**Dear Contributor,**

Enclosed please find page proofs for your article scheduled to be published in ***Ethics & International Affairs***. Please follow these procedures:

Please list the corrections in an email, citing page number, paragraph number, and line number. Send the corrections to Katie Wurtzel ( kwurtzel@cambridge.org), Adam Read-Brown (areadbrown@cceia.org), John Tessitore (johntess@cox.net) and John Krzyzaniak (jkrzyzaniak@cceia.org ).

You are responsible for correcting your proofs. Errors not found may appear in the published journal.

The proof is sent to you for correction of typographical errors only. Revision of the substance of the text is not permitted, unless discussed with the editor of the journal.

Please answer carefully any queries raised from the typesetter.

A new copy of a figure must be provided if a correction is required - please provide this in EPS or TIFF format to the production editor.

To order reprints or offprints of your article or a printed copy of the issue, please visit the Cambridge University Reprint Order Center online at: www.sheridan.com/cup/eoc

Please note that delay in returning your proofs may require publication without your corrections.

Thank you for your prompt attention to these proofs. Please contact me if you have any questions or concerns.

Sincerely,

Katie Wurtzel

Cambridge University Press
One Liberty Plaza
New York, NY 10006
phone: 212-337-6541
fax: 212-337-5959
Email: ddavis@cambridge.org

# Author Queries

*Journal:* EIA (Ethics & International Affairs)

*Manuscript:* S0892679418000527jra

**Q1** The distinction between surnames can be ambiguous, therefore to ensure accurate tagging for indexing purposes online (eg for PubMed entries), please check that the highlighted surnames have been correctly identified, that all names are in the correct order and spelt correctly.

# The Moral Limits of Territorial Claims in Antarctica

Q1 *Alejandra Mancilla**

For those interested in Antarctica, the year 2048 is a key date. This is the year when the Protocol on Environmental Protection—which established a total ban on the exploitation of mineral resources on the White Continent since its entry into force in 1998—becomes open for modification or amendment by any of the consultative parties of the Antarctic Treaty (currently numbering 29).[1] This leaves the door open for a new Antarctic era in which the preservation of its pristine environment might no longer be a shared goal, and where the prospects of economic gain might raise the issue of who is entitled to profit. In the thirty years leading up to 2048, moreover, countries such as China and South Korea will appear ever more prominently as actors with decisive roles in Antarctic politics, even though they were "latecomers" to the Antarctic Treaty System (ATS).[2] To complicate things further, there are several nearer-term challenges, including a rising number of visitors (tourists, scientists, and commercial operators), competition for living natural resources (from fishing to bioprospecting), and climate change.[3] All these factors will test the governance of the ATS and its capacity to preserve Antarctica as (to use the cliché) the most protected continent on Earth.

*I am very grateful to Alfonso Donoso for extensive comments on previous versions of this article. I would also like to thank Megan Blomfield, Kerstin Reibold, Chris Armstrong, and Andreas Føllesdal for written feedback, José Retamales for the illuminating conversations on the topic, and the audiences at the following venues: the "Territorial Rights and Rivers" Workshop, University of Cork; the "Territorial Challenges" Conference, Université du Québec à Montréal; the CSMN Final Conference and "Political Philosophy Looks to Antarctica" Workshop, University of Oslo; and the Political Science Seminar and Seminar on International Legal and Political Theory, University of Oslo. I also thank NorLARNet for financing the Workshop "Norway, Chile, and Argentina as Original Claimants and Current Guardians of Peace, Science, and Environmental Protection in Antarctica," University of Tromsø, where a seminal version of this article was presented. Finally, I thank the editors and anonymous reviewers of *Ethics & International Affairs* for giving me substantial feedback, and Hannah Monsrud Sandvik for her research assistance. This work has been financially supported by the Research Council of Norway, as part of the research project "Political Philosophy Looks to Antarctica."

*Ethics & International Affairs*, 32, no. 3 (2018), pp. 1–22.

doi:10.1017/S0892679418000527

In this context, the purpose of this article is to provide a moral assessment of the claims made by the seven original claimants to Antarctic territory, which have remained "frozen" since the Antarctic Treaty entered into force. Chronologically, from 1908 to 1940, the United Kingdom, New Zealand, France, Australia, Norway, Argentina, and Chile officially delimited their claims over various parts of the continent (with the claims of Argentina, Chile, and the United Kingdom overlapping in the Antarctic Peninsula).[4] While these sovereign claims have been in an international legal limbo for almost sixty years now, it is worth asking how we would evaluate their grounds if they ever "melted"—that is, if the AT were radically modified or came to an end.

This might seem to some as an otiose question: Why ask about the moral justifiability of the original claims when the ATS has worked as a smooth international arrangement, regarded by many as a surprisingly successful diplomatic feat?[5] Why speculate about the future of an international system with a growing membership and expanding institutional governance?[6]

The question, however, is an important one if one bears in mind the challenges mentioned above, the quick and sometimes surprising evolution of international law, and the changing attitudes and assumptions of those who make it and uphold it. A further reason why this question is worth posing is that, even though the topic of sovereignty is conveniently put to the side during AT meetings, at the domestic level (and sometimes also at the international level) the seven claimant countries insist on what they take to be their sovereign claims, and educate their citizens on the belief that their territorial aspirations rightly extend all the way to the South Pole. Thus, even if their claims remain frozen for a long time into the future, it is important for these countries and their people to have a clearer picture of the foundations that support their claims, and to evaluate them candidly. They should be able to distinguish, in other words, between what is morally justifiable and what is a bare assertion of realpolitik, or simply a smart rhetorical move. This evaluation is a modest, but necessary, preliminary step toward a more complete assessment that takes into account the potential claims of other parties,[7] the appearance of new actors, the position of third parties, and the heated discussions about the territorial status of Antarctica that have emerged since the AT was signed. Indeed, what came to be known in the United Nations as the "Question of Antarctica" was first raised by Prime Minister Mahathir of Malaysia. In 1982, during a meeting of the UN General Assembly, Mahathir proposed that the whole continent should be declared "the common heritage of all the nations

of this planet," and that its administration should be the responsibility of the international community rather than an exclusive group of countries.[8] Another discussion has revolved around whether claimant states should extend their claims to the surrounding territorial waters and seabed.[9]

The article is organized as follows. In the next section, I present a short historical background of Antarctic politics leading to the AT. I then present the main grounds given to support territorial claims in Antarctica, and divide them in two main types. On the one hand, states use connection-based grounds that justify territorial claims on some morally relevant link between the state and the territory. On the other hand, there are official documents and geographical doctrines that states offer as grounds for claiming sovereignty. I then appraise these grounds and point to their main limitations. While the former seem overall more compelling than the latter, they are far from sufficient to justify claims as they stand in their entirety. Finally, I suggest that this assessment ought to serve as a starting point to rethink the territorial status of Antarctica.

Three clarifications are in place before proceeding. First, as the title suggests, the assessment that I am interested in is moral, not legal or geopolitical. The latter assessments have abounded since the AT was signed,[10] but a systematic moral assessment still remains to be done.[11] While such an assessment may converge with the legal and geopolitical in some respects, it may also look at them with a critical eye. An underlying assumption of this article, then, is that international politics should not just be about force and rhetoric, but also about giving reasons to others that are consistent with some core moral principles—such as fairness in representation and distribution of resources—and thus acceptable to them.

