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Introduction: The Making and Unmaking of Boundaries

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This volume is concerned with one of the most pressing issues facing us today: the making and unmaking of boundaries. Even in this age of globalization – by which is usually meant capital mobility, extremely rapid methods of transportation and communication, the liberalization of economic markets, the advance of multinational corporations to many parts of the globe, and increased global economic trade – boundaries are enormously important. It matters to people's education, level of health, opportunities and life-prospects, rights and liberties which states they live in. People who migrate from one area of jurisdictional authority to another often taken great risks: Some prospective migrants die in the attempt. The coercive power of the state is often employed to prevent the migration of people across boundaries, and some states expend huge sums of money on military hardware and large armies and sacrifice their soldiers' lives, mainly in defense of existing boundaries.[1]

One of the most destabilizing aspects of the post-Cold War period has been the alteration of boundaries, which takes place outside the rule of law and often by force.[2] For nearly fifty years following the end of the Second World War, there was only one successful case of secession – Bangladesh, which was created out of a separatist movement, and in unique circumstances, particularly since its secession was supported both militarily and politically by India.[3] Since the end of the Cold War, a number of new states have been created in the former Soviet Union, Yugoslavia, and Indonesia, Ethiopia, and Czechoslovakia, and there is little prospect of boundary stability and peace in the ethnically mixed, recently independent states of the first three regions, as there are a number of secessionist groups seeking to further carve them up. The former Soviet Union has become fifteen new states, and there are armed state-seeking groups in Chechnya, as well as the Crimeans in the Ukraine, and the Abkhazians and South Ossetians in Georgia. East Timor has won independence from Indonesia, and the Acehnese and West Papuans are agitating for similar, separate status. The former Yugoslavia has been

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divided into five states, and Montenegrins and Albanian Kosovars continue to press their cause for the further disintegration of what is left of Yugoslavia. Eritrea has separated from Ethiopia. The Czech Republic and Slovakia have emerged from the former Czechoslovakia. There are also armed secessionist struggles in a large number of countries: Tamils in Sri Lanka, Kashmiris in India, Kurds in Turkey and Iraq, and Basques in Spain, and more peaceful, nationalist separatist movements in Quebec in Canada, Scotland in the United Kingdom, and Catalonia in Spain. For the people who fight in secessionist causes, or in defence of the status quo, the main issue is where the boundaries are to be drawn, and implicitly which state the people are to live in. In many of these cases, the struggle is not conducted for reasons directly connected to the material well-being of the people living there, but is more directly understood in terms of nationalist mobilization.

A comparative understanding of boundaries, and especially of how boundaries are to be made and unmade, is enhanced by a detailed examination of the precise ways in which different traditions conceptualize these issues, and have come to regard boundary changes. Each ethical tradition discussed in this volume represents a certain pattern of justificatory argument, and appeals to common concepts or ideas in its normative justification. This includes not only theoretical formulations of the basic principles underlying the traditions, but also the various ways in which different traditions have *in practice* understood and adapted to the challenges posed by boundary changes. The focus of this volume is on the ethical or normative theorizing about boundaries, as opposed to empirical claims, not only because every volume has limits, but also because empirical claims about boundaries are amply documented elsewhere,[4] whereas comparative ethical theorizing about boundaries has heretofore been insufficiently considered.

The interrelationship between ethical traditions and political boundaries is particularly interesting and complex. In many cases, the boundaries constructed by the ethical tradition – between member and non-member – do not have a direct bearing on the boundaries between jurisdictional units. One reason why the two kinds of boundaries frequently do not coincide is that there is a strong territorial claim involved in political boundaries, a claim that does not apply in the case of boundaries between members. Political boundaries are essentially coercive: their rules are made and enforced within a geographical domain, whereas the boundaries constructed by ethical or religious tradition are partially voluntary or subjective in the sense that there is always the possibility of leaving the particular ethical or religious community. This subjective component is especially important where there is an element of self-consciousness about membership, as is generally the case in a world of cultural and ethical pluralism and rival traditions. In many cases, however, the question arises as to whether religious or ethical rules should be enforced politically and applied across a whole domain. If this occurs, the generally porous and partially voluntary nature of boundaries between

traditions are transformed into political or legal requirements. It also raises the question of the appropriate rules for people who are not members of the religion or ethical tradition enforced throughout the polity.

