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ARTICLE

Is Canada Entitled to the Arctic?

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Abstract

This article is interested in the general question of what justifies territorial rights over unoccupied places, including places that are not occupied but are situated within the territorial borders of a state. This question arises because one of the most common defenses of rights over territory makes use of the idea of occupancy and has difficulty explaining such rights in places that are not occupied. It explores this question through an examination of the claims and arguments in the Canadian Arctic, which provides an historically specific test case for the merits and plausibility of the various arguments appealed to. It argues that territorial rights in unoccupied places, including the Canadian Arctic, are justified on different grounds than in occupied parts of the territory, and that the justification also affects the kinds of rights—particularly over resources—that such states can claim.

Keywords: self-determination; territorial rights; sovereignty; territorial sovereignty; unoccupied places; Canadian Arctic; resources; resource rights; international agencies; seabed; unoccupied islands; property rights; property and territory

What justifies political authority over a territory? One answer is that political authority is ultimately justified by reference to the "people" who live on the territory. This answer is developed in many recent arguments for territorial rights (Miller 2007, 2012; Kolers 2009; Stilz 2009), including in my earlier work, where I argue that a group is justified in exercising jurisdictional authority over the area that it occupies when the group is the right kind of group to have rights of collective self-determination (Moore 2015). The principal advantage of appealing to occupancy is that it can respond to the so-called particularist challenge, that is, the challenge of explaining what justifies a particular group's control over a particular territory. Although this move is intuitively plausible and does connect particular geographic areas with the state, it is difficult, on this argument, to justify rights to territory in cases where the land is unoccupied.

In the standard case of territorial rights over occupied land, various territorial rights—of jurisdiction, use of and control over resources, control of the flow of goods and people across borders—are justified either in terms of the value of justice or that of collective self-determination. It is possible to then argue for the full range of rights that are often associated with territorial sovereignty, though naturally there are some normative limits to these rights consistent with the justification offered. The central argument of this paper is that we need to conceive of territorial rights in *unoccupied* places quite differently, both in terms of the justification offered and in terms of the territorial rights that are justified. In particular, I argue that the value of stewardship over unoccupied places can justify the right of jurisdiction, because some entity needs to make and enforce rules connected to stewardship of such places. By "stewardship," I mean the protection and maintenance of these areas for the common good of humanity, including the value of biodiversity, regulating climate change, and avoiding environmental degradation. This justificatory argument has impacts on the kinds of rights that the entity can then claim. To show this, the paper focuses on

resource rights, which are standardly connected to rights of territorial sovereignty. I argue that the stewardship justification does not support the usual understanding of resource rights, which permits resource use and resource-extraction activities, though stewardship clearly does involve control over natural resources.

The paper proceeds in the following way. The over-arching question of the paper is whether state authority over *unoccupied* areas can be justified. This involves asking what can justify state authority or territorial authority in general, and implicitly what value is realized that could justify an entity having these kinds of rights. A general justification is insufficient, however, since any justification has to explain why the entity—such as a state—is entitled to exercise these rights *over the particular place.* It has to address what is now widely regarded as the particularity problem, which means that it has to explain why the entity or governance structure should have authority over a particular area or geographic domain (Simmons 2003, 2016). This is not difficult to show in the self-determination argument because, on that argument, the state could credibly claim to represent the "nation" or the political community, and could credibly claim to be the geographic domain in which the people are self-determining. But the answer to the particularity question is not clear in the case of unoccupied places.

To explore what kinds of justifications might be appropriate in unoccupied places, this paper analyzes the arguments used to justify Canadian jurisdiction over the Arctic Archipelago. It asks, then, two distinct but interrelated questions, both of which are important in justifying territorial control over a particular place. The first question is: "Is Canada entitled to the Arctic?" This can be answered by looking at Canadian claims, activities, and the arguments that were and are advanced to justify its claims. The second question is: "How can we justify territorial rights over unoccupied land?" This second question arises because at least some of the Arctic is unoccupied. The unoccupied part of the Arctic is obviously a specific instance of unoccupied land. The paper begins by first considering the claims that were historically made to justify Canadian jurisdictional authority in the Arctic, which are a mix of empirical and normative arguments. I maintain that these arguments are extremely weak and incapable of justifying either jurisdictional authority or the specific rights, such as resource rights, that are normally associated with it. However, I also argue that the contextually specific features of the relationship of the Canadian state to the Arctic are important as a way to fix the territorial right- holder in cases where having some entity exercise jurisdiction over a geographic area is justified for other reasons (stewardship, peace, stability).

Before I begin, let me consider and address two principal challenges to the argument of this paper: the first is from a statist, and more conservative, direction, which is associated with traditional international relations theory, and assumes that there is no special problem about unoccupied land. The second challenge comes from an indigenous rights perspective, which is concerned that the question posed in this paper overlooks the fact that indigenous people once owned and/or had legitimate authority over the Arctic. This second challenge is directed against the specific case of Canada in the Arctic, which, it is claimed, was fully occupied. Let me address each of these in turn, as they are relevant to the substantive argument of the paper.

The statist objection

Let me motivate the statist objection by agreeing with at least part of it: unlike some cases of unoccupied land, such as the Senkaku/Diaoyu islands in the South China Sea, which are disputed between China, Taiwan, and Japan, Canadian territorial authority in the Arctic is rarely disputed by other international actors. Except for a relatively peaceful dispute over Han Island, a one kilometer wide, barren islet in the Nares Strait between Ellesmere Island and northwest Greenland, which is disputed between Canada and Denmark, Canadian authority over land in the Arctic is accepted by all sides.[1] On the central principle of international law regulating territory and boundaries—the *uti*

[1]On the Hans Island dispute, see Byers (2013, 10–17) and Gray (1997, 61, 68–69).

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possedetis principle (that territorial entitlement is based on what one possesses)—Canada is entitled to the Arctic. The statist might argue therefore that the topic of this paper is uninteresting and irrelevant: everyone is agreed that Canada is entitled to the lands that it claims in the Arctic, and there is no further need to address this question or to examine the basis of the Canadian claim.[2]

That assumption would be wrong, however, for two very compelling reasons, one philosophical and the other both philosophical and practical.

There are general philosophical difficulties with the underlying picture of the state as the final or appropriate territorial right- holder, which is implicit in the statist view. In the opening paragraph, I noted that there is now a widespread view in the territorial rights literature that such rights are held, fundamentally, by "the people," which raises the question how we are to conceptualize the relationship between people in the state and land that they do not, in fact, occupy (Miller 2007; Stilz 2011; Nine 2012; Moore 2014, 2015). To see the plausibility of the view that "the people" hold fundamental territorial rights over the land and that the state is the institutional mechanism by which they do so, consider the case of the Allied victory over Germany in 1945. Nazi Germany was at that time an egregiously unjust and aggressor state, and so was clearly illegitimate. Yet the international community didn't think that it was appropriate for the Allied powers to gain rights over the territory once they had occupied Germany: instead, it was thought that that right should belong to the German people, who should be assisted to create a state on that territory through which they could be self-determining, and that eventually the Allied powers should leave. This suggests that rights over territory are held ultimately by the people, but this has the implication that we need to have an account of how we should deal with land that isn't occupied, and so can't be thought of as central to the self-determination of the right-holding people. We cannot, then, adopt the quick statist dismissal of the general problem of justifying unoccupied land.

