From Proximity to Territoriality: A Kantian Genealogy of the State

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I. Introduction

Comprehensive conceptions of territorial rights address three major problems. For simplicity, I shall call them, respectively, the *necessity problem*, the *particularity problem*, and the *moral strength problem*. The *necessity problem* relates to the general moral relevance of territorial rights as rights that accrue to states as states. This amounts to answering the very question of why states should be entitled to territorial rights. The *particularity problem* challenges political theorists to determine the proper location of territorial rights in a world with limited space and resources. It therefore does not concern the legitimacy of territorial rights as such, but the claim of a state to this or that territory. Finally, the *moral strength problem* is concerned with determining the moral scope of territorial rights. This involves assessing the moral status of territorial rights vis-à-vis other rights and interests, whether individual or collective. For instance: Do territorial rights entail a right to exclude others from entering the territory or benefiting from its natural resources?

In this paper I shall leave the third problem aside and concentrate on the first two problems. To this end I will assume that territorial rights, if justified, have some weight (however little) in that they are not *always* defeated by contravening interests and rights. My approach to the first two problems is distinctively Kantian. It is my contention here that Kant's philosophy provides theoretical resources for tackling both the necessity and the particularity problem. My focus will be on two crucial aspects of the Kantian approach. These aspects refer respectively to what Waldron has called the Kantian *proximity principle* (cf. Waldron 2002) and the *permissive law* (*Erlaubnisgesetz*) of Kant's *Toward Perpetual Peace*. As I will

suggest the proximity principle determines the geographical location of territorial rights, while Kant's permissive law is decisive when it comes to establishing the bearer of these rights. In many respects, the argument presented in this paper takes the form of a Kantian genealogy: a kind of narrative that starts by some fairly basic assumptions about the human condition and shows how the territorial state could have emerged from that condition[1]. The benefit of such an approach resides in its ability to make the argument more appealing to those who criticize Kant's liberalism for its being part of a 'comprehensive' moral doctrine[2].

Before proceeding, three remarks are in order. *First*, although this paper takes Waldron's proximity principle as its starting point, it departs from it in fundamental ways. As I shall argue, Waldron's proximity principle is too reliant on the physical dimension of proximity. *Second*, as noted by Joachim Hruschka (2004)[3], there are at least two versions of the Kantian permissive law. The first version can be drawn from the *Toward Perpetual Peace*, while the second is based on the *Doctrine of Right*. This paper proposes an elaboration of the first version of the Kantian permissive law. *Third*, the Kantian conception of territorial rights that is developed in what follows is 'Kantian' in the sense that Rawls uses the term. Hence, the adjective 'Kantian' means roughly that the conception developed in this paper "sufficiently resembles Kant's in enough fundamental respects so that it is far closer to his view than to the other traditional (…) conceptions" (Rawls 1980: 517).

Finally, to prevent misunderstandings, a terminological clarification needs to be added. Territorial rights stand for two related sets of rights: rights over the people on a particular territory and rights over the territory and its resources. As a result of this distinction, the present paper will face two tasks: *First*, the task of justifying rights over the people located on a particular territory and, *second*, the task justifying control over a particular territory (bearing in mind that most territories currently occupied by states have been acquired unjustly)[4].

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[1] My understanding of 'genealogy' is closely related to that of Williams (2002: 20).
[2] For an example of this criticism see Rawls (1993).
[3] See also Kaufmann (2005).
[4] Note that, although rough, the distinction between rights over the people and rights over the territory is heuristically useful in that it draws attention to two important strains of justification for territorial rights. For, while the key function of the first set of territorial rights is to give the state the power to exercise its rights so as to effectively establish justice, the second set of rights provide the state with the right to control over other people's access to the use and benefits from a territory. Although these two functions overlap to some extent, they are not identical with one another. It is theoretically possible that a state has the right of jurisdiction over the people in a particular territory without having the right to benefit from the territory's resources.

II. Waldron's "Proximity Principle"

When people live side-by-side conflicts naturally occur. As a matter of fact, neighbours must settle competing claims over property in land and agree on the terms of cooperation for mutual benefit. They build fences to delineate their plot of land from that of the adjoining owners and common roads to access their property. As compared with relations between distant people, 'neighbourhoods' stand out as a complex intertwining of simultaneously occurring interactions. People living in proximity may dispute over the boundaries of their property, while at the same time cooperating on maintenance of a common infrastructure. They may send their children in the same school, although pulling the school in different directions to suit their own educational needs. These interactions are intertwined insofar as the result of one interaction has an impact on how the individuals involved behave in subsequent interactions. When neighbours disagree on one issue, cooperation on other issues may be jeopardized.

