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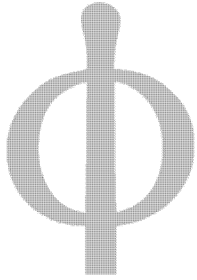
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FROM THE EDITORS

This edition recognizes emerging scholars in the philosophy of law with essays that were produced through a conference at the University of Baltimore. Each participant submitted an article for publication in this *Newsletter*, which then became the materials for the conference proceedings. Each scholar critiqued the others' writings through a day-long public exchange that included faculty, students, and members of the Baltimore community. We thank the Hoffberger Center for Professional Ethics at the University of Baltimore and Director Fred Guy for co-sponsoring this event.

Conference participants included Assistant Professor Josh Kassner of the University of Baltimore, Associate Professor David Lefkowitz of the University of Richmond, Assistant Professor Anthony Reeves of Binghamton University, and Assistant Professor Stefan Sciaraffa of McMaster University.

This edition is a variation from the *Newsletter's* long-standing series to honor and analyze the writings of influential theorists in legal, social, and political philosophy. The format for these on-going tribute editions is to invite several commentaries and responses by a featured philosopher. In this edition, we recognize emerging scholars. All of our editions support the goal to establish an engaging and lively exchange of ideas that contributes to the profession and is accessible to a broad audience, as befits the unique place of the *APA Newsletters*.

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ARTICLES

*Uti Possidetis: A Philosophical Critique*¹

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1. Introduction

It would be hard to overstate the importance of international political boundaries. For more than three-and-a-half centuries the normative relationships between independent political communities have been grounded in a commitment to the sovereign territorial state.² The extent of a sovereign state's

rights are largely determined by the boundaries that separate one political community from another. In addition to their impact on the relations between states, international political boundaries have an impact on individuals and political groups.³ On one side of a border an individual may be subject to gross violations of her human rights. Just meters away—across the border—individuals just like her experience wealth, opportunity, and the protection of political and civil rights. Similarly, the ability of political communities to govern themselves is greatly hindered or enhanced by the boundaries that separate (or combine) political groups.

With so much at stake when we have the opportunity to consider or reconsider them, political boundaries should be drawn/re-drawn conscientiously. At the very least, this requires that we act consistently with morally justifiable principles. I cannot adequately address the wide range of circumstances under which we may have the opportunity to draw or re-draw international boundaries, and a construction of a moral justification for international territorial boundaries from whole cloth is too large a project. As such, the discussion that follows focuses on a specific evolving norm of international law and relations that is intended to govern such matters, *uti possidetis*.

Application of *uti possidetis* establishes the international boundaries of new or emerging independent political communities, and has been invoked by new and emerging independent political communities, as well as the international community.⁴ *Uti possidetis* has been the subject of significant discussion by scholars of international law and relations, but there has been scant commentary by philosophers. This is surprising when one considers the importance of the principle as it relates to questions of political self-determination, state sovereignty, and human rights. This dearth of analysis can be explained in part by the fact that philosophers tend to look at such issues in the abstract and use philosophical analysis as a basis for constructing the ideal principle, practice, or institution. I am beginning with an evolving but operative norm and then offering a critical assessment of the various moral justifications that might be offered in defense of the principle.

The discussion that follows proceeds in three steps. First, I explicate the principle of *uti possidetis* and the role it plays in international law and relations. Second, I offer two distinct but related critical analyses of *uti possidetis* as it is currently employed. Specifically, I argue that invoking *uti possidetis* to establish the territorial extent of new and emerging independent political communities results in the illicit attribution of sovereign rights to an entity without a concern for whether that entity has a legitimate claim to sovereignty. There may, however, be other moral reasons that provide an independent moral justification for *uti possidetis*. With this in mind, the second criticism assesses the arguments that might be offered as independent moral justifications for the principle. Lastly, I offer some thoughts regarding the construction of an alternative rule.

