Territoriality
Prisca Feihle

Content type: Encyclopedia entries
Product: Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL]
Article last updated: April 2019

Subject(s):
Comparative constitutional law — State territory — State sovereignty and states' rights
Published under the direction of the Max Planck Foundation for International Peace and the Rule of Law. General Editors: Rainer Grote, Frauke Lachenmann, Rüdiger Wolfrum.
A. Introduction: Territoriality in Constitutional Law

Territoriality is a concept not explicitly set forth by, but rather underlying constitutional law. It takes a central place in shaping basic assumptions as to constitutional orders. Although processes of deterritorialization contest its continuous adequacy, the relevance of territoriality can be seen as rather evolving than diminishing.

1. The Concept of Territoriality

Territoriality can be linked to different contexts within constitutional law and constitutional legal thinking. Territorial → sovereignty refers to the idea of ‘exclusive exercise of power over a territory’ (Kendall 84) including the ‘capacity to dispose of it’. The latter aspect distinguishes territorial sovereignty from an exercise of power or control of a state over territory not under its sovereignty (in German doctrine under the term of Gebietshoheit; Kohen (2000) 37–38). Some constitutions seek to define the territory of the state and to regulate the alteration of territory through → secession or acquisition (→ Territory, Acquisition). At the same time, the territorial reach of constitutions is not necessarily congruent with the defined territory, as exemplified by distinctions within the territory or the extraterritoriality of fundamental rights (→ extraterritorial application of constitutional rights). Territoriality is relevant in defining the → jurisdiction of the constitutional order. Spatial assumptions also affect notions of community membership and participation, territorial links thus becoming relevant in the regulation of → citizenship and voting rights.

2. Relevance of Territoriality in Constitutional Law

Territoriality in constitutional law might seem to be no more than a banality, given that by definition (Jellinek 394–96) the modern sovereign state is understood as a territorial entity. Not only relevant as a constitutive element of statehood, territory is at the same time recognized as defining the territorial basis of state action (Jellinek 394–98). However, the relevance of territoriality is shifting and its adequacy in view of cross-border phenomena such as digitalization, economic integration and migration is contested. Not only in view of this contestation, there lingers a ‘territorial trap’ in naturalizing geographical assumptions about states and borders conceived as fixed and unchanging entities (Agnew (1994) 53). Instead, territory can be analysed as both conditioning and emerging from state action (Brenner and Elden 367). For legal scholarship in general, the dimension of territoriality draws attention to the ‘the nature of the connection between law and land’ (Raustiala v). The interconnectedness of spatiality and law is highlighted by the stream of scholarship of legal geography (Braverman and others 1). A critical perspective of legal geography draws...
attention to the ‘mutual constitution of law and space often entail[ing] a critical exposition of their frequent role in the production of oppressive power structures’ (Kedar 101–2, remarking that contemporary comparative law and legal geography remained separate despite the potential for cross-fertilization, 95–99). Given the (at least) traditional association of the concept of constitution with the nation-state, it does not come as a surprise that territory as one constitutive element of statehood is of essential relevance for constitutional law. However, avoiding territorial traps in legal scholarship can be advanced by an investigation and reflection upon the mutual influences of territory and constitutional law as well as upon the changing importance of the concept of territoriality for constitutional orders. Accordingly, the concept of territoriality leads to questioning the ways in which geography shapes constitutional law, but also how constitutional law regulates and construes territory.

B. Analysed Constitutions

This contribution brings together different notions of territory and territoriality as they shape and appear in constitutional law and constitutional adjudication. Given the fundamentality of the concept of territoriality and its according relevance for (almost) any constitutional order, the selection of constitutions is aimed at reviewing specific issues linked to territoriality. Therefore, the list of constitutions attempts to allow for a comparison of the definition and views on territory in federal (→ federalism) and → unitary state orders, linked to the history of imperialism and → colonization, of different constitutional ways of dealing with state partition, secession, and territorial contestation as well as territoriality within the supranational entity of the European Union (‘EU’), different understandings of jurisdiction and of the definition of political communities and participation. Therefore, the contribution draws insights from a diverse set of constitutional orders including Australia, Canada, China, Ethiopia, France, Germany, Honduras, India, Ireland, Israel, South and North Korea, Kosovo, Russia, Saint Kitts and Nevis, Serbia, South Africa, Spain, Taiwan, Ukraine, the United Kingdom (‘UK’), and the United States (‘US’).

C. Evolution (Historical)

The fundamental character of territoriality as the basic principle of organizing political power and communities is based on the shift from personal modes of jurisdiction (such as the differentiation between ius civile of Roman citizens and ius gentium applicable to foreigners) and multi-layered sources of legitimacy in the European medieval order to the emergence of the nation-state as a sovereign, territorial entity most evidently marked by the Treaty of Westphalia (Raustiala 8–10; → Westphalia, Peace of (1648)). The concepts of sovereignty and the equality of states (→ States, Sovereign Equality) in the international legal order are deeply linked to the notion of ‘exclusive authority over discrete parcels of territory’ (Bethlehem 13). In the phase of colonization, this understanding of territoriality—together with the ‘standard of civilization’—served imperialistic European powers as a justification for territorial conquest and dispossession outside Europe (Anghie 56–58). After the Second World War, the focus of the → United Nations Charter on sovereign equality for a stabilization of the international order can be seen as ‘protecting the sanctity of Westphalian territoriality’ (Raustiala 19) reaffirmed by the → Friendly Relations Declaration (1970) and its focus on the principle of non-interference (UNGA Res 2625 (XXV); Bethlehem 14; → Territorial Integrity and Political Independence). Territoriality was always complemented by instances of extraterritoriality as evident in the development of the international law of diplomatic relations necessary to allow for exchange between sovereign territorial states (Handl 4). However, its adequacy as the fundamental organizing principle of international and national legal orders is particularly questioned in view of new levels of interdependence and challenges of globalization since the 1990s. The ‘geography of statehood’ would become less important in view of ‘people, goods, services, and funds...
D. Comparative Description

7 It is against this background of both centrality and contestation of the concept of territoriality that a study of its meaning in different constitutions is to be conducted.

1. Defining the Territory of the State

8 Most state constitutions explicitly refer to their national territory within their constitutional text, but only about half of them delineate the territory referred to (Doyle 889). A potential explanation for the finding that many constitutions refrain from clearly determining state territory—while others attempt to do so—could be linked to the fact that the geographical scope of a constitutional order is rather dependent on conventional rules of recognition whereas attempts to delineate territory in the constitutional text can help to clarify such a recognized spatial scope or express a normative claim over contested territory (Doyle 895–98).

