Space Savers, Free Grazers and Ocean Raiders: Private Incursion into Public Spaces.

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In this paper, we consider three examples of private incursion into government spaces. We are interested in the processes in each case that led to the de facto transition of property from public to private, what conditions facilitated the process, how actors (both private and public) related to each other and what narratives about private and public property framed the process. We ask the following two questions: (i) Why did the transition from public to private space in each case take place there and then, that is, what were the enabling conditions? (ii) Why did this transition to private space end, subside or persist?

To aid our analysis, we draw on three political philosophers (Thomas Hobbes, Hugo Grotius and John Locke) whose writings resonate with ideas about the tension between public and private property. The settings of our case studies (Somalia, Montana and Boston) contrast markedly in the scale and nature of the space being claimed. In Somalia, the space is the marine territory offshore of its more than 3000 km long coastline. In Montana, we consider a 600,000 acre portion of the vast area controlled by the United States federal government in the western U.S. Then, at a much smaller scale, we focus on the narrow margins available for public parking in Boston's dense urban neighbourhoods during the winter. The means by which private actors occupy public spaces in each example differ as well. In Boston, individuals claim parking spaces through passive means by placing objects in the space (known as 'space savers'), whereas the incursion of libertarian ranchers onto federal land in Montana was an active and well-publicized event by armed groups in a tense standoff with government law enforcement. By contrast, aggression by Somali fishers against foreign fishing trawlers took place due to an absence of central government in that area, which then transformed into seizure of freighters for ransom.

These are contemporary examples of a conflict between conceptions of property. However, as Horwitz explains, the public/private distinction at play in the examples below arose historically in the sixteenth and seventeenth centuries via the emergence of the nation state, associated with the unrestrained legislative authority of monarchs and parliaments and "a countervailing effort to stake out distinctively private spheres free from the encroaching power of the state" (1982: 1423). This distinction also leads to conceptions of "natural right," particularly in relation to private property, in opposition to the "divine right" as manifested in crown and what is later offered as the foundation for vast holdings of crown lands.

With this in mind, the following brief analyses of Locke, Grotius, and Hobbes are directed toward relating each thinker's ideas on the distinction and movement between private and public property. One of our contentions is that conflict occurs in these examples when different conceptions of property are used to justify competing claims of public and private ownership, particularly when a private actor makes a claim to public property. While these three thinkers have been chosen because their theories apply well to our examples, they also highlight the wide-ranging views of property in the seventeenth century with Locke the model for later libertarian views of private property, Hobbes the advocate of the near absolute power of the state and Grotius somewhere in between. A larger and later goal might be to consider how to use this

theoretical framework as a means to help understand and resolve similar conflicts and apply the work of other important thinkers such as Pufendorf.[1]

I Locke

The historical development of the tension between the public and private is perhaps best articulated by John Locke in his 1689 *Two Treatises of Government*. Notably, he contends that the right to private property is prior to and thus independent of the powers of governments. In Section 27 of Chapter V, he writes:

> Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.

In this account, God created nature and then gave it to all mankind in common. The question for Locke is how to differentiate a particular part of creation as private. He claims that, because each of us are possessors or owners of our own bodies and, in turn, the work of our hands, when we mix our labour with the soil, so to speak, the resulting product is also our own. This allows Locke to conclude that by "natural right" private property is both prior and superior to public, state or crown lands.

The twentieth century political philosopher C.B. Macpherson describes this idea as "possessive individualism" which goes onto powerfully shape our modern views of politics and government. He writes "The individual, it was thought, is free inasmuch as he is proprietor of his person and capacities. The human essence is freedom from dependence on the wills of others, and freedom is a function of possession" (1962: 3). Because the state is limited in its power to encroach on this preexistent private realm, the acquisition and possession of private property becomes the foundation for individual freedom and the later development of individual rights. Again, as articulated by Locke, private property is our "natural right" which must be respected by the crown or government.

But, as Horwitz explains, English law then goes on to establish "a second category of crown land — in essence, public lands" (1982: 1423) in opposition to the private realm which could not be acquired or possessed by private individuals and are then utilized in some manner toward the benefit of the crown or the public good (see Wyndham 1980). This idea is in conflict with Locke's contention that it is private property that is differentiated or removed from God's creation of the commons through the labour of the individual. For Locke, even the sovereign lands of the crown not only can be but *should be* transformed into private property. This transformation actually allows for a "better living" not just for the landowner but also for all others (Macpherson, 1962: 212) because it becomes more "Fruitful" *(Second Treatise*, sec. 41).

