nebraska Press, 2000).
Shaw, Malcolm N. *International Law*, 6th ed (Cambridge: Cambridge University Press, 2008).
Sherman, Charles Phineas. *Roman Law in the Modern World*, vol 1 (Ithaca: Cornell University Library, 2010).
Simonds, Frank H. *Can Europe Keep the Peace?* (New York: Harper & Brothers Publishers, 1931).
Slezkine, Yuri. *Arctic Mirrors: Russia and the Small Peoples of the North* (Ithaca, NY: Cornell University Press, 1994).
Smith, Denis Mack. *Mussolini's Roman Empire* (New York: Viking Press, 1976).
Snyder, Timothy. *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569 – 1999* (New Haven: Yale University Press, 2003).
Spence, Jonathan D. *The Memory Palace of Matteo Ricci* (New York: Penguin Books, 1984).
---. *The Search for Modern China* (New York: WW Norton & Company, 1990).
Spruyt, Hendrik. *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1994).
---. *Ending Empire: Contested Sovereignty and Territorial Partition* (Ithaca, NY: Cornell University Press, 2005).
Strange, Susan. *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge: Cambridge University Press, 1998).
Strayer, Joseph. *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 2005).
Steil, Benn & Manuel Hinds. *Money, Markets & Sovereignty* (New Haven: Yale University Press, 2009).
Tarbuck, Andrew & Chris Lester. *Dubai's Legal System* (Dubai, UAE: Motivate Publishing, 2009).
Taylor, AJP. *The Habsburg Monarchy, 1808 – 1918: A History of the Austrian Empire and Austria-Hungary* (Chicago: University of Chicago Press, 1948).
Thomas, Nicholas. *Islanders: The Pacific in the Age of Empire* (New Haven: Yale University Press, 2010).
Tilly, Charles. *Coercion, Capital and European States, AD 990 – 1992* (Cambridge, MA: Blackwell, 1992).
---. *Identities, Boundaries & Social Ties* (Boulder, CO: Paradigm Publishers, 2005).
Todorov, Tzvetan. *The Conquest of America: the Question of the Other* (Norman, OK: University of Oklahoma Press, 1984).
Tripp, Charles. *A History of Iraq* (Cambridge: Cambridge University Press, 2007).
van Hooydonk, Eric. *The Law Ends Where the Port Area Begins: On the Anomalies of Port Law* (Portland, OR: Maklu Publishers, 2010).
deVattel, Emer. *The Law of Nations, Or, Principles of the Law of Nature, Applied to the*

Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury (Indianapolis, IN: Liberty Fund, 2008).
Vinokurov, Evgeny. *A Theory of Enclaves* (Lanham, MD: Lexington Books, 2007).
Waley-Cohen, Joanna. *The Sextants of Beijing* (New York: WW Norton & Company Inc, 1999).
Wesseling, HL. *The European Colonial Empires, 1815 – 1919* (New York: Pearson Longman, 2004).
Westad, Odd Arne. *Restless Empire: China and the World Since 1750* (New York: Basic Books, 2012).
Whitt, Laurelyn. *Science, Colonialism, and Indigenous Peoples: The Cultural Politics of Law and Knowledge* (Cambridge: Cambridge University Press, 2009).
Wilde, Ralph. *International Territorial Administration, How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2009).
Williams, David V. *A Simple Nullity? The Wi Parata case in New Zealand law & history* (Auckland: Auckland University Press, 2011).
Wilson, Thomas M & Hastings Donnan, eds. *Border identities: nation and state at international frontiers* (Cambridge: Cambridge University Press, 1998).
Winchester, Simon. *The Map That Changed the World* (New York: Harper Perennial, 2001).
---. *Atlantic* (New York: Harper Perennials, 2010).
Woolf, Greg. *Rome: An Empire's Story* (Oxford: Oxford University Press, 2012).
Yashar, Deborah J. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (Cambridge: Cambridge University Press, 2005).
Zarrow, Peter. *After Empire: The Conceptual Transformation of the Chinese State, 1885 – 1924* (Stanford: Stanford University Press, 2012).

Articles

Abebe, Semahagn Gashu. "The Need to Alleviate the Human Rights Implications of Large-scale Land Acquisitions in Sub-Saharan Africa" (2012) 4 Goettingen Journal of International Law 873.
Adorno, Rolena. "Court and Chronicle: A Native Andean's Engagement with Spanish Colonial Law" in Saliha Belmessous, ed. *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 63.
Ahmida, Ali Abdullatif. "State and Class Formation and Collaboration in Colonial Libya" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 59.
Agranoff, Robert. "Autonomy, devolution and intergovernmental relations" (2004) 14 Regional & Federal Studies 26.
Alden, Chris & Christopher R Hughes. "Harmony and Discord in China's Africa Strategy: Some Implications for Foreign Policy" (2009) 1999 China Quarterly 563.
Amanor, Kojo Sebastian. "Global resource grabs, agribusiness concentration and the

smallholder: two West African case studies" (2012) 39 Journal of Peasant Studies 731.
Amirahmadi, Hooshang & Weiping Wu. "Export Processing Zones in Asia" (1995) 35 Asian Survey 828.
Andreff, Wladimir. "La deterritorislisation des multi-nationales: firmes globales et firmes-reseaux" (1996) *Cultures & Conflits* 21.
Andrew, Jessica. "Administrative Review of the Treaty of Waitangi Settlement Process" (2008 – 2009) 39 VUWLR 225.
Anderson, Malcolm. "Les frontieres: un debat contemporain" (1997) 26 – 27 Cultures & Conflits 15.
Andrew, CM & AS Kanya-Forstner. "The French 'Colonial Party': Its Composition, Aims and Influence, 1885 – 1914" (1971) 14 The Historical Journal 99.
---. "French Business and the French Colonists" (1976) 19 The Historical Journal 981.
Atkins, David. "Constructing Italian Africa: Geography and Geopolitics" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 15.
Auty, Richard. "Early Reform Zones: Catalysts for Dynamic Market Economies in Africa" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 207.
Aydelotte, William Osgoode. "The First German Colony and Its Diplomatic Consequences" (1937) 5 Cambridge Historical Journal 291.
Aydin, M Akif. "The Role of Ottoman law in the Establishment of Pax Ottomana" in Kemal Karpat & Yetkin Yildirim, eds, *The Ottoman Mosaic: Preservation of Minority Groups, Religious Tolerance, Governance of Ethnically Diverse Societies* (Seattle, WA: Cune Press, 2010).
Baber, R Jovita. "Law, Land and Legal Rhetoric in Colonial New Spain: A Look at the Changing Rhetoric of Indigenous Americans in the Sixteenth Century" in Saliha Belmessous, ed, *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 41.
Baissac, Claude. "Planned Obsolescence? Export Processing Zones and Structural Reform in Mauritius" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 227.
Ball, Jessica. "A Step in the Wrong Direction: Increasing Restrictions on Foreign Rural Land Acquisition in Brazil" (2011 – 2012) 35 Fordham Int'l LJ 1743.
Barrera, Giulia. "Patrilinearity, Race, and Identity: The Upbringing of Italo-Eritreans during Italian Colonialism" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 97.
Bausch, Camilla & Sandra Cavalieri. "Allocation of Greenhouse Gas Allowances in the United States – A Northeastern Example" (2007) 2007 Carbon & Climate L Rev 129.
Bel, Germa & Xavier Fageda. "Privatization, regulation and airport pricing: an empirical analysis for Europe" (2010) 37 Journal of Regulatory Economics 142.
Belmessous, Saliha. "Introduction: The Problem of Indigenous Claim Making in Colonial