A second clarification is that I understand the claims under examination as the claimants themselves understand them, to wit, as comprising the three main aspects of territorial rights: jurisdiction, border control, and control over land and natural resources.[12] In other words, I understand them as claims to full territorial sovereignty over the Antarctic areas in question. The arguments (as well as the problems and challenges) that I present are therefore arguments (and problems and challenges) for this full-fledged type of claim only. The conclusions would be very different if what was at stake were more restricted demands—for example, rights over certain resources detached from jurisdiction or border control. In fact, an obvious follow-up to this inquiry is to analyze how the standard territorial package could be unbundled in Antarctica, and whether it should be.

A third and final clarification is that there is no tidy database available where one can find the moral justifications given by each country to support their Antarctic claims.[13] Rather, the grounds offered below have been sifted from official documents and channels, and from the writings of legal experts and historians. Neither is there a clear hierarchy among the various claims. And while some appear more prominently than others, it is important to note that they are weighed differently by the different claimants in different contexts.

## Historical Background

Although seal hunting and whaling had been going on in Antarctic and sub-Antarctic waters since the eighteenth century, it was at the turn of the twentieth century when the political, economic, and strategic interest of a few countries over these regions mounted. In the decades to follow, these interests (sometimes conflicting and overlapping) led to a territorial race for the White Continent—a race characterized by a "lordly, and even pontifical, fashion to dispose of islands and lands" by some of the contestants.[14] It was also characterized by such displays of sovereignty as erecting flagstaffs and swastikas here and there, leaving written claims under cairns so that they might be preserved as proof of occupation for posterity, and painting the buildings of foreign whaling companies in one's own national colors to remind them in whose territory they were residing.[15]

The first claim to the Antarctic continent was made in 1908, when the United Kingdom issued its first Letters Patent, which heedlessly included a sizeable slice of Argentinian and Chilean Patagonia and thus had to be reissued in 1917. The British claim was followed by those of New Zealand (1923), France (1924), Australia (1933), Norway (1939), Argentina (1940), and Chile (1940).[16] The British, Argentinian, and Chilean claims overlapped over the Antarctic Peninsula and some sub-Antarctic islands, while—with the exception of Norway at the time—all the claims extended all the way to the South Pole.[17] Less than 20 percent of the territory, Marie Byrd Land, remained unclaimed.

After the end of World War II, Antarctica came to be seen as a potential site for cold war hostilities. With this in mind and after various failed attempts to agree on the territorial status that the continent ought to have, in 1958 the United States invited all interested countries that had participated in the International Geophysical Year of 1957–1958 in the White Continent to lay down some main points of agreement.[18] These were as follows: "(1) that the legal *status quo* of

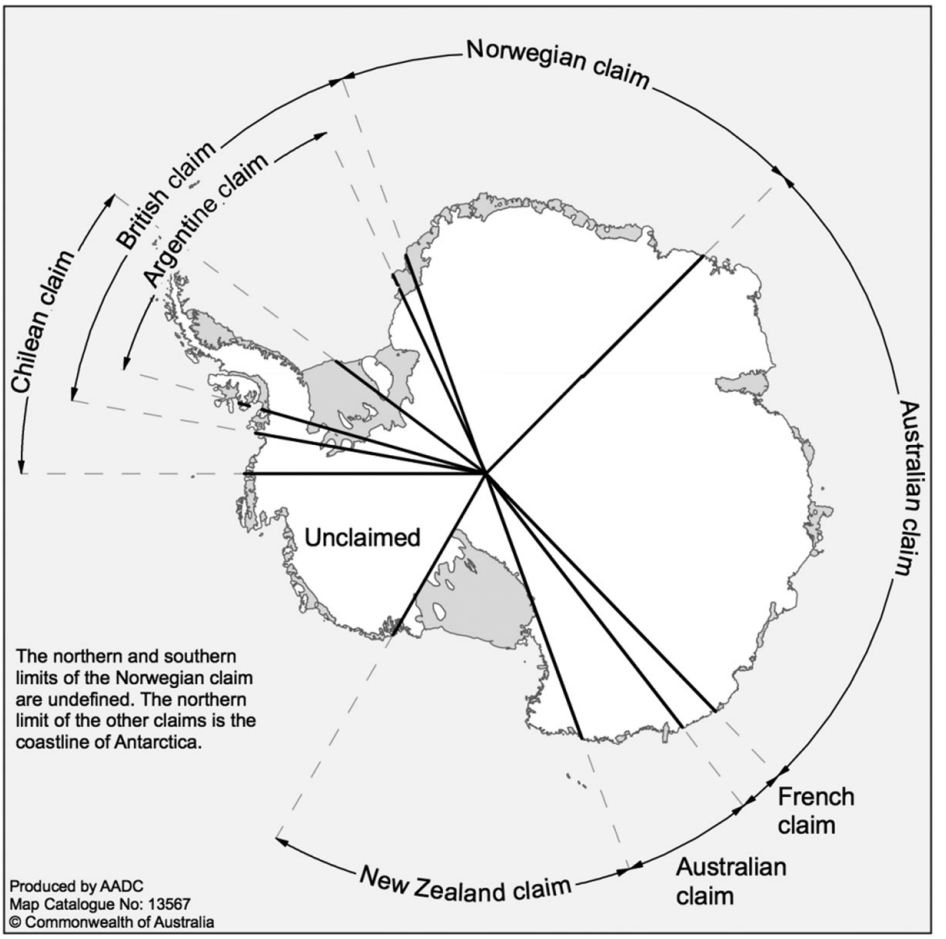


Fig. 1 - B/W online, B/W in print

the Antarctic Continent remain unchanged; (2) that scientific cooperation continue; (3) and that the continent be used for peaceful purposes only."[19]

Peace, science, and "not rattling the bar of territorial claims"[20] were the foundational values of what was to become the Antarctic Treaty, signed on December 1, 1959, in Washington, D.C., by the seven claimants plus Belgium, Japan, South Africa, the United States, and the Soviet Union. It has been repeatedly pointed out that Article IV, which froze the question of sovereignty, was key to the success of the AT. A one-size-fits-all, it recognized the original claims and also the potential basis of claim of some of the contracting parties, notably the United States and the Soviet Union, which made no claim, recognized none, and reserved their right to make their own in the future. Moreover, it stipulated that no further acts by the

claimant countries (such as the building of bases, the appointment of military and/or scientific personnel, the birth of their nationals in Antarctica, and so on) would count as additional grounds for strengthening or extending their claims. It also stipulated that no acts or activities taking place while the AT was in force would give grounds to assert new claims or deny the original ones.[21] But even today, however silent at the AT meetings the seven claimant states might be regarding their sovereign claims, they have not relinquished their territorial aspirations. In the next section, I look at the reasons they give to support them.