Second, as noted above, it's not obvious that controlling territory automatically confers on the right- holder all elements that we normally associate with sovereignty, which typically involves a bundle of different territorial rights. Recent work on territorial rights has taken the form of unpacking this previously untheorized bundle of rights—jurisdiction, resources, control over borders, etc.—and interrogating the grounds on which a state, or a political community, can make a claim to each one of these in the domain (Meisels 2009; Miller 2012; Stilz 2011; Nine 2008, 2012, 2015; Angeli 2015; Moore 2014, 2015; Simmons 2003, 2016). This paper focuses on the right to control resources within the geographic area. In areas that are occupied, it is possible to argue that there are some (defeasible) use and control rights over resources because individuals obviously have rights to use resources: to consume food and water, to make shelters, clothing, and other things in the course of living their lives. As communities, people also need to have control over the rules surrounding this individual acquisition if the community is to be able to have control over the collective dimension of people's lives. However, this argument seems not to apply to uninhabited areas, and, in the sections that follow, this paper explores the weakness of the arguments that are made on behalf of Canadian territorial authority in the uninhabited Arctic and whether they can be employed to justify the full range of rights that are normally associated with territorial sovereignty, focusing especially on rights over resources.

The indigenous occupancy objection

Let me turn now to a different kind of objection to the question posed in the paper, which, to some extent at least, agrees with the basic philosophical position it takes—that territorial rights are established on the basis of people's occupancy of land—but rejects its specific application to

[2]While there are no serious disputes about Canadian *land* possession in the Arctic, there are disputes over the maritime boundaries between Canada and the United States on the Beaufort Sea and on the status of the Northwest Passage. See Blake (1987) and Anderson (1987).

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Canada. The claim is that the Arctic was not unoccupied prior to the establishment of the Canadian state: it was occupied by indigenous people.

This disagreement appears to be in part conceptual and in part empirical. The empirical disagreement might simply be a dispute about whether indigenous people currently, or in the past, lived in the far reaches of the Arctic. The conceptual dispute is related to the empirical dispute in the sense that the answer to the empirical question partly depends on what it *means* for a group to be in occupancy of land, and how the scope of occupancy is delimited.

Let's examine the empirical dispute first. The focus of this paper is on the Arctic Archipelago in the very far north of the Canadian Arctic. Let me concede that many parts of the Arctic were, and still are, occupied by indigenous communities and that some parts which are not currently occupied by indigenous people were in the past occupied. However, there is evidence that some parts, especially the northernmost parts of the Arctic Archipelago, were and are unoccupied. Where the land is unoccupied because indigenous people have been forcibly displaced from their traditional territory, their claims should be analyzed in terms of corrective justice; but I set this aside here, because it raises quite different issues.

Let me turn now to the conceptual question. It is not obvious what it means for a group to be in occupancy of land, so it is important to clarify the sense in which land can be occupied or unoccupied.[3] First, I understand "occupancy" as applying to a collective—a group that has a collective identity and whose members share a geographic location with one another. This geographic location can be called their "area of occupancy." In cases where members of a group are physically present on a piece of land, they occupy at least some of it, but what is the extent of that occupancy? This is not obvious, since occupancy doesn't require that every square kilometer of land be literally occupied by a human being. Indeed, we expect that a group might settle more densely in some areas—along rivers or coastal areas, for example—and leave some areas as green land, or unimproved mountains, and so on. It is sufficient, for occupancy, that the land be an integral part of the collective self-determination project of the group in the sense that the group's way of life is bound up with access to and control over the area. If that condition applies, the group occupies it in the relevant sense. It represents the location of their aims and projects and is central to their material way of life.[4] Occupancy does not refer to a purely intentional or aspirational desire but requires that the group inhabits the area, at least for some time, and relies on the area to sustain its way of life. This means that a thinly inhabited area might be part of a group's occupancy area as long as the place is central or integral to the way of life of the group. Much of the Canadian Arctic is occupied in the relevant sense—certainly the mainland area of the Arctic is the subject of some overlapping occupancy claims by different indigenous peoples, as we might expect from migratory populations.[5] However, the Canadian Arctic is somewhat unusual in that it contains large areas in the interior of the northern part of the Arctic Archipelago that are not occupied even in that sense. Devon Island, Axel Heiburg, Melville Island, Prince Patrick Island, Prince of Wales Island, and Somerset Island have no permanent populations and, while there were definitely migratory Inuit populations on some of the more southern islands in the Arctic Archipelago and on Baffin Island, even then, it's fair to claim that the interior of these islands was and is unoccupied. They are also essentially uninhabitable.

1. The basis of the Canadian claim to the Arctic

Canadian territorial authority over the Arctic is undisputed by other international actors and many Canadians accept it, but this paper is interested in exploring the underlying arguments for it, both

[3]I try to use the language of occupancy in the sense of habitation which, unlike "occupied" land, does not raise issues of grasping or seizing. This is sometimes difficult, given that there is no easy term in English when the adjective is used to modify "land."

[4]This description draws on my book *A Political Theory of Territory*, chapter three. (Moore 2015).

[5]There was extensive mapping of traditional Inuit activity, including hunting areas and travel routes, prior to the Nunavut Land Claims Agreement that shows that the Inuit were active over most of the coastal areas even in the High Arctic Archipelago.

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now and in the past. It explores, that is, the deeper normative argument behind control over unoccupied territory. Most of these arguments rely on empirical claims—appealing, for example, to resource extraction activities, which is an empirical question (whether it occurred). But they also imply a deeper normative argument which should be interrogated: we would want to know why resource-extraction activities are relevant to grounding rights to the area. I argue that these arguments are weak in the senses that (a) they do not justify the bundle of rights—jurisdiction, rights over resources, control over borders—that we associate with territorial sovereignty; and (b) often did not single out a particular agent or institution as the unique territorial right- holder over the geographic domain. However, when taken together and in their context, these performative actions and persistent claims had the effect of generating a hegemonic consensus on Canadian entitlement to the Arctic. I argue that this matters for reasons similar to those identified by Hume on property (1978 [1739]). In cases where there is a strong justification for rights over territory, but disagreement or indeterminacy at the philosophical level about who ought to be the territorial right-holder over a particular geographic domain, the fact of consensus may matter. An examination of these arguments is also necessary to show that even if the claim to exercise jurisdiction is accepted for conventional or convergence reasons, it does not extend to the claim to sovereignty over resources.