History" in Saliha Belmessous, ed. *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 3.
Benhabib, Seyla. "Twilight of Sovereignty or the Emergence of Cosmopolitan Norms? Rethinking Citizenship in Volatile Times" (2007) 11 Citizenship Studies 19.
Bentley, Jerry H. "Globalizing History and Historicizing Globalization" (2004) 1 Globalizations 69.
Benton, Laura. "Possessing Empire: Iberian Claims and Interpolity Law" in Saliha Belmessous, ed, *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 19.
Beveridge, Albert J. "The Development of a Colonial Policy for the United States" (1907) 30 Annals of the American Academy of Political and Social Science 3.
Birckenbach, Hanne-Marget & Christian Wellmann. "Managing asymmetric interdependence: A comparative approach on the Kaliningrad policies of core actors" in Kari Liuhto, ed, *Kaliningrad 2020: Its future competitiveness and role in the Baltic Sea economic region* (Turku, Finland: Pan-European Institute, 2004).
Blumhardt, Hannah. "Multi-Textualism, 'Treaty Hegemon' and the Waitangi Tribunal: Making Sense of 19th Century Crown-Maori Negotiations in Te Urewera" (2012) 43 VUWLR 263.
Bogdanor, Vernon. "Forms of Autonomy and the Protection of Minorities" (1997) 126 Daedalus 65.
Borras, Saturnino & Jennifer Franco. "From Threat to Opportunity" Problems with the Idea of a 'Code of Conduct' for Land-Grabbing" (2010) 13 Yale Human Rts & Dev LJ 507.
Borras, Saturnino et al. "The Challenge of Global Governance of Land Grabbing: Changing International Agricultural Context and Competing Political Views and Strategies" (2013) 10 Globalizations 161.
Brautigam, Deborah & Tang Xiaoyang. "China's Engagement in African Agriculture: 'Down to the Countryside'" (2009) 1999 The China Quarterly 686.
---. "China's Investment in Special Economic Zones in Africa," in Thomas Farole & Gokhan Akinci, eds. *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 69.
Brown, Philip Marshall. "The Capitulations" (1922 – 1923) 1 Foreign Affairs 71.
Buchan, Bruce & Mary Heath. "Savagery and civilization: From terra nullius to the 'tide of history'" (2006) 6 Ethnicities 5.
Burgaud, Jean-Marie & Thomas Farole. "When Trade Preferences and Tax Breaks Are No Longer Enough: The Challenge of Adjustment in the Dominican Republic's Free Zones" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 157.
Burns, JH. "Fortescue and the Political Theory of Dominium" (1985) 28 The Historical Journal 777.
Burrows, Mathew. "'Mission Civilatrice': French Cultural Policy in the Middle East, 1860 – 1914" (1986) 29 The Historical Journal 109.
Brydon, Diana. "Competing Autonomy Claims and Changing the Grammar of Global Politics" (2009) 6 Globalizations 339.
Campbell, John C. "The European Territorial Settlement" (1947) 26 Foreign Affairs 196.

Carlos, Ann M & Jamie Brown Kruse. "The Decline of the Royal African Company: Fringe Firms and the Role of the Charter" (1996) 49 Economic History Review 291.
Cerny, Philip G. "Neomedievalism, civil war and the new security dilemma: Globalisation as durable disorder" (1998) 1 Civil Wars 36.
Charron, Andrea. "The Northwest Passage: Is Canada's sovereignty floating away?" (2004 – 2005) 60 Int'l J 831.
Chen, Ching-chih. "Police and Community Control Systems in the Empire" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 213.
Chen, Edward I-te. "The Attempt to Integrate the Empire: Legal Perspectives" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 240.
Cheung, Anthony BL. "Rebureaucratization of Politics in Hong Kong: Prospects after 1997" (1997) 37 Asian Survey 720.
Chiu, Hungdah. "Legal Problems with the Hong Kong Model for Unification with China and Their Implications for Taiwan" (1988) 2 J Chinese L 83.
Choi, Wai Kit. "(Post) coloniality as a state of Chines exception" (2007) 10 Postcolonial Studies 391.
Chou, Wan-yao. "The *Kominka* Movement in Taiwan and Korea: Comparisons and Interpretations" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 40.
Chu, Liu Yiu. "Interpretation and Review of the Basic Law of the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 49.
Connell, John & John Lea. "'My country will not be there': Global warming, development and the planning response in small island developing states" (1992) 9 Cities 295.
Cooley, Alexander & Kimberly Marten. "Base Motives: The Political Economy of Okinawa's Antimilitarism" (2006) 32 Armed Forced & Society 566.
Cordes-Holland, Owen. "The Sinking of the Strait: The Implications of Climate Change for Torres Strait Islanders' Human Rights Protected by the ICCPR" (2008) 9 Melbourne J Int'l L 405.
Cotula, Lorenzo. "The international political economy of the global land rush: A critical appraisal of trends, scale, geography and drivers" (2012) 39 Journal of Peasant Studies 649.
Cresti, Federico. "The Early Years of the Agency for the Colonization of Cyrenaica (1932 – 1935)" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 73.
Crusey, Kimberley A. "Time for Growth" (2006) Int'l Fin L Rev 60 – 61.
Cross, JA. "The colonial office and the dominions before 1914" (1966) 4 Commonwealth & Comparative Politics 138.
Crozier, Andrew J. "The Establishment of the Mandates System 1919 – 25: Some Problems Created by the Paris Peace Conference" (1979) 14 Journal of Contemporary History 483.
Cumings, Bruce. "The Legacy of Japanese Colonialism in Korea" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton

University Press, 1984) 478.
Dandeker, Christopher & James Gow "The Future of Peace Support Operations: Strategic Peacekeeping and Success" (1997) 23 Armed Forces & Society 327.
Daniel, Shepard. "Situating private equity capital in the land grab debate" (2012) 39 Journal of Peasant Studies 703.
Darwin, John. "Imperialism in Decline? Tendencies in British Imperial Policy between the Wars" (1980) 23 The Historical Journal 657.
Day, Jessica. "Waitangi Tribunal History: Interpretations and Counter-facts" (2009) 15 Auckland UL Rev 205.
De Schutter, Olivier. "The Green Rush: The Global Race for Farmland and the Rights of Land Owners" (2011) 52 Harv Int'l LJ 503.
Del Boca, Angelo. "The Obligations of Italy Toward Libya" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 195.
Diener, Alexander C & Joshua Hagen. "Introduction: Borders, Identity, and Geopolitics" in Alexander C Diener & Joshua Hagen, eds, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State* (Lanham, MD: Rowman & Littlefield Publishers, Inc, 2010) 1.
---. "Russia's Kaliningrad Exclave: Discontinuity as a Threat to Sovereignty" in Alexander C Diener & Joshua Hagen, eds, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State* (Lanham, MD: Rowman & Littlefield Publishers, Inc, 2010) 121.
---. "Conclusion: Borders in a Changing Global Context," in Alexander C Diener & Joshua Hagen, eds, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State* (Lanham, MD: Rowman & Littlefield Publishers, Inc, 2010) 189.
Digre, Brian. "The United Nations, France, and African Independence: A Case Study of Togo" (2004) 5 French Colonial History 193.
Dirlik, Arif. "Modernity in Question? Culture and Religion in an Age of Global Modernity" (2003) 12 Diaspora 147
Dowla, Asif. "Export Processing Zones in Bangladesh: The Economic Impact" (1997) 37 Asian Survey 561.
Duly, LC. "The Failure of British Land Policy at the Cape, 1812 – 1828" (1965) 6 Journal of African History 357.
Duus, Peter. "Introduction," in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996)
---. "Economic Dimensions of Meiji Imperialism: The Case of Korea, 1895 – 1910" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895-1945* (Princeton: Princeton University Press, 1984) 128.
---. "Imperialism without colonies: The vision of a greater east Asian co-prosperity sphere" (1996) 7 Diplomacy & Statecraft 21.
Eckert, Carter J. "Total War, Industrialization, and Social Change in Late Colonial Korea" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 1.
Edmonds, Richard Louis & Herbert S Yee. "Macau: From Portuguese Autonomous

Territory to Chinese Special Administrative Region" (1999) 1999 China Quarterly 801.
Edwards, Robin. "Native Title: Dead Capital?" (2003) 2003 Sing JLS 80.
Emerson, Rupert. "Iraq: The End of a Mandate" (1933) 11 Foreign Affairs 355.
Engman, Michael. "Success and Stasis in Honduras' Free Zones" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 47.
Erickson, Richard. "Status of Forces Agreements: A Sharing of Sovereign Perspective" (1994) 37 AFL Rev 137.
Falk, Richard. "State of siege: Will globalization win out?" (1997) 73 International Affairs 123.
---. "The Decline of Citizenship in an Era of Globalization" (2000) 4 Citizenship Studies 5
Farole, Thomas & Gokhan Akinci. "Introduction" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 1.
Fazal, Tanisha & Ryan Griffiths. "A State of One's Own: The Rise of Secession Since World War II" (2008) 15 Brown Journal of World Affairs 199.
Fitting, George. "Export Processing Zones in Taiwan and the People's Republic of China" (2006) 22 Asian Survey 732.
Fitzhardinge, LF. "Hughes, Borden, and Dominion Representation at the Paris Peace Conference" (1968) 49 Canadian Historical Review 160.
Fortin, Elizabeth & Ben Richardson. "Certification Schemes and the Governance of Land: Enforcing Standards or Enabling Scrutiny?" (2013) 10 Globalizations 141.
Fox, John P. "Britain and the Inter-Allied Military Commission of Control, 1925 – 26" (1969) 4 Journal of Contemporary History 143.
Fuller, Mia. "Preservation and Self-Absorption: Italian Colonization and the Walled City of Tripoli, Libya" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 131.
Fyodorov, Gennady M. "The Social and Economic Development of Kaliningrad" in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998)
Gade, John A. "The Memel Controversy" (1923 – 1924) 2 Foreign Affairs 410.
Gagnier, D. "French loans to China 1895 – 1914: The alliance of international finance and diplomacy" (1972) 18 Australian Journal of Politics and History 229.
Gal-Or, Noemi. "Suspending Sovereignty: Reassessing the Interlocking of Occupation, Failed and Fragile State, Responsibility to Protect, and International Trusteeship (Lessons from Lebanon)" (2008) 41 Isr LR 302.
Galbraith, John S. "The Chartering of the British North Borneo Company" (1965) 4 Journal of British Studies 102.
---. "Italy, the British East Africa Company, and the Benadir Coast, 1888 – 1893 (1970) 42 Journal of Modern History 549.
Gann, Lewis H. "Western and Japanese Colonialism: Some Preliminary Comparisons" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895-1945* (Princeton: Princeton University Press, 1984) 497.
Gannon, Jennifer. "Renegotiation of the Status of Forces Agreements between the United