(a) Constitutional Techniques of Defining Territory

9 Constitutions define the territory of the state—if they do so—in different ways (for a general overview, see also Doyle 888–90), some enumerating the covered sub-state entities (Art. 67 of the Constitution of the Russian Federation: 12 December 1993 (as amended to 21 July 2014) (Russ) defines that the territory of the Russian Federation comprises the territories of its subjects—which Article 65 enumerates—inland waters, territorial sea, and the air space above them; Article 1 together with Schedule 1 of the Constitution of the Republic of India: 26 January 1950 (as amended to 28 May 2015) (India); Preamble of the Basic Law of the Federal Republic of Germany: 23 May 1949 (as amended to 13 July 2017) (Ger) referring to the ‘entire German people’ in the enumerated Länder, some by referring to the existing territorial borders (Additional Art. 4 to the Constitution of the Republic of China: 25 December 1947 (as amended to 10 June 2005) (Taiwan); Art. 2 of the Constitution of Ukraine: 28 June 1996 (as amended to 21 February 2014) (Ukr)) or some implicitly relying on the historical expansion of the state (eg Preamble of the Constitution of the People’s Republic of China: 4 December 1982 (as amended to 14 March 2004) (China)).

(b) Conditions for Qualifying as State Territory

10 The geography of territory as defined in constitutional law varies to a great extent. International law sets forth only few conditions defining the quality of state territory. There is neither a minimal extent of the physical space nor a requirement of contiguity or undisputed status of the borders—or even the entirety of the territory—as long as there is a certain coherent territory governed in an effective way (Crawford 46–52). One qualification as affirmed in domestic case-law is, however, that not the entirety of the territory can be man-made, instead, territory must be ‘natural in origin’ in the sense of ‘parts of the surface
of the earth which have come into existence in a natural way’ (Bílková 24; Administrative Court decision in Duchy of Sealand (1978) (Ger)).

(c) The Claim to Unity, Indivisibility, or Territorial Integrity

Constitutions proclaim the ‘unity’, ‘indivisibility’, or ‘integrity’ of the state or territory. In some instances, those proclamations have the character of a solemn confirmation of the established territorial order, especially when processes of constitution-making were marked by contestations regarding what physical space this unity would encompass. In such a way, the Preamble of the South African Constitution (Constitution of the Republic of South Africa: 16 December 1996 (as amended to 1 February 2013) (S Afr)) refers to building a ‘united and democratic’ South Africa, aimed at overcoming the racially defined separation under the previous → apartheid regime, which had also brought about territorial exclusions with regard to the ‘homelands’, reincorporated into the new (interim) constitutional order in 1994 (Klug 16, 24–26). Against the historical background of the threat of territorial break-up, the Preamble of the Constitution of the Russian Federation refers to the preservation of the ‘historic unity of the State’.

Besides the symbolic value that comes with claims to the historical achievement of unity, indivisibility, and territorial integrity, constitutions ascribe further relevance to them. Some Constitutions foresee a prohibition of activities violating the territorial integrity (Art. 13(5) Constitution of the Russian Federation; Art. 4 Constitution of the People’s Republic of China). In the French Constitution (Constitution of the French Republic: 28 September 1958 (as amended to 23 July 2008) (Fr)) the term ‘territorial integrity’ is relevant to the role of the president as its guarantor (Art. 5), for emergency powers (Art. 16), and to the restraining of constitutional amendments which may not interfere with the integrity of the national territory (Art. 89(4)). The Constitution of the People’s Republic of China in its Preamble affirms the ‘mutual respect for sovereignty and territorial integrity’ to form principles of its foreign policy.

(d) Constitutional Claims to Territory Following State Partition

The constitutional definition of state territory becomes exceptional in situations of its partition. Constitutions either uphold the normative claim to govern the entirety of the former territory or limit their reach while envisioning ways for reunification.

The insistence of both the People’s Republic of China (China) and the Republic of China (Taiwan) on the unity of China and their opposing claims to govern its territory found their reflection in the respective constitutional law. China’s Constitution construes Taiwan as forming part of its territory as ‘one China’ enshrining a duty for reunification (Preamble of the Constitution of the People’s Republic of China; Anti-Secession Law of the People’s Republic of China: 14 March 2005 (China)). More ambiguously, Taiwan still refers to the territory defined by its existing national boundaries (Additional Art. 4 to the Constitution of the Republic of China), and to a ‘free area’ as well as a ‘mainland area’ (Additional Arts 1, 2 and 4). However, the application of law to the mainland is now regulated by specific statutes at least indicating a trend towards greater separation (Crawford 212–15). Similarly, the Constitution of the Republic of Korea (12 July 1948 (as amended to 29 October 1987) (S Kor)) defines the state territory as consisting of ‘the Korean peninsula and its adjacent islands’ (Art. 3), whereas the actual division is only reflected in the objective of ‘peaceful unification’ (Preamble, Arts 4, 66, 69; see also Grote). In its proclamatory character, the North Korean Constitution preliminarily restricts the objective of achieving ‘the complete victory of socialism’ to the ‘northern half of Korea’ (Art. 9 of the Constitution of the Democratic People’s Republic of Korea: 27 December 1972 (as amended to 5 September 1998) (N Kor)). In a pragmatic way, the Constitution of Ireland prior to its amendment in 1998 upheld the claim to the territory of ‘the whole of Ireland’ (Art. 2 of the Constitution of Ireland: 29 December 1937 (Ir)), while restricting the scope of application of the laws to the
Southern part (Art. 3). Since its amendment in 1998, Art. 3 Constitution of Ireland affirms its will ‘to unite all the people who share the territory of the island of Ireland’ requiring the majoritarian consent of the people ‘democratically expressed, in both jurisdictions’. In contrast, before reunification, previous Article 23 of the German Basic Law (Basic Law of the Federal Republic of Germany: 23 May 1949 (Ger)) explicitly limited the territorial scope of the Basic Law to an enumerated list of Länder in West Germany, but foresaw the Basic Law to be put into effect in ‘other parts of Germany’ following their accession. The Basic Law thus enshrined an imperative of reunification related to the notion of a German territory outside the constitutional reach (Grundlagenvertrag (1973) 15–16).

(e) Constitutional Perspectives on an Alteration of State Territory

15 How far constitutional law allows for an alteration of the territory of the state comes to the fore with relation to the challenge of secession and to acquisition of territory.