## On What Grounds Do States Claim Antarctic Territory?

The grounds over which the original claimants justify their territorial claims to Antarctica can be classified into two main types. On the one hand, there are those that rely on a more or less tangible link between the state and the territory—a link created by the state's actual (and also symbolic) presence there. I call these "connection-based grounds," and they consist of (i) first exploration and discovery; (ii) scientific exploration and expeditions; (iii) the exploitation of natural resources; and (iv) state activity. On the other hand, there are those that rely on official documents or geographical doctrines, quite independently from an actual (or symbolic) presence or activity in the claimed area. Among these grounds are (v) the principle of *uti possidetis iuris* (a principle of international law whereby newly formed states kept the same boundaries of their former administrative divisions, from the time when they were dependent areas);[22] (vi) the legal transfer of territory; (vii) geographical continuity and contiguity, and (viii) the sector principle. In what follows I will briefly review these claims and exemplify their use by the seven claimants.[23]

### *Connection-Based Grounds*

#### First exploration and discovery

The first exploration and discovery of the sub-Antarctic islands and of the Antarctic landmass and surrounding sea is a reason given by the British, Norwegians, French, Australians, and New Zealanders to support their territorial claims. In its pleadings against Argentina and Chile, presented to the International Court of Justice in 1955, the United Kingdom claimed that "the first discoveries of South Georgia, the South Sandwich Islands, the South Orkneys, the South Shetlands [Coats Land], and Graham Land were all made by British nationals"

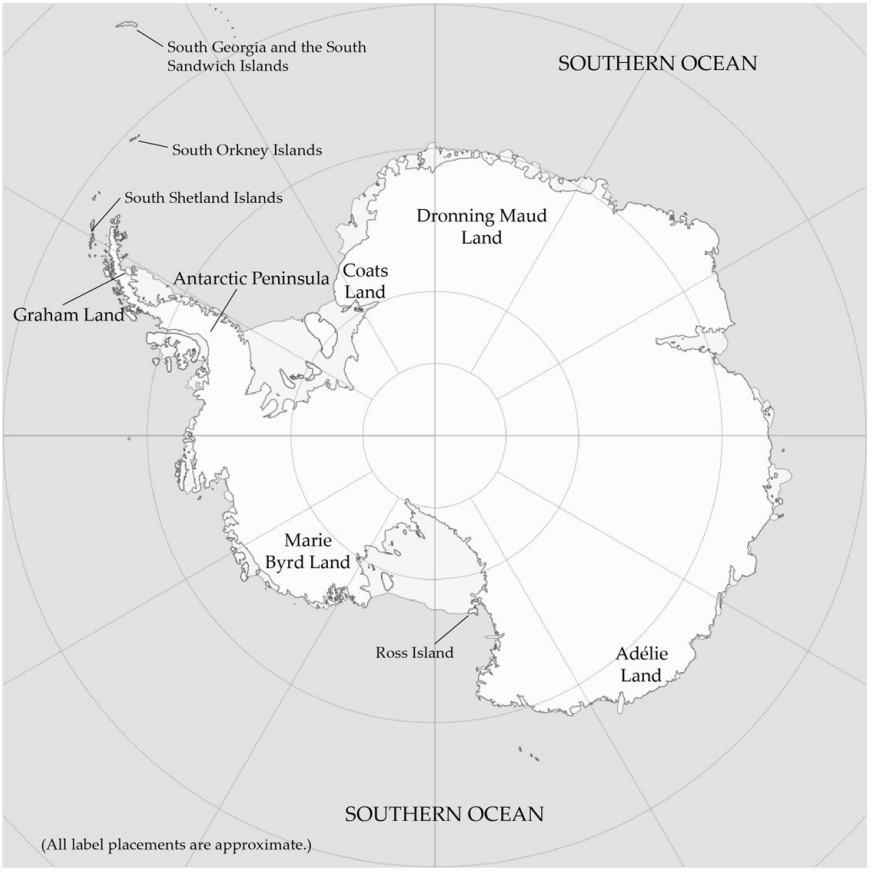


Fig. 2 - B/W online, B/W in print

and that, on the basis of these discoveries, "Great Britain possessed … *an original root of title* to all the territories concerned."[24] Norwegians, meanwhile, remind us that it was Roald Amundsen, one of their own, who first reached the South Pole in 1911 and who, in the course of that expedition, "discovered large areas that were named and taken into possession on behalf of the King of Norway."[25] The Australian Antarctic Division founds its "long *association* with [Antarctica]" on the 1911–1914 Australasian Antarctic Expedition led by Douglas Mawson, while the French base their claim on Dumont D'Urville's discovery of Adélie Land in 1840.[26] New Zealanders, finally, also underline their "Antarctic Firsts": from Tuati, the first New Zealander to sight Antarctic mainland in 1840 while on a U.S.-led voyage, to Alexander Von Tunzelmann, possibly the first man to set foot on the Antarctic mainland while taking part in a Norwegian-led expedition in 1895.[27]

### Scientific explorations and expeditions

Scientific explorations and expeditions are also commonly mentioned as grounds for claiming Antarctic sovereignty, even though they were not performed exclusively by nationals of the claimant countries.[28] Moreover, these expeditions were frequently multinational, like the British Southern Cross Expedition led by the Norwegian Carsten Borchgrevink, the first to voluntarily winter on the continent (1898–1900); and the 1929–1931 British, Australian, and New Zealand Antarctic Research Expedition, led by Douglas Mawson, where the latter claimed as British Antarctic Territory what is now Australian Antarctic Territory. Norway's claim to Dronning Maud Land was "legitimized in large part" by the work done by the Norvegia Expeditions, a series of scientific trips to Antarctica sponsored by the whaling entrepreneur Lars Christensen.[29]

### Exploitation of natural resources

Seal hunting in the Southern Ocean and the sub-Antarctic islands was undertaken as early as the eighteenth century by the British, Norwegians, Argentinians, and Chileans.[30] All four countries draw on these activities as demonstrating their early presence in the area. To mention two examples, one Argentinian diplomat recalled that at the beginning of the nineteenth century, seal hunters from his country had already frequented the sub-Antarctic islands "to exploit the valuable skins of those wretched creatures who fell by the hundreds of thousands under the mallets of avid sea merchants that hid with zeal the cold places where they carried out the slaughter."[31] Meanwhile, a Chilean author writing in 1954 noted that when seals became extinct in Tierra del Fuego, hunters went further south to Cape Horn and to the islands of Diego Ramírez and the South Shetlands. For him, "the exploitation of the natural resources of such regions constitutes *a completely satisfactory juridical basis* [for the Chilean claim]."[32]

Large-scale whaling in Antarctic and sub-Antarctic waters, meanwhile, surged at the turn of the twentieth century and was carried out mainly by Norwegian and British companies. As noted by Johan Nicolay Tønnessen and Arne Odd Johnsen in *The History of Modern Whaling*, "no written documents are required to prove that whaling brought to a head the question of sovereignty in the Antarctic."[33] In a few years this activity "completely altered the value of these archipelagos," and gave rise to the first settlements in the form of whaling stations, the remains of which are still to be seen in some areas.