The arguments that were made

Historically, the Canadian claim in the Arctic principally relied on two transfers by the British: the 1870 transfer of "Rupert's Land and the North-Western Territory," which was under indirect imperial control by the Hudson's Bay Company and was transferred to Canadian authority by an Act of Parliament (the Rupert's Land Act) in 1868; and a second transfer by an Imperial Order-in-Council dated July 31, 1880, under which the British transferred all "territories and possessions in North America not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions" (cited in Nicholson 1979, 60; see also Head 1963, 212). The second transfer was necessary because the 1870 Rupert's Land Act did not specify the precise northern frontier of the Canadian claim. Later, Canadian claims to the northern reaches of the second transfer was further clarified by adoption of the so-called "sector principle," which argued for a conventional drawing of boundaries along lines of longitude to the North Pole.

The Canadian territorial claim in the Arctic, then, is dependent on the transfer of territorial authority from Britain. What, though, was the basis of the British territorial claim in the Arctic? Britain based its claim on a number of different arguments, which Canada claims to have inherited. These were: (1) discovery; (2) historical connection; (3) legal documents; (4) effective occupancy and administration; (5) geographic contiguity, which in this case had a very specific interpretation—the "sector principle." All of these claims were then buttressed by the fact that many of them—though not all—were unchallenged by rival authorities and so are accepted as part of international law.

Claims and legal documents. Historical claims, discovery claims, and legal documents often operated in tandem because discovery in the past was used as the basis of a legal claim.

At the heart of the British claim to the Arctic Archipelago is the assertion that the British "discovered" it. The 1894 Act of Parliament describing the boundaries of the British claim explicitly refers to the eastern boundary, including "such portion of the North West coast of Greenland as may belong to Great Britain by *right of discovery* or otherwise [emphasis added]" (Nicholson 1979, 59). This activity began as early as 1576 when Martin Frobisher began the first of three voyages to what we now know as Frobisher Bay, through Davis Strait. It was followed by other explorations: John Davis in search of the Northwest Passage in 1585, 1586, and 1587; George Waymouth in 1602 to the Hudson Strait; Henry Hudson in 1610–11; and other voyages throughout the seventeenth century. The best known of these exploratory missions, designed to both map the area and discover a north-west passage from the Atlantic to the Pacific Ocean, was the ill-fated British expedition of 1845 led by John Franklin.

This argument may seem obviously weak, since we no longer think that sailing on a ship past some island, mapping the coastline for scientific purposes, or erecting a pile of rocks (a cairn) can

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confer rights over it, much less rights to thousands of kilometres inland.[6] Even at the time, there was serious concern that these could not justify jurisdiction, but merely amounted to performative actions that signaled a desire to hold territory in the area, and that this would need to be consolidated in other ways. There was a related concern that these actions failed to pick out a specific, individual territorial right- holder. For example, after the Franklin expedition, the Americans joined the British in searching for Franklin himself, his crew, and ship, but they also began their own mapping and exploring, and there was great concern among the British that the Americans were using this opportunity to "discover" the land for themselves.[7] This concern was not without warrant. Many countries engaged in "discovery." Americans also explored King William Island in 1878–80, erecting a cairn and planting an American flag at its northern extremity (Schwatka exploration). Greely in 1881–84, operating under the American flag, did the same in the central part of Ellesmere Island. The Norwegians sent expeditions to the Arctic Archipelago and more than 100,000 square miles were claimed in the name of the King of Norway.[8] By 1871, the British colonial secretary, responding to this activity, but principally to American exploration and mining interests, expressed the view that there would be "great difficulty" in including the far northern islands as part of Canada unless steps were taken to place the title of Canada "upon a clear and unmistakable footing" (cited in Nicholson 1979, 60). It was for this reason that the British took steps to pass title to Canada through both the Imperial Order in Council and the 1895 Act of Parliament.

Effective occupancy and administration

The usual "test" for a political entity to have rights of jurisdiction is "effective occupancy." In the case of the High Arctic, the British and then Canadian governments attempted to show "effective occupancy" by appealing to the fact that they administered justice and legal order to the people extracting resources there and, on such occasions, they took the opportunity to hoist the Union Jack (Nicholson 1979, 62–63; Canadian Department of Marine and Fisheries 1898, 24). By the spring of 1903, the government of Canada was patrolling the Hudson Bay and the eastern Arctic Archipelago, in part to demonstrate the exercise of sovereignty but also to map the area, to collect customs duties, and to enforce Canadian law. For example, in the 1906–07 exploration of Ellesmere Island, Devon Island, and Somerset Island, ship commander Captain Bernier reports that customs duties were collected from whalers in the area, a point that was made specifically to lend support to the claim that there was general acquiescence to Canadian authority.

The claim to exercise "effective occupancy" in the High Arctic was very weak because these activities were often very sporadic and because other potential claimants were engaging in similar activities in the area. The Americans, too, were not only mapping the area and claiming it but had established a graphite and mica mine in Baffin Island without British or Canadian permission.

The Canadian government was, however, anxious to assert jurisdiction and control over the large swathes of unoccupied and probably uninhabitable land in the High Arctic. Hence, between 1953 and 1955, Inuit families from Labrador were relocated by the Canadian government to the High Arctic Islands in order to demonstrate "use and occupancy" in the High Arctic, in the face of Greenland Inuit visiting Ellesmere Island and also increased US military presence in the area. The move was disastrous for the Inuit people themselves, whose relationship to their new location is

[6]Peter MacKay, Canada's foreign minister, commented on the Russian flag-planting on the North Pole seabed in 2007: "… this isn't the fifteenth century. You can't go around the world and just plant flags and say. 'We're claiming this territory.'" See *"Canada Rejects Flag-planting as 'Just a Show'"* (2007). Also see Foxall (2014, 93–112).

[7]In response, the British authorized Sir G. S. Nares to explore the northern coasts of Ellesmere Island and Greenland in 1875–76, hoisting the Union Jack at a number of places as they went. This discussion is largely drawn from the appendices of Romaniuk (2013).

[8]This claim was not withdrawn until 1930, when it was abandoned on condition that Canada pay the costs of the expedition that "discovered" this area, a condition that Canada accepted (Nicholson 1979, 66).

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perhaps summed up by their name for it: *Auyuittuq* ("the place where the ice never melts").[9] Of course, what this demonstrated was (a) a complete disregard for the welfare of the indigenous people themselves; (b) that the idea of "Canadian" Inuit and "Greenland Inuit" and "American Inuit" (in Alaska) failed to capture the trans-state character of these indigenous communities; and (c) that large swathes of this land had no people on them, which was concerning for the Canadian claim to territorial sovereignty.

The Sector Principle. In making the arguments above, the British and, subsequently, the Canadian state also sometimes appealed to indigenous use and occupancy in the Arctic that is proximate to the Archipelago to buttress their claim. This is problematic, though, too, because it presupposes without argument that the people in question were Canadian in the relevant sense.

