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## Part II

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# Western legal framings

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### Chapter 3

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# Decolonising Antarctica

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## I Preliminaries

In 1960, the General Assembly of the United Nations adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples (hereinafter, Declaration on Decolonisation).<sup>2</sup> By virtue of the Declaration, the General Assembly recognised, among other things, that “the peoples of the world ardently desire the end of colonialism in all its manifestations”, that its continued existence “prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace”.<sup>3</sup> Bringing colonialism in all its forms and manifestations to “a speedy and unconditional end” was therefore a necessity.<sup>4</sup> To ensure that this would happen, two years later a Special Committee on Decolonisation was established, and in 1990 the first International Decade for the Eradication of Colonialism was proclaimed.

Today, almost sixty years later, the efforts made to decolonise occupied territories can be celebrated. Even though 17 non-self-governing territories still remain (home to nearly two million people), most of the former European colonies have gained independence.<sup>5</sup> That decolonisation is, as the Declaration asserts, an “irresistible and irreversible” process has become part of the politically correct discourse.

But there is still a whole continent where colonial claims are preserved. In approaching the end of the Third Decade for the Eradication of Colonialism,

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2 UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, A/RES/1514(XV).

3 Ibid.

4 Ibid.

5 Since the creation of the United Nations, more than 80 former colonies comprising some 750 million people have gained independence: ‘The United Nations and Decolonization’, United Nations, <https://www.un.org/dppa/decolonization/en>, accessed 13 April 2020.

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Antarctica remains an enclave mostly run by the same colonial and wishing-to-be colonial powers that claimed whole wedges of it between 1908 and 1940, or reserved their rights to make a claim in the future under the auspices of the Antarctic Treaty (hereinafter, AT).<sup>6</sup> Ironically, it was by virtue of the latter – signed in Washington DC one year before the Declaration on Decolonisation – that their territorial claims were “frozen”. This means that they were not given up, but put in abeyance while the AT remained in force.<sup>7</sup> Today, it is an accepted trope in the field of the Antarctic humanities and social sciences that Antarctica was and still is part and parcel of the colonial project at the global level, and that the once default view regarding Antarctica’s “exceptionalism” in world politics does not have much support in historical facts.<sup>8</sup>

6 I say “mostly” because in the course of six decades new actors have appeared. The first unilateral claim was made by the United Kingdom in 1908, when it issued its first Letters Patent, which included a slice of Argentinian and Chilean Patagonia and thus had to be reissued in 1917. It was followed by New Zealand (1923), France (1924), Australia (1933), Norway (1939), Argentina (1940) and Chile (1940). The claims of the United Kingdom, Argentina and Chile partly overlap. By virtue of the AT, moreover, the Soviet Union and the United States reserved their rights to make a claim in the future. By “wishing-to-be colonial powers” I have in mind Argentina and Chile which, while disputing British imperialism in Antarctica, extended – in a colonialist mode – what they conveniently labelled as their own “natural domains” all the way into the South Pole. See Adrian Howkins, ‘Appropriating Space: Antarctic Imperialism and the Mentality of Settler Colonialism’, in Tracey Banivanua Mar and Penelope Edmonds (eds), *Making Settler Colonial Space* (London: Palgrave Macmillan, 2010), 29–52.

7 Article IV of the AT establishes that:

“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”: Antarctic Treaty, 1 December 1959, 402 UNTS 71.

8 Among others, see Klaus Dodds and Christy Collis, ‘Post-Colonial Antarctica’, in Klaus Dodds, Alan D. Hemmings and Peder Roberts (eds), *Handbook on the Politics of Antarctica* (New York: Edward Elgar Publishing, 2017), 50–86, at 53; Alan D. Hemmings, Klaus Dodds and Peder Roberts, ‘Introduction: The Politics of Antarctica’, in *ibid.*, 1–17; Shirley V. Scott, ‘Three Waves of Antarctic Imperialism’, in *ibid.*, 37–49; Ben Maddison, *Class and Colonialism in Antarctic Exploration, 1750–1920* (London: Pickering & Chatto, 2014); and Adrian Howkins, *The Polar Regions: An Environmental History* (London: Polity, 2016).

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In a global scenario where interest in Antarctica and its resources will continue to grow, the question around the present and future governance of the continent becomes pressing. Even though over 60 years the AT's membership has grown from 12 to 53 signatories, only 29 states have the power to "vote" and shape Antarctica's legal framework.<sup>9</sup> Almost three-quarters of the world's states, that is, are total outsiders and not bound by its regulations. The fact that Antarctica remains colonised, in short, impedes rather than allows a stronger development of its governance structures.