Locke goes yet further claiming private ends are not only prior and superior to that of the public good or utility but also that these ends can never be usurped by the state. He writes later in the *Second Treatise*:

[1] For an excellent account of early conceptions of property see Stephen Buckle's *Natural Law and the Theory of Property: Grotius to Hume* (1991).

> …the inhabitants of any country who are descended and derive a title to their estates from those who are subdued and had a government forced upon them against their free consents retain a right to the possession of their ancestors…. Their persons are free by a native right, and their properties, be they more or less, are their own and at their own disposal, and not at his (Chapter 16).

Once land has been transformed into private property there is no moral possibility for its return to the commons or later movement into (or back into) the public realm. In other words, the "first taker" from the commons, which is the private individual, should be the last unless by voluntary relinquishment or transfer. This then sets up a significant antagonism between the private and public, with the state and the individual each claiming that their interests are superior to the other.

II Grotius

The claim to the superiority of public lands is based in the development of a conception of the public good, again related to the establishment of the nation state. Hanson describes this as the development of a sense of civic consciousness, "a public dimension in social life" that put forward a new vision of the rights and duties of citizens. "It means that men have come to recognize that they have important and enduring interests and loyalties relating to a civic order, as distinguished from the sorts of interests which center on one's self, one's family, property, or livelihood" (1970: 26). This new idea leads Hugo Grotius to develop the concept of *dominium eminens* or eminent domain in his 1625 work *On the Law of War and Peace*[2] which describes the necessity to assert the "ends of public utility" over private ends. As Grotius writes:

> The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.

So, even though Grotius accepts the need for private property, agreeing that "the first one taking possession would have the right to use things not claimed and to consume them up to the limit of his needs, and any one depriving him of that right would commit an unjust act" (Vol.2, Book I, II, 1.5), he also views the public use of property as part of the civil power of the state in the same category of "the making of peace, of war, and of treaties ; or things, such as taxes, and other things of a like nature" (Vol. 2. Book I, III,VI.2). As Grotius clarifies:

> [T]hrough the agency of the king even a right gained by subjects can be taken from them in two ways, either as a penalty, or by the force of eminent domain. But in order that this may be done by the power of eminent domain the first requisite is public advantage; then,

[2] See Lenhoff, Arthur. 1942."Development of the Concept of Eminent Domain." *Columbia Law Review* 42(4): 596–638.

> that compensation from the public funds be made, if possible, to the one who has lost its right (supra note 214, bk. VIII, ch. 14, § 7).

This idea is later included in the Fifth Amendment of the United States Constitution, authored by James Madison, which states that "private property [shall not] be taken for public use, without just compensation". This "Takings Clause" is a stark contrast to Locke's clear assertion of the superiority of the private realm because it is based on a claim that "public use" in relation to a conception of the public good can assert itself as superior as long as there is some kind of "just compensation" to the private user. Later, the Fourteenth Amendment extends the clause to actions by state and local governments. This has led to variety of conflicts between private individuals and governments, more recently focused on the impact of environmental laws and associated regulations.

III Hobbes

Thomas Hobbes did not understand property as a right but as a human convention. The only natural right maintained by individuals living under a public or civil power is the right to self-preservation. Therefore, quite unlike Locke and distinct from Grotius, Hobbes sees public property backed by the sovereign power of the state as fundamentally superior to private property, without any requirement to articulate the "public advantage."

The rationale for this assertion is that private individuals cannot regulate or maintain the use of their lands without the "common power" of the sovereign. He writes, "Seeing then without human law all things would be common, and this community a cause of encroachment, envy, slaughter, and continual war of one upon another" (Dialogue, 58). This conclusion fits within the purview of his most well-known work, *Leviathan*. It is a book about civil war or, more accurately, how civil war can be avoided by the proper understanding and implementation of state power. He comes to write on this subject matter earnestly as his native England suffered through a series of civil conflicts from 1641-1651. What is now collectively called the English Civil War, these conflicts stemmed from a fundamental disagreement between the English Parliament and the King Charles I over who had the ultimate and *legitimate* right to rule. Like the thinkers above, Hobbes rejects the traditional concept of divine right as the foundation for legitimacy or the ordering principle for the state and replaces it with the capacity to make and enforce a social contract.

It is with this problem of legitimacy in mind that Hobbes explains in *Leviathan* that in a state where the citizenry split their allegiance between conflicting political factions there can be no clear rules, reliable trade, or physical security. The anxiety induced by the indiscriminate character of violence not only inspires insecurity but also allows for no industry, culture, trade, architecture, exploration, "no account of Time; no Arts; no Letters; no Society" (186). We can undertake no great ventures or works of any kind because every individual is preoccupied with their own preservation, having no time or imagination to conceive of anything else. The use of private property towards private ends is thus impossible without the overarching power of the state to secure the preservation of individuals.