(i) Secession

16 Exceptionally, constitutions guarantee a right to secession (eg Art. 39(1) Constitution of the Federal Democratic Republic of Ethiopia: 21 August 1995 (Eth); Art. 113 Constitution of Saint Kitts and Nevis (Saint Christopher and Nevis Constitution Order (SI 1983/881): 22 June 1983 (St Kitts & Nevis); see also Doyle 898–901), sometimes only on a transitional basis (paras 6–11). However, most constitutions do not provide for a right to secession, rather they prohibit the breaking away of a part of its territory in an explicit way (Art. 4 Constitution of the People’s Republic of China’s; Anti-Secession Law of the People’s Republic of China) or are silent on the question of secession. Constitutional references to the ‘unity’, ‘indivisibility’ (Art. 1 Constitution of the French Republic), ‘inviolability’ (Art. 2 Constitution of Ukraine) or ‘sovereignty’ (Art. 4(1) Constitution of the Russian Federation) over the entire territory can be understood as also eluding the constitutional possibility for secession. Accordingly, the Spanish Constitutional Court held secession to be prohibited by the ‘indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards’ according to Art. 2 of the Constitution of the Kingdom of Spain: 6 December 1978 (as amended to 27 September 2011) (Spain), leaving room for secession only via a ‘total revision’ of the Constitution as to Art. 168 (Resolution on the Process to Create an Independent Catalan State Case (2015) (Spain)). The meaning of such references can evolve in view of a constitutional embedment of claims to → self-determination. Accordingly, the principle of ‘indissolubilité’ (Art. 1 Constitution of the French Republic) after the constitutional recognition of the principles of self-determination (Preamble para. 2) and self-government (Arts 72, 74) is interpreted as not precluding a referendum about independence (Decision No 87–226 DC (1987) (Fr); Daly 463). In → Reference Re Secession of Quebec Case (Can) (1998), the Canadian Supreme Court found that despite no unilateral right of secession was enshrined in the Canadian Constitution, the underlying principles of democracy, federalism, the rule of law and constitutionalism, and protection of minorities would require that a clear democratic vote on secession in a province could result in a duty to negotiate secession upon the federal government.

(ii) Territorial Expansion

17 The expansion of the territory used to be—and still is—a matter of constitutional dispute. Whether the ‘Territory Clause’ in the US Constitution (Constitution of the United States of America: 17 September 1787 (as amended to 7 May 1992) (US)), foreseeing the admission of ‘new States … into this Union’ and establishing federal rule over territories (Art. IV s 3, paras 1 and 2), authorized the acquisition of territory was controversial in the beginning, but confirmed by the Supreme Court which deduced from the constitutional powers of making war and treaties the power to acquire territory ‘either by conquest or by treaty’, thus providing for the Union’s territorial expansion (Raustiala 36–38). Currently, whereas many constitutions are silent on the matter, others attempt to accommodate for
territorial alterations in different ways expressing the prerequisite of consent for territorial acquisitions as required by international law. Constitutions foresee special ratification requirements for international agreements concerning state territory (Art. 53 Constitution of the French Republic; Art. 18(1) Constitution of the Republic of Kosovo: 9 April 2008 (Kos); Art. 4(2) Federal Constitutional Law No. 6-KFZ (‘On The Procedure Of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation’): 17 December 2001 (as amended to 31 October 2005) (Russ)) or require a constitutional amendment (Art. 8 Constitution of the Republic of Serbia: 30 September 2006 (Serb)).

(f) The Territoriality of a Supranational Entity

18 The territoriality of the EU remains contested. Article 52(1) Treaty on European Union (‘TEU’) prescribes the EU Treaties to be applicable to its member states, specifying their territorial scope (Art. 52(2) TEU in conjunction with Art. 355 Treaty on the Functioning of the European Union (‘TFEU’)). Despite the basically accessory nature of the territorial scope to the territories of the Member States (as particularly highlighted in Lisbon (2009) (Ger) 402–3), spatial dimensions in the further integration of the EU—such as the introduction of the ‘area of freedom, security and justice’ (Arts 67 et seqq. TFEU) or the establishment of common border regulations (Schengen Borders Code Regulation (EU) 2016/399 of 9 March 2016)—can be seen as leading to a certain territorial character of the EU itself (Battis and Kersten 4–9; Bast 296–304). Following the Treaty of Lisbon, territorial cohesion is an objective of the EU, next to economic and social cohesion (Art. 3(3)3 TEU). Although there is no uniform understanding of the exact meaning of territorial cohesion, Article 174 TFEU links it to the idea of territorial development and the reduction of regional disparities. Those aims are supported through policies advancing cooperation on local and regional levels, infrastructure and urban/regional development throughout the EU territory (Aust 226–29). Also, EU citizenship encompasses a territorial dimension as ‘the fundamental status of nationals of the Member States’ precludes national measures which deprive ‘citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union’ such as measures which at least de facto force an EU citizen ‘to leave the territory of the Union’ (Ruiz Zambrano (2011) paras 41–44 (CJEU)).

2. The Constitution’s Territorial Reach

19 Constitutions usually imply their reach into the entire state territory. In some cases, this is affirmed explicitly in the constitutional text (Art. 15 Constitution of the Russian Federation; Preamble of the German Basic Law). In parallel, the → European Court of Human Rights (ECtHR) states that its case-law would preclude territorial exclusions, instead it applies a presumption of competence for human rights protection throughout the state’s territory, even where the control over such is de facto contested (Ilașcu and Others v Moldova and Russia (2004) para. 312 (ECtHR)). The constitutionalist idea of public authority as based on and restrained by constitutional law could imply that public authority as pouvoir constitué is bound to the constitution in an encompassing way—whether acting within or outside the state territory. However, the territoriality of constitutional orders challenges this notion. The traditional association of constitutions with the nation-state led to the natural assumption of territorial exclusive authority of a constitution within, not reaching beyond the state’s borders (Grimm 94–95). Internally, some constitutional orders draw distinctions between different territories within the state’s territory, thereby in certain ways restraining their own reach. Externally, the extraterritorial reach of constitutions—and in particular of fundamental rights—remains disputed.
(a) Colonial History and the Reach of Constitutions