In this Chapter, I start from the assumption that humanity as a whole (and not just seven, 12, 29 or 53 states) should be taken to be interested parties on Antarctic matters and should be given, at least *ab initio*, the opportunity to engage in Antarctic deliberations. The lack of native Antarcticans should turn everyone – rather than those who were there first, or did this and that, or discovered so and so – into an 'inchoate' member of the Antarctic club.<sup>10</sup>

With this in the background, in the next section I present some accounts of how colonialism took and takes place in Antarctica, and discuss what I consider to be three specific wrongs connected to it. I then give some suggestions to start the decolonising process in Antarctica, respond to a key objection and conclude.

### 2 What's wrong with Antarctic colonialism?

That Antarctica stands as no exception in world history, but should be seen instead as part and parcel of the colonial project and mindset, has become a commonplace since 1982, when, in a passionate speech to the United Nations General Assembly (UNGA), the Prime Minister of Malaysia, Mohammed bin Mahathir, denounced the AT as "an agreement between a select group of countries [which failed to] reflect the true feelings of the members of the United Nations or their just claims".<sup>11</sup> This discourse slowly gave rise to a "post-colonial engagement" with Antarctica by scholars working in critical

9 The other 24 states are non-Consultative Parties, which means they can attend the annual Antarctic Treaty Meetings (ATMs) and give their opinion on the different matters discussed, but not take part in decision-making (the system operates on the basis of unanimity and does not formally conduct "votes" on any matter). In the last ten years, their presence at the ATMs has been irregular, with only four attending in 2010, and a record number of 16 in 2017: Secretariat of the Antarctic Treaty, 'Final Reports', <https://www.ats.aq/devAS/Info/FinalReports?lang=e>, accessed 13 April 2020.

10 I have no space here to develop a full argument for this assumption. One way to defend it would be to say that it has to do with a basic requirement of justice in original appropriation. To put it in Lockean terms, "that enough and as good [is] left in common for others [to appropriate]": John Locke, *Two Treatises of Government, Book II*, Peter Laslett (ed) (Cambridge: Cambridge University Press, 1988), §27, at 88.

11 United Nations General Assembly A/37/PV10, 29 September 1982, at 132.

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geopolitics and security studies, history, anthropology, international relations and other disciplines.<sup>12</sup> It also challenged the widespread assumption that, because the United States and the Soviet Union (instead of the European powers) were dominant in the AT, the latter was not an appendix of the colonial era. What made this project colonial, as Mahathir suggested, was the fact that only a select group of states took part, imposing their own rules of exclusivity.<sup>13</sup>

It now gets repeatedly mentioned in the literature that the discovery, exploitation of marine resources and subsequent claiming of Antarctica by different states merely echoed what was going on at the time on a global scale: the conquest of land and resources for political, strategic and economic reasons; the projection of capital to the furthest corners of the earth; and a growing pressure over key natural resources by multinational companies that kept pushing the ‘resource frontier’ further and further.<sup>14</sup> Moreover, as Klaus Dodds puts it, the AT did not eliminate, but rather rewarded these attempts at colonial occupation and annexation. Accordingly, its new members were “forced to replicate the colonizing behavior of earlier parties” via the establishment of scientific bases to prove they were conducting substantial research activity in the continent, and thus accede to Consultative status.<sup>15</sup>

Shirley Scott has retold Antarctic history as three successive imperialist waves performed through colonial practices. The first wave took place in the 16th century, when Spain and Portugal divided the “New World” between them – and therefore, the yet to be discovered *terra australis incognita*. The second wave took place throughout the period where states staked their territorial claims over the continent as if it were *terra nullius* available for acquisition. The third wave is ongoing since the AT was signed, with the United States “using the rhetoric of universal science as justification”.<sup>16</sup>

12 Klaus Dodds, ‘Post-Colonial Antarctica: An Emerging Engagement’, *Polar Record* 42, no. 1 (2006): 59–70.

13 I thank Peder Roberts for pointing this out.

14 For an analysis of Antarctica as a “resource frontier”, see Howkins, note 6. In the literature, “imperialism” and “colonialism” are sometimes treated as interchangeable terms, sometimes as two processes that went together hand in hand, and sometimes as if colonialism had been a subset of practices within the wider umbrella of imperialism. For the purposes of the discussion, I will refer to colonialism only, and understand it roughly as a practice of domination through political and economic control over a territory, which standardly included the creation of settlements that kept their political allegiance to the colonising power. Here I draw from the definition offered by Margaret Kohn and Kavita Reddy, ‘Colonialism’, *The Stanford Encyclopedia of Philosophy* (Fall 2017 edn), Edward N. Zalta (ed), <https://plato.stanford.edu/archives/fall2017/entries/colonialism/>, accessed 4 February 2019.