Acquiescence to the institutions of a common power or "visible Power to keep them in awe" thus has some major benefits. Primarily, it provides a single and transparent source or object of fear — it shifts the focus of our "continual fear of violent death" from all other human

beings, to a common source. And, as a consequence, it allows for "a more contented life" or the fulfilling of desires through private economic, cultural and social projects. In other words, life within the sovereign state is not freedom from fear but is the consolidation of fear. The state still threatens the citizenry with violence so that they submit to its will or "tye[s] them by feare of punishment to the performance of their Covenants."[3] Within the sovereign state, the citizen has a determinate knowledge or foresight of how they will be punished or rewarded for their conduct; something they lack in "the state of nature" outside of state power.

Really, there is no qualitative difference between this threat and the threats competing gangs and fiefdoms make in demand for obedience— state power is not passed down by God nor is it based on some cosmological notion of the Good. But, because competing non-state actors have no monopoly on the use of violence; they have no capacity to enforce a social contract or covenant. Just as in the anarchical state of nature, their threats seem arbitrary and their promises unreliable. The sovereign state, on the other hand, has this monopoly and thus the legitimacy to offer a social contract — the signatory to such a contract can have confidence that its conditions will be met (keeping the peace and "a more contented life", for example). This is what makes state violence "legitimate force" and non-state violence illegitimate.

Somalia

This Hobbesian conception of the superiority of public property applies in an obvious way to the situation in Somalia. In 1991, Somalia's central government collapsed, and the country has experienced conflict at varying levels until the present day. Several non-state actors have attempted to claim authority and revenue capture opportunities provided by this institutional vacuum. These have included traditional clan authorities, the Islamic Courts Union and, most recently, Al-Shabab, a jihadist group currently fighting against the official Somali government and African Union peacekeepers.

Notably, two parts of northern Somalia (Somaliland and Puntland) have to a degree even 'reoccupied' this institutional vacuum by establishing self-declared autonomous states that seem to be able to reliably provide services and security for their citizens in the Grotian sense of the "public utility." However, by Hobbes's account, any legitimacy gained via the public good is compromised because neither Somaliland nor Puntland have received international recognition as autonomous states and are still considered by the Somali Federal government as part of their territory. Walls and Kibble observe that "while Somalia is essentially a failed state with international recognition, Somaliland possesses all the attributes of a working state, but without the recognition" (2010: 33). Problematically, then, while they may rightfully claim their territories via Grotius "public advantage" qualification for eminent domain, they do not have exclusive authority to enforce their own laws. In this example, then, Hobbes's conception of property conflicts with that of Grotius, as these territories are still unable to assert exclusive authority over property and thus are unable to guarantee or facilitate the acquisition or

[3] Hobbes asserts this in various ways throughout the text: "Covenants without the Sword, are but Words, and of no strength to secure man at all" (XVII, 223); "there must be some coercive Power to compell men equally to the performance of their Covenants, by the terrour of some punishment greater than the benefit they expect by the breach of their Covenant" (XV, 202) and; "Of all Passions, that which enclineth men least to break the Lawes, is Fear" (XXVII, 343).

maintenance of private property or contracts particularly in their offshore territory even though they may be able to provide some sense of security for the time being.

We can see this problem at play most clearly in the example of international piracy off of Somalia's northern coast. Notably, it was foreign actors taking advantage of the collapse of the state that initial led to the crisis driven in part by a dramatic rise in global seafood consumption (FAO, 2016). Many markets were not able to meet demand from domestic or regional fisheries so trawlers increasingly targeted distant fishing grounds, particularly in the developing world (Tickler et al., 2018). Hence, foreign trawlers were drawn to the waters off the coast of Somalia due to the rich fisheries found there as well as the low transaction costs due to the absence of regulations.[4]

The first recorded hijacking of a ship - a Hong Kong registered tanker - occurred in 2005 (The Economist, 2103). However, anecdotal accounts of attacks on foreign registered fishing vessels took place before then. The lack of notoriety of these attacks, or at least reliable data, may be because the trawlers may have been fishing illegally. This is because Somalia's central government had limited ability to enforce fishing in their marine territory. Thus, while foreign (and domestic) trawlers may have been tempted exploit fisheries close to the Somalian coast unburdened by licences and catch quotas, they would be hesitant to report being attacked while fishing illegally. While foreign trawlers may have drastically reduced their activity in Somali waters, this did not necessarily mean a return of fishing by Somali fishers. Many were apparently hesitant to put out to sea again due to the risk of being attacked by pirates or being perceived as pirates themselves by international enforcement and private maritime security (Petrovic, 2011; in Schneider and Winkler, 2013). Another important factor was the lure of piracy itself, which, while riskier, was more lucrative.