### State activity

In international law, state activity constitutes the key element of effective occupation, a principle used to justify the extension of sovereignty to terra nullius.[34] Not surprisingly, it is mentioned by all the claimants to Antarctic territory, and it takes many forms, from the more to the less tangible. Among them are the construction and administration of stations; the permanent or intermittent presence of public servants and military personnel; the organization of rescue missions and the maintenance of navigational aids; the issuing and granting by government officials of licenses and official concessions for seal-hunting, whaling, and other types of resource exploitation in the sub-Antarctic islands and further south; the creation of national parks for the protection of some species of animals; the issuing of postage stamps; the mapping and naming of the area; and the inclusion of the area into the administrative division of the state's territory.[35]

## *Official Documents and Geographical Doctrines*

### Uti possidetis iuris

The Latin American claimants argue that, after they gained their independence from Spain, the principle to delimit their territories was *uti possidetis iuris* (literally "as you possess under law"); that is, "each new republic had absolute dominion over the lands situated within the frontiers that the Mother Land had assigned to them by Royal Charters or other documents."[36] By appealing to royal decrees and official documents from the time when they were, respectively, the Captaincy General of Chile and the Viceroyalty of the Río de La Plata, both Chile and Argentina assert that, already in colonial times their southern limits reached all the way to the South Pole. These official texts, in turn, are based on the famous 1494 Treaty of Tordesillas (which was itself based on the 1493 Papal Bull of the Spanish Pope Alexander VI), signed between the kingdoms of Spain and Portugal. By virtue of the treaty, the New World was divided between Spain and Portugal by a line that ran at 370 leagues west of the Cape Verde islands from the Arctic to the Antarctic. Even though the existence of the White Continent was at that time and until a few centuries later only speculation, both countries claim to be the right inheritors of Spanish claims in Antarctica.

### Transfer of territory

As part of the Commonwealth, Australia and New Zealand rely on a transfer of title from the British Empire to ground their claims. In the case of New Zealand, this goes back to 1923, when the Ross Dependency was established

and given to the Governor-General of New Zealand. Ten years later, the one-paragraph-long Australian Antarctic Territory Acceptance Act came into effect. Through it, Britain transferred its sovereignty over vast areas of Antarctica.[37]

### Geographic continuity and contiguity

Geographic continuity and contiguity are doctrines used in international law not as independent, but as subsidiary roots of title, normally accompanying effective occupation. They are associated with the idea of "peripheral possession," namely, that a state may be active only on the coast of a barren territory and yet retain rights over the extended periphery.[38] Argentina and Chile have repeatedly offered their contiguous position to Antarctica as support for their claim to the White Continent.[39] Geographic continuity, meanwhile, lies tacitly at the basis of all seven claims. Starting from very modestly sized coastal areas where actual human or state activity was carried out, states inflate their claims all the way to the South Pole. They do so based on "the modern view of sovereignty," according to which state activity as evidence of sovereignty "need not press uniformly on every part of the territory."[40]

### The sector principle

Canadian Senator Pascal Poirier proposed the "sector principle" in 1907 as a way to sort out territorial claims in the Arctic. In simple terms, it stipulates that countries that are adjacent to the polar region have a right to all the lands extending toward the North Pole. The way to delimit the sector is by drawing lines from the extreme ends of the circumpolar territories that converge at the pole. Although none of the Antarctic claimants explicitly invoked the sector principle to ground its claim, it is based on its spirit that the claims took the shape of neat pie slices covering almost the entire continent. Rather than as an original ground, then, the principle should be understood as a delimiting method that the claimants used to apportion their spheres of interest in Antarctica.[41]

## Appraising the Grounds

It is now time to evaluate the moral force of the grounds offered above. To appraise the connection-based grounds, I look at connection-based theories of territorial rights and see whether, and to what extent, the original Antarctic claims fit their bill. To appraise the grounds based on official documents and geographical

doctrines, I examine how fair they seem both in terms of their representativeness and in terms of the distribution of resources, as well as how fitting they are in the case of Antarctica.

*The Limits of Connection*

Connection-based theories ground the claims of a specific agent to a specific territory on some morally relevant link between that agent and that territory. This link can be based on some action carried out in the past and sustained into the present (as in first occupancy theories, such as that of Grotius) or on some ongoing activity.[42] In the latter case, it may be the value added to the territory by the agent through his individual labor or through a collective undertaking.[43] The relevant link can also result through the realization in the territory of a particular conception of the land, where the land influences the agent's way of life and the agent shapes the land in turn, in constant interaction.[44] Connection-based theories can also stress the importance of the territory for the gradual unfolding of the common history and culture of a nation,[45] or for the development of a political self-determining collective.[46] What all these theories share, in sum, is the idea that territorial claims are not merely general claims to inhabit and develop one's life-plans somewhere, but particular claims to inhabit and develop one's life-plans in a place where one (or one's group) has some connection that is deemed morally relevant.[47]

In the previous section, the first four grounds presented were based on some past or ongoing connection. However, there are serious challenges in applying connection-based theories to justify them.

First, for the sake of argument, let us say that the states in question did in fact form and sustain certain morally relevant connections in Antarctica. The question then is, do these connections justify the appropriation of the large chunks of territory actually claimed? In other words, to how much land are these states entitled by virtue of the tracks and marks they left in very limited parts of the territory?[48] This delimitation problem (or "boundary problem") has been discussed by John Simmons in regard to the Lockean theory of original appropriation, but it cuts across all connection-based theories.[49] In Simmons's reading of Locke, by mixing her labor with the land, the individual comes to own the latter. But how much of the latter? As Simmons says, "It is not obvious that labor can ground a clear right to *anything* if it is not possible to specify the boundaries of what is acquired by [it]."[50] His suggested answer is that our purposive activities can help to specify

"only the *maximum possible* extent of the property labor creates" so that "we can take that which is necessary to our projects (and perhaps reasonable windfall products of these activities), but our property runs only to the boundaries of our implemented projects (and not just to whatever we might envision)."[51] While acknowledging that defining and drawing the limits of our purposive activities is in itself no easy task, one can still regard this approach as a plausible way of delimiting the boundaries in the case at hand. If not positively, this method could at least be applied negatively to help us to determine what definitely should *not* be regarded as the proper limits of Antarctic claims. By this token, claimant states would only be allowed to appropriate as much land as they had actually used to implement their projects at the time when the claims were made, and not simply all the land that they considered to be in their interest at that time—for example, in an imperial manner, or as a way to secure access to plentiful natural resources for the foreseeable future, or as a strategic move within a larger power play at the international level.

Claimant states might here respond that they added value to Antarctica in various forms: scientific value, by bringing the continent onto the world map through their expeditions and explorations; material value, by constructing permanent and temporary bases, docks, lighthouses, and navigational aids; economic value, by using the marine resources available; and cultural value, by establishing memorial sites for posterity. Claimants might also underline their role as custodians, played by issuing licenses and permits for the establishment of economic activities, as well as by carrying out rescue missions. Having noted all of this, it still looks like a leap of faith—not to say an act of effrontery—to invoke any or all of these grounds to justify the appropriation of whole wedges of a continent—wedges that comprise thousands of square kilometers extending inland from the explored, "improved," or regulated areas. In fact, claims of this kind remind one of the Nozickian character who spilled a can of tomato juice in the sea in the hope of becoming its owner.[52] To sum up, it seems that unless one is extremely generous with notions such as "purposive activities" and "implemented projects," these would only suffice for states to claim some control over specific places, such as Ross Island and the South Shetlands, and very limited coastal areas where there had been noticeable activity at the time when the claims were made. The challenge, then, is to justify the sheer mismatch between what states present as legitimate grounds for their claims and the actual extension of the latter.