15 Dodds, note 12 at 63.

16 Scott, note 8 at 39–44.

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Adrian Howkins discusses the mentality of settler colonialism (i.e. ‘a desire to conquer nature and to appropriate space’) as falling under the umbrella of imperialism, and remarks that it is “no coincidence that all the countries involved in the twentieth-century ‘Scramble for Antarctica’ were also practicing settler colonial imperialism in other parts of the world”.<sup>17</sup>

To give one last example, in the course of criticising the obsession with sovereignty of the seven historic claimants, Alan Hemmings points out that “the present Antarctic dispensation, including the treatment of territory, was arrived at prior to the existence of more than half of the world’s present states, as a result of an imperial and colonial model now generally repudiated”.<sup>18</sup>

There is thus wide agreement that Antarctica was and remains a colonial enclave. What is harder to find is a categorisation of the moral wrongs specific to this kind of colonialism, and a request for explicit recognition of the colonial origins of Antarctic claims, as well as for a revision of the colonial terms under which the “Antarctic contract” was originally signed, and under which it is currently sustained.<sup>19</sup> In the remainder of this section, I point to three such wrongs.<sup>20</sup>

There are two kinds of theories that have been developed in political philosophy to explain the moral wrong of colonialism that seem relevant for our purposes. A first kind of theory sees the moral wrong of colonialism as lying in the unjust taking of land from indigenous populations for the massive settlement of groups who came from the colonial power, and maintained their allegiance to it. As Margaret Moore explains, this process not only disrupted the affective attachment of the natives to the land, but robbed them of their collective right to be self-determining over *that* territory, to decide what life-plans and projects they wished to pursue *there*.<sup>21</sup> A second kind of theory, defended by Lea Ypi, sees the moral wrong of colonialism as consisting in the political domination of one group over another, where this domination involves “the creation and upholding of a political association that denies its members equal and reciprocal terms of cooperation”.<sup>22</sup> According to this

17 Howkins, note 6 at 48.

18 Alan D. Hemmings, ‘Security beyond Claims’, in 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), 70–94, at 77.

19 Alan Hemmings comes closest when he analyses four aspects in which territorial claims in Antarctica are wrong: moral, practical, legal and geopolitical. He then advocates for an Antarctic where security is prioritised beyond territorial claims, and where the seven claimants give up their claims to sovereignty in order to be better prepared for future challenges. Hemmings, note 18 at 70–94.

20 The list does not intend to be exhaustive.

21 Margaret Moore, ‘Justice and Colonialism’, *Philosophy Compass* 11, no. 8 (July 28, 2016): 447–61.

22 Lea Ypi, ‘What’s Wrong with Colonialism’, *Philosophy & Public Affairs* 41, no. 2 (2013): 158–91, 158.

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account, the morally problematic feature of colonialism lies not in the occupation of someone else's land per se, but in the terms under which distinct territorial agents (i.e. the colonisers and the colonised) were made to interact.

Because of the lack of native Antarcticans, it might seem odd to try to apply these theories to our case.<sup>23</sup> My contention, however, is that a reinterpretation of each can help to make sense of three distinctive wrongs of Antarctic colonialism.