Realists might object at this point; arguing that morality is simply irrelevant when discussing matters of international law and relations. I am unable to offer a full reply; nonetheless, a few words are in order to explain why this discussion is a discussion worth having. I believe that the skepticism of realists is based on unjustified assumptions about the nature of interactions in the international arena. Perhaps most troubling is the fact that for many realists the international arena is assumed to be a Hobbesian state of nature. As Charles Beitz has argued, the analogy does not stand up to scrutiny.⁵ Since the analogy fails, the skeptical arguments fail.

Alternatively, there are realists who contend that states are simply incapable of doing anything other than acting in pursuit of the nation's interests.⁶ First, this position depends on an artificially limited, and I believe unjustifiable, understanding of national interest. Second, the actual behavior of states in the international arena indicates that states can and often do engage in practical deliberation and action that is guided by moral value judgments. The realist bears the burden of explaining why moral theory is irrelevant to our understanding of this phenomenon.

2. Explicating the Principle

To understand the critical analysis that follows it is necessary to have an understanding of the principle and the role it plays in the relations between states. As such, there are two aspects of the principle of *uti possidetis* that are of particular importance. What sort of principle is it, and what are the practical implications of its application?

2.1 Nature of the Principle

To understand the nature of the principle it is useful to juxtapose the contemporary version of the principle with its Roman ancestor. In its original form *uti possidetis* was invoked in domestic disputes over property. The principle established burdens of proof and persuasion at the outset of litigation over the rightful ownership of property. The principle established that the possessor of the disputed property stood in a privileged legal position in relation to the property in question. Litigation would start with the non-possessing claimant bearing the burden of proof. Thus, in its Roman form invocation of the principle merely established, as a contingent matter, the standing of the parties in relation to the disputed property; it did not settle the dispute. As a consequence, the eventual resolution would be based on substantive reasons related to rightful claims, not the invocation of the principle.

In its contemporary incarnation *uti possidetis* bears little resemblance to its Roman ancestor. The international community uses the principle when drawing/redrawing the international political boundaries of new and emerging independent political communities. Specifically, under the principle the administrative (internal) boundaries and international (external) political boundaries of a predecessor state are used to determine the international political boundaries of new and emerging independent political communities.

In addition to the obvious difference over the scope of the two versions of the principle, one domestic and one international, for this discussion, the more significant difference is that the contemporary version of the principle is not merely a presumption. When invoked, rather than set the stage for a substantive discussion, the principle is dispositive of the question over the location of the new boundaries. Thus, the Roman version of the principle was merely a procedural measure necessary to set the stage for a substantive discussion, whereas under the contemporary version the principle *replaces* the substantive discussion.

2.2 Operation and Impact

Before discussing the impact of the principle it may be useful to have an understanding of the circumstances to which the principle is applied. Whether one is addressing a secessionist movement, the dissolution of a state, or the emergence of a new state from the rubble of civil war, one of the most pressing issues that must be addressed is where to establish the international political borders that will define the territory of the new or emerging independent political community.

There are numerous alternatives through which the new boundaries might be determined. We could imagine a deliberative process involving negotiation and compromise, perhaps ending with a referendum on the terms of the separation. This process would be informed (at least in part) by principles of justice relevant to the matter at hand. On the other hand, employing the principle of *uti possidetis* in such circumstances simply results in the transformation of internal administrative borders into external international borders.

An example may help to explain. Recently, after decades of civil war, Sudan held a referendum on independence for the political communities in Southern Sudan. As part of the separation, the location of the international borders of the newly independent political community must be determined. Like any other modern state, Sudan (the predecessor state) had at least two types of political boundaries: internal boundaries marking different administrative divisions within the state, and external boundaries marking the difference between Sudan and all other sovereign states. Under *uti possidetis*, Southern Sudan's borders would be carved out of the internal administrative borders that divided the predecessor state of Sudan. No discussion of the justification for those specific borders would be needed, and no discussion of altering those borders warranted.