How did that claim get extended to all the islands of the Arctic Archipelago, many of which had no populations over which to exercise jurisdiction? In 1907, the Canadian senator Pascal Poirier moved that Canada make a formal declaration of possession of the lands and islands situated in the Arctic extending to the North Pole. The claim here made more determinate the British transfer because it specified that all the islands between longitude 141° and 60° west up to the North Pole were Canadian territory. Since that time, other countries have used lines of longitude to claim lands in the North Pole without really showing any previous discovery or jurisdictional control or occupancy, but simply parceling out sovereignty in this way. The Poirier proposal suggested a claim to the North Pole, but the first explicit Canadian government claim to land reaching up to the North Pole (by the minister of the Interior) was in 1920. This was consolidated in the Canadian lexicon in 1953 when the Prime Minister of Canada reiterated the view: "We must leave no doubt of our active occupation and exercise of our sovereignty in these northern lands *right up to the pole*" (cited in Nicholson 1979, 71). The sector principle was superseded when Canada and Russia ratified the UN Convention on the Law of the Sea, but it was an important element in extending Canadian territorial rights to the High Arctic Archipelago. This "principle" is a purely conventional one, and even if we accept the convention, it is related only to how to draw boundaries, not to the justification of jurisdictional rights or resource rights, which we normally associate with territorial sovereignty.

2. Analysis of these arguments and their bearing on resource rights

One of the striking features of the arguments advanced for Canadian territorial authority in the Arctic is how weak they are. It is not simply that we now no longer accept "discovery" or flag planting or claims along lines of longitude as conferring rights over territory. It's that these arguments were not conclusive in their own time because they often failed to pick out a single territorial right- holder, and also did not provide a plausible normative basis for full territorial jurisdiction. They were rooted in a period of competition between European states for territorial authority, where claims were often advanced through these performative actions, which served to signal a desire to be the territorial sovereign there, but which didn't conclusively pick one out as the preferred sovereign. Even the legal claims are problematic since they rely on the aforementioned activities, and are made and decided in the legal order of the claimant group, rather than an impartial (e.g., international) tribunal.

The British and, subsequently, Canadian claims were mainly directed against rival states—the Americans, the Norwegians, the Danes, and the Russians—and almost entirely at validating British and, subsequently, Canadian sovereignty.[10] In that, the British and the Canadians have been

[9]For a discussion of these disastrous relocations, see my book *A Political Theory of Territory*, chapter three (Moore 2015).

[10]This does not, of course, settle the question of legitimacy in the domestic domain. This is relevant because, as indicated earlier, much of the Arctic was occupied. The fact that the territorial claims of the various European and European-descent countries simply ignored the indigenous people's communities is largely related to the assumptions about the cultural and racial superiority of Europeans, which led them to marginalize, ignore, and /or destroy the existing political communities living in the area. These assumptions are no longer at the center of the interstate order, nor acceptable bases of state legitimacy (Cairns 2000, 17).

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remarkably successful: these claims, weak in themselves, and indeed recognized as such by the claimants, were effective over time in building an association in the minds of rival state actors that the Arctic was British and, subsequently, Canadian. Today, the Canadian claim is almost universally recognized as valid within the inter-state community and, a few disputes over adjacent territorial waters aside, Canadian territorial rights are recognized in the Arctic. Some might argue that this convergence on Canada as the rightful authority in that region ought to be decisive—and, as I will argue below, it is indeed normatively relevant. However, this does not amount to accepting the statist view outlined at the beginning of the paper.[11]

Why not? First, the weakness of the specific, historical arguments for territorial authority in the High Arctic means that if Canada is the appropriate territorial authority, it needs this to be grounded in a different justificatory argument. The usual arguments—in terms of being an instrument of justice and/or self-determination over the people living there—do not apply to unoccupied areas, and the push to extend territorial claims in the Arctic from more standard cases was rooted in a racist imperial mentality, according to which white people ruled over nonwhite people everywhere, and competed with each other for territorial control (Cairns 2000). Thus, if the basis of the claim is to be put on firmer ground, we need an argument for jurisdictional authority, which also then can be deployed to examine related claims (such as claims to resources or control over migration). I develop this below, in the idea of stewardship. Secondly, and relatedly, these various claims may have helped historically in achieving consensus, which I will suggest does have some relevance, but they do not show that that confers the kind of rights we normally associate with territorial sovereignty. I will argue this below, specifically in relation to resource rights: I claim that these arguments do not justify the state in having rights of use and control over resources in the Arctic Archipelago. Although Britain, and then subsequently Canada, in making a claim for territorial rights in the Arctic, appealed to their control over resource-based activities such as fishing, whaling, and mining as an argument in support of their claim to having rights over the territory, that argument seems to get things exactly the wrong way around. The correct view, surely, is not that extracting resources confers entitlement over the whole territory, but, in the absence of entitlement to the territory, why would we think that the person or group was entitled to the resources?

In appealing to jurisdiction over resources to buttress their claim to territory, the British were extending a familiar line of argument to their case. But the reason various kinds of human activities, such as using land and resources, lend support to a group or community's claim to have territorial rights on said land is because it helps demonstrate an integral connection between the life of a community and access to and control over natural resources. Another reason is that there is clearly a close relationship between control over natural resources and the exercise of collective self-determination. This is because it is difficult to have robust forms of self-determination if one lacks control over the conditions of one's collective existence, and this centrally means control over the natural resources, including land and water, where one lives.[12] These considerations can support indigenous people's claims to resource rights in their part of the Arctic for they are the traditional occupants of the land, living there and using it in the course of their lives. In the case of the unoccupied land in the Arctic Archipelago, however, the area is neither deeply connected to the Canadian people's way of life, plans, and projects, nor important to control for collective self-determination.

[11]For a good account of why third parties should recognize these claims, see Nine (2015).

[12]In this respect, the 1993 Nunavut Lands Claims Agreement could be thought to be deeply problematic. In it, the Inuit surrendered aboriginal title and recognized Canadian sovereignty for concrete benefits, such as large amounts of money to be transferred. Inuit title can, to some extent, coexist with Canadian authority, especially one premised on an environmental remit, because Inuit people who live there have a strong interest in preserving the very environment in which they live. And it was disappointing, too, that the Agreement gave control to the Canadian state of resources, which, on the argument provided below, would have been better placed in the hands of the indigenous people (subject to environmental constraints).

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But before I can claim that there is no right to extract resources in the Arctic, I have to consider an influential liberal argument that there is a general liberty right to extract resources in land that is empty (Locke 1993 [1689]; Nozick 1974; Steiner 1996; Simmons 1992; Mack 2013). The basic idea here is that individuals own themselves and have basic liberty rights to acquire, keep, and exchange property holdings in the external world; unclaimed or unowned land is not valuable to anyone, but, by transforming it into something of use, it contributes to increasing the "general stock" of wealth available to mankind, in Locke's memorable phrase. This was generally accepted in much liberal political theory in the past and does seem to rely on a number of widely accepted assumptions about human liberty, human needs, the rights of people to satisfy their needs, and the positive transformative effects of human labor (cf. Nine 2012). On this view, unowned or unclaimed land or resources, such as in the seabed or the unoccupied Arctic islands, should be "up for grabs." If we accept this view (and we are not libertarians), then we can see that there may be a role for the state to regulate this activity (perhaps by issuing permits or by enforcing environmental regulations) but the general disposition is a permissive one. If we accept this line of argument, it would mean that the state ought, in general, be disposed to allow companies—whether from Ontario or Michigan or Germany—to arrive in the Arctic to extract resources that would ultimately lead to gains in human welfare.