Dua (2015) suggests that Somali piracy should be thought of as occurring in two phases, with the first phase being attacks on fishing trawlers closer to shore, only then expanding to larger container ships and tankers farther offshore. This shift to attacking tankers and container ships was more lucrative and gained more attention worldwide and between 2008 and 2011 over 700 ships being attacked and over 150 ships being hijacked (IMB, 2012). The expanded scope of piracy may have brought more revenue to participants, but also required an extensive network of capital to fund the boats, engines and fuel needed for sorties farther to sea. The much larger economic losses also led the United Nations Security Council to invoke Article 7 of the UN Charter, allowing for coordinated military enforcement on the high seas (Elmi et al., 2015).

Shortland (2015), in discussing the rapid rise, then fall of piracy off Somalia likens the inflection point in 2007-2008 right before the rapid rise in piracy as a "Goldilocks period", where the costs of piracy incurred by shipping was low enough to be paid off without requiring additional mitigation, but not yet high enough to attract international attention and naval activity. Following this period, a synergistic relationship between escalating ransoms and increased investment in piracy led to longer ransom negotiations and the 'hardening' of commercial vessels, either through lethal or non-lethal means. This led to a decline in the return to piracy due

[4] A lack of state presence on the water may have also encouraged other illicit activities by foreign actors. Allegations of toxic waste dumping off the Somali coastline have been made repeatedly since 1991. A series of investigations by international agencies however did not however establish definitive proof that dumping had taken place (UN, 2011). At the same time, monitoring for offshore toxic waste is difficult by nature, and is made even more demanding given the limited capacity and greater risk in the Somali context.

to costs of housing hijacked crew during negotiations. Moreover, commercial vessels became more risky targets to attack due to the growing use of lethal and non-lethal measures, which threatened damage or loss of pirate vessels, injury or death. Gilmer (2017) claims that by 2012, the residents of many coastal communities in Somalia "had already successfully chased pirates out of town" (1371)

But, perhaps more important for the present work is Shortland and Varese's (2016) suggestion that Somali piracy did not act in a complete institutional vacuum. Indeed, the authors argue that piracy could not have taken place to the extent that it did in Somalia without strong *local* institutions. The ability for hijacked vessels to cross extensive distances along the Somali coast and the honouring of existing ransom agreements (that is, without a risk of a freed ship immediately becoming hijacked again), would not have happened without coordination between intermediaries on the ground. Hence it is not surprising that incidents of piracy were also not uniformly distributed off the Somali coastline. The southernmost part of Somalia, despite experiencing the severest levels of government collapse, did not have correspondingly high levels of piracy (Coggins, 2016). Correspondingly, the northernmost part of Somalia, the self-declared republic of Somaliland, has also experienced low levels of piracy.

The lack of piracy in Somaliland may be due to increased institutional capacity, such as a coast guard. However, Hastings and Philips (2018) submit that Somaliland did not yet have the physical capacity to enforce state authority at sea during the height of pirate activities. Dissuading pirate activity arose instead, the authors argue, from a discourse of shared identity, order and stability among Somalilanders that reinforced and justified their separation from the rest of Somalia. Put otherwise, "Somalilanders have instead collectively defined – and purposefully articulated – piracy out of their Independence discourse, essentially shaming it out of existence as something that is incongruent with the Somaliland identity" (Hastings and Phillips, 2018; 10).

Rangeland in the Western U.S.

Our second case reflects the long history of conflict over land use and resistance to perceived federal overreach in rural areas of the United States. This is especially apparent in the western United States, where the federal government has the largest proportional land holdings, yet is the most distant from the centres of power and influence. Following the frequently violent state and private efforts to remove indigenous populations and the extirpation of the buffalo population, the arid regions of the western U.S. were quickly occupied by livestock, especially sheep. At this point, there was no specific allocation of grazing rights. Rather, land was treated as a commons where anyone could graze their livestock. Sheep were well suited to the environmental conditions and fed a growing demand for wool for mills in the east.