Regarding the impact of the principle, my concern is with the impact the principle has on sovereign states, political groups, and individuals. Since the modern state is defined territorially, though not the same thing as sovereignty, the establishment of international political boundaries is determinative of the reach of a sovereign state's rights. Its rights to territorial integrity, political independence, and nonintervention are defined and limited by the territorial extent of the state. As such, where boundaries are drawn dramatically impacts the scope of a sovereign state's rights.

The next two sections will deal with the impact the principle has on the interests of political groups and individuals; consequently, my remarks here will be brief. Even if we assume that in many cases the application of *uti possidetis* will benefit some political groups the benefit does not necessarily follow from the application of the principle. Any such benefit is merely contingent. Similarly, in some cases the application of the principle will serve individual interests and human rights, but as that is not the focus of the principle it is just as likely that individual rights are less rather than more secure. In either case, the fact that the principle operates as a dispositive rule regardless of the substantive moral reasons relevant to the determination of the location of international political boundaries means that the impact on the interests of political groups and individuals—both positive and negative—is a contingent matter.

3. Critical Perspectives

The critical inquiry that follows focuses first on the fact that implicit in the application of the principle is the attribution of sovereign rights to a new independent political community. I argue that this results in an unjustified attribution of sovereign rights without regard for the legitimacy of the political community's claim to sovereignty. The fact that the principle

of *uti possidetis* results in an attribution of sovereign rights that is incompatible with a concern for the values upon which legitimate claims to sovereignty are based does not mean that the principle cannot be independently justified. As such, the second critique focuses on possible independent moral justifications for the principle. In the end, I argue that the principle of *uti possidetis* fails to advance the moral values that are intended to be served by international legal and political institutions, and that an alternate principle should be constructed.

As it is the role of the principle in the deliberative process that must be justified, understanding the moral justifiability of *uti possidetis* requires that we have an understanding of how the principle operates as a reason for action/decision. As discussed above, when faced with a new/emerging independent political community in need of a determination of its international political boundaries the application of *uti possidetis* is determinative of the new boundaries. In other words, the principle operates as an all-things-considered conclusive reason for action. Application of the principle supersedes substantive deliberation over the appropriateness of the borders. As such, if the principle is to be justified, the justification must be able to support a principle with such an exclusionary and determinative impact on the matters to which it applies.⁷

3.1 The Argument from Arbitrariness

Before proceeding I think it appropriate to recognize one oft-cited objection that I do not intend to address. It is often argued that using the existing political boundaries (internal and external) of a predecessor state to determine the international political boundaries of a new political entity is unjustified because the existing political boundaries are arbitrary.⁸ For example, imagine an emerging state in Africa that was once part of a former colony which then became the fiefdom of an autocratic dictator; one might argue that the borders being relied upon to establish the international political boundaries of the new state are arbitrary, and for that reason morally unjustified.

Though I am sympathetic to this criticism I have become convinced that this is a controversial proposition that deserves its own analysis and/or defense. In short, those who reject the proposition that the problem with using the existing internal and external boundaries is their arbitrariness contend that to be arbitrary essentially means to be unprincipled; to lack a rational basis.⁹ As a matter of historical fact the borders that were initially imposed were likely based on principled considerations. For example, in Africa the borders established by the colonial powers were not accidents. The borders were drawn to avoid clashes between colonial powers. As such the borders were arguably based on moral and practical considerations. Nonetheless, I believe that what we are concerned with is not merely that the borders were arbitrarily drawn, but that in many cases the original borders, though arguably having a principled origin, were unjust; and the application of *uti possidetis* merely perpetuates the injustice. As such the critical analysis that follows focuses on whether using the existing borders is unjust or not; not whether they were arbitrarily imposed.

3.2 *Uti Possidetis*: Unjustifiable Ascription of Sovereign Rights

As discussed above, the application of *uti possidetis* is not about setting provisional borders so that negotiation about the location of the permanent borders can begin; rather the application of *uti possidetis* determines the permanent territorial extent of new and emerging independent political communities. Along with this comes the right to territorial integrity based on the political boundaries established under *uti possidetis*. Historically, this has been the very point of invoking the principle.¹⁰

The right to territorial integrity is a right of sovereign states. I take it to be a generally accepted proposition that rights should only be attributed to those entities with the moral status of a right holder. To use a non-moral (and not very original) example, the rights of membership in a golf club require, at the very least, that an individual be a member of the club. We would not recognize a non-member as a holder of the rights associated with membership; or at the very least, a non-member could not claim those rights as a member.