Incongruities between constitutional law, territory, and authority are specifically evident in the history of colonization. The transformation from early republics to empires can be conceived as a former process of ‘deterritorialization’ disconnecting territorial control and jurisdictional authority (Benhabib 8) leading to continuous processes of territorial segregation (Nightingale 5). Whether colonizing states defined colonies as forming part of their state territory (such as France and Spain) or not (such as UK and the US) was not the only decisive factor for the constitutional reach. Instead, exclusions and distinctions between ‘metropolitan’ and ‘colonial’ territory prevailed under both conceptions. In US constitutional history, the acquisition of Spanish colonies challenged the US Constitution’s territorial scope, contemporarily termed in the question of ‘Does the Constitution follow the flag?’ (Raustiala 76–79). Puerto Rico was understood as a ‘territory belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution’ (Downes v Bidwell (1901) 287 (US)). The US Supreme Court argued that Congress had the discretion over the decision whether to incorporate newly acquired territory, thereby extending the Constitution’s reach, whereas only ‘fundamental’ principles of the Constitution would apply to ‘unincorporated territories’ (Raustiala 83–86; Neuman (2015) 602). In German legal doctrine, the predominant view denied an application of the Constitution (Reichsverfassung 1871) to the colonies not understood as forming part of the state territory (von Bernstorff 150–51; Schwander 179–80). Through France’s constitutional history, both the designation of the colonies, and later-on overseas territories as French territory, and the territorial reach of constitutional law to them, varied (→ Overseas Territories, Australia, France, Netherlands, New Zealand, United Kingdom, United States of America). Whereas the Constituent Assembly (1790–91) declared the colonies not to fall under the Constitution, already Article 6 of the ‘Constitution du 5 fructidor de l’An III’ (1795) saw them as an integral part of the Republic subordinated to the same constitutional law, soon and continuously eluded by the subordination to special rules (‘spécialité législative’) and governance by decrees (Luchaire 11–21). Later on, the Constitution of the Fourth Republic (1946) (Fr) introduced the distinction between the territoires d’outremer and the départements d’outre-mer of which the latter were legally approximated to ‘metropolitan’ France to a wider extent (Luchaire 21–25).

(b) Internal Territorial Distinctions

Constitutional law can introduce territorial distinctions. Geography is not always the predominant factor leading to the introduction of such differentiations. Differences between territories in a state are implied within the constitutional order of a decentralized and federal organization in general. However, the connection between law and land becomes peculiar where constitutions establish different regimes within the state territory—to a certain extent excluding territory from the reach of the constitution or specific constitutional principles. Such differentiations serve different purposes. They can attempt to accommodate geographic expansion, particular regional differences, serve demands for self-determination and autonomy, or economic purposes.

(i) Differentiations in the Constitutional Status of Sub-State Divisions

Geographic expansion can evidently influence the variety of different forms of status accommodated by constitutional law. Given its vast territorial expansion, the Russian federal system consists of numerous entities with different status differentiating between republic, territory, region, city of federal significance, autonomous region, and autonomous area (Art. 66 Constitution of the Russian Federation). The Constitution of the French Republic—despite its generally centralized nature—provides for certain distinctions for the overseas territorial entities (départements et régions d’outre-mer and collectivités d’outre-mer) leaving room for accommodating local differences through adaption of statutes and self-regulation (Arts 72–74). The supranational system of the EU accommodates varieties in
its territorial reach. The territorial scope of the EU Treaties covers the territory of the Member States (Art. 52(1) TEU) and European territories for whose external relations a Member State is responsible (Art. 52(2) TEU; Art. 355(3) TFEU). Beyond that, the Treaties generally apply to the outermost regions while specific measures acknowledge their special characteristics (Arts 355(1), 349 TFEU). Special arrangements according to association are decisive for certain non-European overseas territories (Art. 355(2) TFEU; Arts 198 et seqq. TFEU). For other areas, the Treaties foresee modifications (Art. 355(4) TFEU) or exclude the application (Art. 355(5) TFEU).

(ii) ‘Unincorporated Territories’ and ‘Colonial Clauses’

23 Certain exclusions from the constitutional order can also be found in relation to ‘unincorporated territories’ in the US, such as Puerto Rico, where the population has no representatives in the House of Representatives or Senate; similarly, the District of Columbia equally lacks voting rights for Congress (Sparrow 304). A particularly obvious remnant from the colonial past still stipulating an exclusion of territories from the normative (human rights) order can be found in Article 56 European Convention on Human Rights (‘ECHR’). Article 56(1) ECHR determines that the Convention’s extension to ‘territories for whose international relations [a Convention state] is responsible’ is dependent upon that state’s declaration. Despite its condemnation as ‘anachronistic as colonial remnants may be’, the ECtHR affirms that it is bound by this territorial limitation (Chagos Islanders v the United Kingdom (2012) para. 74 (ECtHR)) seeing itself unable to ‘unwrite provisions contained in the Convention’ (Quark Fishing Ltd v the United Kingdom (2006) (ECtHR)).

(iii) Territory Held by Indigenous Peoples

24 Throughout constitutional history until today, the status ascribed to territory held by indigenous or first peoples remains complex (→ rights of indigenous communities). In the US, the characterization as ‘domestic dependent nations’ (Cherokee Nation v Georgia (1831) 17 (US)) and ‘distinct political communities having territorial boundaries within which their authority is exclusive’ generally shields against interference from the states in some respect (Worcester v Georgia (1832) 557 (US)), but not with regard to interferences by the federal government (Raustiala 39–43). In Canada, Aboriginal and treaty rights found constitutional entrenchment in 1982 with section 35(1) of the Constitution Act (Constitutional Acts of Canada: 29 March 1867 (as amended to 17 April 1982) (Can)). Whether → Aboriginal title—consisting in a communally held right in land based on prior occupancy which confers the right to exclusive use and occupation—including a right to self-government remains contested (Delgamuukw v British Columbia (1997) (Can); Macklem 333–34). More restrictively, the Australian system left less room for self-government, confining land title to property rights, denying that there could be any ‘parallel law-making system in the territory’ since the British Crown’s assertion of sovereignty (Members of the Yorta Yorta Aboriginal Community v Victoria (2002) para. 44 (Austl); Brennan and Davis 34).

(iv) Areas Under Special Autonomy

25 Constitutions accommodate regional differences—in a provisional or continuous manner—by allowing for a deviation from certain constitutional provisions or principles. The Chinese resumption of control over → Hong Kong as a Special Administrative Region under the principle of ‘one country, two systems’ declared the socialist system not to be practiced in Hong Kong, foreseeing that the ‘previous capitalist system and way of life shall remain unchanged for 50 years’ (Art. 31 Constitution of the People’s Republic of China; Art. 5 Basic
Law of the Hong Kong Special Administrative Region: 4 April 1990 (China)), meaning until 2047. Similar rules apply to the Special Administrative Region of Macao.

26 The distinction of a specific territory in the constitutional order can be linked to economic reasons. Treaty ports in China during the 19th and early 20th century, mostly based on ‘unequal treaties’, served as an entry point for foreign vessels and goods, sometimes constituting ‘physically isolated enclave-like foreign settlements’ (→ Treaties, Unequal). In the 1980s, Special Economic Zones (‘SEZ’) in China were established in order to allow for economic cooperation and to attract foreign investment into the otherwise centrally planned Chinese economy foreseeing favourable economic conditions, stability to foreign investors, and decentralized forms of administration (Arts 4 and 14 Regulations on Special Economic Zones in Guangdong Province (26 August 1980) (China)). Whereas the Chinese SEZ succeeded in initiating economic growth, the effectivity of SEZ in other countries is contested, the privileges for a certain territory not necessarily leading to positive spill-overs for the rest.