We should, I argue, reject this picture of relatively unimpeded access to unused resources on unoccupied land, which would lead to the creation of property rights. Because the political community cannot make a special claim to the land and resources in an unoccupied area, the argument relies on a questionable Lockean assumption that we can correlate resource extraction with general benefit. This assumption was generally held when this view was hegemonic from the seventeenth century until very recently, but we now have a richer scientific understanding of the interrelationship between resource development and the environment, especially in a fragile ecosystem like the Arctic, where the use of the resource involves transformative extraction activities and the common good of all humanity.[13]

The problem with resource extraction and property rights to permit resource extraction is that they pose a serious threat to the fragile and specialized ecosystem of the Arctic.[14] This is true of two areas of grave contemporary concern, which involve resource-extraction activities in unoccupied areas: oil and gas drilling in the Arctic; and mining in the seabed, though the concerns are not

[13]Perhaps, though, the libertarian can reply that his or her theory can accommodate this insight. Although there is in libertarian political and economic thought a presumption in favor of the acquisition of unowned things in the external world, which is grounded in the idea of individual self-ownership and the importance of individual liberty, most versions of libertarianism view acquisition as subject to a constraint or proviso that incorporates the claims of others. Although Locke's original proviso was primarily concerned with the *distributive* claims of others and the worry that the appropriation of specific individual things would make those people excluded from property holdings worse off, the libertarian-who-accepts-science could argue that she has the conceptual resources to broaden the proviso to incorporate the new scientific evidence about potential harms. There are, however, at least two problems with the extension of the proviso to incorporate the ecological argument advanced above. First, this seems to turn the libertarian project on its head in the sense that the broad commitment of libertarianism is the defense of private property rights. Although there were constraints on this that needed to be respected, these were always defined in such a way to make appropriation possible, precisely because property rights were viewed as an extension of liberty. But the ecological story which I've offered for the Arctic, and which could be also adopted in other places, shows that appropriation is wrongful for large swathes of the world. This, then, seems to pose a tragic dilemma for the science-informed libertarian, who believes property rights are an extension of individual liberty and this would be constraining what she also regards as a fundamental human liberty and thereby would be tragic. Second, the scientifically informed libertarian constraint on appropriation, as described above, would require a complete retheorization of the libertarian view of resources as interchangeable and undifferentiated. The traditional view of the proviso is that welfare gains through efficiency can compensate losers who are harmed by resource extraction or excluded from them. However, the ecological view advanced here suggests that resources should not be viewed merely as things that ought to be available for transformative human processes, but should be evaluated, instead, in terms of the relationship of "resources" to other living things in the world and to human beings.

[14]For a good discussion of the specialized Arctic ecosystem and the disastrous effects of warming on it, see *"$500bn plan to refreeze the Arctic"* (2017, 32).

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confined to these. There is real concern among environmental scientists about the risk of offshore drilling in the Arctic seas of both Canada and the United States (Alaska). Oil disperses and degrades very slowly at very low temperatures, and challenging weather, ice, remoteness, and lack of coastal infrastructure and population make a successful cleanup even less likely. In 2011, the head of the US Coast Guard warned Congress that the United States was unprepared to respond to a major oil spill in the Arctic (Byers 2013, 201). The same challenges exist in the Canadian sector of the Beaufort Sea and the Arctic Archipelago. Indeed, according to the World Wildlife Federation, "mounting an effective response to a major oil spill in the Arctic is presently not possible due to enormous environmental challenges, a lack of capacity, and the severe limitations of current response methods in ice-covered waters" (cited in Byers 2013, 213).

The seabed is another unclaimed and unoccupied area on Earth that is a potential source of resources which could contribute to the overall wealth and prosperity of humankind (Byers 2013, 213). Should we regard these as "up for grabs"? There have been known deposits of rich manganese ore on the Arctic floor in the Kara Sea off Siberia at least since 1872, but this issue has become of more pressing importance with increased technology and the discovery of additional seabed nodules. These are typically found near underwater geysers (hydrothermal vents) and contain economic concentrations of strategic minerals, including copper, nickel, cobalt, and rare-earth elements. There is as yet no deep-sea mining in the Arctic Ocean, but it is expected that this will become economically viable in the near future as a result of the melting polar ice caps. How should we regard this? Should the state sanction private appropriation (and perhaps taxes on the wealth generated) as these are unused resources that will contribute to the general stock of mankind?

Some might argue that a complete prohibition on resource extraction is unwarranted: there may be resource extraction that can be done without serious ecological damage. Indeed, it might be claimed that harvesting such resources would help offset the cost of ecological cleanup, a point that I will consider next. I cannot, of course, preclude the possibility of an environmentally safe form of resource extraction, but I think a precautionary principle is in order because of the fragility of these areas and their importance to the health of the planet and the people living on it. We have insufficient knowledge of the effects of disturbing the highly specialized ecosystems that flourish around the ecological environment of the Arctic (or the hydrothermal vents in the seabed which would be disturbed by seabed mining) and the only way to find out is to go ahead with resource extraction, which imposes serious risk on everyone. A red-line rule about resource extraction is also suggested by considering the possible consequences of a more nuanced rule involving the exercise of judgement in this matter: states, which would be in a position to tax the resource wealth created, would have an incentive to adopt a permissive stance. It could also be argued—in favor of a red-line rule—that in a world where homo sapiens dominate most of the Earth's surface and species extinction rates are between 100 and 1,000 times their prehuman level, it makes sense to fence off human-free areas as rapidly and extensively as possible before these areas are also subject to the kinds of trade-offs that have, until now, been managed so badly from the point of view of stewardship (*The Economist*, 2019). Therefore, the model for resource exploitation that makes sense for the Arctic, I would argue, are the rules outlined in the Antarctic Treaty, which prohibits all forms of resource extraction, with the exception of some (regulated) fishing in the adjacent Antarctic Seas (though this could be better regulated and enforced).

3. Who Ought to be the Steward?

In the first part of the paper, I argued that the justifications for Canadian authority over the uninhabited parts of the Arctic Archipelago are very weak. I then suggested that it would be problematic to leave this area unowned and under no control because this might give rise to predatory activities. The thought, then, is that this area needs a territorial authority principally to exercise a stewardship function, though, also, I will suggest below that there are other values at play, too, such as peace and stability. At this point, the relevant territorial right is simply the right of

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jurisdiction—the right to make and enforce rules connected to stewardship. This is, in some sense, also a right over resources since it involves controlling resources (preventing people from using them). Although I do not discuss this here, it could also justify the right to control borders, since environmental stewardship may involve preventing in-migration of human beings into protected areas.

In some sense, of course, stewardship is an important principle everywhere, not simply in unoccupied areas. Although I cannot argue for this here, I assume that there is some kind of stewardship requirement everywhere on Earth and that the state has a fiduciary duty to protect and take responsibility for the health of its territory, and to do its share in contributing to environmental goals of global sustainability and environmental protection. In occupied areas, this competes with other sorts of claims by people living there, for use and exploitation of resources.[15] The competing arguments that apply elsewhere don't apply to the Arctic. Moreover, many of these unoccupied places—the oceans, the polar regions, the rainforests—are ecologically fragile, and are also important for interconnected climate processes on Earth. In such places, the territorial right- holder, if there is to be one (and I think this is necessary to ensure that the areas are properly protected), has an obligation to protect these areas both because the Arctic and other unoccupied places are valuable in themselves and because of their importance to the planet as a whole.