What we learn from the example of the golf club is that the normative standing of the individual as a holder of membership rights in the club is dependent on the possession of certain characteristics or properties (viz. membership in the club). In other words, the attribution of rights that are based on normative standing is conditional. As such, for an individual or collective to be a holder of rights as a matter of moral standing an implicit requirement is that the potential rights holder fulfill the conditions necessary to have such standing.

Returning to the discussion of *uti possidetis* and the implication that its application results in the attribution of the right to territorial integrity (among other sovereign rights) to new and emerging independent political communities, if the application of *uti possidetis* results in the attribution of sovereign rights to a group that lacks a legitimate claim to sovereignty, then there is a conflict between *uti possidetis* and the conditions necessary for an independent political community to have moral standing as a holder of sovereign rights.

In assessing the conditions necessary for a legitimate claim to moral standing as a rights holder one should look at the moral basis (bases) for the attribution of the rights in question. If we take rights to be tied to interests worth protecting,¹¹ then in the case of sovereignty there are two sets of interests that could be served by the rights in question. The individual inhabitants of the political community have an interest in having their interests (including human rights) protected,¹² and there are the interests of the political community itself. With regards to the latter, there is a growing consensus that certain qualified groups have a right to political self-determination.¹³ Assuming that the interests of individuals and political communities are worth protecting, legitimate claims by an independent political community to moral standing as a holder of rights that are tied to these interests would require that the claimant be able to protect and promote these interests.

One might contend that the interests of the international community are also relevant to this discussion. Though not irrelevant to a broader understanding of the various moral considerations that influence the relations between and actions of states in the international arena, if our focus is on the moral standing of rights holders, we should be seeking relevant attributes of the rights holders rather than general moral good that might be a goal of the larger community; in this case the international community.

If we take the moral standing of sovereign entities to be tied to their ability to promote and protect the relevant interests of individuals and qualified groups, *uti possidetis* proves problematic. The application of *uti possidetis* excludes from consideration any regard for the interests upon which the moral standing of sovereign entities as rights holders depends, viz. the interest individual inhabitants have in the protection and promotion of their human rights, and the interest qualified groups have in political self-determination. As a consequence, whether the borders that are established through *uti possidetis* actually serve the interests upon which the moral standing of a sovereign state depends is accidental.

It may be objected that *uti possidetis* could still be justified as essential to the transition of new or emerging independent

political communities to sovereign statehood. Under the current system of international relations a political community must be organized as a territorially defined state to be an actor in and subject of the normative framework governing the relations between states (international law and relations). Furthermore, to serve the very interests upon which the moral standing of states as rights holders depends requires that the territorial extent of the political community be established before sovereignty can be attributed to the political community. Therefore, since the establishment of the international borders is necessary to establishing sovereignty and as *uti possidetis* serves this function, adherence to the principle does not involve the illicit attribution of sovereign rights to an entity without a legitimate claim to sovereignty.

This objection misunderstands the concern I have with *uti possidetis*. It is not that *uti possidetis* should be rejected because it establishes the international political boundaries of a new or emerging independent political community. Rather, I contend that *uti possidetis* is problematic because it establishes the international political boundaries of new and emerging independent political communities *without regard for the very moral values that justify the moral standing of states*. It is certainly possible to draw or redraw the borders in a way that best serves those underlying interests. To point to the fact that the territorial extent of a political community must be defined before it can have a viable claim to standing as a sovereign state does not dictate how that determination should be made.

An additional objection that has been brought to my attention relies on the domestic analogy that states in the international arena are like individuals in domestic society. If this is true, then our understanding of the nature of the rights of sovereign states should be similar to our understanding of the nature of the rights of individuals. When we ascribe a right to an individual the conditions necessary for the ascription of the right don't stand as a bar to the exercise of the right. Individual rights holders have discretion over how to exercise the right, and this discretion includes making choices that fail to promote the good (of the individual or others).