These examples could be extended at great length, but the basic point should already be clear: when a plurality of ways of life exists in close proximity, common rules cannot be piecemeal. Conflicts are just too endemic, the parties too entrenched and the consequences of non-cooperation too serious for people to confide in a case-by-case or casuistic law-finding. A state must take responsibility for the consistency of the whole picture. This, in a nutshell, is the underlying idea of the Kantian proximity principle according to Waldron (cf. 2002; 2009). It is not difficult to see what is distinctively Kantian about this principle. It works under the premise that each legal rule should be regarded as part of a *system* of mutual respect between free and equal persons, not merely as a unilateral (or bilateral) interpretation of what is just (cf. Stilz 2009a). For Kant, when coercion is exercised, it must be used systematically and consistently, or else it contravenes the idea of Right as the harmonization of each person's external freedom with that of everyone (cf. Waldron 1996).

Two important remarks are in order. The *first* concerns the relation between the two classes of territorial rights mentioned above, namely rights over the people on a particular territory and rights on the territory and its resources. From the above it should be clear that the rights of the state to rule over those who find themselves within a particular territory are not achieved by mere delegation of *natural* property rights in land. These rights are *primordial* in the sense

that in their absence individual property rights have no 'conclusive' legitimacy[5]. Yet, without a system of jurisdictional rights, even the most enlightened human beings would find themselves in a situation where there is no clear source of definitive legal judgment to resolve disputes over the content of property rights. As long as individuals retain the ultimate say about who has the right to what, "the result is a war for the monopoly of interpretation over equally justified but incompatible opinions about property" (Kersting 1992: 352). What is needed, thus, is a *univocal* interpretation of property rights by means of a system of jurisdictional rights that regulates relationships between neighboring people whose property rights are, as a matter of fact, mutually limiting[6]. Only a system of jurisdictional rights can define and secure property rights in land in the face of unavoidable disagreement. This can be read as an account of what Kant means by his claim that "only the concurring and united will of all, insofar as each decides the same thing for all, and all for each, and so only the general united will of the people, can be legislative" (Kant AA 6: 314)[7].

The *second* remark relates to the meaning of 'people'. As stated, by adopting the Kantian principle of proximity, the fundamental idea is that states should be established by people who live 'side-by-side', whether they show any affinity or sympathy with one another or not. For this reason, Kant defines the laws of a state as the "laws for a multitude of human beings living in proximity to one another and *therefore* under a constitution" (Kant AA 6: 355; emphasis added). Evidently, this way of looking at peoples runs counter to the nationalist assumption that states should be formed around nations. Kant gathers individuals into peoples based on the likelihood of their conflicts, while (liberal) nationalists argue the other way around. For them, nations are groups of individuals who share some common traits or at least a sense of 'us' that distinguishes them from other groups. Kant's 'people' is not understood to

[5] Admittedly, the term 'primordiality' carries a certain amount of ambiguity. It can be taken to mean that the state's right to rule over people is *original*, while the other class of territorial rights – the rights of the state over the territory – is *derivative*. Though Waldron does not explicitly address this issue, it is, I think, an unmistakable consequence of Kant's idea of 'supreme proprietorship' (cf. Kant AA 6: 323-4) that these two classes of rights should be regarded as 'co-original' (or 'equiprimordial'). In fact, they presuppose each other. As mentioned, the state's rights to rule over people must be conceived as an essential condition for the exercise of people's rights over the territory as the total of the properties belonging to the citizens. Yet, while this may lead one to conclude that the state's rights to rule over people are therefore foundational, this overlooks the fact that those rights are mere abstractions, unless their scope is appropriately limited and specified. Accordingly, it is only through the seizing of a particular area that the state's rights to rule over people can take on a determinate or substantive shape as territorial rights. However, the act of seizing does not necessarily involve that the state in question enjoys property-like rights over the territory and its resources. What is meant is merely that it is this state and not another one that can impose its law on the people within that territory.

[6] On the importance of law's uniformity see also Rawls (1971: 240).

[7] Quotations from Kant's works follow the usual convention. AA stands for Akademie Ausgabe followed by the volume and page number.

have such common features[8]. For Kant people living in a situation of physical proximity, ought to submit to a common law, or else they will continue to be living in a situation of permanent threat. And what is more, entering into political society with those with whom one is otherwise likely to be in conflict is something that a person might legitimately be forced to do (cf. Waldron 2002: 138; cf. Kant AA 6: 312)[9].