Conflict emerged again as cattle herders began to move into the west. The issue was not only over sharing land where the frontier had long since closed. Cattle herders claimed that sheep grazing was detrimental to their livelihoods, as sheep could not only outcompete cattle by being able to eat a wider range of plants, but also overgraze rangelands in general, limiting their productivity (Dick, 1970; cited in Linley, 1999). Vigilante cattle herders slaughtered thousands of sheep and demarcated areas that were restricted for cattle alone. Foss (1960) argued that this conflict did not occur simply over conflict over land, but rather that more common land (belonging to the state) had to be offered as homestead and more distinct ownership was needed:

> The old lawless West of range wars and conflicts between homesteaders and stockmen, and between cattlemen and sheepmen, was lawless not because it was populated by a peculiar breed of hyper aggressive and unscrupulous people, but because of political acts which resulted in land policies that were not suited to the region and that had the effect of encouraging conflict, insecurity, and disrespect for law. Congress offered the homesteader a piece of land so small that he was forced to use public land that did not belong to him. (Foss, 1960, 30-31; cited in Linley, 1999)

As it plays out, the "public use" of these grazing lands functioning under a Grotian conception of the public good comes to conflict with a Lockean view of private use for private goods. The 'range wars' that characterized the late 1800s and early 1900s were reignited in the 1970s with the Sagebrush Rebellion, although in this instance it was a reaction against the federal government, rather than a conflict among private users. The Sagebrush Rebellion was really a series of efforts to devolve control of federal lands in the western US to state or local levels, usually for grazing. What precipitated the Sagebrush Rebellion was the 1976 decision by the federal government to end homesteading, where individuals could claim certain federal lands by settling and developing it. But, during the same period, there was also a move to increase protection of federal lands through restriction of certain recreational and commercial activities, such as offroad vehicles and grazing, respectively. Along with the earlier passage of the Endangered Species Act of 1973, the groundwork was laid for future conflict between the ranchers and the federal government.

According to Abelson (1993), this conflict hinges on different interpretations of grazing rights. "The Fifth Amendment's Takings Clause has emerged as a critical battleground in this dispute over whether a federal grazing permit constitutes a private property right or a mere license" (409). The ranchers make a Lockean claim that the right to graze their cattle on public lands is a private property right in a similar way that "riparian rights" for water use on farms for irrigation gives farmers ownership of the water from rivers and other waterways. Adler (2019) compares grazing rights with "prior appropriation" judgements for riparian rights "Advocates of private grazing rights on public lands have cited the same right of appropriation as applies to water" (786).[5]

This claim then conflicts with environmental laws such as the Endangered Species Act. Under the Takings Clause, "the government can take property through the enforcement of

[5] Adler (2019) goes on to review some of the case law:

> Falen and Budd-Falen argued that grazing preferences under the Taylor Grazing Act and laws applicable to National Forest lands are a form of property right entitled to Fifth Amendment protection. Stimpert asserted that grazing permits are a form of property entitled to procedural due process rights. Nelson suggested that ongoing environmental problems could be resolved by clearer delineation of property rights in public land grazing. Anderson and Hill argued that contractual or other sanctioned property interests would enhance economic efficiency of grazing resource use. Despite substantial differences in these claims, they share several common themes that natural law ranch advocates have adopted (786).

regulations" (Abelson, 411). So, in this instance, enforcement of the Endangered Species Act gives the government eminent domain over the private property right to graze cattle on public lands. Whether or not "grazing rights" can be considered private property is certainly a matter of legal debate. However, for our purposes, it is the conflicting conceptions of property that matter: with the ranchers making a claim to private property and the federal government making a claim to the public good.

Perhaps the best example of this conflict took place in an area around Bunkerville, Nevada in the early 2000s, notable for both the level of potential violence on both sides and the philosophies that the ranchers used to justify their claims to federal land. The patriarch of the Bundy family, Cliven Bundy, had been illegally grazing his cattle on land owned by the Federal Bureau of Land Management (BLM) since 1993. Cliven Bundy had stopped paying after the BLM imposed seasonal grazing restrictions in order to protect an endangered species of tortoise, protected under the Endangered Species Act. In the years that Mr. Bundy and his family ignored repeated orders to both cease grazing and pay the fines in arrears. In April 2014, the BLM attempted to seize cattle owned by Bundy. A standoff with Bundy and his sons resulted in the BLM officers backing down. However, the BLM attempted a second seizure of Bundy's cattle a few days later. The BLM officers were outnumbered, not only by local residents, but also by members of various right wing and libertarian militias. The BLM officers again retreated.