The first wrong, I submit, consisted in the unilateral appropriation by a few states of extravagant expanses of uninhabited (and mostly uninhabitable) space. In a context where it was already clear that the earth's land and resources were not infinite, and that humans were exhausting them quite rapidly, those who staked claims over Antarctica during the first half of the 20th century did so with a hoarding and overwhelming attitude, almost completely foreclosing the possibility of future takings.<sup>24</sup> Moreover, in so doing they left out the majority of the world's states and the majority of humankind.<sup>25</sup> Following Moore's theory, it was a wrongful taking of land. But departing from Moore, what made it wrong was not the eviction or subjugation of native populations. Rather, what should have been considered as a common bounty of humanity (the last continent to be discovered, the only land left on earth yet to be explored) was divided into pie-shaped wedges among only seven countries, and claimed on grounds that could have at best justified much more modest appropriations.<sup>26</sup>

The second and third wrongs of Antarctic colonialism have to do with political domination and are thus connected to Ypi's account. They consist, first, in the creation of a political association (the AT) whose members appointed themselves as representatives of all mankind when it came to

23 As Ben Maddison points out, because of its lack of inhabitants, Antarctica was "unsettling to [the Europeans'] prevailing understandings and procedures of colonial possession": Maddison note 8 at 52. This fact did not prevent them, of course, from "dispossessing" the native population of penguins. In the words of a midshipman in a British expedition that discovered a new island in the South Shetlands, in 1819, the birds "with most disturbing obstinacy disputed our right to proceed... and it was not until great slaughter had been committed and an opening forced through them [that] we were enabled to further our research": *ibid.*, at 53.

24 I say "almost" because Marie Byrd's Land, the most inaccessible part of Antarctica, remains unclaimed.

25 In 1959, the population of the seven claimant countries taken together represented a mere 4.74 percent of the total world population. At the time, there were 82 members of the United Nations. See, respectively, United Nations, 'World Population Prospects', <https://population.un.org/wpp/Download/Standard/Population/>, accessed 19 February 2019; and Donald R. Rothwell, 'The Antarctic Treaty as a Security Construct', in Hemmings, Rothwell and Scott, note 18 at 46.

26 The merits of the different grounds for these claims are examined in Alejandra Mancilla, 'The Moral Limits of Territorial Claims in Antarctica', *Ethics & International Affairs* 32, no. 3 (2018), 339–60.

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governing the fifth largest continent on earth; and, second, in the maintenance of a system where not all members are treated on equal and reciprocal terms.<sup>27</sup>

The birth of the AT, in 1959, took place with only 12 states taking part: the historic claimants, those who did not make claims but reserved their right to make such claims in the future, and those others which had conducted science in Antarctica during the International Geophysical Year 1957–1958.<sup>28</sup> It has been repeatedly argued in defence of this arrangement that the time was ripe to lay down rules and prevent Cold War tensions from escalating on the “white” continent; that the beauty of the Treaty was precisely that it left sovereign claims suspended in order to focus on peaceful scientific cooperation instead; that keeping it as a demilitarised and nuclear-free zone was a true diplomatic feat.<sup>29</sup> However, it is well-known that some of the claimants blocked from the beginning the idea of establishing a genuinely international association, which would have required them to give up their claims entirely.<sup>30</sup> Because it was better to have a frozen claim than none, the AT was constituted for this purpose by the claimants themselves, and with the approval of a handful of other states.

As already shown, Ypi’s theory sees ones of the wrongs of colonialism as consisting in the creation (by the colonisers) of a political system to rule over a group of people (the colonised) who are not treated as equal members in the rule-creating process. The second wrong of Antarctic colonialism, relatedly, lies in the creation of a political system that leaves out from the outset a

27 In the Preamble, the 12 original signatories recognise “that it is *in the interest of all mankind* that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord”; they are “convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the *interests of science and the progress of all mankind*”; and are convinced that using Antarctica for peaceful purposes only “will further the purposes and principles embodied in the Charter of the United Nations”: AT, Preamble, my emphases.

28 Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom, plus the Soviet Union and the United States, plus Belgium, Japan and South Africa.

29 See, e.g., Francisco Orrego Vicuña, ‘Antarctic Conflict and International Cooperation’, in National Research Council, *Antarctic Treaty System: An Assessment: Proceedings of a Workshop Held at Beardmore South Field Camp, Antarctica, January 7–13, 1985* (Washington, D.C.: National Academy Press, 1986); 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), 39–50.

30 Peter J. Beck, *The International Politics of Antarctica* (London and Sydney: Croom Helm, 1986), at 39.

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group of people who should have been treated as members, but were not – i. e. the international community as a whole. The injustice consists not in the constitution of a political association that was not negotiated under equal and reciprocal terms by its members, but in treating a large part of those who should have been members and deliberators in the initial establishment of the association as wards in need of representation. In constituting the AT, the 12 original signatories appointed themselves not only as guardians of Antarctica, but also as guardians (in the sense of legal representatives) of the rest of humanity.