27 ‘Charter Cities’ drive the experiences of SEZ even further and suggest the foundation of new cities on an undeveloped piece of land upon the grant of autonomy by the host state in order to create a distinct legal, economic, administrative, and political environment. The purpose of such territorial enclaves is to enhance economic development by establishing zones with rules that can differ widely from the rest of the state in order to attract international investment and foster stability (Fuller and Romer 4–7). In Honduras, after the constitutional court struck down previous legislation attempting to establish such zones for violating Honduran sovereignty, it found the plan for founding ‘Zones for Economic Development and Employment’ to be compatible with Honduras’ territorial integrity in 2014. Criticism is not only directed against the neoliberal implications or the vagueness of the scheme of governance (Sagar 513–14), but also the limitation of rights connected with their establishment with only ‘six of the constitution’s 379 articles’ required to apply (The Economist, ‘Honduras Experiments with Charter Cities’).

(c) Demarcating the Internal and the External: The Construction of Border Zones

28 Constitutions also contribute to the construction of a distinct border zone not necessarily congruent with the physical state border. State borders can become relevant in the determination of the material scope of fundamental rights. In the US, the Supreme Court held that procedural → due process does not apply to the exclusion of → aliens arriving at the border (Neuman (2015) 605; Knauff v Shaughnessy (1950) (US)) and that non-refoulement as enshrined in domestic law and Article 33 of the United Nations Convention Relating to the Status of Refugees does not protect persons intercepted on the → high seas (Sale v Haitian Centers Council, Inc (1993) (US); → refugees). Such territorial understandings condition that externalized schemes of border control—such as decisions to refuse entry to the UK by British Immigration Officers in Czech Airports (Regina v Immigration Officer at Prague Airport and Another ex parte European Roma Rights Centre and Others (2004) (UK))—escape the scope of (also international) protection (Battjes 275–83). In addition, policies construe migrants in some situations to be ‘at the border’ although clearly being in it territorially. For example, ‘lawful admission’ can become relevant for immigration due process rights—as opposed to the actual entry—or ‘expedited removal’ can take place not only at the border but also within 100 miles of the border in the US (Shachar (2009) 815–19). In a similar way, according to the German Federal Constitutional Court, whereas a person in the transit zone of an airport is undeniably on German territory, being kept in transit would not interfere with the freedom of the person according to Articles 2(2) and 104 Basic Law as legal and factual requirements for crossing the state border would not touch upon this guarantee (Flughafenverfahren (1996) 198–99 (Ger)). A redefinition of territory is particularly visible in Australia’s policy to ‘excise’ Australian overseas territory
From Australia’s ‘migration zone’, thus excluding the application of domestic migration law and the entry to mainland Australia (Battjes 272–73).

(d) External Reach of Constitutions: The (Extra-) Territoriality of Fundamental Rights

Territorial assumptions continuously shape the reach of fundamental rights. The extraterritoriality of constitutional rights remains contested. Despite open provisions binding state authorities to the protection of fundamental rights in an encompassing manner without implying a geographical limitation (s 7(2) Constitution of South Africa; Art. 1(3) German Basic Law, s 32 Canadian Charter of Rights and Freedoms (Constitution Act, 1982: 17 April 1982 (Can)), courts do not generally assume the reach of fundamental rights beyond the territory of the state.

(i) Justifying Limitations of an Extraterritorial Reach of Fundamental Rights

Territorial limitations of the general obligation to respect fundamental rights are backed up with arguments invoking the comity to the territorial state, the aim of fundamental rights to operate between a state and its inhabitants or the idea of a social contract between state and citizens (Milanovic 58–83). Courts accordingly refer to a necessary harmonization with other states, legal systems, or public international law requiring greater legislative discretion or modifications of constitutional provisions in an extraterritorial context (Zweitregister (1995) 41–42 (Ger); Telekommunikationsüberwachung I (1999) 362–64 (Ger); critical towards such principled reductions of the scope of fundamental rights (Payandeh 1074–75). Others put forward a territorially limited reading of the general obligation to protect fundamental rights based on an otherwise potential infringement with the sovereignty of other states (Kaunda and Others v President of the Republic of South Africa and Others (2004) paras 37–44 (S Afr)). The Canadian Supreme Court generally denied the extraterritorial application of the Charter arguing that the application would require enforcement impossible extraterritorially ‘based on international law principles against extraterritorial enforcement of domestic laws and the principle of comity’ (R v Hape (2007) para. 85 (Can)).

(ii) Historical Development

Historically, such arguments led to a complete denial of the reach of fundamental rights beyond the state territory. The US Supreme Court first adhered to a strict territorial limitation of the reach of the Constitution by which ‘a government is ordained and established ‘for the United States of America,’ and not for countries outside of their limits’ (In re Ross (1891) 464 (US)). This dictum was only overturned in the post-Second World War context of extraterritorial jurisdiction for military personnel and their dependents under the Status of Forces Agreements arguing—quite to the contrary—that the US as a ‘creature of the Constitution ... can only act in accordance with all the limitations imposed by the Constitution’. The protection by the Bill of Rights of a citizen abroad is not ‘stripped away just because he happens to be in another land’ (Reid v Covert (1957) 5–6 (US)). Nevertheless, for non-citizens, the application of fundamental rights would depend on ‘the alien’s presence within [the US’] territorial jurisdiction’ (Johnson v Eisentrager (1950) 771 (US)) or even require a sufficient connection with the US to be considered part of that community, the mere presence not sufficing (in interpreting the term ‘the people’ in the Fourth Amendment, United States v Verdugo-Urquidez (1990) 264–75 (US)).
(iii) Current Positions on an Extraterritorial Reach of Fundamental Rights

Currently, the positions as to the (extra-)territoriality of fundamental rights are still far from consistent. Nonetheless, instead of a complete denial of their reach beyond territory, certain decisions indicate an applicability at least with regard to specific territory under de facto sovereignty (→ Boumediene v Bush Case (US) (2008)). Outside constellations of de facto sovereignty over territory, some decisions argue for an extraterritorial reach of fundamental rights in a rather careful manner affirming its exceptional nature. In relation to Canadian officials interviewing a detainee in Guantanamo Bay and sharing the contents with US authorities, the Canadian Supreme Court found an exception to the general territorial limitation of the applicability of the Charter, if ‘Canada was participating in a process that was violative of Canada’s binding obligations under international law’ (Canada (Justice) v Khadr (2008) para. 19 (Can)). In the UK, mindful of the policy reasons for limiting the application of fundamental rights to overseas military operations, the Court of Appeal in Al-Saadoon suggested a narrow reading of the scope of exceptions to territorial jurisdiction as put forward by the ECtHR (Al-Saadoon and Ors v Secretary of State for Defence (2016) paras 69–73 (UK)). The Israeli Supreme Court’s willingness to extend inter alia rules of Israeli Administrative Law to a certain extent to the Occupied Territories otherwise governed by the law of occupation is linked to the length of occupation (Zilbershats 919; Kretzmer 25–27). The Israeli Supreme Court also confirmed positive obligations of Israeli authorities towards Palestinians in the non-occupied Gaza strip (Gaber Al-Bassiouni v The Prime Minister (2008) (Isr)) although not clearly explaining the basis and scope of the ensuing responsibility (Shany 108–16).