This problem was in fact addressed by legal scholars who, in the first decades of the twentieth century, realized that the standard criteria of effective occupation had to be "relaxed" in the polar regions if they were to make any sense. In the words of the Russian scholar W. Lakthine, to apply the traditional rules of effective occupation in those areas could not be "reasonably required."[53] In a context where imperialism was very much alive, Lakthine's proposal may well be explained: it was only through diluting the standards of effective occupation that imperial states could account for their claims to huge spaces in the hinterlands of their areas of influence. But was this justifiable? An alternative would be to say that in a place such as Antarctica, talk of extending the exclusive territorial monopolies of individual states on the basis of their minimal activity and presence should be given up altogether. If the normal standards of effective occupation do not lend themselves to being applied here, this may be an opportunity to think differently about the territorial status that these areas ought to have, rather than an instance where the standard concepts should be stretched in an ad hoc manner.[54]

A second challenge to connection-based arguments concerns those that specifically present the exploitation (and overexploitation) of Antarctic marine resources as grounds for claiming sovereignty. Upon reflection, this seems an inversion of logic. Should not the burden of proof be on the (*over*)*exploiters* of the past to justify their continued control over those resources? To be sure, they could retort that, at the time, looking for new "resource frontiers" was a practice in which all states engaged and about which nobody complained.[55] From an environmental perspective, however, one could require that territorial claimants in today's world demonstrate their capacity to manage their territories resiliently and sustainably.[56]

### *The Limits of Official Documents and Geographical Doctrines*

Connection-based arguments are the most frequently cited to ground a state's territorial aspirations to Antarctica. As mentioned above, however, official documents and geographical doctrines are also used, sometimes supporting the other grounds (as with geographical continuity, the transfer of territory, and the sector principle), and sometimes on their own (as with geographical contiguity and the principle of *uti possidetis iuris*). In what follows, I analyze how fair these grounds seem in terms of representation and the distribution of resources, as well as their fittingness to the Antarctic case.

*Uti possidetis iuris* was applied during the nineteenth century to the newly independent Latin American countries by keeping the borders drawn during the Spanish colonization. Following from this, Argentina and Chile both claim that they acquired historical rights over the Antarctic territory directly from the Spanish crown via the Treaty of Tordesillas. But does this claim hold up to scrutiny? There are at least two problems here. One is the fairness (or lack thereof) of a decision made between two countries (Portugal and Spain) to divide most of the earth between them—including areas that were at the time only a matter of theoretical speculation. Tellingly, not even then were those claims recognized by external parties to the agreement. Indeed, if Hugo Grotius were alive he would certainly reject this argument on the same grounds that he rejected the Portuguese claim to exclusive possession, navigation, and trade in the East Indies. As Grotius asserts in defense of a sea free for all, Pope Alexander VI might well have been the chosen arbiter between Spain and Portugal, but this "appertaineth not to the rest of the nations."[57] Another problem is that, even if we accept that the agreement was fair at the time in terms of who participated and how they divided up their share, treaties and agreements should be subject to modification or amendment as circumstances radically change. In this specific case, what may have been considered a fair distribution of the world's resources in 1494 need not have been at the time the Antarctic Treaty was signed, let alone today. This is not to say that moral principles change with time, but that their application has to be sensitive to the context, and that the grounds underlying the claims have been superseded by the changed circumstances.[58]

The justifiability of the British transfer of Antarctic territories to New Zealand and Australia is dubious for similar reasons. Whereas in the previous case it was two countries that came together and decided to divide a significant area of the world between themselves, here it was just one country that took the initiative and proclaimed it to the others. After making the first unilateral claim, the United Kingdom then transferred part of its claimed territory to its former colonies (and thus triggered the formalization of all the other claims, also made unilaterally). Outside an imperialistic mindset, however, the declaration of the United Kingdom's sovereignty over a large area of Antarctica is certainly controversial on its own. A corollary of this is that the transfer of territory on which a large part of the Australian claim and the totality of the New Zealand claim are based is prone to the same questioning. A transfer of territory, after all, is justifiable only if the transferor is entitled to transfer the territory in the first place.

When it comes to the doctrines of geographic continuity and contiguity, none of the claims under these doctrines were or are unanimously accepted, and they gained popularity at a time when imperial powers were in need of justifying control over extensive peripheries surrounding their areas of influence.[59] For this reason alone, anyone suspicious of the imperialistic modus operandi should be on the alert. What is more, even if one were to agree with these doctrines in principle, one could still ask whether they fit the Antarctic case. Concerning contiguity, one has to be very magnanimous, if not blithe, to accept its application to territories that are a thousand kilometers apart in the best of cases, as measured from the southern tips of Argentina and Chile to the northern tip of the Antarctic Peninsula. For the other claimants, the distance is much greater still. Concerning continuity, the boundary problem reappears: even if a state showed that it had exercised its sovereignty over a given coastal area of the White Continent (which is the case for most of the claimants), it would not straightway follow that it would have a claim extending all the way to the South Pole.

Regarding the use of the sector principle as a loose inspiration to delimit the claimed areas, there is an obvious aspect of its application that seems problematic from a moral point of view. Even if one accepted that it is fitting to use this principle as a delimiting method for the nearest countries to Antarctica, it seems like an implausible ad hoc extension to project one's claims not from one's own metropolitan territories, but from one's tiny overseas dependencies—as France, Norway, and the United Kingdom roughly did. More importantly, if applied at all, it would make more sense to do it wholesale, thus giving countries such as Brazil, India, Liberia, Madagascar, and Peru grounds to project their own claims. As F. M. Auburn has noted, however, "doubtless the geometrical form is convenient in making a claim, but that of itself does not give the lines legal standing."[60] Nor—it should be added—does it give them moral standing. The application of the sector theory to Antarctica seems so plagued with arbitrariness that it might just as well be dropped altogether.

## Concluding Remarks

In *Sleeping Beauty*, the newborn princess Aurora is cursed by a jealous fairy to die by pricking her finger on a spindle when she turns sixteen. Unable to destroy the spell, a good fairy manages instead to soften it such that Aurora will not die, but will instead sleep until a loving kiss awakens her. As predicted, on the day of her

sixteenth birthday the princess pricks her finger and falls asleep, together with everyone else in the court. A hundred years pass, after which a young prince finds the castle, kisses the sleeping Aurora, and everyone wakes up in the same shape as they were a century before.

The story of Antarctica during the twentieth century and the beginning of the twenty-first is in some ways similar to *Sleeping Beauty*. Fearing that an escalation of military power and territorial conquest would thwart the peace in the last uninhabited continent, the parties who signed the AT in 1959 arguably did for Antarctica what the good fairy did for Aurora, by softening the prospect of potential conflict and exploitation. But whereas the young princess had to wait a hundred years to awaken, it is hard to guess how many years it will take for the AT to be modified or come to an end (if it ever does), and thus for Antarctica to wake up to competing sovereign claims once again. More importantly, whereas Aurora and her surroundings were left unaffected for as long as the spell lasted, Antarctica and its surrounding world have been changing in ways that were unpredictable in 1959. Today, the original characters of the story are not what they were six decades ago, and new characters have appeared in the meantime.