The third wrong of Antarctic colonialism, lastly, consists in the maintenance of a political association with an unequal power structure, where membership is open in theory to all world states, but ‘real’ membership (i.e. consultative status with decision-making power) is given exclusively to those capable of conducting “substantial research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition” – a condition that was imposed by the original self-appointed signatories.<sup>31</sup> By turning a politically exogenous feature – i.e. scientific capacity – into the decisive criterion for determining who “votes” and who doesn’t, the AT leaves a large group of states (and thus a substantial percentage of humanity) substantively voteless, while giving decision-making powers over a whole, resource-rich continent to roughly one-sixth of them.<sup>32</sup> This restriction of voting rights is a colonial hangover rather than a clean break with Antarctica’s colonial past: as many have pointed out, the science criterion may be interpreted as the perfect cover-up for ensuring that only states that are developed enough will ever be able to take an active role in Antarctic politics.<sup>33</sup> Here some could object that, insofar as it is a voluntary association, the two-tiered membership of the AT does not violate any requirements of reciprocity or equal treatment to those who wish to become part. They are, after all, free to choose whether or not to join in the first place. But this objection takes for granted precisely what is being put into question; namely, whether

31 AT, Article IX(2). It is true that this requirement has been broadened in interpretation, so that now collaboration with ongoing scientific programmes and use of already established infrastructure is encouraged. The question remains, however, why science should be required at all.

32 Defenders of the AT might object that the most populated countries on earth are Consultative parties, so that the majority of humanity is in fact represented: as of 2018, around 65 percent of it: Kevin A. Hughes, Andrew Constable, Yves Frenot, Jerónimo López-Martínez, Ewan McIvor, Birgit Njåstad, Aleks Terauds, et al., ‘Antarctic Environmental Protection: Strengthening the Links between Science and Governance’, *Environmental Science & Policy* 83 (2018): 86–95, at 88.

33 On the uneasy relationship between Antarctic science and politics, see John R. Dudeney and David W.H. Walton, ‘Leadership in Politics and Science within the Antarctic Treaty’, *Polar Research* 31 (2012), 1–9; and Aant Elzinga, ‘The Continent for Science’, in Dodds, Hemmings and Roberts, note 8, 103–124.

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having the governance of a whole continent come under the aegis of a handful of states was just to begin with.

In the excessive historic claims, in the constitution, and maintenance of the AT as an elitist political association for privileged states only: therein lie three specific wrongs of Antarctic colonialism. In the next section I make some suggestions as to how to move forward.

### 3 Decolonising Antarctica

What should be done, then, to decolonise Antarctica? Rather than a full proposal, what I offer in this section is a brief sketch with some points to consider.

Taking the Declaration on Decolonisation as the model to drive and guide the decolonisation process in Antarctica, the first step should be an explicit recognition by the historic claimants of the colonial spirit in which their unilateral claims were made. Vestiges of a bygone era, and either unrecognised or openly disputed by the majority of world states (including Treaty members), these claims should once and for all be allowed to “melt”.<sup>34</sup> Giving up their territorial claims, however, would not mean giving up their presence in the continent. Just like the Declaration on Decolonisation recognises that newly independent states will need to go through a transition, where the old authorities ensure that new institutions are in place before leaving, here a similar arrangement should be reached. Moreover, because the “newly independent state” in this case lacks a permanent human population, the historic claimants would probably continue to have a strong presence and influence on Antarctic matters.<sup>35</sup>

A second step should be the explicit recognition of the way in which the AT was originally constituted, by self-appointed members who unilaterally ruled out the possibility of internationalising Antarctica. That all states are free to opt in is the default response among those who think there is no problem regarding participation in the AT. The truth, nonetheless, is that the majority of developing states remain outsiders.<sup>36</sup> One idea towards revising

34 According to Alan Hemmings, “186 states appear *not* to recognize the Antarctic claims [and] a smaller number have clearly declared this”: Hemmings, note 18 at 77.

To be sure, this would require Argentinians and Chileans to recognise – against their purportedly anti-colonial attitude – the colonial nature of their claims.

35 Those who find this proposal utterly unrealistic should not forget that international politics is full of unexpected turns, and that some of the claimants in the past have been open to this possibility. See, e.g., New Zealand’s position on this issue in Hemmings note 18, at 87–88.

36 Among the consultative parties, 18 out of 29 countries are OECD members, while in the case of non-consultative parties it is 11 out of 24. OECD, ‘List of OECD member countries – Ratification of the Convention of the OECD’, <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>, accessed 25 February 2019.