Since the 2014 standoff, the federal government has charged Mr. Bundy, some of his sons and associates with various offences, however the process ended in a mistrial due to withholding of evidence by the prosecution. As of 2018, Mr. Bundy continued to graze his cattle without paying fees (Sottile, 2018). However, his repeated efforts to have all federal public lands in Nevada declared as belonging to the State of Nevada have failed.[6]

While this particular case gained national and international attention, it is just one manifestation in the United States of a long and deep conflict related to the assertion of private property rights on public lands. Again, ranchers like Bundy make the Lockean claim that "ranchers have a pre-existing or preemptive right in the federal range" (Abelson, 410) exclusive to grazing.

Boston Winter Parking

Our last example concerns the practice of space saving in Boston. While not as contentious as the example above, it illustrates similar features with private citizens making claims to public space. Space saving typically occurs in dense neighbourhoods where most of the parking is along streets. After a snowfall, the city clears the streets by ploughing snow off to the sides. The snow is pushed against the cars parked along the street and owners usually have to shovel this snow away from their cars in order to pull out. Once having left the parking space, owners will place objects in the space as a way of keeping it reserved until they return. The most common rationale identified by supporters of the practice of space saving is that they 'earned' the space by putting in the labour of clearing the snow. Put otherwise, individuals believe have

[6] The federal government owns 85% of land in Nevada. There was a persistent argument among some Nevadans that federal land should have been transferred to the state once Nevada gained statehood. In 1979, the Nevada legislature approved of legislation to assume ownership of federal lands, these laws were ruled unconstitutional by the U.S. Supreme Court in 1986 (Linley, 1999).

added value to the space by removing the obstacle to its use. Here we see the Lockean claim that private property is more "Fruitfull" than public.

While the phenomenon of saving parking spaces happens in other urban centres in North America such as Philadelphia and Chicago, we focus on its occurrence in southern Boston (more specifically, the neighbourhoods of South Boston and South End). This is because in Boston, the practice seems to have been especially commented upon in newspapers, social media and academia. This volume of comments allows a better opportunity to analyze the way supporters and detractors justify their positions over space saving. These debates are not just over differing philosophies regarding public and private properties, but instead engender broader economic and social trends in the urban landscape such as gentrification and ethnicity.

The history of space saving in Boston is unclear. Some accounts trace its emergence to an especially large snowstorm in 1978. Residents typically identify it as having been a feature of their neighbourhood for several decades. Views regarding the justification of space saving are polarized. Media descriptions and online debates in all cases typically portray the practice as something that is characteristic of South Boston and South End neighbourhoods. However, supporters of space saving see it as a traditional practice evocative of a time when the majority of residents lived as families and neighbours knew each other and there was a shared respect of informal institutions such as space saving. By contrast, critics typically label space saving as a selfish practice, being not only illegal, but also inefficient, as it essentially removes a parking space from use, even when the claimant doesn't need it.

Despite space saving being de facto illegal encroachment of municipal property, the City of Boston has been surprisingly accommodating. In the winter of 2004-2005, Boston Mayor Thomas Menino of announced that all space savers had to be removed 48 hours after the end of a city-declared 'snow emergency' (Goodnough, 2010). Once that time period elapsed, city crews would remove any space savers on city streets. This policy, while seeming like enforcement, simultaneously legitimized an informal (and illegal) practice. At the same time, it did not provide for enforcement of the rights of the person who had placed the space saver in cases where it had been removed by another driver (Baker, 2015a). The city administration demurred from getting involved in such disputes, deeming them as "neighbor to neighbor disputes" according to the mayor's spokeswoman (Baker, 2015a). Following a winter storm in 2015 that saw Boston receiving record snowfalls, the mayor also relaxed his 48-hr post storm deadline for space savers (Planas, 2015).

Tolerance of space savers differed among Boston neighbourhoods. In 2015, the City of Boston allowed the neighbourhood of South End to ban space savers. South End was given this authority after the South End Forum, a coalition of 15 neighbourhood community and business associations unanimously agreed to the measure (Baker, 2015b). Space savers are removed by the city during the twice weekly waste collection, regardless of whether it has snowed or not, and residents can also report space savers that need removal. The South End Forum also encouraged residents to send the names and licence plate numbers of vehicle owners who ignored the ban, as well as setting up a fund to cover vandalism arising from space saver removal (Baker, 2015b). This was significant, as not only was the South End Forum banning something that was already illegal, but it was unclear if they had the authority to enact local-level policies. Similar to the city's attitude towards space saving, the de facto authority of the South End Forum was given legitimacy by municipal cooperation despite this legal ambiguity.