Many of the ethical traditions examined in this volume regard territorial boundaries as regrettable in the sense that the justificatory theory they appeal to is universal in scope. This view on the moral status of boundaries does not necessarily translate, in a straightforward or direct way, into a particular view on the justifiability of different modes by which boundaries can be altered. In many cases, traditions have developed different kinds of normative distinctions in practical confrontation with such issues as whether conquest is justified; whether territory can be purchased and, indeed, what is the relationship between land and territory, in the sense of jurisdictional authority; whether secession is justified, and, if it is, what can justify it; and a host of other questions and issues connected to the legitimacy of the practices designed to make and unmake boundaries.

1. The Problem of Defining a Tradition and Theorizing about Traditions

Central to this volume, and comparative ethics generally, is the quest to consider a set of topics or questions from the standpoint of particular traditions. This presents some immediate difficulties, mainly concerned with the problem of what constitutes a tradition, and the related problem of how to individuate traditions.

In a world of cultural heterogeneity, communities informed by these ethical traditions interact and overlap with each other in a wide variety of ways. They trade with each other, quarrel with each other, sometimes conquer or marry each another. They are often acutely aware of the presence of people who operate within other, rival, traditions, with quite different self-understandings, and sometimes they incorporate elements of other traditions into theirs. Nor is this solely a recent phenomenon, accompanying globalization as defined at the beginning of this introduction. As Richard Tuck makes clear in his chapter (8), there has been a profound awareness of the clash of different moral views at least since the time of Herodotus. The Roman world, in particular, had to contend with its own version of globalization, as members of various traditions – Roman citizens, Africans, Jews, Greeks – lived side by side, sometimes commingled on the same territory, and were also engaged in a wide variety of transactions, including trade and warfare, with exotic peoples beyond the fringes of the Roman Empire.

This volume does not represent traditions as homogeneous, self-sufficient entities, although there are purists within each tradition that aspire to separateness. The contributors to the volume recognize that these traditions have constantly interacted with, and are influenced by, one another, and that they are internally heterogeneous to begin with. The organization of

the volume reflects this fact by presenting two chapters about each tradition. These different chapters reflect a certain degree of debate concerning what the tradition is about, which itself normally reflects tensions and debates within the self-understanding of the tradition. Moreover, within each chapter, there is an acute sensitivity to the degree to which traditions are contested, and to the fact that traditions are not organized, hierarchical, tightly bound structures, but patterns of interpretation, which can be defined more or less expansively, and have a number of elements, often in tension with each other.

In spite of the dangers attached to essentializing "traditions," by which is meant failing to capture the heterogenous nature of particular traditions, it is a useful starting point for ethical inquiry to recognize that people often see themselves as operating within a particular defined tradition in the sense that they explicitly and implicitly appeal back to a certain book (the *Qu'ran*, say) or a certain body of interpretation (in the case of Islam, the pre-modern Muslim jurists). In many cases, the members themselves recognize that ethical inquiry for them, but not for everybody, has to take into account the salience of a particular text they think is authoritative, and a body of interpretation of that text as a starting point for ethical inquiry.

Sometimes these starting points have strong links to a particular religious heritage. An ethical tradition is unambiguously religious, if not uniquely so, when its major propositions are considered by adherents to have been divinely revealed, either explicitly or implictly, and deemed both credible and true for that reason. This is a claim made in various ways by Judaism, Islam, and Christianity. The natural law tradition, on the other hand, is essentially philosophical and secular (to use a modern term) in its origins, content, and major lines of development. Yet the appropriation by Christian thinkers of natural law ideas deriving mainly from Plato, Aristotle, and the Stoics, and the combination of those philosophical ideas with biblical concepts, has sometimes led to the perception that the resulting mix, not excluding its philosophical content, is more religious than secular. The perception of the natural law tradition as predominantly a religious tradition is one factor that led to the designation of Renaissance scholasticism and Early Modern natural law as "Catholic natural law" and "Protestant natural law," respectively. In this volume, because the former figures prominently in the chapter on Christianity, the chapter on natural law has been largely reserved for the latter.

While these two variants of the natural law tradition overlap to a great extent, they also emphasize different intellectual sources and were both extremely important to the debate on European conquest and settlement in the Americas (the former being emphasized in the Spanish and Portuguese colonization of the Americas, the latter in British colonization). Indeed, it is because of their rich and pioneering debates on settlement and jurisdictional authority in the context of the colonization of the Americas that both have been included in this volume.