States and the Republic of Korea" (2001) 12 Colo J Int'l Envtl L & Pol'y 263.
Garrett, Geoffrey. "The Causes of Globalization" (2000) 33 Comparative Political Studies 941.
Geiss, Imanuel. "The German Empire and Imperialism 1871 – 1918" (1974) 20 Australian Journal of Politics and History 11.
Ghai, Yash. "Citizenship and Politics in the HKSAR: The Constitutional Framework" (2001) 5 Citizenship Studies 143.
Gilling, Bryan D. "The Maori Land Court in New Zealand: An Historical Overview" (1993) 13 Canadian Journal of Native Studies 17
Gills, Barry K. "'Empire' versus 'Cosmopolis': The Clash of Globalizations" (2005) 2 Globalizations 5.
Goedde, Patricia. "The Basic Law of the Sinuiju Special Administrative Region: A Happy Medium Between the DPRK Constitution and Hong Kong Basic Law" (2003) 3 Journal of Korean Law 77.
Goemans, Hein. "Bounded communities: territoriality, territorial attachment, and conflict" in Miles Kahler & Barbara F Walter, eds, *Territoriality and Conflict in an Era of Globalization* (Cambridge: Cambridge University Press, 2006) 25.
Goode, Luke. "Cultural citizenship online: the Internet and digital culture" (2010) 14 Citizenship Studies 527.
Gordon, Andrew & Trevor Stack. "Citizenship Beyond the State: Thinking with Early Modern Citizenship in the Contemporary World" (2007) 11 Citizenship Studies 117.
Goswami, Bhaskar. "Special Economic Zones: Lessons from China" in KR Gupta, ed, *Special Economic Zones: Issues, Laws and Procedures*, vol 1 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008) 83.
Goto, Ken'ichi. "Cooperation, Submission, and Resistance of Indigenous Elites of Southeast Asia in the Wartime Empire" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 274.
Grant, Bruce. "Empire and Savagery: The Politics of Primativism in Late Imperial Russia" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 292.
Grant, Thomas D. "Regulating the Creation of States: From Decolonization to Secession" (2009) 5 Journal of International Law & International Relations 11.
Gricius, Algirdas. "Russia's Exclave in the Baltic Region" in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998).
Grosby, Steven. "Territoriality: the transcendental, primordial feature of modern societies" (1995) 1 Nations & Nationalism 143.
Grove, D John. "Global Cultural Fragmentation: A Bourdieuan Perspective" (2007) 4 Globalizations 157.
Gurr, Ted Robert. "The Politics of Aboriginal Land Rights and The Effects on Australian Resource Development" (1985) 31 Australian Journal of Politics and History 474.
Hall, John A. "Nationalisms: Classified and Explained" (1993) 122 Daedalus 1.
Hall, Thomas D & James V Fenelon. "Indigenous Movements and Globalization: What is

Different? What is the Same?" (2008) 5 Globalizations 1.
Hamer, Andrew Marshall. "Planning urban development with a change of sovereignty in mind: a Hong Kong case study" (1997) 14 Cities 287.
Harrington, Alexandra R. "Victims of Peace: Current Abuse Allegations against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future" (2005) 12 ILSA J Int'l & Comp L 125.
---. "A Tale of Three Nations?: The role of United Nations peacekeepers and missions on the concept of nation-state, nationalism, and ownership of the state in Lebanon, the Democratic Republic of the Congo, and Kosovo" (2006) 21 Conn J Int'l L 213.
---. "Prostituting Peace: The Impact of Sending State's Legal Regimes on U.N. Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard" (2008) 17 Fla St J Transnat'l L & Pol'y 217.
---. "Policing Against the State: United Nations Policing as Violative of Sovereignty" (2008) 10 San Diego International Law Journal 155.
---. "Corporate Social Responsibility, Globalization, the Multinational Corporation and Labor: An Unlikely Alliance" (2012) 75 Alb LR 483.
---. "Sovereignty, Territory and Fluidity: Lessons from Hoganas" SSRN Working Paper Series (2009).
---. "Uncertain Rest: The Nebulous Legal Status of Overseas Military Cemeteries,"
SSRN Working Papers Series (2011).
---. "All that you leave behind: the territorial relationship of heritage defence sites and military bases" in C Clark & CA Brebbia, eds, *Defence Sites: Heritage and Future* (Wessex, UK: WIT Press, 2012) 257.
Hasani, Enver. "*Uti Possidetis Juris*: From Rome to Kosovo" (2003) 27 Fletcher Forum 85.
Hayes, Michael et al. "The citizen of empire" (2010) 14 Citizenship Studies 511.
Held, David. "Cosmopolitanism: globalisation tamed?" (2003) 29 Review of International Studies 465.
Hess, Robert L. "Italy and Africa: Colonial Ambitions in the First World War" (1963) 4 Journal of African History 105.
Hettne, Bjorn. "The Fate of Citizenship in Post-Westphalia" (2000) 4 Citizenship Studies 35.
Hickford, Mark. "Framing and Reframing the Agon: Contesting Narratives and Counternarratives on Maori Property Rights and Political Constitutionalism, 1840 – 1861" in Saliha Belmessous, ed, *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 152.
Hilliard, Christopher. "The Native Land Court: Making Property in Nineteenth Century New Zealand" in Saliha Belmessous, ed, *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 204.
Hinckley, FE. "Extraterritoriality in China" (1912) 39 Annals of the American Academy of Political and Social Science 97.
Hobbes, Thomas. "Leviathan, or, Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil" in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 23 (Chicago: William Benton, 1952).
Hocking, Barbara Joyce & Barbara Ann Hocking, "A Comparative View of Indigenous