(iv) Argumentation Supporting Fundamental Rights’ Extraterritorial Reach

When arguing for a certain reach of fundamental rights across borders, courts seem to underline a particular firm territorial nexus of the situation. In → extradition cases, courts affirm certain obligations of authorities to verify whether the consequences—despite beyond the territory—are compatible with fundamental rights, given the person’s presence on the territory of the state (Auslieferung IV (2005) 162 (Ger); Mohamed and Another v President of the Republic of South Africa and Others (2001) para. 49 (S Afr); Soering v the United Kingdom (1989) paras 86–91 (ECtHR)). Similarly, the territorial link of surveillance measures can be based on the collection and recording of communication taking place on state territory even if aimed at communication abroad (Telekommunikationsüberwachung I (1999) 362–64 (Ger)). Also, when deciding on the transferal of data to foreign states, the state’s fundamental rights can pose certain obligations that the transferal does not lead to a delusion of → data protection, or a violation of rule of law principles or human dignity (BKA-Gesetz (2016) 341–42 (Ger)).

(v) The Extraterritorial Reach of Rights Under International Human Rights Law

The internationalization of human rights at the same time does not consistently lead to a detachment of human rights protection from territorial foundations. Article 2(1) → International Covenant on Civil and Political Rights (1966) (‘ICCPR’) requires State Parties to protect the human rights of individuals ‘within its territory and subject to its jurisdiction’. The Human Rights Committee (‘HRC’) interpreted this requirement as not encompassing a strict territorial limitation, instead referring ‘to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party’ (General Comment 31 HRC (26 May 2004) CCPR/C/21/Rev.1/Add. 13, para. 10). Although the ECtHR recalibrated its rather strict territorial approach in Banković (2001) (ECtHR), it still holds that a state’s jurisdictional competence under Article 1 ECHR is primarily territorial; only exceptional circumstances giving rise to the exercise of jurisdiction by a state outside its own territorial boundaries in cases of ‘state agent authority and control’ and ‘effective control over an area’ (Al-Skeini and Others v the United Kingdom (2011) paras 130–41 (ECtHR)). Even if the ECtHR has accommodated various
instances of an extraterritorial reach of the ECHR (as eg for a vessel on the high seas flying under a Convention state’s flag, Hirsi Jamaa and Others v Italy (2012) paras 70–78 (ECtHR)), those remain exceptional.

3. Territoriality of Jurisdiction

The concept of → jurisdiction outlines how far a state has the competence to act, either by prescribing its rules, adjudicating disputes, or enforcing the adherence to its laws. The general principles under public international law—still referring back to the Lotus Case (→ Lotus, The)—can be summarized as establishing a strict notion of territoriality with regard to the jurisdiction to enforce, only lawful on another state’s territory with its consent, and a general permission of a jurisdiction to prescribe or adjudicate on acts also occurring outside the territory when there is a sufficient connection to the state in question.

(a) Territoriality at the Basis of Defining Jurisdiction (Narrowly)

Traditionally, for the proper allocation of state competences, the ‘most natural allocative principle [is] the physical, clear boundary-based principle of territoriality’ (Ryngaert (2017) 53–54). The UK, especially, adheres to a primacy of the territorial principle, with a presumption of statutes not applying extraterritorially unless Parliament states its clear intent to the contrary (Ryngaert (2015) 64). Also the US Supreme Court explicated a rather strict understanding of territorial jurisdiction for civil jurisdiction in the 20th century, finding that a ‘statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker’ (American Banana Company v United Fruit Company (1909) 348 (US)). Warning against foreign relations implications, the US Supreme Court in relation to the → United States Alien Tort Statute put forward a narrow reading of a presumption against extraterritoriality requiring that ‘even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application’ (Kiobel v Royal Dutch Petroleum Co (2013) 124–25 (US); see further Jesner v Arab Bank (2018) (US)).

(b) Departures from (Purely) Territorial Definitions of Jurisdiction

In contrast, there are departures from a primarily territorial understanding of jurisdiction. The growing global influence of the US after 1945 brought about a turn towards an allowance for effects-based jurisdiction concerning conduct abroad having consequences within the borders (Ryngaert (2015) 68; for antitrust law United States v Aluminum Co of America (1945) 443 (US)). Far-reaching extraterritorial implications of US legislation such as the 1996 Helms-Burton-Act (PL 104–14) (creating a liability of any person trafficking with property confiscated by the Cuban Government towards any US national owning such a claim (→ Unilateral Trade Measures)) or more recently the 2017 CAATSA (Countering America’s Adversaries Through Sanctions Act (PL 115–44) imposing unilateral → economic sanctions against Iran, Russia, and North Korea) provoked international criticism. The EU has adopted legislation with far-reaching effects transgressing the territory of the Member States: Aviation activities also outside the EU were included in the greenhouse → emissions trading scheme according to Directive 2008/101/EC (Air Transport Association of America v Secretary of State for Energy and Climate Change (2011) (CJEU)). EU regulations on OTC derivatives apply to trade between foreign parties (Regulation (EU) No 648/2012; Schmalenbach 259). The EU General Data Protection Regulation (Regulation (EU) 2016/679, (GDPR)) is of a broad reach with its territorial scope covering the processing of personal data of subjects in the EU, but hereby also related to controllers or processors not in the EU (Art. 3 GDPR). However, such developments are still relying heavily on territorial links, such as effects within the territory—even if those are interpreted in an expanding way (Bethlehem 14, 22; Ryngaert (2015) 96–97). Challenging the adequacy of a primarily territorial definition of jurisdiction,
alternatives suggest more flexible approaches of functional or ‘deemed’ (Bethlehem 22) jurisdiction, a ‘reasonable’ exercise of jurisdiction (Ryngaert (2015) 145–87), or categories of ‘community’ or ‘justice’ (Ryngaert (2017) 59–65), thereby searching for ways in which a largely territorial state-based system of institutions can accommodate ‘non-territorial jurisdictional aims’ (Ryngaert (2017) 65–68, 77–78).