II. The Kantian "Territoriality Principle"

Although theoretically appealing, Waldron's "proximity principle" suffers from important limitations. Waldron's argument centers entirely around the assumption that people living *physically* side-by-side should enter into political society with one another. This understanding of proximity is essential in explaining why territorial states have to be established, but it certainly does not settle the question of where their borders should be and why these borders remain stable over time. On the contrary, if people's physical proximity to others is determinative of their belonging to one or the other state, then the composition of states is likely to be incessantly reshaped by various factors such as (border) conflicts, migrations and so on. Yet, since for Kant it is an objective 'circumstance of justice' that human beings, due to the spherical shape of the earth, "cannot scatter themselves infinitely" (Kant AA 8: 358), physical proximity seems more apt to trigger the internationalization of legal relations. And once this is granted, one is thrown back to the initial problem, the necessity problem: how can the proximity principle ground the stability of territorial borders in the face of transnational interactions? And: how can it ground the right to rule within a *particular* territory?

The answer to these questions may be found by looking at how Kant addresses another problem of his legal doctrine, the problem of justifying *intelligible* possession of external objects. To see where the similarity between the two problems lies, compare the following two situations:

[8] On Kant's sometimes ambiguous understanding of 'people' see Angeli (2004).
[9] Clearly, a consequence of this view is the partial rejection the social contract theory (cf. Stilz 2009b). On the other hand, Kant does not abandon the idea of social contract altogether. It still proves useful as a heuristic device for assessing the moral legitimacy of the law. Specifically, Kant holds that the state's legislation cannot claim to represent general will for a people if it "is so constructed, that an entire people could not possibly agree to it" (Kant AA 8: 297).

(1) Mary walks out of her house to purchase some food. In her absence someone eats, without her permission, the food that she left in the fridge. Since Mary was absent the intruder did not commit a crime.
(2) Judith leaves for a few days her society of residence. Judith's society decides to expropriate her property. Since Judith was absent, her society did not commit anything wrongful.

Despite various differences, these two situations display one important similarity. Both Mary and Judith are required to remain (a) permanently and (b) physically attached to a particular place or thing to avoid being deprived of the respective rights. Since this requirement appears to be incompatible with individual autonomy, a solution would consist in relaxing somewhat the relation of spatial and temporal *immediacy*. This is precisely the strategy adopted by Kant in the case of property rights.

> "So the way to have something external as what is mine consists in a *merely rightful* connection of the subject's will with that object in accordance with the concept of intelligible possession, *independently of any relation to it in space and time*" (Kant AA 6: 254-5; emphasis added).

Strangely enough, Kant applies this conception of intelligible possession even to interpersonal relationship within families and private households. Kant argues that a "domestic community and the possession of their respective status vis-à-vis one another by all its members is not annulled by their being authorized to separate from one another and go to different *places*; for what connects them is a relation *in terms of rights*" (Kant AA 6: 254). Once again, the difference is between *physical* relations and *merely legal* relations. While *physical* relations can be captured by mere reference to seemingly apparent facts (let me call them *here-and-now facts*), legal relations are *constructed* by human beings exercising powers of reason. Obviously, reason here does not refer to the reason of one or other the individual. Rather it provides the basis of thinking universally. In this sense, to ground a conception of human relations on reason involves establishing the possibility of agreement. Human relations in space are thus conceived in such a way that everyone could rationally agree to. Of course, these relations are still linked to the unavoidable fact of physical proximity, but the link is not as strongly relied upon it as it is for Waldron. The spatial and temporal ties of proximity can be loosened in such a way that everyone could rationally agree to. But how? Let me address the temporal dimension of legal proximity first.

Abstraction from the temporal constraint of physical proximity would imply, for instance, that even though Judith has left her place of residence she continues to be regarded, *for some time*, as if she had not left it at all. The basic idea here is that no one could rationally agree to rules that would oblige people to remain attached to the place where one happens to reside. Conversely, the society of destination would be authorized to treat Judith, *for some time*, as if she were not in their midst so as to guarantee the uniformity and effectivity of the law[10]. In both cases the presence or absence of Judith is *real for legal purposes*.