So where should this leave us? After analyzing the grounds for claiming sovereignty in Antarctica, there are three obvious observations to make. First and most importantly, even when applying the most charitable approach to territorial rights that the claimants could use (that is, connection-based theories), there is a vast mismatch between the grounds of the claims and the actual scope they purport to cover. First exploration and discovery, scientific exploration and expeditions, the exploitation of natural resources, and state activity in different shapes might serve to found very restricted sovereign claims regarding some islands (such as the South Shetlands and Ross Island), some areas of the Antarctic Peninsula, and some other sites where there was in fact human presence. If this much were granted, a peaceful outcome of such recognition could be the establishment of very modest territorial parcels where there are no overlapping claims. Where there are overlapping claims, some sort of condominium would have to be sought whereby claimants would exercise their sovereignty jointly.

Second, there is the problem of justifying the official documents invoked as bases for the Antarctic claims. Bilateral treaties from half a millennium ago that were contestable from the moment they were signed, the transfer of territory where it is not clear that the latter belonged to the transferor in the first place, and the geographical doctrine of continuity (tailor-made to justify claims at the

height of the imperialist era) do not seem particularly defensible. This seems especially so from today's perspective, when there are no lands yet to be discovered, and when the number of parties interested in sharing our world's limited resources has increased manyfold.

Third, the fittingness of the geographical doctrine of contiguity and the sector principle to the Antarctic case is doubtful. The claimants themselves must provide some further support to the affirmation that lands separated by at least a thousand kilometers can be called "contiguous." The same goes for the loose application of the sector principle by projecting their Antarctic territories from their minuscule overseas territories.

If one agrees with the analysis presented above, most (if not all) of the Antarctic continent should be sovereign-less. But this is not to say that it should devolve into terra nullius, starting a new area of Antarctic conquest. Rather, instead of thinking about which states should hold full sovereign rights and where, a much more plausible approach is to ask what they (and maybe also other entities) have been doing, are doing, and should do there, and what rights they have acquired, and should acquire, in return.[61] Here is where function-based theories of territorial rights could enter the picture. By performing important functions (such as regulating economic activities, carrying out search and rescue missions, maintaining airstrips and navigational aids, conducting inspections to ensure compliance with the Environmental Protocol, and so on), the AT member states could show that they have played a relevant role in Antarctica, using it "exclusively for peaceful purposes"—something which, as stated in the Preamble of the treaty, is "in the interest of all mankind."[62] They could therefore be co-participants in an international governance regime whereby various rights and responsibilities are assigned according to such criteria as historical involvement and capacity, but also inclusiveness and fairness in the access to resources.[63]

This takes me to a final point, which is the UN "Question of Antarctica" reloaded. As it stands, the Antarctic Treaty System may seem perfectly fine for those who are already members, and especially for Consultative Parties entitled to shape the rules around the last uninhabited continent. It is questionable, however, whether a self-appointed system where three-quarters of the world states are not members can be deemed as fair.[64] If the original territorial claims were put to the side and a function-based approach were favored, two pending issues would be how to ensure greater fairness in representation and in the access to resources (by

which I mean not only economic but also, and perhaps more importantly, scientific).

Going forward, intellectual and political debate surrounding the territorial status of Antarctica must grapple with three interrelated elements: unbundling the various elements of territorial rights, integrating parties that have so far been left out of these discussions, and seeking ways to provide fairer access to the resources of the planet's most remote region. This has been a preliminary attempt to clear the ground in that direction.

NOTES

[1] Although there is no necessity for anything to happen in 2048, the Protocol establishes that fifty years after its entry into force, any of the consultative parties may request a conference to review its operation. Any changes to it would then have to be adopted "by a majority of the Parties, including three-fourths of the States which are Antarctic Treaty Consultative Parties at the time of adoption of [the] Protocol." The Protocol on Environmental Protection to the Antarctic Treaty opened for signature on October 4, 1991 and entered into force January 14, 1998. See Secretariat of the Antarctic Treaty, "Protocol on Environmental Protection to the Antarctic Treaty," Article 25, www.ats.aq/documents/recatt/Attoo6_e.pdf.

[2] The Antarctic Treaty System comprises the AT at its core, plus the other legal instruments regulating different Antarctic matters, such as the Convention for the Conservation of Antarctic Marine Living Resources, and the Protocol on Environmental Protection. Regarding Korea's and China's interests in Antarctica, see Anne-Marie Brady and Kim Seungryeol, "Cool Korea: Korea's Growing Antarctic Interests," in Anne-Marie Brady, ed., *The Emerging Politics of Antarctica* (Abingdon: Routledge, 2013), pp. 75–95; and Anne-Marie Brady, *China as a Great Polar Power* (Cambridge: Cambridge University Press, 2017). Reports about China's interests in Antarctica have also surged in recent times. See, for example, "China's Secret Threat to Australia's Antarctic Claim, Report Reveals," *News.com.au*, August 18, 2017, www.news.com.au/world/chinas-secret-threat-to-australias-antarctic-claim-report-reveals/news-story-/d88ca4389f7d621f5b50d529954de68d; and Dan Southerland, "Does China Want to Explore Antarctica, or Exploit Its Resources?" *Radio Free Asia*, November 30, 2017, www.rfa.org/english/commentaries/china-antarctica-11302017154333.html.

[3] For a succinct presentation of these challenges, see Klaus Dodds, "Governing Antarctica: Contemporary Challenges and the Enduring Legacy of the 1959 Antarctic Treaty," *Global Policy* 1, no. 1 (2010), pp. 108–15. For a more detailed account, see Alan D. Hemmings, Donald R. Rothwell, and Karen N. Scott, eds., *Antarctic Security in the Twenty-First Century: Legal and Policy Perspectives* (Abingdon: Routledge, 2012).

[4] A good summary is given in Victor Prescott and Gillian D. Triggs, *International Frontiers and Boundaries: Law, Politics and Geography* (Leiden: Martinus Nijhoff Publishers, 2008), pp. 384–91.

[5] See Julia Jabour and Melissa Weber, "Is It Time to Cut the Gordian Knot of Polar Sovereignty?" *Review of European Comparative & International Environmental Law* 17, no. 1 (2008), pp. 27–40; and Gillian Triggs, "The Antarctic Treaty System: A Model of Legal Creativity and Cooperation," in Paul Arthur Berkman, Michael A. Lang, David W. H. Walton, and Oran R. Young, eds., *Science Diplomacy: Antarctica, Science, and the Governance of International Spaces* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2011), pp. 39–50.

[6] Today the AT has 29 Consultative Parties, which adopt measures, resolutions, and decisions by consensus at the annual meetings; and 24 Non-Consultative Parties, which can participate in the deliberations but have no vote. These 53 countries represent just over a quarter of the member states of the United Nations, and they include the two most populated countries in the world, China and India. The consultative status of a country depends on its ability to conduct "substantial research activity there." See Secretariat of the Antarctic Treaty, "Parties," www.ats.aq/devAS/ats_parties.aspx?lang=e.

[7] The grounds offered by the United States and Russia to support their status as potential claimants mostly coincide with the ones presented below, but they also present problems of their own, which I do not examine here.

[8] See United Nations General Assembly, Thirty-Seventh Session, 10th Plenary Meeting, A/37/PV.10*, September 29, 1982, p. 132, www.un.org/ga/search/view_doc.asp?symbol=A/37/PV.10. The discussion kept going until the early 2000s.