Once we accept that the primary relationship of people to unoccupied areas such as the islands in the far north of the Arctic Archipelago is not that of ownership and/or resource extraction but that of stewardship in the interests of common humanity, there is the question of who or what institution ought to discharge that duty, and how the costs should be paid for.

Let me take these two issues in order. There are three possibilities for jurisdictional authority and enforcement of these stewardship duties in the unoccupied Canadian Arctic: (1) an international agency; (2) indigenous people located near the Arctic; and (3) proximate territorial states, and if the latter, (3b) which proximate state? These are not necessarily mutually exclusive since indigenous people and territorial states can operate through international institutions, and responsibility can involve both jurisdiction and enforcement capabilities. It's possible to have shared jurisdiction or to allocate these functions (jurisdiction and enforcement) to different agents.

Since the idea of stewardship involves protection and maintenance of the area for the common good of humanity, it might seem that the appropriate locus of jurisdiction for the regulation or maintenance of the area in question ought to fall to an international organization with coercive powers, charged with this responsibility. There are a number of transnational organizations that deal with areas of international cooperation over the Arctic. Most notably, there is transborder cooperation among indigenous people on matters of shared concern principally through the Inuit Circumpolar Council,[16] and indigenous people and the relevant territorial state also have

[15]I do not want to downplay the importance of environmental concerns in such places. Indeed, in many populated areas, relatively small protected areas can have large impacts on preserving biodiversity and halting environmental degradation. Recent research has shown that "even 17 percent of the world's land surface, if chosen carefully, could be arranged to protect as many as 67 percent of the world's plant species." Species in these areas are often the ones most at risk because they are close to areas inhabited by humans. This has been the conclusion of studies that focus on areas such as the southern Appalachians and Brazil's Atlantic rainforest along its southeastern coast, which contain threatened species. See *"Eco-nomics"* (2019, 68–70).

[16]There has been extensive mobilization by the indigenous people in the Arctic to assert their rights to exercise jurisdiction over their collective lives, to control resources, to protect their culture, and to address their economic, social, and cultural marginalization. Some groups—like the Athabaskans and Gwich'in—are spread across Alaska (the United States) and Canada, and seek forms of cooperation to pursue their shared interests across the two boundaries. The same is true of the Inuit in Alaska and the western Arctic—called respectively the Inuvialuit (Canada) and Inupiat (Alaska)—who broadly share the same culture and regard themselves as essentially the same people. They work closely together in the Inuit Circumpolar Council (ICC) which also includes other Inuit people (the Inuit Tapiriit Kanatami) as well as indigenous people of Greenland and Russia. Other groups—the Saami, who are spread across Norway, Sweden, Finland, Russia, and the Aleuts in the Aleutian Islands between Russia and the United States, and Russia's own indigenous people—have also been interested in representation in international organizations that are relevant to them, such as the Arctic Council.

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representation in the Arctic Council, which gives indigenous people permanent rights of participation. However, higher-level membership status is confined to the eight Arctic territorial states—Denmark (including Greenland and the Faeroe Islands), Canada, Russia, Sweden, Norway, and the United States.[17]

Although we do have some international agencies in place, and these could be further strengthened and made more inclusive, the central problem is that there is not now nor in the foreseeable future an overarching organization with jurisdiction and enforcement capabilities over the territory that could effectively exercise a stewardship role. The problem here is not a theoretical one but a practical one. It is that there's no point in assigning an authority to carry out this function unless this—the assigning and the carrying out—is practically feasible. There are two senses of "feasible": the binary sense, which is connected to logical consistency; and a scalar sense, in which feasibility refers to a measure of probability (how likely it is for something to happen or be agreed up on or implemented). The establishment of a multilateral agency with jurisdictional authority and coercive power over unoccupied resources is feasible in the first sense but not obviously in the second. Moreover, the organizations that we have now and in the foreseeable future are inadequate in two ways: they are only authoritative for those parties that agree to them and, even then, the enforcement mechanisms are quite weak.

It's unlikely that we can get agreement on such an organization or conferring significant powers on existing transnational or international agencies in the comprehensive way that is needed in the foreseeable or even medium-term future. That does not, of course, mean that we shouldn't take steps to advance that view, or to create a global environmental agency for the Arctic that could undertake such management activities and enforce its rules.

But in the meantime, or in addition, we could also imagine giving the responsibility to protect the Arctic to the most proximate capable agent who is likely to discharge this duty. Proximity matters because in the case of an environmental disaster, especially in the challenging environment of the Arctic Ocean, it is important to get to the area in question quickly to identify the problem, to address it, and possibly stop or reverse the situation. It is therefore strongly related to capacity, by which I mean the ability to discharge this function. Indeed, capacity is a necessary condition for being a territorial rights–holder. After all, what would be the point of conferring authority over territory to act as a steward if the designated agent or institution could not fulfill that responsibility? These two considerations are relevant to the second and third possibilities: indigenous people in the Canadian Arctic who live nearby on the one hand, and proximate capable territorial states on the other.

One advantage of giving stewardship responsibility to indigenous people is that they live close to the uninhabited Arctic, and so are in a position to identify and respond to environmental harm and are also likely to be impacted by the harm, which means that they have a strong interest in environmental protection. Moreover, they have been among the most consistent proponents of something like a stewardship view of the environment. Consider this fairly typical statement of how indigenous people relate to the land by the Mohawk scholar Monture-Angus (1999, 36; Nichols 2018):

> Although Aboriginal people maintain a close relationship with the land … , it is not about control of the land … Earth is mother and she nurtures us all … Sovereignty, when defined as my right to be responsible … requires a relationship with territory (and not a relationship based on control of that territory) … What must be understood then is that the Aboriginal request to have our sovereignty respected is really a request to be responsible.

[17]There are similar demands in other Arctic states. The Saami people, who live in Norway, Sweden, Finland, and Russia, have a Saami Council that was established in 1956 to promote linguistic and cultural rights. Because the Saami are largely nomadic reindeer herders, it was important that the Saami were recognized in all these countries and their right to freedom of movement be protected. Along with the Inuit, they have had, since 1996, "permanent participant" status in the Arctic Council, where they cooperate on issues of importance to them. The Saami also have mechanism of collective self-government: there are elected Saami Parliaments established in Norway in 1989, in Sweden in 1993, and Finland in 1996.