Citizenship Issues" (1998) 2 Citizenship Studies 121.
Hofman, Irna & Peter Ho. "China's 'Developmental Outsourcing': A critical examination of Chinese global 'land grabs' discourse" (2012) 39 Journal of Peasant Studies 1.
Holbrook, James. "Reports from Baghdad" (2010) 34 LS 351.
Horowitz, Shale. "Restarting Globalization After World War II: Structure, Coalitions and Cold War" 2004 (37) Comparative Political Studies 127.
Huff, Andrew. "Indigenous Land Rights and the New Self-Determination" (2005) 16 Colo J Int'l Envtl L & Pol'y 295.
Hughes, Arnold. " Decolonizing Africa: Colonial Boundaries and the Crisis of the (Non) Nation State" (2004) 15 Diplomacy & Statecraft 833.
Imbert, Patrick. "Globalization and Difference: Displacement, Culture and Homeland" (2004) 1 Globalizations 194.
Isin, Engin P. "Citizenship, class and the global city" (1999) 3 Citizenship Studies 267.
Jansen, Marius B. "Japanese Imperialism: Late Meiji Perspectives" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 61.
Jerary, Muhammad, T. "Damages Caused by the Italian Fascist Colonization of Libya" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 203.
Jersild, Austin Lee. "From Savagery to Citizenship: Caucasian Mountaineers and Muslims in the Russian Empire" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 101.
Jianfan, Wu. "Several Issues Concerning the Relationship between the Central Government of the People's Republic of China and the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 65.
Kaher, Eric. "Notes: Weathering Rising Seas in a Sinking Ship: The Constitutional Vulnerabilities of the Regional Greenhouse Gas Initiative" (2011 – 2012) 23 Fordham Envtl LJ 162.
Kahler, Miles. "Territoriality and conflict in an era of globalization" in Miles Kahler & Barbara F Walter, eds, *Territoriality and Conflict in an Era of Globalization* (Cambridge: Cambridge University Press, 2006) 1.
Kaiser, Karl. "Germany's Unification" (1990 – 1991) 70 Foreign Affairs 179.
Kaswan, Alice. "Decentralizing Cap-and-Trade? The Question of State Stringency" (2009) 1 San Diego J Climate & Energy Law 103.
Kawakami, KK. "Manchuria: The Crux of Chino-Japanese Relations" (1928) 6 Foreign Affairs 379.
Kawamura, Noriko. "Wilsonian Idealism and Japanese Claims at the Paris Peace Conference" (1997) 66 Pacific Historical Review 503.
Khodarkovsky, Michael. "'Ignoble Savages and Unfaithful Subjects': Constructing Non-Christian Identities in Early Modern Russia" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 9.
Kirby, William. "The Internationalization of China: Foreign Relations at Home and Abroad in the Republican Era" (1997) 150 The China Quarterly 433.
Koyama, Naoko. "SEZs in the Context of Regional Integration: Creating Synergies for

Trade and Investment" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 127.
Krasner, Stephen D. "Compromising Westphalia" (1995 – 1996) 20 International Security 115.
Kugelman, Michael. "Introduction" in Michael Kugelman & Susan L Levenstein, eds, *Land Grab? The Race for the World's Farmland* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009).
Kunnemann, Rolf & Sofia Monsalve Suarez. "International Human Rights and Governing Land Grabbing: A View from Global Civil Society" (2013) 10 Globalizations 123.
Lake, David A. & Angela O'Mahony. "The Incredible Shrinking State: Explaining Change in the Territorial Size of Countries" (2004) 48 J Confl Resolution 699.
Langhorne, Richard. "Anglo-German Negotiations Concerning the Future of Portuguese Colonies, 1911 – 1914" (1973) 16 The Historical Journal 361.
Larebo, Haile. "Empire Building and Its Limitations: Ethiopia (1935 – 1941)" in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 83.
Latham, Robert. "Border formations: security and subjectivity at the border" (2010) 14 Citizenship Studies 185.
Lazzerini, Edward J. "Local Accommodation and Resistance to Colonialism in Nineteenth-Century Crimea" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 169.
Leane, Geoffrey WG. "Indigenous Rights Wronged: Extinguishing Native Title in New Zealand" (2006) 29 Dal LJ41.
Lee, Eric Yong-Joong. "Development of North Korea's Legal Regime Governing Foreign Business Cooperation: A Revisit Under the New Socialist Constitution of 1998" (2000) 21 Nw J Int'l L & Bus 199.
---. "The Special Economic Zones and North Korean Economic Reformation with a Viewpoint of International Law" (2004) 27 Fordham Int'l LJ 1343.
Legault, Albert. "La crise de Berlin de 1962" (1979) 10 Etudes internationales 91.
Lewis, James A. "Sovereignty and the Role of Government in Cyberspace" (2010) 16 Brown Journal of World Affairs 55.
Li, Kevin X et al. "Maritime Policy in China after WTO: Impacts and Implications for Foreign Investment" (2005) 36 J Mar L & Com 77.
Lieven, Dominic. "Dilemmas of Empire 1859 – 1918. Power, Territory and Identity" (1999) 34 Journal of Contemporary History 163.
Lincoln, Laura. "*Takamore v Clarke*: An Appropriate Approach to the Recognition of Maori Custom in New Zealand Law?" (2013) 44 VUWLR 141.
Linklater, Andrew. "Cosmopolitan Citizenship" (1998) 2 Citizenship Studies 23.
Linnott, Andrew. "What was the 'Imperium Romanum'?" (1981) 28 Greece & Rome 53.
Liou, Chin-shian. "Bureaucratic Politics and Overseas Investment by Chinese State-Owned Oil Companies: Illusory Champions" (2009) 49 Asian Survey 670.
Lloyd, Lorna. "'Us and Them': The Changing Nature of Commonwealth Diplomacy, 1880 – 1973" (2001) 39 Commonwealth & Comparative Politics 9.

Lo, Sonny & Herbert S Yee. "Legitimacy-Building in the Macau special administrative region: Colonial legacies and reform strategies" (2005) 13 Asian J Political Science 51.
Locke, John. "A Letter Concerning Toleration Concerning Civil Government, Second Essay, An Essay Concerning Human Understanding" in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 35 (Chicago: William Benton, 1952).
Luong, Pauline Jones. "After the Break-up: Institutional Design in Transitional States" (2000) 33 Comparative Political Studies 563.
Lynn, Martin. "Britain's West Africa policy and the island of Fernando Po, 1821 – 1843" (1990) 18 Journal of Imperial and Commonwealth History 191.
Lyon, Peter. "The rise and fall and possible revival of international trusteeship" (1993) 31 Commonwealth & Comparative Politics 96.
Machiavelli, Nicolo. "The Prince" in Robert Maynard Hutchins, ed, *Great Books of the Western World*, vol 23 (Chicago: William Benton, 1952).
Maher, Eric. "Notes: Weathering Rising Seas in a Sinking Ship: The Constitutional Vulnerabilities of the Regional Greenhouse Gas Initiative" (2011 – 2012) 23 Fordham Envtl L Rev 162.
Makunike, Chido. "Large-Scale Agricultural Investment in Africa: Points to Ponder" in Michael Kugelman & Susan L Levenstein, eds, *Land Grab? The Race for the World's Farmland* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009).
Mallory, Walter H. "The Passing of Extraterritoriality in China" (1931) 9 Foreign Affairs 346.
Mann, Michael. "Nation-States in Europe and Other Continents: Diversifying, Developing, Not Dying" (1993) 122 Daedalus 115.
Margulis, Matias E & Tony Porter. "Governing the Global Land Grab: Multipolarity, Ideas and Complexity in Transnational Governance" (2013) 10 Globalizations 65.
Matsusaka, Y Tak. "Managing Occupied Manchuria, 1931 – 1934" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Wartime Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996).
Maulucci, Thomas W. "Comparing the American Occupations of Germany and Iraq" (2008) 3 Yale Journal of International Affairs 120.
Maxwell, Katie. "Multi-State Environmental Agreements: Constitutional Violations or Legitimate State Coordination?" (2006 – 2007) 15 Penn State Envtl L Rev 355.
McCarthy, Connor. "The Paradox o f the International Law of Military Occupation: Sovereignty and the Reformation of Iraq" (2005) 10 J Confl & Sec L 43.
McIntyre, David W. "The admission of small states to the commonwealth" (1996) 24 Journal of Imperial & Commonwealth History 244.
McMichael, Phillip. "Land Grabbing as Security Mercantilism in International Relations" (2013) 10 Globalizations 47.
Merritt, HP. "Bismarck and the German Interest in East Africa, 1884 – 1885" (1978) 21 The Historical Journal 97.
Miscamble, Wilson. "Deciding to Divide Germany: American policymaking in 1949" (1991) 2 Diplomacy & Statecraft 294.
Misiunas, Romuald. "Rootless Russia: Kaliningrad – Status and Identity" (2004) 15