Why, if states and independent political communities are like individuals and can legitimately be rights holders, should the exercise of their rights be limited by a demand that the exercise of those rights must serve the underlying values upon which the conditions for legitimate claims to moral standing are based? In short, why don't states have the same discretion that individuals do? There are at least two reasons why I believe that this fails. First, even the rights of individuals are limited by the rights of others. My right to liberty does not include a right to harm you. As such, if the domestic analogy is correct, the rights of groups should be similarly limited by the rights of other relevant moral agents—individuals and groups.

Second, I reject the claim that the nature of groups as rights holders in the international arena is relevantly similar to that of individuals in domestic society. Individuals have standing as rights holders because of the capacities they possess (autonomy, rationality, humanity). It is the value of the capacity itself that grounds the right, not how the capacity is used. On the other hand, the standing of groups as rights holders depends on how they serve the interests of their constitutive members; as such, you cannot separate the conditions necessary for an independent political community to have a legitimate claim to sovereignty from the underlying values that justify its claim to moral standing.

One final objection that has been brought to my attention is that the practical implications of my critique may be minimal. If the conditions necessary for an independent political community to have a legitimate claim to moral standing are

respect for basic human rights and political self-determination, then in nearly every case, the application of *uti possidetis* is likely going to serve those ends. In which case, many regimes that we might otherwise judge to be unjust will have legitimate claims to sovereignty over the territory established by the application of *uti possidetis*.

First, this is a factual claim that the application of *uti possidetis* will not result in an unjustifiable ascription of rights to an entity that lacks a legitimate claim to moral standing. This is an empirical question, and one need only look to the various crises around the globe to recognize that in many cases where borders have been drawn it has had a dramatic negative impact on individual and group rights. Second, the focus on human rights and political self-determination is intended to demonstrate that some relatively uncontroversial moral claims about the conditions necessary for legitimate claims to sovereignty can be used to demonstrate the problematic nature of an evolving norm of international law and relations. The objection implicitly accepts my conclusion; that *uti possidetis* should not operate as a dispositive reason for action/decision and that what matters is the degree to which international territorial borders serve the interests of individuals and groups. Lastly, since *uti possidetis* should not operate as a dispositive reason for action/decision, in those cases where individual human rights are undermined and/or group rights to political self-determination are violated *uti possidetis* should not prohibit a decision that better serves these underlying values.

3.3 Moral Critique

The fact that the principle may be problematic because of its illicit ascription of sovereign rights does not imply that the principle cannot be morally justified. There may exist an independent moral justification for the principle. The possible justifications are likely to be found along two lines of argument. First, the principle of *uti possidetis* could be morally justified if there was something intrinsically valuable about the principle or the results which it produces. Alternatively, one might justify the principle by pointing to its instrumental value to some other important moral good.

3.3.1 Intrinsic Value

As to proposition that the principle is intrinsically valuable, the most charitable construction of such an argument is one that focuses on the state of affairs that results from the application of the principle—that the establishment of international political borders of new and emerging independent political communities is valuable in and of itself. There are a number of reasons why I find this potential line of argument unconvincing. First, one implication of the claim that the application of the principle results in an intrinsically valuable state of affairs is that the boundaries established are valuable regardless of their service to the interests of the groups and individuals affected.

Alternatively one might argue that the intrinsic value of the boundaries produced by application of the principle is derived from the intrinsic value of the internal and external borders of the predecessor state. Though, as I discussed previously, I am not pressing the argument that the internal and external political boundaries of the predecessor state are arbitrary; it is also the case that the value judgments that caused their creation are not likely to be the same ones that would be relevant in a moment of political transition.