[9] See Patrizia Vigni and Francesco Francioni, "Territorial Claims and Coastal States," in *Handbook on the Politics of Antarctica*, eds. Klaus Dodds, Alan D. Hemmings, and Peder Roberts (Cheltenham, UK; Northampton, Mass.: Edward Elgar Publishing, 2017); and Mel Weber, "Delimitation of the Continental Shelves in the Antarctic Treaty Area: Lessons for Regime, Resource and Environmental Security" in *Antarctic Security in the Twenty-First Century: Legal and Policy Perspectives*, pp. 172–196.

[10] Among many others, see J. P. A. Bernhardt, "Sovereignty in Antarctica," *California Western International Law Journal* 5, no. 2 (1974); Benedetto Conforti, "Territorial Claims in Antarctica: A Modern Way to Deal with an Old Problem," *Cornell International Law Journal* 19, no. 2 (1986), pp. 249–58; Hemmings, Rothwell, and Scott, *Antarctic Security in the Twenty-First Century*; Gillian Triggs, "Australian Sovereignty in Antarctica – Part I," *Melbourne University Law Review* 13 (1981), pp. 123–58; and Gillian Triggs, "Australian Sovereignty in Antarctica – Part II," *Melbourne University Law Review* 13 (1981), pp. 302–33.

[11] This is not to say that moral considerations have not been raised by other authors. Alan D. Hemmings, for one, has repeatedly touched upon the issue of the international legitimacy of the ATS, and on the way in which the territorial aspirations of the claimants have hindered progress in terms of governance and regulation. See Alan D. Hemmings, "Security Beyond Claims," in Hemmings, Rothwell, and Scott, *Antarctic Security in the Twenty-First Century*, pp. 70–94; and Alan D. Hemmings, "Re-Justifying the Antarctic Treaty System for the 21st Century: Rights, Expectations and Global Equity," in Richard Powell and Klaus Dodds, eds., *Polar Geopolitics: Knowledges, Resources and Legal Regimes* (Cheltenham, U.K.: Edward Elgar Publishing, 2014), pp. 55–73. See also Emilio J. Sahurie, *The International Law of Antarctica* (New Haven: New Haven Press, 1992). Even though Sahurie's approach is legal, moral issues permeate the book. The contribution this article purports to make to the existing literature is to begin a more methodical appraisal of the different arguments that have (and could) be raised regarding the territorial status of Antarctica. To apply the tools of political philosophy to the Antarctic question promises to deliver conclusions that have been overlooked so far, or that have not been sufficiently examined.

[12] David Miller, "Territorial Rights: Concept and Justification," *Political Studies* 60, no. 2 (2012), p. 253.

[13] Attempts at systematization from a legal perspective can be found in Prescott and Triggs, *International Frontiers and Boundaries*, ch. 14; and Sahurie, *International Law of Antarctica*, ch. 4.

[14] J. Gordon Hayes, *Antarctica: A Treatise on the Southern Continent* (London: The Richards Press Limited, 1928).

[15] See Robert E. Wilson, "National Interests and Claims in the Antarctic," *ARCTIC* 17, no. 1 (1964), p. 21; and International Court of Justice, March 16, 1956, "Antarctica Cases (United Kingdom v. Argentina; United Kingdom v. Chile)," The Hague, Netherlands, p. 28.

[16] See, respectively, International Court of Justice, "Antarctica Cases," p. 8; Antarctica New Zealand, "Antarctic Treaty," www.antarcticanz.govt.nz/environment/policy-and-management/antarctic-treaty/; République Française, "La France et l'Antarctique," *France Diplomatie*, www.diplomatie.gouv.fr/fr/dossiers-pays/antarctique/la-france-et-l-antarctique/; Australian Government, "Australian Antarctic Territory Acceptance Act 1933," www.legislation.gov.au/Details/C2004C00416; Magnus Hovind Rognhaug, ed., *Norway in the Antarctic* (Tromsø: Norwegian Ministry of Foreign Affairs, 2014), p. 7; Ministerio de Relaciones Exteriores de Chile, Decreto 1747, "Fija Territorio Chileno Antártico" (1940), www.leychile.cl/Navegar?idNorma=1017683; and Pablo Fontana, *La Pugna Antártica: El conflicto por el sexto continente 1939–1959* (Buenos Aires: Guazuvirá Ediciones, 2014), p. 108.

[17] In recent years Norway has changed its discourse and now talks about Dronning Maud Land reaching all the way to the South Pole. See Ole Magnus Rapp, "Norge Utvider Dronning Maud Land helt frem til Sydpolen," *Aftenposten*, September 19, 2015, www.aftenposten.no/norge/Norge-utvider-Dronning-Maud-helt-frem-til-Sydpolen-28019b.html.

[18] The International Geophysical Year was a project of scientific cooperation between Eastern and Western countries that had Antarctica as one of its research objectives.

[19] U.S. Department of State, "Antarctic Treaty," state.gov/t/avc/trty/193967.htm.

[20] Alan D. Hemmings, "Considerable Values in Antarctica," *Polar Journal* 1 (2012), pp. 139–56, p. 143.

[21] "1. Nothing contained in the present Treaty shall be interpreted as: (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica; (b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise; (c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's rights of or claim or basis of claim to territorial sovereignty in

Antarctica. 2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force." Secretariat of the Antarctic Treaty, "Antarctic Treaty" (1959), Article IV, www.ats.aq/documents/ats/treaty_original.pdf.

[22] See Ian Brownlie, *Principles of Public International Law*, 7th edition (Oxford: Oxford University Press, 2008), p. 130.

[23] The two types of grounds coincide to some extent with what historian Patricia Seed has seen as founding the different "ceremonies of possession" by the European powers during the early colonization of America. While relying on official protocols was key for the Spanish, the British prioritized more mundane activities, such as the erection of buildings and actual presence in the place. In the case of Latin American claimants to Antarctica, the use of the principle of *uti possidetis iuris* could be read as a sign of the Spanish inheritance. The focus on human presence and activity, on the other hand, could be interpreted as a sign of the British influence when it comes to justifying possession. See Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World 1492–1640* (Cambridge: Cambridge University Press, 1995), especially chs. 1 and 3. Seed, however, does not pursue a moral evaluation of these different methods.

[24] International Court of Justice, "Antarctica Cases," para. 11–12, my emphasis. Neither Argentina nor Chile recognized the court's jurisdiction.

[25] Rognhaug, *Norway in the Antarctic*, p. 7.

[26] See, respectively, Australian Antarctic Division, "Australian Antarctic Territory," 2017, www.antarctica.gov.au/about-antarctica/australia-in-antarctica/australian-antarctic-territory (my emphasis); and Prescott and Triggs, *International Frontiers and Boundaries*, p. 386.

[27] New Zealand Ministry for Culture and Heritage, "First among Men," July 22, 2014, nzhistory.govt.nz/politics/Antarctica-and-nz/people.

[28] Antarctic expeditions were also carried out by Belgians, Americans, Russians, Swedes, and Japanese.

[29] Rognhaug, *Norway in the Antarctic*, p. 7.

[30] Americans were also active, but I omit them here to focus exclusively on the claimants.