In January 2018, after a large snowfall and multiple media reports of menacing signs attached to space savers, Mayor Walsh threatened to end the tolerance of space savers citywide (Reiss, 2018). The mayor stated on a television talk show that "*The space isn't your space…You did the work to get your car out, but it's a city street*." Mayor Walsh softened his tone in a follow up tweet stating that while there were no plans to change the space saver policy, he disapproved of the threatening messages left on cars. As of the winter of 2018-2019, the city of Boston's policy towards space savers remains unchanged: space savers are only tolerated for 48 hrs after a snow emergency (Boston.gov, 2019).

Conclusion

We now consider the examples of private incursion into public space described above in the context of the three models of private/public distinction established by Locke, Grotius and Hobbes. To briefly review, Locke steadfastly believed in right of private ownership gained by one's own labour. Moreover, to the greatest extent possible, property should be private, despite any apparent public good or utility. This view of the primacy of private ownership clearly resonates with those who use space savers in Boston. The individual, by clearing away the parking space, has mixed their 'labour with snow', so to speak. A similar view would likely be held by the Bundy family and their supporters, in that BLM land prohibited grazing, even seasonally, was limiting the value that could be extracted from it.

Grotius similarly recognized the right of private property, but also accepted that conditions may allow for state incursion to serve public utility. Hobbes argued for the primacy of the state over private property, given that only a singular authority (the state) could ensure that social contracts (such as the respect of private property) were universally respected. This appeal of a single, unifying locus of order is evident in how piracy failed to take hold in Somaliland. The nationalist narrative of the region and its inhabitants emphasized both the importance of not only state authority, but a sovereign Somaliland, with the benefits, such as peace and economic development, that might come with it. It also buttresses the critiques of space saving in Boston. This is because the norms of who used space savers, under what conditions and with what sanctions might be applied to someone who removed them varied according to the individual. Without consistency of space saver policy, discord was not only inevitable, it made good headlines.

It is also apparent that in all three examples there are the spatial and temporal limits to the incursion of private activities into public spaces. These limits are the most apparent in the case of Somalia, where there was the aforementioned "Goldilocks period" of peak piracy activity. The pirates thrived for a period in the absence of a singular authority in the Somali marine territory. However, mounting attacks and growing ransoms soon led to a coalition of state and private actors to enforce authority within and adjacent to Somali waters. Pirate activity also occupied a spatial "sweet spot", where too little institutional arrangement in southern Somalia meant that even piracy couldn't work, as even pirates required a *Leviathan*-like sense of clear rules and reliable trade, mediated by local-level institutions. By contrast, in northern Somalia/Somaliland, acting against piracy legitimized the breakaway state's desire for international recognition. Our research did not consider whether Lockean justifications for incursions onto 'wasted' federal rangelands in the western U.S. varied over time. In the case of the Bundy standoff in Nevada, illegal use of federal land had gone on for years. The justification for occupation was not absolute, however, as seen when Bundy and sympathizers occupied the Malheur National

Wildlife Refuge (MNWR) in Oregon. The broad support the Bundy family gained in their occupation in Nevada eroded by those who thought that they their occupation of MNWR, some 600 miles north in Oregon. For example, the Oath Keepers, a limited-government organization comprised of former and serving military and police members, supported the Bundy occupation in Nevada. However, Stewart Rhodes, the Oath Keeper founder and president, claimed in New York Times that he ordered his group to have a more limited presence at MNWR (Turkewitz, 2016). The distinction, the article suggests, is that while groups sympathetic to what was perceived as a threat to the Bundys' livelihoods from restricted grazing space, the occupation of MNWR was more on principle.

The final example of space saving in Boston suggests a similar 'sweet spot' of environmental and demographic factors that allowed incursion into public spaces. Many urban centres in North America experience heavy snowfalls that need to be cleared. However, we speculate that Boston's prevailing climate is such that it experiences enough snow for local Lockean norms to emerge and persist, but not enough snow for the city of Boston to invest in enough clearing equipment to ensure that streets are cleared completely of snow. Similarly, the relative demographic homogeneity of the neighbourhood of South Boston may have allowed the space saving norm to take hold more easily (and for the narrative of community tradition to persist). By contrast, the rapid gentrification of the adjacent South End neighbourhood may have weakened the strength of the space saving-community narrative, allowing for the establishment of a new community norm banning space savers in that neighbourhood.

References

Abelson, David. 1993. "Water Rights and Grazing Permits: Transforming Public Lands into Private Lands." *U. Colo. L. Rev.* 65 (1993-94): 407-426.

Adler, Robert. 2019. "Natural Resources and Natural Law Part I: Prior Appropriation." *William & Mary Law Review* 60(3): 739-808.

Boston.gov 2019. "Winter In Boston" *www.boston.gov/winter-boston#space-savers* (April 11, 2019).