In assessing this alternative argument I will assume for the sake of argument that the external borders of predecessor states should remain unaltered; not because I believe that they are above criticism, but because the additional ethical and political issues that arise are too complicated to be dealt with here. The functional origin of internal administrative boundaries is likely

to be found in considerations of governance and control.¹⁴ It has often been the case that these boundaries were created with the specific purpose of dividing groups so that they would not pose political threats to the ruling elites.¹⁵ Even if in particular instances the internal administrative boundaries of a predecessor state do not carry with them a legacy of intentional injustice, what determines whether they would be justified as external international political borders of a new or emerging independent political community would depend on a substantive evaluation of the justice of such boundaries in the present. They are not valuable in and of themselves.

Lastly, even if it is the case that the application *uti possidetis* results in a state of affairs that is intrinsically valuable, this does not support a dispositive reason for action/decision as is claimed by *uti possidetis*. It explains why we ought to give moral weight to the borders that would be established by the application of *uti possidetis*, but it does not explain why other relevant moral considerations should be excluded from our deliberations. Though I have not canvassed all of the possible arguments for the intrinsic value of the internal and external political boundaries of predecessor states, I am confident that whatever the value of political boundaries is, it is not likely intrinsic.

3.3.2 Instrumental Value

Under an instrumental argument for the moral justifiability of the principle of *uti possidetis*, the principle would be justified as a means to achieving some other moral good. Assuming some instrumental relationship between the principle and the moral good it serves, the strength and nature of the principle as a reason for action/choice is going to depend on the extent to which the principle serves the underlying moral good.

As a general matter, instrumental arguments can be understood to be making either weak or strong claims. Under the weak interpretation all that is claimed is that the means make the ends being sought more likely; but the means are neither necessary nor sufficient for achieving the desired ends. Alternatively, under the stronger interpretation, the means are claimed to be necessary to achieving the underlying justificatory end. In either case, to understand and evaluate the instrumental argument one must understand the end being sought. What is the moral good that the principle of *uti possidetis* is thought to be serving?

Since Westphalia (1648) the normative framework of international relations has been directed at the promotion and maintenance of international order—international peace and security.¹⁶ It should be uncontroversial to claim that international order, understood as the peace between and security of states, is a morally valuable good; and that, all other things being equal, international order ought to be promoted. As such, the instrumental argument for the moral justification of the principle of *uti possidetis* depends both on the nature of the instrumental relationship between *uti possidetis* and international order and the relative moral significance of international order itself.

Dealing with the latter first, under either understanding of the instrumental relationship between *uti possidetis* and international order (weak or strong), as the value of *uti possidetis* is dependent on the value of international order, it is necessary to understand the moral nature and significance of international order before one can adequately assess the instrumental argument for *uti possidetis*. If international order is itself instrumentally valuable, then to understand the value of *uti possidetis* we need to understand the ultimate moral good towards which international order is directed and the relationship between international order and that ultimate moral good. Alternatively, one might argue that the value of international order is intrinsic; that it is valuable in and of itself.

Though I am convinced that the value of international order is instrumental, in either case, understanding the moral significance of international order ultimately depends on understanding the importance of international order in relation to other values relevant to relations between actors in the international arena. Consequently, to understand the instrumental argument for the moral justification of *uti possidetis*, unless one can defend the unlikely proposition that international order is the only moral value relevant to the normative framework of international relations, one must also understand the relative moral value of international order.

Though I am unable to offer a complete defense, I would like to propose two moral goods towards which the normative framework of international relations may also be directed. First, there is a growing consensus that political self-determination by groups is an important moral value to be served by the normative framework of international relations. Second, there seems to be little reason to reject as an ethical claim that respect for basic human rights should be a matter of concern for the international community. In addition, there has been greater recognition of the importance of the self-determination of peoples and basic human rights¹⁷ by the international community.

Turning now to the instrumental arguments, under the weaker understanding of the instrumental relationship between *uti possidetis* and international order, the claim is that *uti possidetis* makes achieving and maintaining international order more likely. As such, any instance in which the application of *uti possidetis* does not have an impact on international order there is no instrumental reason in support of the application of the principle. In those cases where application of the principle will actually undermine international order there is an instrumental argument against application of the principle. Likewise, in those cases where the moral benefit to international order is outweighed by the harm to group self-determination or respect for basic human rights, the instrumental argument for the application of the principle is at least open to challenge. What is not justified is a dispositive reason for action/decision.