Diplomacy & Statecraft 385.
Mittelman, John. "Globalization Debates: Bringing in Microencounters" (2004) 1 Globalizations 24.
Morkenstam, Ulf. "Indigenous Peoples and the Right to Self-Determination: The Case of the Swedish Sami People" (2005) 25 Canadian Journal of Native Studies 433.
Morteru, Arasaki. "The struggle against military bases in Okinawa – its history and current situation" (2001) 2 Inter-Asia Cultural Studies 101.
Mosely, Philip E. "The Occupation of Germany: New Light on How the Zones Were Drawn" (1950) 28 Foreign Affairs 580.
Munro, J Forbes. "British Rubber Companies in East Africa before the First World War" (1983) 24 Journal of African History 369.
Munro, W Bennett. "The Neutralization of the Suez Canal" (1901) 27 Annals of the American Academy of Political and Social Science 13.
Myers, Ramon H & Yamada Saburo. "Agricultural Development in the Empire" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895-1945* (Princeton: Princeton University Press, 1984) 420.
Myers, Ramon H. "Post World War II Japanese Historiography of Japan's Formal Colonial Empire" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 455.
---. "Creating a Modern Enclave Economy: The Economic Integration of Japan, Manchuria, and North China, 1932 – 1945" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 136.
Nallathinga, Ramakrishna. "The Role of Special Economic Zones in Regional and National Development" in KR Gupta, ed, *Special Economic Zones: Issues, Laws and Procedures*, vol 1 (New Delhi: Atlantic Publishers & Distributors Ltd, 2008) 54.
Napier, Jack P. "Military-Civilian Relations in the Occupation of Japan and Korea" (1954) 8 Journal of International Affairs 151.
Narula, Smita. "The Global Land Rush: Markets, Rights and the Politics of Food" (2013) 49 Stan J Int'l L 101.
Neil-Tomlinson, Barry. "The Nyassa Chartered Company: 1891 – 1929" (1977) 18 Journal of African History 109.
Newman, David. "The resilience of territorial conflict in an era of globalization" in Miles Kahler & Barbara F Walter, eds, *Territoriality and Conflict in an Era of Globalization* (Cambridge: Cambridge University Press, 2006) 85.
Norchi, Charles H. "The Public Order of Ports" (2008 – 2009) 14 Oceans & Coastal LJ 155.
Oberdorfer, Lutz. "The Danzig Question in British Foreign Policy, 1918 – 1920" (2004) 15 Diplomacy & Statecraft 573.
Oldberg, Ingmar. "Kaliningrad: Problems and Prospects" in Pertii Joenniemi & Jan Prawitz, eds, *Kaliningrad: the European amber region* (Aldershot: Ashgate Publishing Ltd, 1998).
O'Rourke, Kevin & Jeffrey D Williamson. "When did globalization begin?" (2002) 6 European Review of Economic History 23.
Orsman, Jessica. "The Treaty of Waitangi as an Exercise of Maori Constituent Power"

(2012) 43 VUW R 345.
Palayret, Gallianne. "Overseas French Minority and Indigenous Rights: Dream or Reality?" (2004) 10 International Journal on Minority and Group Rights 221.
Papadopoulos, Nicholas. "The Role of Free Trade Zones in International Strategy" (1987) 5 European Management Journal 112.
Parker, Ned. "The Iraq We Left Behind: Welcome to the World's Next Failed State" (2012) 91 Foreign Affairs 94.
Parks, Judith & Howard Elcock. "Why do regions demand autonomy?" (2000) 10 Regional & Federal Studies 87.
Parsons, FV. "The North-West African Company and the British Government, 1875 – 1895" (1958) 1 The Historical Journal 136.
Peattie, Mark R. "Introduction," in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895 – 1945* (Princeton: Princeton University Press, 1984) 27.
---. "Japanese Attitudes Toward Colonialism, 1895 – 1945" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 80.
---. "The Nan'yo: Japan in the South Pacific, 1885 – 1945" in Ramon H Myers & Mark R Peattie, eds, *The Japanese Colonial Empire, 1895- 1945* (Princeton: Princeton University Press, 1984) 172.
---. "Nanshin: The 'Southward Advance,' 1931 – 1941, as a Prelude to the Japanese Occupation of Southeast Asia" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 189.
Pentassuglia, Gaetano. "State Sovereignty, Minorities and Self-Determination: A Comprehensive Legal View" (2002) 9 International Journal on Minority and Group Rights 303.
Pepper, Suzanne. "Hong Kong, 1997: East v West and the Struggle for Democratic Reform within the Chinese State" (1997) 37 Asian Survey 683.
Perrone, Nicolas Marcello. "Restrictions to Foreign Acquisitions of Agricultural Land in Argentina and Brazil" 10 (2013) Globalizations 205.
Pratt, Angela. "Treaties v *Terra Nullius*: 'Reconciliation,' Treaty-Making and Indigenous Sovereignty in Australia and Canada" (2004) 3 Indigenous LJ 43.
Pritchard, Sarah. "Native Title from the Perspective of International Standards" (1987) 18 Australian YBIL 127.
Rabinowitz, Dan. "National identity on the frontier: Palestinians in the Israeli education system" in Thomas M Wilson & Hastings Donnan, eds, *Border identities: nation and state at international frontiers* (Cambridge: Cambridge University Press, 1998) 142.
Ramos, Howard. "National recognition without a state: Cree nationalism *within* Canada" (2000) 6 Nationalisms and Ethnic Politics 95.
Rappard, WE. "The Practical Working of the Mandates System" (1925) 4 Journal of the British Institute of International Affairs 205.
Reynolds, E Bruce. "Anomaly or Model? Independent Thailand's Role in Japan's Asian Strategy, 1941 – 1943" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 243.