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This seems to capture the essence of the stewardship view: that decisions should be made in the interests of the long-term protection of "the land" or ecosystem, and that the primary relationship of individuals or groups to that area is one of responsibility. There are numerous other references by many different indigenous people to a similar stewardship conception of the land, which suggests that the indigenous way of viewing land is not primarily a proprietary one (although, of course, different indigenous people may have different views). One disadvantage of conferring exclusive stewardship rights on indigenous people, however, is that they lack capacity: stewardship involves not only expensive scientific analysis of the ecosystem to support environmental protection but also enforcement capabilities. Small and isolated indigenous peoples cannot themselves discharge these responsibilities (though, of course, one of the reasons that they lack capacity is that they have been dispossessed of the main requirements precisely by the Canadian state) and would need either the transfer of resources to enable them to do this, or to work in cooperation with the Canadian state that does have this capacity, which again may raise issues of feasibility.

This brings us to proximate and capable territorial states discharging this duty. The Canadian state is, of course, a contender for being given responsibility to protect the Arctic Archipelago, which is currently within its territorial boundaries. The proximity and capacity principles don't uniquely pick it out as the one to discharge this duty. Russia, the United States, or Denmark are also proximate to some parts of the Archipelago. However, here, the fact that these historical arguments have achieved convergence at the international level on Canadian authority over this territory is both legally and morally relevant. As David Hume noted, in cases of disagreement over property, we need a political order and a system of rules to avoid conflict (Hume 1978 [1739], 484–98). This thought applies, too, to territory. Although we need to do better than mere conflict avoidance at the international level (we need stewardship of the unoccupied areas that are important to the health of the planet), we should accept conventional reasons when they lead to convergence on a territorial right- holder that is both proximate and capable, even if that convergence is the result of weak normative reasons. Indeed, it would be a disservice to philosophical reasoning if this was ignored because the imperative to avoid conflict (among competing claimants) and assign a steward in these areas is also morally compelling and can justify appealing to conventional rules.

This may seem a very conventional view: Canada has territorial rights over its portion of the Arctic, Russia over its, and so on. Territorial states that are accepted political authorities in other unoccupied areas—whether they be rainforests or uninhabited islands or deserts—are picked out, for conventional reasons, as holders of jurisdictional authority to exercise stewardship over adjacent unoccupied areas with which they are associated. In fact, though, the argument of this paper is more radical than this because stewardship implies a success condition: a country could fail to be a steward, and its territorial rights brought into question. The conventional argument only picks out the current state, or the conventionally accepted state, as the one that ought to be the steward when we have a number of possible contenders, but this authority is contingent on the state actually performing this function.

On this front, there is some reason for optimism. While the Canadian state has not always taken this view, there is some evidence that it now sees itself at least partly as a steward of the Arctic. Stewardship, as it relates to species protection, is the main argument for the establishment of the 200 nautical mile zones of regulation for coastal states. It has been deployed in support of the Canadian state's claim that the ocean around the Arctic Archipelago ought to be viewed as internal waters only, and it is the main duty bearer to enforce the Convention on the Law of the Seas, which is concerned with marine pollution, as well as the terms of the Ballast Water Management convention.[18] Regulation and enforcement is especially important in the Arctic, where ships need strengthened hulls and advanced navigational and communications equipment appropriate for

[18]The issue here is that cargo ships typically carry a large amount of water in their ballast tanks to provide stability in the open seas and this water is typically taken on in the last port of call and released at the next port of call. This is a major source of

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remote and challenging Arctic seas, and where the ecosystem is highly specialized and extremely vulnerable to invasive species transfer. It also gives a normative basis for the creation of large national parks in the Arctic and the creation of marine-protected areas.

Of course, this stewardship view is not the only conception that the Canadian state has of the basis of its territorial rights, and perhaps it's not the dominant one, but it is normatively the most compelling. Moreover, the justificatory argument in terms of stewardship not only makes the state's territorial claims limited (since it does not include resource-use and resource-extraction rights) and conditional (on being a steward) but also does not necessarily support *exclusive* jurisdiction: indeed, since indigenous people, too, have a strong claim, and their main drawback is that they lack capacity (for reasons largely connected to prior injustice), they could be included at the legislative (jurisdictional) level in a power-sharing executive position over the Arctic.[19] The same argument also applies to those international institutions that may be able to cooperate in the exercise of stewardship over the Arctic.

Who pays the cost?

In the discussion of resource extraction, this paper assumed that stewardship primarily involved simple nonextraction of resources. This suggests that the primary cost of being a steward is opportunity cost.

This is not quite true, however. Stewardship can be quite expensive. First, there are some costs attached to protecting an area from external predation. The steward has to be in a position to regulate the area and enforce those regulations. In many cases—and I would argue that this would be true of the Arctic countries—they would be accepted by the territorial state that has control over the area, which may benefit in prestige terms from having this additional territory. In addition, as Chris Armstrong (2016) has argued, stewardship may involve cleanup of environmentally damaged areas, such as restoring coral reefs to their former healthy state or attempting to refreeze the permafrost to prevent the release of huge amounts of carbon into the atmosphere.[20] These efforts may be quite expensive. Since they are in the common interests of all humanity, and the problems were created by global processes such as the overall quantity of CO_2 in the atmosphere, it follows that these costs should be borne by all, and a global fund set up to collect and administer the funds. Like the creation of a global or regional agency to exercise jurisdiction over these areas, this is probably not likely in the foreseeable future. This doesn't mean, however, that this isn't the right normative approach to unoccupied areas that are crucial for the health, indeed survival, of the planet.

4. Conclusion

The first part of the paper examined the many arguments that have been given for Canadian territorial authority in the Arctic and found them wanting. Most of them were directed at other possible territorial rights–holders, but didn't explain the purpose, function, value of jurisdiction, or other territorial rights. Despite their weaknesses, these performative actions—and legal and other claims—have resulted in a convergence on a particular territorial rights–holder in this area, and this

invasive species transfer. Canada is a signatory to this, which suggests recognition of the general duty to protect the resources and environment of the Arctic and regulate commercial activity for this purpose.

[19]A political scientist might ask why not separate jurisdiction and enforcement function, and place jurisdiction in the hands of the adjacent indigenous population and enforcement in the hands of the Canadian state? That is a possibility, but there is a disadvantage too: in making rules and in designing policies, there is the ever-present question of costs. For this reason, the institution or agency that is charged with enforcing the rules should also have a say, though not necessarily an exclusive say, in making the rules.

[20]For a discussion of different cost-sharing principles, see Armstrong (2016).

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fact is important in choosing which state might be best positioned in cases where the normative arguments are weak and there is more than one potential and capable territorial right- holder.

The paper also argued that in unoccupied areas the right to resource extraction should be decoupled from territorial authority. Usually sovereign authority is assumed to confer also the right to control and use resources within a jurisdiction, but I argue that the first does not follow from the second in this case. The various justificatory arguments that have been advanced for territorial authority in the Arctic do not extend to resource rights there. Indeed, given the fragile nature of the Arctic ecosystem and the importance of the Arctic (and the oceans) in regulating the climactic patterns in the planet as a whole, the uninhabited Arctic Archipelago should be treated as global commons, protected by a territorial state in combination with indigenous people and international institutions.[21] For these reasons, the basic model of stewardship that I've put forward, at least as regards resource exploitation, reflects the terms of the Antarctic Treaty, which, for all its faults, preserves the Antarctic as a nuclear-free and military-free zone, and prohibits all forms of resource appropriation, allowing only habitation for the purpose of scientific study.