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the terms of accession would be to turn things on their head and consider every world state a member of the AT unless they opted out. Given that this would only give states the right to speak and give their opinion at the ATMs, it couldn't be objected that this nudging strategy would create a huge political upheaval within the system.

Third and finally, there should be an explicit recognition that the maintenance of a two-tiered membership based on science is problematic and should be rethought. It is one thing to say that science is a good thing to have in Antarctica, because it enhances the capacity for decision-making, but quite another to say that the production of scientific knowledge *alone* should be the basis for privileged decision-making rights. A “continent for science” might be a good thing, but from this it does not follow that the political arrangement should be the exclusive property of those who do science. Imposing science as the criterion to determine who should be Antarctic players, in sum, perpetuates the unequal power relations characteristic of colonial structures; removing it would be to remove a real obstacle in the way to a more fair participation in Antarctic decision-making.<sup>37</sup>

### 4 An objection, and a response

In a much quoted article by theorists interested in colonisation and decolonisation, Jeremy Waldron argues for what he calls “the supersession of injustice”.<sup>38</sup> In places such as North America, New Zealand and Australia, he contends, heinous injustices were committed against the native populations by the colonial powers, which not only subjugated them, but also settled there for good. So what should we do about those wrongs? What should a theory of reparation demand? Waldron's answer is that, insofar as circumstances have radically changed (through a sharp increase of the world's population and a sharp decline of available resources) what counted as an injustice at  $t_1$  may not be so at  $t_2$ . The message for the indigenous groups is that the initial injustice has been *superseded*: proper reparation should not be about giving the land back to the native people (for, where would the descendants of the settlers go?!), but about creating just conditions for them, now and in the future.

Similarly, some may agree with the analysis offered in section 2 and still object to the idea that the wrongs of Antarctic colonialism should be addressed head-on. Despite the colonial origins of the AT and its associated wrongs, they might say, its accomplishments in 60 years, its growing membership and legitimacy, the efficiency of its legal corpus and its overall stability should be hailed, not jeered. Among the accomplishments, they could mention what Alan Hemmings calls “the new trinity of high values” of the AT since the

37 Thanks to Peder Roberts for pushing me on this point.

38 Jeremy Waldron, ‘Superseding Historic Injustice’, *Ethics* 103, no. 1 (1992), 4–28.

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Environmental Protocol (EP) was signed in 1991: peace, science, and the protection of the environment.<sup>39</sup> In short, rather than becoming obsessed with the unjust beginnings of the Antarctic political setup, we should look forward and secure what the AT has already achieved.<sup>40</sup> What might have been an unjust arrangement at its inception, in other words, may have ceased to be so considering six decades of positive track-record.

I don't think this objection works. For one thing, it is impossible to disprove such a claim, given that we have no access to the possible worlds where the AT did not happen. How can we know if things would not have been even better if Antarctica had not been colonised in the way it was? For another thing, this objection is biased in favour of the status quo, and seems to assume that the list of achievements already set out would be lost if someone dared to reform the AT's structure. But this worry is unwarranted. On the contrary, there are good reasons to think that all the positive aspects already mentioned could be strengthened in a decolonised AT.

In terms of preserving peace and scientific cooperation in the continent, it makes sense to think that bringing in a larger number of members into the Antarctic political association would help, rather than hinder, these goals.<sup>41</sup> The ideals of open science and knowledge-sharing might truly be realised, while a critical discussion could finally be had regarding issues such as bio-prospecting – which goes unchecked given the unwillingness of many of the consultative parties to modify the legal status of what today is conveniently treated as *res nullius*.<sup>42</sup>

As for the protection of the environment, Antarctica is usually mentioned as the most protected place on earth, thanks to the provisions of the EP.<sup>43</sup> In practice, however, Antarctica has mostly protected itself thanks to its uninviting climate, geographical remoteness, and costly access. It is these factors – more than any active engagement of the AT – which has kept the continent relatively pristine.<sup>44</sup> To be sure, it has to be acknowledged that it was thanks

39 Alan D. Hemmings, 'Considerable Values in Antarctica', *The Polar Journal* 1 (2012): 139–56, at 145.

40 In this spirit, see Marcus Howard, Julia Jabour and A. J. Press, 'Antarctic Treaty System Ready for a Challenge', *Science* 338, no. 6107 (2 November 2012), 603.