Roberts, TW. "Republicanism, Railway Imperialism, and the French Empire in East Africa, 1879 – 1889" (2011) 54 The Historical Journal 401.
Robin, Ron. "'A Foothold in Europe': The Aesthetics and Politics of American War Cemeteries in Western Europe" (1995) 29 Journal of American Studies 55.
Rush, Trevor A. "Don't Call It a SOFA! An Overview of the US-Iraq Security Agreement" (2009) 2009 Army Law 34.
Sahlins, Peter. "State formation and national identity in the Catalan borderlands during the eighteenth and nineteenth centuries" in Thomas M Wilson & Hastings
Donnan, eds, *Border identities: nation and state at international frontiers* (Cambridge: Cambridge University Press, 1998) 31.
Sassen, Saskia. "Land Grabs Today: Feeding the Disassembling of National Territory" (2013) 10 Globalizations 25.
Schaefer, Matthew. "The 'Grey Areas' and 'Yellow Zones' of Split Sovereignty Exposed by Globalization: Choosing Among Strategies of Avoidance, Cooperation, and Intrusion to Escape an Era of Misguided 'New Federalism'" (1998) 24 Can-USLJ 35.
Schanzer, Carlo. "Italian Colonial Policy in North Africa" (1923 – 1924) 2 Foreign Affairs 446.
Scott, Shirley V. "*Terra Nullius* and the *Mabo* Judgment of the Australian High Court: A Case Study of the Operation of Legalist Reasoning as a Mechanism of Political-Legal Change" (1996) 42 Australian Journal of Politics and History 385.
Shakir, Mustafizul Hye & Thomas Farole, "The Thin End of the Wedge: Unlocking Comparative Advantage through EPZs in Bangladesh" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 23.
Shattuck, Annie & Eric Holt-Giminez. "Moving from Food Crisis to Food Sovereignty" (2010) 13 Yale Human Rts & Dev LJ 421.
Shuwen, Wang. "The Basic Rights and Obligations of the Residents of the Hong Kong Special Administrative Region" (1988) 2 J Chinese L 123.
Siewers, Christopher N. "Balancing a Colonial Past with a Multicultural Future: Maori Customary Title in the Foreshore and Seabed After *Ngatu Apa*" (2004 – 2005) 30 NCJ Int'l L & Com Reg 253.
Sit, Victor SF. "China's Export-Oriented Open Areas: The Export Processing Zone Concept" (1988) 28 Asian Survey 661.
Shibata, Isaku. "Airfield Management of High-Density Airports in Metropolitan Areas – A Study of Narita International Airport" (2010 – 2011) 10 Issues in Aviation Law & Policy 321.
Shorrock, William I. "The Origin of the French Mandate in Syria and Lebanon: The Railroad Question, 1901 – 1914" (1970) 1 International Journal of Middle East Studies 133.
Slezkine, Yuri. "Naturalists versus Nations: Eighteenth Century Russian Scholarss Confront Ethnic Diversity" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 27.
Smith, Michael. "Murky Precedent Meets Hazy Air: The Compact Clause and the Regional Greenhouse Gas Initiative" (2007) 34 BC Envtl Aff L Rev 387.

Smith, Woodruff D. “The Ideology of German Colonialism, 1840 – 1906” (1974) 46 Journal of Modern History 641.
Song, Dong-Wook & Sung-Woo Lee. “Port Governance in Korea” (2007) 17 Devolution, Port Governance and Port Performance Research in Transportation Economics 357.
Stadler, KR. “The Disintegration of the Austrian Empire” (1968) 3 Journal of Contemporary History 177.
Stahn, Carsten. “Governance Beyond the State: Issues of Legitimacy in International Territorial Administration” (2005) 2 International Organizations Law Review 9.
Stebeck, Elias N. “Between ‘Land Grabs’ and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia’s Normative Setting in Focus” (2011) 5 Mizan Law Review 175.
Steinman, Erich. “Sovereigns and citizens? The contested status of American Indian tribal nations and their members” (2011) 15 Citizenship Studies 57.
Stern, Philip J. “Politics and Ideology in the Early East India Company-State: The Case of St. Helena, 1673 – 1709” (2007) 35 Journal of Imperial and Commonwealth History 1.
Taddia, Irma. “Italian Memories/African Memories of Colonialism” in Ruth Ben-Ghiat & Mia Fuller, eds, *Italian Colonialism* (New York: Palgrave Macmillan, 2005) 209.
Takizawa, Makota. “Okinawa: Reversion to Japan and Future Prospects” (1971) 11 Asian Survey 496.
Taylor, Philip H. “The Administration of Occupied Japan” (1950) 267 Annals of the American Academy of Political and Social Science 140.
Tejani, Sheba. “The Gender Dynamics of Special Economic Zones” in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011).
Theron, Liesle. “Healing the Past: A Comparative Analysis of the Waitangi Tribunal and the South African Land Claims System” (1998) 28 VUWLR 311.
Tonnesson, Stein. “Globalising national states” (2004) 10 Nations & Nationalism 179.
Vail, Leroy. “Mozambique’s Chartered Companies: The Rule of the Feeble” (1976) 17 Journal of African History 389.
Vinokurov, Evgeniy. “The enclave-specific vulnerability of Kaliningrad” in Kari Liuhto, ed, *Kaliningrad 2020: Its future competitiveness and role in the Baltic Sea economic region* (Turku: Pan-European Institute, 2005) 56.
Visser, Oane & Max Spoor. “Land grabbing in Post-Soviet Eurasia: the world’s largest agricultural land reserves at stake” (2011) 38 Journal of Peasant Studies 299.
von Bredow, Wilfred. “The Changing Character of National Borders” (1998) 2 Citizenship Studies 365.
Wall, Michael H. “The Regional Greenhouse Gas Initiative and California Assembly Bill 1493: Filling the American Greenhouse Gas Regulation Void” (2006 – 2007) 41 U Rich L Rev 567.
Watkin, Kenneth. “Maintaining Law and Order During Occupation: Breaking the Normative Chains” (2008) 41 Isr L Rev 175.
Watkins, Thomas Glyn. “Ownership Ancient and Modern Ownership in Public and Private Law” (1999) 11 Sri Lanka Journal of International Law 251.
Wells, Roger H. “Interim Governments and Occupation Regimes” (1948) 257 Annals of