Perhaps the stronger understanding of the instrumental relationship between *uti possidetis* and international order will fare better. Under the stronger understanding of the instrumental relationship *uti possidetis* is necessary to the promotion and maintenance of international order. As such, it would never be the case that one could have international order without the application of *uti possidetis*. However, if we accept the proposition that there are other relevant moral values to be served by the normative framework of international relations, then the mere fact that *uti possidetis* is necessary for international order does not imply a dispositive reason for action/decision. It may be the case that following *uti possidetis* establishes borders that undermine political self-determination or make the violation of basic human rights inevitable. In either case, in particular instances, those considerations might outweigh the harm done to international order.

In the end, my argument depends on the truth of the proposition that continued use of *uti possidetis* to determine the international territorial boundaries of new and emerging independent political communities will undermine the promotion of individual human rights and right of qualified groups to political self-determination. This is a speculative claim about the difference between the world in which we live, one where *uti possidetis* is an evolving and operative norm of international law and relations, and a counterfactual world in which an alternative process is used to determine the international territorial boundaries of new and emerging independent political communities.

One might not share my intuition regarding the instrumental value of the principle of *uti possidetis*, arguing instead that without such a rule individual human rights and group political self-determination are more rather than less likely to be undermined.¹⁸ The stability of expected outcomes provided by such a robust rule would provide states with a great degree of assurance of an orderly future state of affairs. In which case, states would be more likely to support secessionist and independence movements. The greater support of states would result in more new and emerging independent political communities receiving the support of the international community in their efforts to separate from a predecessor state, thus, leading to greater respect for individual human rights and political self-determination.

As to the competing speculations regarding the instrumental value of *uti possidetis*, the question is an empirical one. In short, to answer the matter with certainty we would need to compare examples of the implications of *uti possidetis* on the promotion of individual human rights and group political self-determination with cases under which the territorial boundaries of new and emerging independent political communities were determined in some other way that is more directly concerned with the moral values to be served. I am unable at this time to offer such comparisons in large part because the alternative I am suggesting has not (to my knowledge) been tried.

Nonetheless, though I understand the concern that lies at the heart of the objection, I think it is a misplaced one. First, for secessionist and independence movements to pose a threat to the stability of the international order, no matter how the territorial boundaries are determined, there would have to be a great many of them. If there were, I doubt that maintaining rules that perpetuate rather than solve the injustices that motivate independence movements is going to promote stability. If, on the other hand, the claim is that in individual cases states are more likely to support dissolution if they know with certainty what the territorial boundaries of the new political community are going to be and we concede that the moral worth of those boundaries are tied to their ability to protect and promote human rights and group political self-determination, it is not the case that the only institutional solution capable of providing such certainty is the application of a dispositive rule like *uti possidetis*. Rejecting *uti possidetis* does not imply that there should be no rule at all. Rather, one could provide sufficient certainty and stability with an institutionalized procedure that determines the territorial boundaries of new and emerging independent political communities prior to dissolution of the predecessor state, but also allows for some substantive deliberation over where those boundaries should be.

4. Conclusion and Suggestions for an Alternative Principle

In the end, the principle of *uti possidetis* as a dispositive reason for using the external and administrative boundaries of a predecessor state to establish the international political borders of a new/emerging independent political community cannot be justified. This should not be taken to imply that I believe that I have demonstrated that the establishment of international political borders of new/emerging states should be treated as an open question; I am simply rejecting the idea that we are justified in deciding the placement of such boundaries without considering the impact those boundaries will have on various moral values toward which the normative framework of international relations is directed.

This merely begs the question, How should we determine where those new borders should be drawn? In light of the foregoing argument, one might wonder why we need a rule

at all. Why not treat each instance in which we are faced with the possibility of drawing the international political borders of new independent political communities as an open question; weighing those reasons in favor of using the extant internal and external political boundaries of the predecessor state against other (competing) moral values of the normative framework of international relations?