4. Territory and the Polity: Citizenship, Democracy, and Participation

38 Territorial assumptions are also underlying constitutional regulations on citizenship and democratic representation.

(a) Citizenship

39 The correlation of territoriality and citizenship is ambivalent given that territorial and personal membership are not necessarily congruent (Gosewinkel 648–52). However, territory matters in the definition of membership to a political community within regulations concerning citizenship upon birth or → naturalization. The → ius soli principle confers citizenship upon birth to persons born within the territory of the state. This territorial definition of belonging is rooted in the common law tradition, historically linked to the English medieval feudal system, in which ‘ligeance’ and ‘true and faithful obedience’ to the sovereign were owed by a subject from birth (Shachar (2012) 1006). An adherence to a strict ius soli principle can still be found in Brazil, Canada, and the US whereas other constitutional orders introduce additional requirements such as legal residence status of the parents or further conditions of residence. The strong nexus between territory and citizenship under the 14th Amendment to the US Constitution (s 1) allows that citizenship upon birth abroad to a US parent can be restricted by the prerequisite of subsequent residence in the US (Rogers v Bellei (1971) (US)). Elements of ius soli can be found in legal orders generally basing the conferral of citizenship on a → ius sanguinis principle, also in reaction to the exclusionary effects of a strict accordance of citizenship upon descent, providing for citizenship upon birth in the territory to foreign parents under further conditions (Arts 19-1 to 19-4 Code Civil (Fr); s 4(3), 29 StAG (Nationality Act) (Ger)). In the conferral of citizenship upon naturalization, territory becomes relevant in conditions of legal residence in the state territory of a certain duration (eg s 10 StAG (Nationality Act) (Ger); Art. 21-7 Code Civil (Fr)). In the prereunification jurisprudence on German citizenship of the German Federal Constitutional Court, a nexus to territory became decisive for the effects of citizenship. From the constitutional imperative of reunification, the Court derived the principle of unitary citizenship according to Articles 116(1) and 16 of the German Basic Law necessitating that a conferral of citizenship within the German Democratic Republic would entail the acquisition of citizenship in the Federal Republic of Germany. Such an automatic conferral of citizenship would not conflict with principles of public international law such as respect for the existence and jurisdiction of other states, as the citizenship in the Federal Republic of Germany would only produce effects once a person is within the jurisdiction of the Federal Republic of Germany and accepts or requests such effects (Teso (1987) 137–38, 153 (Ger)).

(b) Political Participation and Voting Rights

40 The concept that being within a territory shapes the belonging to a political community does also affect the conditions for democratic participation. Territoriality is referred to as remaining ‘an indispensable precondition of democratic ruling’ (Gärditz 912). The connection between territory and political participation is mapped by restrictions of voting rights of citizens residing abroad and participatory rights of non-citizen residents (Hirsch
Ballin) as in residence requirements for the eligibility for offices of particular importance in the constitutional order.

(i) Residence Requirements for Particular Offices

41 A particular strict nexus to the territory can be required for the eligibility for particular offices as visible in the residence requirement of ten years for eligibility as President in Russia (Art. 81(2) Constitution of the Russian Federation) or the dispute about whether the condition for the US President to be a ‘natural born Citizen’ requires birth in the US (Neuman (2015) 594).

(ii) Non-Resident Citizens’ Voting Rights

42 Restrictions of citizens’ franchise when abroad are linked to different notions of the role of presence in the territory for political participation. In South Africa, the now abandoned requirement of ordinary residence was first aimed at facilitating the electoral process and was linked to the underlying view of a certain disloyalty of those working abroad (Le Roux 268–72), whereas the acknowledgment of a ‘continued commitment’ to South Africa led to a positive obligation to facilitate the exercise of voting rights of citizens temporarily abroad (Richter v The Minister for Home Affairs and Others (2009) paras 93–94 (S Afr)). In the UK, the exclusion of citizens residing abroad for more than 15 years from parliamentary elections is based on the view that residence is a reasonable criterion for assuming the necessary continued links to the state (R (Preston) v Wandsworth London Borough Council (2012) paras 89–92 (UK)). This exclusion also applied to the referendum on UK’s EU membership of 23 June 2016 even with regard to citizens residing within the EU (Shindler and Anor v Duchy of Lancaster (2016) (UK)). Similarly, the German Constitutional Court links the residence requirement to a familiarity with the circumstances guaranteeing the communicative function of elections (Wahlberechtigung der Auslandsdeutschen (2012) 50–54 (Ger)). Other views emphasize the relation of presence in the territory to being affected by the outcome of elections (see Separate Opinion (Lübbe-Wolff) to Wahlberechtigung der Auslandsdeutschen (2012) 64–66 (Ger)). Accordingly, the ECtHR held the exclusion of a British citizen living in Gibraltar from elections to the European Parliament to violate the right to vote given the affectedness by EU legislation (Matthews v the United Kingdom (1999) paras 34, 53, and 64 (ECHR)) whereas persons living abroad could be excluded from the franchise (Sitaropoulos and Giakoumopoulos v Greece (2012) (ECtHR)). The European Court of Justice deemed the effect of EU measures for non-European overseas territories too indirect to trigger an obligation to hold elections (Eman and Sevinger (2006) paras 47–49 (CJEU)). After the Ontario Court of Appeal upheld the exclusion of Canadian citizens living abroad for more than five years from federal elections linking it to the idea of a social contract and the necessary ‘fairness to resident voters’, who live with the consequences of the laws for which they vote’ (Frank v Canada (Attorney General) (2015) paras 92–94 (Can)), the Supreme Court of Canada found this limitation upon the right to vote to be disproportionate, especially as also including people upholding strong links to Canada and being affected by Canadian legislation despite their absence (Frank v Canada (Attorney General) (2019) (Can)).

(iii) Non-Citizen Residents’ Voting Rights

43 Reversely, instances of voting rights accorded to non-citizens present in the state territory are rather rare. New Zealand is one of four states according voting rights to legally permanent residents in national elections, next to Chile, Malawi, and Uruguay (McMillan 1, n 2). Qualifying Commonwealth citizens who are resident in the UK can register to vote in general elections (Representation of the People Act 1983 (c. 2), s 1; and—prior to the Treaty of Lisbon—in European Parliament elections, see Spain v United Kingdom (2006) paras 71–80 (CJEU)). In South Africa, voting rights were granted to foreign residents in the first post-apartheid election, also as a pragmatic interim response to unjust
nationality regimes (Le Roux 265–68). In the US, states could allow for alien → suffrage, whereas since 1996 voting of non-citizens in federal elections is criminalized (Neuman (1996) 63–71; Neuman (2015) 595). The German Federal Constitutional Court excludes the constitutional possibility of non-citizen residents’ voting rights in federal and regional elections, discrepancies between those subordinated to state authority, and those obtaining the right to vote, to be resolved through an adaption of regulations concerning citizenship (Ausländerwahlrecht I (1990) 51–52 (Ger)). EU integration challenges such a reliance on formal membership for according voting rights to a limited extent with enshrining the right of EU citizens to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence (Arts 20(2)(b) and 22 TFEU; implemented for instance in Art. 88(3) Constitution of the French Republic; Art. 28(1) 3 German Basic Law).