Baker, Billy. 2015a. "Space Saver Justice Undercuts Ban in South End." *Boston Globe* February 16.

Baker, Billy. 2015b. "South End bans parking spot savers." *Boston Globe* January 4th.

Coggins, Bridget. 2016. "Failing and the Seven Seas? Somali piracy in global perspective.", *Journal of Global Security Studies* 1(4): 251-269.

Dick, Everett. 1970. *The Lure of the Land: a social history of the public lands from the Articles of Confederation to the New Deal*. Lincoln: University of Nebraska Press.

Dua, Jatin. 2015. "After piracy? Mapping the means and ends of maritime predation in the Western Indian Ocean." *Journal of Eastern African Studies*. 9(3): 505-521.

Elmi, Afyare, Ladan, Affi, Knight, Andy et al. 2015. "Piracy in the Horn of Africa Waters: Definitions, History and Modern Causes." *African Security* 8(3): 147-165.

FAO. 2016. *The State of World Fisheries and Aquaculture 2016*. Rome: Food and Agriculture Organization.

Foss, Philip. 1960. *Politics and Grass: The Administration of Grazing on the Public Domain.* Seattle: University of Washington Press.

Gilmer, Brittany. 2017. "Hedonists and husbands: piracy narratives, gender demands and local political economic realities in Somalia." *Third World Quarterly* 38(6): 1366-1380.

Goodnough, Abby. 2010. "Making It Clear That a Clear Parking Space Isn't." *New York Times* December 28.

Hanson, Donald. 1970. *From Kingdom to Commonwealth: The Development of Civic Consciousness in English Political Thought*. Cambridge: Harvard University Press.

Hastings, Justin. and Sarah Philips. 2018. "Order beyond the state: explaining Somaliland's avoidance of maritime piracy." *J. of Modern African Studies* 56(1):5-30.

Hobbes, Thomas. 1997. *A Dialogue between a Philosopher and a Student of the Common Laws of England*. Chicago: University of Chicago Press.

Horwitz, Morton. 1982. "The History of the Public/Private Distinction", *University of Pennsylvania Law Review* 130: 1423-1428.

International Maritime Bureau. 2012. *Piracy and armed robbery against ships*. In: Special Report, 2012. London: International Maritime Bureau.

Linley, William. 1999. "From Oregon's Range War to Nevada's Sagebrush Rebellion." *Journal of the West* 38(1): 56-61.

Macpherson, C.B. 1962. *The political theory of possessive individualism: Hobbes to Locke*. Oxford: Clarendon Press.

Planas, Antonio. 2015. "Marty Walsh ices saver policy." *Boston Herald* February 22.

Reiss, Jaclyn. 2018. "Walsh warns he'll end space saver rule if people aren't nicer to each other." *Boston Globe* January 11.

Schneider, Patricia and Mathias Winkler. 2013. "The Robin Hood Narrative: A Discussion of Empirical and Ethical Legitimizations of Somali Pirates." *Ocean Development and International Law* 44:185–201.

Shortland, Anja. 2015. "Can we stop talking about Somali piracy now? A personal review of Somali piracy studies." *Peace Economics, Peace Science and Public Policy* 21(4):419-431.

Shortland, Anja and Federico Varese. 2016. "State-building, Informal Governance and Organized Crime: The Case of Somali Piracy." *Political Studies* 64(4): 811-831.

Sottile, Leah. 2018. "Report: FBI suggested waiving fees for Cliven Bundy before ranch standoff, did not consider him a threat." *Washington Post* December 8.

Sweeney, C. 2017. "Space Savers are Banned in the South End". Boston Magazine. February 9, 2017.

The Economist. 2013. "What Happened to Somalia's Pirates?" May 20.

Tickler, D., Meeuwig, J., Palomares, M-L. and Pauly, D. 2018. “Far from home: Distance patterns of global fishing fleets.” *Science Advances* 4(8), eaar3279.

Turkewitz, Julie. 2016. “Bundy Brothers, Who Sought to Rally a Nation, Draw Scant Support at Trial.” *New York Times* October 2.

U.N. 2011. *Report of the Secretary-General on the protection of Somali natural resources and waters.* 25 October. New York: United Nations.

Walls, Michael, and Steve Kibble. 2010. “Beyond Polarity: Negotiating a Hybrid State in Somaliland.” *Africa Spectrum*. 45(1): 31-56.

Wyndham, Katherine. 1980. Crown land and royal patronage in mid-sixteenth century England. *Journal of British Studies*, *19*(2):18-34.