What is more difficult to understand, though, is how to loosen the 'space tie' of human proximity; the fact that proximity is ultimately contingent upon the physical distance between persons engaged in interactions. In addressing this problem, it is important to recall that for Kant human perceptions alone cannot provide a consistent picture of interpersonal relations. They amount, at best, to 'snapshots' of a particular situation at a given time. A consistent picture of human relations in space therefore must be an idea that reason imposes on appearances; an idea that extends beyond the field of immediate perceptions and confers synthetic unity on the manifold of spatial perceptions. Such idea is the idea of separate territories. These territories afford a reliable absolute frame of reference for classifying human relations of proximity in space. As Robert Sack (1986) put it, modern territoriality involves a classification by area (instead of by type) whereby geographic space is apportioned into discrete parcels of land.

An example may help here. Consider migrants. When people migrate, the legal relationship that they establish with those who happen to reside in the place where they settle is not necessarily the result of their being physically closer to them. Again, physical proximity is difficult to be determined consistently. Territorial borders provide a more reliable spatial reference for identifying the degree of legal relationship between individuals. What matters then is whether migrants have physically crossed national borders or not. It is the fact of crossing borders that, for instance, triggers the extension of what Kant calls the 'rights of hospitality' on the part of the native population[11]. What matters to me here, however, is not the content of these rights, but the fact that their beneficiaries are chosen *on a territorial basis*

[10] It is important to emphasize that the use of what now legal scholar call the 'entry fiction' is limited in time and to the acquisition of certain rights (e.g. voting rights). In the U.S. the 'entry fiction' has attracted a great deal of criticism for violating the rule of law. In one of the most criticized cases, Shaughnessy v. United States ex rel. Mezei, the Court held that the defendant's due process rights were not violated because the defendant was treated "as if stopped at the border" and thus had no due process rights.

[11] Kant calls these rights "right of a guest" (*Gastrecht*) and "right of resort" (*Besuchsrecht*) (Kant AA 8: 358).

rather than merely on a proximity basis. These rights incorporate a way of organizing and stabilizing legal relations around territorial unities.

By leaving behind the state of nature human societies are no more clusters of human proximity with unclear borders but states whose territories serve as major repositories of rights and memberships. The kind of proximity thus created may be a juridical fiction, but it is practically and morally no less significant than *factual* proximity. Just as it is important to enforce a uniform system of laws to avoid endless disputes over the monopoly of legal interpretation, it is equally important to clear up, before conflicts arise, who are the addressees (and authors) of the laws. This goal can be achieved by complementing the physical dimension of proximity with a legal and territorial one. The proximity principle turns into a *territoriality principle*.

III. The Kantian Permissive Law

Schematically, the explanation of Kantian territoriality principle can be resumed as follows:

(1) People living physically close to each other are permanently exposed to conflicts about the meaning and scope of their rights
(2) *Therefore* they ought to enter a 'civil society' that regulates the exercise of their freedom of choice (most notably with regard to the ownership of external things such as land)
(3) and use the external boundaries of their contiguous land to determine the scope of their public law on a territorial basis.

Non-Kantians may at this point raise an important question: what is actually meant by 'ought'? For most Kantians the territoriality principle expresses a moral duty each individual must fulfil. But readers less sympathetic to Kant's moral philosophy tend to regard such moral claims with suspicion. They may take the territoriality principle to express at best a prudential recommendation.

Since this paper is not addressed to a purely Kantian audience, I will not take sides with either of these two views. To this end, I will shift the focus from the grounds of moral obligation in establishing territorial states to the legitimacy of these states as institutions already in place. This shift reflects the purpose of a *genealogical* method of justification. Genealogies of the

kind outlined in the preceding section hardly tell us anything definitive about moral obligations[12]. But they can teach us much on the way an institution like the (territorial) state could have arisen, even if it did not arise that way (Nozick 1974: 8-9). What they do in effect is to give a function to the territorial state in attempting to make plausible how it might have come about if people were reasonable enough to follow their own interests[13].

For the sake of clarity, let me distinguish between the two justificatory contributions that the Kantian territoriality principle can make to normative debates on territorial rights. The Kantian territoriality principle provides evidence that

1. states are morally justified in exercising at least some degree of sovereignty on a territorial basis (in making, applying and enforcing territorial laws within their territory).

2. individuals are morally obliged to obey the laws of states that are morally justified in exercising at least some degree of sovereignty on a territorial basis "in making, applying and enforcing territorial laws within their territory).

In this paper I defend only the former claim[14] – although with an important reservation. The purpose of the territoriality principle is not to spell out the sufficient conditions under which states should be judged to be legitimate. What it tries to show instead is that: *if* we accept the basic normative premises of the Kantian genealogy sketched above (e.g. that human beings

[12] See on this also Ronald Dworkin's criticism of hypothetical contracts as grounds of moral duties (Dworkin 1975: 16-19).