41 At this point, some might worry that if the decision-making procedure through consensus is already problematic, it will become unworkable as membership keeps growing. For a defence of a more democratic procedure, see 'Reform the Antarctic Treaty', *Nature* 558 (14 June 2018), 161.

42 Christopher C. Joyner, 'Bioprospecting as a Challenge for the Antarctic Treaty', in Hemmings, Rothwell and Scott, note 18, at 197–214.

43 'Protocol on Environmental Protection to the Antarctic Treaty', Umwelt Bundesamt, 27 January 2016, <https://www.umweltbundesamt.de/en/protocol-on-environmental-protection-to-the>, accessed 12 November 2018.

44 For a critical appraisal of environmental protection in Antarctica, see Justine D. Shaw et al., 'Antarctic Protected Areas are Inadequate, Unrepresentative and at Risk', *PLOS Biology* 12 (2014), 1–5.

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to the vision of the EP signatories that there still is a protected Antarctic environment. If the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) rather than the EP had been signed, the “white” continent would have probably ceased to be so by now.<sup>45</sup> Still, it is not clear why this would change for the worse in a decolonised Antarctic Treaty System, especially considering that those states **which** more openly wish for the end of the mineral ban are already signatories.<sup>46</sup>

Moving on to its growing membership and legitimacy, it is true that the AT is now more representative – and purportedly, more legitimate – than it was at the beginning. Yet it should be recalled that its growth in terms of members occurred precisely when external criticism increased.<sup>47</sup> Rather than waiting for a new Mahathir to reopen the ‘Question of Antarctica’ at the UNGA, and rather than waiting for non-parties to publicly reject the AT as the rightful political association to regulate Antarctic matters, starting a decolonising process within the AT might give the system increased legitimacy and standing vis-à-vis potentially rebellious states.

Regarding the efficiency of its legal corpus, this would not have to be affected by a decolonisation process. On the contrary, it is more likely that those areas which have, so far, been left out – such as bioprospecting – could finally become regulated.

Lastly, that the AT has provided stability to the continent during six decades is no guarantee that it will continue to provide it in the future. But, more importantly, stability in itself is not a value: a wrongful arrangement might be very stable, and one might still want to change it. I am not saying that this is the case of the AT; I am only saying that the fact that there is a stable system on its own is no argument against a push toward decolonisation.

45 This is not obvious, though, given that most of the tough environmental regulations found in the EP were actually taken from CRAMRA. I thank Julia Jabour from bringing this point to my attention.

46 See, for example, the recent claim by the leader of the National Antarctic Center of Ukraine, Evgeny Dikiy, that “there is only a little more than 30 years to 2048 and, after this, it is probable that the ban will be lifted. In this process will be those countries that keep scientific stations there and carry out scientific activities. Because of this, it is no coincidence that half of our [2018–19] expedition consists of geologists”: Alexander Zagorodny, ‘For the First Time in Many Years, Ukrainian Female Scientists Have Been Sent to Antarctica’, *TSN Ukraine*, 17 January 2019, <https://ru.tsn.ua/ukrayina/vpervye-za-mnogo-let-v-antarktidu-otpravlyayutsya-ukrainskie-zhenschiny-uchenye-1282185.html>, accessed 25 February 2019, translation by Hannah Monsrud Sandvik. See also China’s purported acknowledgment (at least for the Chinese public) that its main interest in Antarctica is to eventually exploit its resources: Anne-Marie Brady, *China as a Great Polar Power* (Cambridge: Cambridge University Press, 2017), at 38.

47 Twenty-nine new states joined the AT after 1982: Secretariat of the Antarctic Treaty, ‘Parties’, <https://ats.aq/devAS/Parties?lang=e>, accessed 13 April 2020.

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### **5 Concluding remarks**

In this article I have suggested that, being part and parcel of the colonial enterprise, Antarctica should also be part of the world's decolonisation process. After pointing to three wrongs of Antarctic colonialism (the extravagant appropriation of land, the unjust constitution, and the unjust maintenance of a political association where not all parties are treated in equal and reciprocal terms), I proposed some ways forward. An open recognition of its colonial past and an honest willingness to move forward together with those who have so far been left aside are, in my view, the two main routes that the decolonisation process should take in Antarctica. Instead of weakening the achievements of the AT over six decades, this might be a needed step to strengthen and deepen its capacity to confront the challenges ahead.

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