The last two chapters in this volume span more contemporary debates, and the ethical traditions examined are more obviously secular. Unlike the traditions of the pre-modern and modern periods, the characterization of liberal theory and international law as ethical traditions is more open to question. Liberal theory and international law are both clearly traditions, in the sense that they accept authoritative principles and operate at least partly through either past debate and practice. Whether they are ethical traditions is a little more contested: in the case of liberal theory, normative value is placed on the freedom of the individual, on personal autonomy, and there is a clearly articulated theory of the appropriate scope of state action, which qualifies it as an ethical theory. It is not a *comprehensive* moral theory, but it certainly raises questions, and attempts to provide coherent answers, about the appropriate – that is, legitimate and justifiable – scope of state actions. International law, too, is clearly a tradition: like all law, it is oriented by past precedence and practice. However, some people, aware of the strong divergence between law and morals, and the role of power relations in the creation of international law, might argue that international law is not an ethical tradition. Andrew Hurrell confronts this challenge in his chapter (14), arguing that international law articulates a system of universal norms that confers legitimacy on certain practices and de-legitimizes other practices. In this sense, international law can be regarded as an ethical tradition, which empowers certain actors and justifies certain actions. Both liberal theory and international law have been included in this volume precisely because their norms have been influential in modern times in the debate on the legitimate modes by which boundaries are made and unmade.

One of the most difficult aspects of comparative ethical inquiry is the question of how to individuate distinct moral communities. At the most general level, the different traditions are clear enough: the principles appealed to by a Muslim, who is clearly operating within an Islamic tradition, are quite different from those appealed to by an international lawyer. They accept different authoritative texts, and consider different principles to be relevant in assessing the justifiability of a particular practice. But beyond the most general level, problems arise. For example, does Orthodox Christianity fit in with the Christian tradition represented in this volume, on the grounds that it accepts the same authoritative text (the Christian Bible)? Or does Orthodox Christianity embody its own distinctive morality, as Samuel Huntington has argued?[5] There is an intermediate position between purely local moralities, and universal morality (which involves the thin conception of shared moral beliefs) but what exactly constitutes that intermediate position is not always clear. The chapters in this volume articulate clearly distinguishable ethical traditions, but because there is no clear answer about the appropriate level of generality that traditions are conceived of, it follows that what should be included within a tradition, or what constitutes a tradition in its own right, will be open to debate.

Another challenge to the examination of ethical theorizing within different traditions involves the appropriate objects of study. The chapters in this volume not only examine critical reflection on authoritative texts and the principles enunciated in these texts, but also how these principles have been applied in practice. People who share a common tradition – by which is meant people who appeal to a similar set of authoritative texts and have a similar moral vocabulary – develop their practices and norms through concrete practices, and often in relation to a set of problems or challenges that arise in the real world. The relationship between normative justification, authoritative text, and practice is, however, an extremely complex one, as the contributions to the volume reveal. On the one hand, we cannot simply understand the normative principles underlying a tradition by examining the authoritative texts, because these might not be complete guides to actual practice – these principles may be appealed to very selectively, and so it is necessary to examine how the principles and commitments have been manifested in practice. On the other hand, if we want to know what is justified according to a particular tradition, we cannot simply appeal to what people have done. Sometimes people act without regard for the values or principles that are common in their society, and it would be wrong to view the actions of the vicious and the unjust as representative of the moral code of all those who share the tradition they were brought up in. Sometimes there is also genuine disagreement within traditions about the limits on permissible action, and this is not always clear by simply looking at practices. In order to figure out what people think is morally right, it is important to pay attention to the public discourse that is employed, the principles and values appealed to, and how this has guided practice, as well as to the resilience and possible tension between the different elements of traditions, and the role this plays in justifying action in specific contexts.[6]

2. Ethical Traditions, Boundaries, and Territory

Questions of political and legal authority are inextricably bound up with the issue of territory because of the close, interconnected relationship between territory and governance. This relationship is particularly clear in the modern state-system, which is premised on the Weberian notion of the sovereign territorial state with the exclusive right to govern within clear territorial boundaries. Since the end of the seventeenth century in Europe, it has been impossible to talk about sovereignty without also discussing territory. This is because sovereignty refers not merely to the right to regulate various aspects of life within the territory, but also because it involves the capacity to exclude other political agents from control of the territory.[7] A close relationship between governance and territory was also characteristic of the Roman Empire, which had definite limits, a clear boundary, and attempted to construct systems of uniform administration and taxation throughout the territory.

During periods of less effective governance, such as the Middle Ages in Europe, no single political power could claim to be the exclusive sovereign authority within a definite territory. This was partly because of the limited capacity of governing powers to give effect to their rules. In fact, there were many competing, and overlapping sources of authority, such as small bishoprics within a kingdom, free cities, city leagues, the Teutonic Knights, and the Hanseatic League. Many functions that are now associated with the sovereign state, such as coining money, or setting a standard of weights and measures, were carried out at the local level or performed by non-state actors, such as guilds. Even during the Medieval period, however, governance had strong territorial association: it was not governance over persons, or over members simply, as in a nomadic tribal system, but over a geographical region, even if its boundaries were often more zones than clear demarcations. Territory was relevant because it referred to the bounds of jurisdictional authority, the geographical scope of the rules the political authority made. This geographical dimension was relevant even when the boundaries between competing authorities was unclear, or when several powers competed with each other for authority.