[31] Alberto L. Daverede, "Política y actividades antárticas de la República Argentina," Conference Proceedings, Aula de Estudios Antárticos, Madrid (1987), p. 3.

[32] Oscar Pinochet de la Barra, *Chilean Sovereignty in Antarctica* (Santiago de Chile: Editorial del Pacífico, 1955), p. 32, my emphasis.

[33] Johan Nicolay Tønnessen and Arne Odd Johnsen, *A History of Modern Whaling* (London: C. Hurst; Canberra: Australian National University Press, 1982), p. 178.

[34] Brownlie, *Principles of Public International Law*, p. 133.

[35] Giving a full account of the arguments from state activity that each country uses to stake their claims would constitute an article of its own. A good summary can be found in Sahurie, *International Law of Antarctica*, pp. 259–277.

[36] Pinochet de la Barra, *Chilean Sovereignty in Antarctica*, p. 27.

[37] See note 16 above.

[38] Brownlie, *Principles of Public International Law*, pp. 142–43.

[39] To this, the concept of "geological continuity" is sometimes also added; namely, that the Antarctic Peninsula and mountain range is a prolongation of the Chilean Andes. See Wilson, "National Interests and Claims in the Antarctic," p. 23.

[40] Brownlie, *Principles of Public International Law*, p. 143.

[41] For an extended criticism of the application of the sector principle in Antarctica, see Francis M. Auburn, *Antarctic Law and Politics* (Bloomington: Indiana University Press, 1982), pp. 23–31.

[42] Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), see especially Book II, chs. 2 and 3.

[43] For the individualist version, see John Locke, *Two Treatises of Government*, ed. Peter Laslett (New York: Cambridge University Press, 1988); and A. John Simmons, "On the Territorial Rights of States," *Philosophical Issues* 11, no. 1 (2001), pp. 300–26. For the collectivist version, see Cara Nine, *Global Justice and Territory* (Oxford: Oxford University Press, 2012).

[44] Avery Kolers, *Land, Conflict, and Justice: A Political Theory of Territory* (New York: Cambridge University Press, 2009).

[45] David Miller, "Territorial Rights: Concept and Justification."

[46] Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2015).

[47] The other main type of normative theories of territorial rights is function-based. These justify territorial claims in terms of certain functions that the territorial agent (typically, the state) fulfills—like securing the basic human rights of its members or establishing property laws that comply with some basic

legitimacy conditions. See Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004); and Anna Stilz, "Why Do States Have Territorial Rights?" *International Theory* 1, no. 2 (2009), pp. 185–213. For functionalists, then, the link between the people and the territory is a contingent fact: what matters is that a people have "a" (rather than "this" or "that") territory to enable their state to fulfill important functions for them. They thus tend to focus on the present and future rather than the past. Because the Antarctic claims here examined are all special claims to "this" rather than "a" territory, I leave aside function-based theories for the purposes of the analysis. They will reenter, however, toward the end of the article.

[48] Note that I am not dealing here with the more fundamental and thornier question of whether it is morally meaningful to become the owner and/or sovereign of a geographical space just by virtue of doing certain things in it. Even if, for the purposes of the discussion, we assume that this makes sense, the problem still remains of how to fix the borders of that appropriation.

[49] Not to be confused with the better-known "boundary problem," which regards the issue of delimiting democratic polities. See Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," *Nomos XXV: Liberal Democracy* (1983), pp. 13–47.

[50] A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), p. 268, his emphasis.

[51] Ibid., p. 276, emphasis in original.

[52] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174–75. To get a picture of the magnitude of the claims, notice that four of the seven claimants claim areas that are vastly larger than their own metropolitan territories: Chile and New Zealand claim a territory almost twice their size, the United Kingdom claims a territory six times its size, and Norway claims a territory seven times its size (if one interprets its claim as extending all the way to the South Pole).

[53] "It is not due to accident that not a single State can effect the occupation even of those Polar islands that are adjacent to its coast in a more 'effective' manner than through the establishment of small posts and a periodic patrol by avisoes, etc. Therefore, considering Polar conditions, the form of occupation practiced today by Polar States is all that can be 'reasonably required.'" W. Lakthine, "Rights over the Arctic," *American Journal of International Law* 24, no. 4 (1930), p. 710.

[54] Antarctic imperialism is a topic that has been well examined by scholars in international relations, geopolitics, and history. See, for example, Klaus J. Dodds, "Post-Colonial Antarctica: An Emerging Engagement," *Polar Record* 42, no. 1 (2006), pp. 59–70; and Shirley Scott, "Three Waves of Antarctic Imperialism," in Dodds, Hemmings, and Roberts, *Handbook on the Politics of Antarctica*, pp. 37–49. However, while the focus has been to criticize Antarctic imperialism, not much has been said of where this should leave us today, in a context where these practices are no longer acceptable.

[55] For an account of Antarctica as a "resource frontier," see Adrian Howkins, *The Polar Regions: An Environmental History* (Cambridge, U.K.: Polity, 2016), p. 47.

[56] Kolers, *Land, Conflict, and Justice*, p. 76.

[57] Hugo Grotius, *The Free Sea* (Indianapolis: Liberty Fund, 2004), p. 16.

[58] Jeremy Waldron, "Superseding Historic Injustice," *Ethics* 103, no. 1 (1992), pp. 4–28.

[59] The principle of continuity was invoked by colonial powers in Africa to justify control of the hinterland (the regions lying inland from the coasts), while the principle of contiguity was used to justify claims to land separated by water from the territory of the claimant state. See David W. Heron, "Antarctic Claims," *Foreign Affairs* 32, no. 4 (1954), p. 663.

[60] Auburn, *Antarctic Law and Politics*, p. 27.

[61] Other entities might include, for example, NGOs such as the Antarctic and Southern Ocean Coalition or organizations such as the Scientific Committee on Antarctic Research.

[62] "Preamble," Antarctic Treaty.

[63] An interesting question to ask here is whether Antarctica should become a state of its own. The challenge, of course, would be to figure out who the Antarctic demos would be. For a proposal of increased human settlement and political engagement in Antarctica (albeit without full sovereignty), see Doaa Abdel-Motaal, *Antarctica: The Battle for the Seventh Continent* (Santa Barbara, Calif.: Praeger, 2016).

[64] The lack of participation is especially serious in the case of African countries, of which only South Africa is a party to the treaty.

---

Abstract: By virtue of the Antarctic Treaty, signed in 1959, the territorial claims to Antarctica of seven of the original signatories were held in abeyance or "frozen." Considered by many as an exemplar of international law, the Antarctic Treaty System has come to be increasingly questioned, however, in a very much changed global scenario that presents new challenges to the governance of

the White Continent. In this context, it is necessary to gain a clearer understanding of the moral weight of those initial claims, which stand (despite being frozen) as a cornerstone of the treaty. The aim of this article is to offer an appraisal of such claims, which may be divided into two main kinds: those grounded on some relevant link to the territory, and those grounded on official documents and geographical doctrines. After pointing to the limitations and challenges that they face, I conclude with some remarks about how this assessment ought to serve as a starting point to rethinking the territorial status of Antarctica.

Keywords: Antarctica, Antarctic Treaty System, imperialism, international law, natural resources, territorial claim