[13] There is something both liberating and discomforting about genealogies. What is liberating about them is the ability to get over the painful process of collecting evidence for facts that almost certainly never took place in the way they are portrayed (cf. Craig 2007). If the goal of the genealogy is to show that the territorial state is beneficial in certain specific respects, historical accuracy is not required. The sole requirement is that the story is plausible in the sense that the events fictively presented *could* have occurred in fact. To this end, it is essential to make sure that (1) the interests by which people are guided in the story are *generalizable* interests (i.e. interests that everyone shares) and that (2) the decisions taken are rational in the sense that they support the most effective attainment of their these interests.

[14] To some my distinction between legitimacy and obligation may appear as a decidedly unKantian move. For Kant is often seen as arguing that citizens have a moral obligation to obey the law of a morally legitimate state. To me, however, Kant's Doctrine of Right leaves a gap between legitimacy and obligation. True, Kant argues that "when you cannot avoid living side by side with all others, you *ought* to leave the state of nature and proceed with them into a rightful condition" (Kant AA 6: 307; my emphasis). Crucially, however, 'ought' is not meant to be a *moral* 'ought' in the sense intended by the categorical imperative, if only because juridical duties belong to a branch of investigation that is conceptually independent of the realm of morality. Juridical duties are, for Kant, precisely those duties, whose observance can, but need not be motivated by moral incentives. Simply put, juridical duties tell us what one has to do in order to conform to external laws. This is not to say that juridical duties are less stringent than moral duties. The problem with such *juridical* duties is that they are entirely hypothetical: the necessity of an action results from the assumption that one has an interest to conform to those laws, which are functional to the safeguard of everyone's sphere of freedom. But this interest is a rather general one that leaves plenty of room for situations in which it is in fact not in one's own particular interest to comply with the proximity principle.

have an important interest in not having their lives determined by the choices forcefully imposed by others), *then* we will quite naturally think of states as entitled to territorial rights – yet making the legitimacy of a state ultimately contingent upon its having these rights. The territoriality principle is therefore primarily an argument about the *form* and not about the content and strength of rights. It is ultimately agnostic as to whether the legitimacy of territorial states also depends, say, (internally) upon its democratic constitution and (externally) upon the fulfilment of certain redistributive requirements.

Yet with this said, one might still complain that justificatory role of the territoriality principle turns out to be pretty limited in those respects that matter most in contemporary debates on territorial rights – most notably, debates surrounding the above mentioned particularity problem. I think of cases in which seemingly incommensurable values pull toward incompatible choices. As an example, consider the case of colonization. Prima facie, colonization sits uncomfortably with the territoriality principle. Colonizers illegitimately occupy the territory of the 'colonized'. And what is worse, they do so by force and, if successful, by subjugating the local population. Nowadays, however, the descendants of the former colonizers have often ceased to behave as 'colonizers' allowing free elections and asserting the rule of law[15]. If this is the case, do the original inhabitants still have a legitimate claim to recover what they regard as *their* territory? Or does the importance of established legal relationships supersede past injustices?

The nature of these particularity problems seems to rule out the idea that they can be resolved by a straightforward appeal to the territoriality principle. Both parties can claim reliance on it. The native population may argue that in order for the territoriality principle to be effective, it must be respected in some way. This means, for instance, that external actors, colonized included, cannot unilaterally redraw boundaries as they wish. Once territorial boundaries are set, they must be *sacred*. The descendants of the colonizers, on their part, may claim that the temporal scope of the territoriality principle cannot extend (too far) into the past, lest it loses its very raison d'être. The basic idea here is that the legal regulation of *actual* relations between individuals should take precedence over the regulation of relationships between individuals belonging to distinct generations.

[15] Of course, the descendants of the colonizers remain often the dominant group within the country, leaving the indigenous population in a subordinate position. However, for the sake of argument let me consider those cases in which no group could complain about significant social disadvantages that are *causally* related to the lost of territorial sovereignty. On the difficulty to establish this relationship see Waldron (2002).