E. Concluding Remarks

44 The comparative assessment depicts how the concept of territoriality continues to shape constitutional law in a fundamental way. Discourses of deterritorialization challenge the adequacy of such a territorial basis of the constitutional (and international) legal order in view of new levels of interdependence and globalization (Bethlehem). Accordingly, the primacy of territory in defining jurisdiction, the reach of constitutions and fundamental rights, membership and participation can be questioned to a certain extent. The extraterritorial reach of fundamental rights or jurisdictional principles allowing for legislation with far-reaching extraterritorial impact can be seen as a departure from strict territoriality. However, territoriality has not lost its valence in constitutional law. An investigation into the relevance of territorial assumptions in constitutional law can unfold the transformations that the interdependence of territory, authority, and rights is undergoing (Sassen 3–18). An alteration of territoriality in the traditional understanding is not a simplified linear process of deterritorialization or internationalization. A more adequate reading depicts the dialectics of processes of deterritorialization as being accompanied by instances of reterritorialization (Middell 500–2; Bast 308). In such a view, processes of deterritorialization do not render territoriality obsolete as depicted in its diverse occurrences in constitutional law. Instead, the interconnectedness of territory and constitutional law points towards a potential adaptiveness of the concept of territoriality.

Select Bibliography


Grimm, D, Die Zukunft der Verfassung II (Suhrkamp 2012).


Hickman, J, Space is Power. The Seven Rules of Territory (Lexington 2016).


Kohen, M (ed.), Territoriality and International Law (Elgar 2016).


Kretzmer, D, The Occupation of Justice. The Supreme Court of Israel and the Occupied Territories (State University of New York 2002).


Raustiala, K, Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law (OUP 2009).

Ryngaert, C, Jurisdiction in International Law (2nd edn OUP 2015).


Schwander, T, Extraterritoriale Wirkungen von Grundrechten im Mehrebenensystem (Duncker and Humblot 2019).


Select Cases


Al-Skeini and Others v the United Kingdom (ECtHR) App 55721/07 (7 July 2011).


Ausländerwahlrecht I (Foreigners’ Voting Rights I) 2 BvF 2, 6/89 (31 October 1990) BVerfGE 83, 37 (Ger).

Auslieferung IV (Extradition IV) 2 BvR 2259/04 (6 July 2005) BVerfGE 113, 154 (Ger).

Banković and Others v Belgium and Others (ECtHR) App 52207/99 (12 December 2001).

BKA-Gesetz (Federal Criminal Police Office Act) 1 BvR 966/09 and 1 BvR 1140/09 (20 April 2016) BVerfGE 141, 220 (Ger).


Canada (Justice) v Khadr [2008] 2 SCR 125 (Can).

Chagos Islanders v the United Kingdom (ECtHR) App 35622/04 (11 December 2012).

Cherokee Nation v Georgia 30 US 1 (1831) (US).

Decision No. 87-226 DC (2 June 1987) Loi organisant la consultation des populations intéressées de la Nouvelle-Calédonie et dépendances Recueil 34 (Fr).

Delgamuukw v British Columbia [1997] 3 SCR 1010 (Can).

Downes v Bidwell 182 US 244 (1901) (US).

Duchy of Sealand 9 K 2565/77 (3 May 1978) Deutsches Verwaltungsblatt 510, Administrative Court of Cologne (Ger).


Flughafenverfahren (Airport Asylum Procedure) 2 BvR 1516/93 (14 May 1996) BVerfGE 94, 166 (Ger).

Frank v Canada (Attorney General) 2015 ONCA 536 (Can).
Frank v Canada (Attorney General) 2019 SCC 1 (Can).
Gaber Al-Bassiouni v The Prime Minister (30 January 2008) HCJ 9132/07 (Isr).
Grundlagenvertrag (Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic 1972) 2 BvF 1/73 (31 July 1973) BVerfGE 36, 1 (Ger).
Hirsi Jamaa and Others v Italy (ECtHR) App 27765/09 (23 February 2012).
Ilașcu and Others v Moldova and Russia (ECtHR) App 48787/99 (8 July 2004).
In re Ross 140 US 453 (1891) (US).
Jesner v Arab Bank (24 April 2018) No 16–499, Supreme Court (US).
Kaunda and Others v President of the Republic of South Africa and Others [2004] (4) SA 235 (S Afr).
Lisbon 2 BvE 2/08 (30 June 2009) BVerfGE 123, 267 (Ger).
Matthews v the United Kingdom (ECtHR) App 24833/94 (18 February 1999).
Mohamed and Another v President of the Republic of South Africa and Others [2001] ZACC 18 (S Afr).
Quark Fishing Ltd v the United Kingdom (ECtHR) App 15305/06 (19 September 2006).
Regina v Immigration Officer at Prague Airport and Another ex parte European Roma Rights Centre and Others [2004] UKHL 55 (UK).
Richter v The Minister for Home Affairs and Others [2009] (3) SA 615 (S Afr).


Sitaropoulos and Giakoumopoulos v Greece (ECTHR) App 42202/07 (15 March 2012).

Soering v the United Kingdom (ECTHR) App 14038/88 (7 July 1989).


Telekommunikationsüberwachung I (Surveillance of Telecommunication Case) 1 BvR 2226/94, 1 BvR 2420/95 and 1 BvR 2437/95 (14 July 1999) BVerfGE 100, 313 (Ger).

Teso 2 BvR 373/83 (21 October 1987) BVerfGE 77, 37 (Ger).

US v Aluminum Co of America 148 F 2d 416 (2d Cir 1945) (US).


Wahlberechtigung der Auslandsdeutschen (Voting Rights of German Citizens Abroad) 2 BvC 1, 2/11 (4 July 2012) BVerfGE 132, 39 (Ger).

Worcester v Georgia 31 US 515 (1832) (US).

Zweitregister 1 BvF 1/90, 1 BvR 342/90 and 1 BvR 348/90 (10 January 1995) BVerfGE 92, 26 (Ger).