The ethical traditions examined in this book discuss the issue of boundaries in two distinct, but related, senses. First, they discuss the issue of boundaries in terms of the boundaries between members and strangers, insiders and outsiders, people of their faith or ethical standpoint, and people who do not adopt the ethical tradition. The central focus of this kind of concern is related to boundaries as they arise with respect to the issue of membership. Who is and who is not a member of a particular community? How should the two interact? What principles should govern their relations?

These ideas are brought up in numerous ways throughout this volume. The Jewish Bible refers to the presence of non-Jews amongst the Jewish people, discussed mainly in terms of the principles that should govern the relations between the two, and in terms of the appropriate organizing rules and principles that should govern the community. Implicit in Confucian teaching is also a distinction between followers of Confucianism and the rest of humanity, who are potentially subject to Confucian rules and virtues. The issue was raised most acutely in terms of the relations between those who have adopted Confucian principles and ways and those who resist it. Daniel Bell's chapter (4) notes the concern expressed over the disagreeable reality that some outsiders showed no inclination to assimilate or abandon their own culture and become civilized (Confucianized).

The Christian tradition has also been strongly shaped by a conception of boundaries, especially the boundary between insiders and outsiders. Christians were acutely aware of the presence within "Christian Europe" of converts, heretics, Jews (the "outsiders within"), and of Muslims (the "outsiders outside"), whose presence came to define the limits of Christian Europe. The Islamic tradition operated with a basic boundary between

Muslims and non-Muslims (*dar-al Islam* and *dar-al harb*), but further distinguished between non-Muslims who are part of one's community and require defence against invaders,[8] and those non-Muslims who offer basic protections for Muslims, especially in terms of safety and freedom to practice one's religion.

One of the key debates in contemporary liberal political philosophy is the question of whether, or to what extent, liberals should tolerate illiberal groups.[9] This is essentially a question of what organizing principle should be adopted in a community, when the adherents of different ethical traditions disagree. The only ethical tradition examined in this volume that does not address the question of who is a member, and the appropriate relations governing insiders and outsiders, is that of international law, and this is because international law, as the only global set of institutionalized norms, defines who has standing in international law and in the interstate system. As a result, it is both very difficult for non-state actors (outsiders) to get recognition within international law, and these actors do not really challenge the tradition of international law, but only aspire to be recognized by international law and the international community as legitimate political actors.

Second, there is the issue of legitimate governance, which raises the question of how to draw the political or jurisdictional boundaries of legitimate units. Interestingly, while many of the ethical and political traditions do have conceptions of legitimate governance in the sense that they articulate a standard to distinguish legitimate from illegitimate governance, they are much more vague on the question of what principle(s) should determine how to draw the boundaries between these units. In some cases, this is because the tradition simply ignores the latter kind of question, relying, as in the case of liberalism, on simplifying assumptions that prevent consideration of the most difficult ethical issues concerning border change. The Confucian tradition is a good example of the indirect relationship between legitimizing principles and political boundaries. The Confucian tradition articulates a clear sense of justice, involving a basic respect for humanity, filial piety, and respect for tradition and wisdom, all of which provide an outline of the principles characteristic of legitimate rule. But this conception does nothing to clarify the scope of these principles, except perhaps to indicate that they should be applied universally. The question then arises as to whether this concept of legitimate rule would justify conquest of area under the rule of an unjust leader by a political authority established by Confucian principles. One answer that seems possible to draw from the principles and general discussion is that there is no right to "territorial integrity," in the modern sense, to protect an unjust leader, but it is also important (presumably because of the danger of a ruler's using Confucianism as a pretext for his own expansionist aims) to determine the wishes and desires of the people living beyond the area of Confucian political authority. In this sense, it seems that it is assumed that there is a universal desire for justice,

or possibly a latent universal knowledge of what injustice is, even in areas governed by rival ethical traditions (that is, areas that are not populated by people imbued with Confucian traditions and principles). The "test" for justified military action is whether it would be acceptable to the people in the conquered region.