The latter argument intrigues me as it involves a sort of *de facto shift* in the meaning of the territoriality principle: from the moral legitimacy of territorial states to the moral legitimacy of *actual* territorial states. That does not mean that the possession of *de facto* power is by itself sufficient for *de jure* legitimacy of territorial states. The shift is above all epistemological. Instead of thinking of territorial states as abstract entities, we are to think of them as the states in which we live. And yet it is undeniable that this shift also has an important normative element. It involves regarding *real* territorial rights as being at least partially disconnected from the instrumental value that the above Kantian genealogy has attached to them. With only this instrumental value in mind, we would never really explain how territorial rights can achieve the stability to be effective. It is essentially for this reason that a genealogy of territorial rights must come to see the actual rights of states as having – besides their undeniable instrumental value – an intrinsic value[16].

Now, even Kant's political philosophy takes on the shape of a genealogy when it comes to dealing with the territorial rights of actual states. In his *Towards Perpetual Peace* Kant argues that the permissive law allows exceptions from the rule of law for past violations, not for present or future ones. In a long note Kant emphasizes that "prohibition [of seizing territories by unilateral occupation] applies only to the mode of acquiring a right in the future (…), whereas the exemption from this prohibition (i.e. the permissive part of the law) applies to the state of political possessions in the present" (Kant AA 8: 348). To make clear that permission and prohibition do not apply to the same situation at the same time Kant draws a sharp distinction between "the *mode of acquisition* (which is to be forbidden hereforth)" and "the present *state of* (...) *possessions*" (Kant AA 8: 347). The purpose of this distinction is to condemn any present (and future) unilateral act of occupation, while at the same time preserving legal and moral judgment from the potentially destabilizing force of historical claims. In so doing, Kant redirects the attention from alleged violations that occurred in the past to the present (and future) of civil societies. For Kant there is no need to demonstrate that the occupation of a territory *was* just. What matters is that past violations, if any, do not prevent individuals living in a situation of legal proximity (i.e. as citizens of an established territorial state) from setting up their relations so that old pretensions do not break out into open hostilities or even civil war, thus frustrating the attempts to establish a just peace.

[16] One of the most salient features of genealogies is precisely the faculty to connect the instrumental and intrinsic value of the 'good' that is to be justified. See on this Williams (2002). See also Ci (2006).

The main reason for assigning value to territorial rights *per se* – as intrinsically valuable rights – is then – paradoxical as it may sound – that these rights must outgrow their instrumental value to serve the goal for which they were created, i.e. (in Kant's case) establishing a permanent peace among nations[17]. Accordingly, in the first preliminary article of his *Perpetual Peace* Kant urges the sovereigns "to nullify all existing reasons for future wars", yet even those which "are not yet known to the contracting parties" (Kant AA 8: 343). From this it certainly does not follow that states are free to occupy foreign territories, promising to later redeem this injustice by establishing justice (cf. Stilz 2009b). Each legitimate state has valid claims to its territory, and outsiders would do wrong by interfering with these rights. Again, what is important is for Kant is that prohibition and permission do not *simultaneously* apply to the same issue (cf. Kant AA 8: 348).

IV. Conclusion

This paper has argued that the Kantian philosophy provides valuable normative and conceptual resources for addressing two of the most critical issues facing defenders of territorial rights: the necessity problem and the particularity problem. The Kantian territoriality principle tells us why it is important that people unite with those who live in proximity and establish a territorial state. Contrary to Jeremy Waldron, I have drawn a distinction between two related forms of proximity: physical and legal proximity. Although physical proximity is essential in explaining why territorial states have to be established, it does not settle the question of where their borders should be and why these borders remain stable over time. This problem can be solved by means of a 'legal' or territorial conception of proximity that is based on, though not reducible to, physical proximity. As I have shown, the distinction between physical and legal proximity parallels the distinction between sensible and intelligible possession. Like intelligible possession, legal proximity abstracts from *immediate* relations to things and person in time and space.

[17] To be sure, this is not to deny that Kant was ambiguous on this issue. Kantians may take the term 'permission' to imply that people has at best a *provisional* authorization to occupy a territory that has been illegally acquired (cf. Brandt 1995; see also Ypi 2010). As a proof for this one has only to read at the beginning of *Perpetual Peace* where Kant points out that "permissive law" allows a delay in execution of three of Kant's "preliminary articles" "only as a means of avoiding a premature implementation which might frustrate the whole purpose of the article" (Kant AA 8: 347). This seems to support the view (opposite to my own) that historic injustices must be rectified notwithstanding changed circumstances.

In the last part of the paper, I addressed the particularity problem by means of the Kantian permissive law. On my interpretation of Kant's permissive law, states can be entitled to the territory they presently occupy even if the territory has been occupied unjustly in the past. What matters is that past violations, if any, do not prevent individuals from setting up their relations as citizens so that old pretensions do not break out into open hostilities or war.

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