Although this paper does not argue that the Canadian state is entitled to the Arctic in any deep sense, it also claims that there should be some territorial right- holder over this place. In line with the overall argument of the paper, which interrogates territorial rights as a bundle of rights that can be configured in different ways, the paper acknowledges that imaginative power sharing and joint sovereignty arrangements are possible that would enable groups or institutions that are not now capable, to be so, and that these should be explored. It also argued that the most attractive solution—a capable transnational and coercive institution charged with stewardship over the whole ecosystem of the Artic—is also the least feasible. Since it looks unlikely that the right kind of international organizations will be created in the foreseeable future, and since proximate indigenous people lack capacity, we are left with territorial states, which, in the current world order, are the basic unit of the international system. Although the normative arguments in support of the Canadian territorial state are weak, Canada meets the proximity and capacity conditions, and there is a convergence on Canada as the territorial right- holder in the Arctic Archipelago. This means that Canada is, comparatively speaking, best placed to exercise territorial rights over the geographic domain that it is associated with. Its right over that territory is, however, limited to discharging their fiduciary responsibilities in the Arctic, to look after it as a unique environment, and, ideally, it should endeavor to do this in conjunction with Arctic indigenous people and transnational (regional or international) institutions. Moreover, the right to the Arctic is conditional on actually being a steward. If a state fails to act accordingly, its authority should be regarded as illegitimate. The arguments for territorial rights in uninhabited places do not confer discretionary sovereignty over these areas, but only jurisdiction and control over what is necessary to be an effective steward over them.

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[21]For a good discussion of the deleterious effects of resource extraction on fragile polar regions (as well as the ocean, rainforests, and biodiversity hotspots, all of which are important to regulate weather and climactic conditions on Earth and to sequester large amounts of carbon), see the discussion of the "global commons" as it applies to the Arctic in Romaniuk (2013).

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References

"$500bn Plan to Refreeze the Arctic." 2017. *The Guardian Weekly* (London), March 3, 32.

Anderson, Ewan. 1987. "The Importance of Geographical Scale in Considering Offshore Boundary Problems." In *Maritime Boundaries and Ocean Resources*, edited by Gerald Blake. Beckenham, Kent: Croom Helm.

Angeli, Oliviero. 2015. *Cosmopolitanism, Self-Determination and Territory: Justice with Borders*. Houndsmill Basingstoke, Hampshier: Palgrave MacMillan.

Armstrong, Christopher. 2016. "Fairness, Free-riding, and Rainforest Protection." *Political Theory* 44 (1), 206–30.

Blake, Gerald. 1987. "Worldwide Maritime Boundary Delimitation." In *Maritime Boundaries and Ocean Resources*, edited by Gerald Blake. Beckenham, Kent: Croom Helm.

Byers, Michael. 2013. *International Law and the Arctic*. Cambridge: Cambridge University Press.

Cairns, Alan. 2000. *Citizens Plus: Aboriginal Peoples and the Canadian State*. Vancouver: UBC Press.

Canada. Department of Marine and Fisheries. 1898. *Report of the Expedition to Hudson Bay and Cumberland Gulf*. Ottawa: Department of Marine and Fisheries.

"Canada Rejects Flag-planting as 'Just a Show.'" 2007. *Independent Online*, August 3. https://www.iol.co.za/news/world/canada-rejects-flag-planting-as-just-a-show-364759.

"Eco-nomics," 2019. *The Economist* (London), February 9, 68–70.

Gray, David H. 1997. "Canada's Unresolved Maritime Boundaries." *IBRU Boundary and Security Bulletin* 5: 61–70.

Foxall, Andrew. 2014. "We Have Proved It, the Arctic Is Ours: Resources, Security and Strategy in the Russian Arctic." In *Polar Geopolitics? Knowledge, Resources and Legal Regimes*, edited by Richard Powell and Klaus Dodds. Cheltenham: Edgar Elgar.

Head, Ivan. 1963. "Canadian Claims to Territorial Sovereignty in the Arctic Regions." *McGill Law Journal* 9: 200–26.

Hume, David. 1798 [1739]. *A Treatise of Human Nature*, edited by L.A. Selby-Bigge. Oxford: Clarendon.

Kolers, Avery. 2009. *Land, Conflict and Justice: A Political Theory of Territory*. Cambridge: Cambridge University Press.

Locke, John. 1993 [originally published 1689]. "The Second Treatise of Government." In *Political Writings of John Locke*, edited by David Wootton. London: Penguin.

Mack, Eric. 2013. "John Locke on Property." *Online Library of Liberty*. http://oll.libertyfund.org/pages/eric-mack-on-john-locke-on-property-january-2013.

Meisels, Tamar. 2009. *Territorial Rights*, 2nd ed. Dordrecht: Springer.

Miller, David. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press.

Miller, David. 2012. "Territorial Rights: Concept and Identification." *Political Studies* 60: 252–68.

Monture-Angus, Patricia. 1999. *Journeying Forward: Dreaming 'First Nations' Independence*. Halifax, Nova Scotia: Fernwood.

Moore, Margaret. 2014. "Which People and What Land? Territorial Right-holders and Attachment to Territory," *International Theory* 6 (1): 121–40.

Moore, Margaret. 2015. *A Political Theory of Territory*. New York: Oxford University Press.

Nichols, Robert. 2018. "Theft Is Property! The Recursive Logic of Dispossession." *Political Theory* 46 (1): 3–28.

Nicholson, Norman L. 1979. *Boundaries of the Canadian Confederation*. Toronto: MacMillan.

Nine, Cara. 2008. "A Lockean Theory of Territory." *Political Studies* 56 (1): 148–65.

Nine, Cara. 2012. *Global Justice and Territory*. Oxford: Oxford University Press.

Nine, Cara. 2015. "Compromise and Original Acquisition: Explaining Rights to the Arctic." *Social Philosophy & Policy* 32: 149–70.

Nozick, Robert. 1974. *Anarchy, State and Utopia*. New York: Basic Books.

Romaniuk, Scott Nicholas. 2013. *Global Arctic: Sovereignty and the Future of the North*. Luton, Bedfordshire: Berkshire Academic Press.

Simmons, A. John. 1992. *The Lockean Theory of Rights* Princeton, NJ: Princeton University Press.

Simmons, A. John. 2003. "On the Territorial Rights of States." In *Social, Political and Legal Philosophy*, Vol. 11, edited by Ernest Sosa and Enrique Villaneuva. Malden, MA, and Oxford: Blackwell.

Simmons, A. John. 2016. *Boundaries of Authority*. Oxford: Oxford University Press.

Steiner, Hillel. 1996. "Territorial Justice." In *National Rights, International Obligations*, edited by Simon Caney, David George and Peter Jones. Boulder, CO: Westview Press: 139–68.

Stilz, Anna. 2009. "Why Do States Have Territorial Rights?" *International Theory* 1 (2): 185–213.

Stilz, Anna. 2011. "Nations, States, and Territory," *Ethics* 121 (3): 572–601.

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