In other cases, the conception of boundaries between members of different traditions is importantly related to the question of jurisdictional authority over land. This is because of the strong territorial component implicit in the idea of political rule, which presupposes that the rules apply to all people who live within the geographical or territorial domain. Different conceptions of legitimate (that is, just, moral, proper) rule directly affects the relationship between members and non-members, and sometimes this has a direct bearing on the rules regarding land, even if not on the issue of the boundaries between jurisdictional units. Ethical traditions typically involve adherence to certain fundamental organizing principles, which might themselves have an exclusionary or adverse impact on members of other faith communities or ethical traditions. This is discussed briefly by Menachem Lorberbaum in Chapter 2 in terms of rabbinic debates in Judaism over whether (and to what extent) gentiles have rights to inherit land and acquire real estate within the Holy Land.[10] This stemmed from a debate over the rules concerning the jubilee year in *Leviticus*, and on Maimonides' interpretation of the relationship between rules governing the community, and whether land became de-sacralized when owned by gentiles. Of course, many traditions have had rules that seemed to privilege members of their own tradition and penalize members of rival communities – the Christian tradition, for example, imposed harsh restrictions on members of the Jewish community, and particularly on their capacity to settle and own land in various places throughout Europe in the Middle Ages.

Further, in defining the territorial component involved in the creation and alteration of political boundaries, land (and control over land) is often a relevant factor. The rules operate over a domain in which people are not the sole relevant considerations in establishing the borders of the domain. In some traditions, such as liberalism, there is an extensive discussion and debate about the legitimacy of property rights, and how individuals can come to own individual pieces of property, but these are not generally helpful in explaining or justifying political boundaries, for reasons that Allen Buchanan explains in his chapter (12) on liberalism. In other cases, the conception of "land" that "belongs" to a particular ethical or religious tradition is defined in accordance with the faith community that occupies, or has occupied the land, although this of course is frequently contested by rival traditions and communities. Christians, for example, tended to assume that all territory that had once been under Christian rule remained *de jure* if not *de facto* Christian lands. This helps to explain the Crusaders' quest to "liberate" the Christian Holy Lands; as well as the sporadic attempts from

the fifteenth century to the late seventeenth century to drive the Ottomans from the Eastern Mediterranean, and why it was that Christians spoke of the "reconquest" of Spain, when, by 1492, the Kingdom of Al Andalus had been Muslim for longer than it had been Christian.[11] Interestingly, there was a very similar view in the Muslim tradition about how to specify what constitutes Muslim land. Like their Christian counterparts, Muslim jurists were, Abon El Fadl argues,[12] very reluctant to concede that territory conquered by the Crusaders and Mongols were no longer to be regarded as an abode of Islam.

In other cases, the land itself is not exactly viewed as analogous to individual property, but is more closely associated with belonging (collectively) to a particular group of people, although not as a result of prior occupancy or rule, but as a result of the terms of a covenant with God. This is discussed in this volume with respect to the Jewish, Christian, and Islamic traditions. In all three religious traditions, the earth – and of course all the land on the earth – is conceptualized as belonging in the first instance to God, and that God has made the land available to human beings. In return, human beings have general obligations, which are variously described as avoiding "corrupting" the land, living in accordance with justice, or living in accordance with God's laws. Interestingly, there is a parallel debate in these three traditions about the extent to which political institutions, and thus jurisdictional territories, are necessary to uphold the community's relations with God. In all three, the obligations to live in accordance with God's laws are not purely individual, but also, importantly, collective, although there is a significant question, especially in Islam, whether this collective obligation requires the equation of religion and polity. This is expressed in terms of a debate over whether God's laws have to be implemented politically, which means jurisdiction over a piece of land, in which the *Shariah* (Way to God) is upheld, or whether religious community is sufficient. Khaled Abou El Fadl argues in his chapter (11) on the Islamic tradition that the Medina component of the Muslim narrative (which involves institutionalizing politically the Islamic message) cannot be dismissed. The message underlying the Medina experience suggests, if carried to its logical conclusion, making the defence of religion inseparable from the duty to defend the territory. There is a similar debate in the Jewish tradition, with the Zionist idea of developing the political sanctuary of the state of Israel, constituting at least a partial departure from the traditional message of Judaism, which involves waiting for a spiritual Messiah to lead the people back to their homeland.

In addition to this question of the relationship between political authority and religious obligations, there is, in both the Jewish and Islamic traditions, a sense that certain places are exceptionally blessed: in the Jewish tradition, there is the notion of the Promised Land, centered on Jerusalem; in the Islamic tradition, Mecca, Medina, and Jerusalem are viewed as "sacred" or "prohibited" spaces, blessed by exceptional Divine acts. This leaves open the question, in the Islamic tradition, of whether their sacredness requires