There are a number of reasons, both practical and moral, for rejecting this approach. First, without a rule to define the initial bargaining position deliberations and negotiations over the placement of new external political borders are likely to be *ad hoc* and unprincipled. Assuming that such an approach can be effective, the resultant borders are even more likely to institutionalize existing power disparities rather than serve moral ends. In addition, there is a value to determining how such contentious matters are to be dealt with when cool and calm deliberation is possible, rather than in the heat of a dispute. If we were to treat the matter as an open question, the *ad hoc* nature of such determinations in the face of crisis is likely to lead to instability and injustice.

Assuming that the principle of *uti possidetis* is instrumentally valuable to international order, and that international order is an important value to be served by the normative framework of international relations it is reasonable to claim that using the external international political borders and internal administrative boundaries of the predecessor state to identify the *provisional* international political borders of new and emerging independent political communities is justified. The fundamental difference between this version of the principle of *uti possidetis* and the version of the principle that was the focus of the foregoing critical assessment is that the version I am proposing does not operate as a dispositive reason. Rather, the principle I am proposing is much more like the original Roman version. As proposed, the principle would merely establish the initial bargaining situation in which the existing boundaries are privileged and departures from the existing political boundaries must be justified by an appeal to other values that can be impacted by the placement of international political boundaries.

I am not ignorant of the broader implications of my argument. First, if I am correct, the moral justifiability of all international political boundaries should be understood in instrumental terms. If the lines we draw on a map serve morally valuable interests without demanding too great a moral sacrifice then they ought to be maintained. However, if the lines on the map fail to advance the morally valuable interests that international political borders are intended to serve or if their maintenance demands too great a moral sacrifice, then those lines should be subject to alteration. Second, though merely a microcosm within the larger discussion over issues like self-determination and secession, I believe that one cannot adequately address these matters without explicitly addressing the question of the moral justifiability of borders. Lastly, I hope that by addressing an emerging operative principle of international law and relations that I have helped to add critical insight into the actual operation of the normative framework of international relations.

Endnotes

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- their critical comments and insights helped to make this a much stronger piece.
2. Many point to 1648 and the Treaty of Westphalia as the defining moment marking the conceptual origin of the principle.
 3. For example, see Christopher Heath Wellman, *A Theory of Secession: A Case for Political Self-Determination* (Cambridge: Cambridge University Press, 2005).
 4. Enver Harsani, "Uti Possidetis Juris: From Rome to Kosovo," *Fletcher Forum of World Affairs* 85 (Summer/Fall 2003): 94.
 5. Charles R. Beitz, *Political Theory and International Relations* (Princeton, New Jersey: Princeton University Press, 1999).
 6. Roger D. Spegele, *Political Realism in International Theory* (Cambridge: Cambridge University Press, 1996), 19.
 7. For a discussion of exclusionary reasons and their operation in the practical deliberations of agents see Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 1999), 35-42.
 8. Harsani 2003. See also Steven R. Ratner, "Drawing a Better Line: *Uti Possidetis* and the Borders of New States," *American Journal of International Law* 90 (1996): 590.
 9. *Ibid.*
 10. Harsani 2003.
 11. George Rainbolt, "What are Group Rights," in *Groups and Group Rights*, ed. Christine Sistare, Larry May, and Larry Francis (Lawrence: University of Kansas Press, 2001), 71-81. See also Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986).
 12. For example, see *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (2001).
 13. Growing importance (philosophically and legally) of political self-determination as a basic norm of international law and relations.
 14. See Harsani 2003.
 15. *Ibid.*
 16. Mark W. Janis, *An Introduction to International Law*, 3rd ed. (New York: Aspen Law and Business, 1999), 159-160.
 17. *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (2001).
 18. I would like to thank Stefan Sciarafa and Anthony Reeves for pressing me on this point. I hope that the response I give engages, if not answers, their concerns.
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