the American Academy of Political and Social Science 57.
White, Justine. "Fostering Innovation in Developing Economies through SEZs" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 183.
Wilde, Ralph. "From Danzig to East Timor and Beyond: The Role of International Territorial Administration" (2001) 95 AJIL 583.
---. "From Trusteeship to Self-Determination and Back: The Role of the Hague Regulations in the Evolution of International Trusteeship, and the Framework of Rights and Duties of Occupying Powers" (2009) 31 Loyola LA Int'l & Comp LJ 85.
Willis, Edward. "Legal Recognition of Rights Derived from the Treaty of Waitangi" (2010) 8 NZ PIL 217.
Wilson, Thomas M & Hastings Donnan, "Nation, state and identity at international borders," in Thomas M Wilson & Hastings Donnan, eds. *Border identities: nation and state at international frontiers* (Cambridge: Cambridge University Press, 1998) 1.
Wily, Liz. "Looking back to see forward: the legal niceties of land theft in land rushes" (2012) 39 Journal of Peasant Studies 751.
Woert, Eckart. "The Governance of Gulf Agro-Investments" (2013) 10 Globalizations 87.
Woolford, Andrew & RS Ratner. "A Measured Sovereignty: The Politics of Nation-Making in British Columbia" (2004) 24 Canadian Journal of Native Studies 283.
Wriston, Walter B. "The Twilight of Sovereignty" (1993) 17 Fletcher Forum on World Affairs 117.
Yang, Tsemin. "The Problem of Maintaining Emissions 'Caps' in Carbon Trading Programs Without Federal Government Involvement: A Brief Examination of the Chicago Climate Exchange and the Northeast Regional Greenhouse Gas Initiative" (2005 – 2006) 17 Fordham Envtl LJ 271.
Yarovski, Dov. "Empire and Citizenship" in Daniel R Brower & Edward J Lazzerini, eds, *Russia's Orient: Imperial Borderlands and Peoples, 1700 – 1917* (Bloomington, IN: Indiana University Press, 2001) 58.
Yilmaz, Ihsan. "Diversity, Legal Pluralism, and Peaceful Co-Existence in the Ottoman Centuries" in Kemal Karpat & Yetkin Yildiri , eds, *The Ottoman Mosaic: Preservation of Minority Groups, Religious Tolerance, Governance of Ethnically Diverse Societies* (Seattle, WA: Cune Press, 2010) 93.
Yirush, Craig. "'Chief Princes and Owners of All': Native American Appeals to the Crown in the Early-Modern British Atlantic" in Saliha Belmessous, ed., *Native Claims: Indigenous Law against Empire 1500 – 1920* (Oxford: Oxford University Press, 2012) 129.
Young, Louise. "Imagined Empire: The Cultural Construction of Manchukuo" in Peter Duus, Ramon H Myers & Mark R Peattie, eds, *The Japanese Empire, 1931 – 1945* (Princeton: Princeton University Press, 1996) 71.
Youyu Zhang, "The Reasons for the and Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and its Essential Contents and Mode of Expression" (1988) 2 J Chinese L 5.

Yuan, Jing-dong & Lorraine Eden. "Export Processing Zones in Asia: A Comparative Study" (1992) 32 Asian Studies 1026.
Yueng, Yue-Man et al. "China's Special Economic Zones at 30" (2009) 50 Eurasian Geography and Economics 22.
Zhang, Baohui. "Politics Paralysis of the Basic Law Regime and the Politics of Institutional Reform in Hong Kong" (2009) 49 Asian Survey 312.
Zhao, Min & Thomas Farole. "Partnership Arrangements in the China-Singapore (Suzhou) Industrial Park: Lessons for Joint Economic Zone Development" in Thomas Farole & Gokhan Akinci, eds, *Special Economic Zones: Progress, Emerging Challenges, and Future Directions* (Washington, DC: World Bank, 2011) 101.
Zheng, Henry R. "Law and Policy of China's Special Economic Zones and Coastal Cities" (1987) 8 NYUJ Int'l & Comp Law 193.
Zhu, Jieming. "Denationalization of urban physical development: The experiment in the Shenzhen Special Economic Zone, China" (1996) 13 Cities 187.

Online Sources

"Sweden says No to euro" *BBC.Com* (15 September 2003), online: BBC.Com <http://news.bbc.co.uk/2/hi/europe/3108292.stm>.

"UK couple charged with illegal sex released in Dubai" *BBC.Com* (28 January 2010), online: BBC.Com <http://news.bbc.co.uk/2/hi/middle_east/8486086.stm>.

"British man loses Dubai kiss appeal" *BBC.Com* (24 May 2010), online: BBC.Com <http://news.bbc.co.uk/2/hi/uk_news/england/london/8700999.stm>.

"Newly-wed couple win Dubai car sex appeal" *BBC.Com* (4 May 2010), online: BBC.Com < http://news.bbc.co.uk/2/hi/middle_east/8660305.stm>.

"Fury over attack on British war graves in Benghazi" *BBC.Com* (March 4, 2012), online: BBC.Com <http://www.bbc.co.uk/news/uk-17244211>.

Buchanan, Michael. "Swedish town aims to be 'euro city'" online: *BBC.Com* (29 December 2008), online <http:www.bbc.co.uk/2/hi/business/7798060.stm>.

Hall, Camilla. "UAE unveils separate court system for Abu Dhabi financial hub," Financial Times (2 May 2013), online: FT.Com <http://www.ft.com/intl/cms/s/0/c2c79a5c-b2fb-11e2-95b3-00144feabdc0.html?siteedition=intl#axzz38zHLWcRv>.

"World Top 30 Airports," (2 August 2014), online: World Airport Codes <http://www.world-airport-codes.com/world-top-30-airports.html>.