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Borders

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A. Introduction

1. General Outline

1 'Border' has several connotations. It points to the 'line' separating 'one country from another'; it also indicates a tract of territory laying 'along its boundary' or at 'the edge of a country or territory' (Oxford English Dictionary; see Nicolini (2022) 193). It then refers to territories across the frontier line; the latter extends over, and includes, the lands laying on both its sides. The Scottish border provides an example: it designates the line, and its adjoining districts, suppressed by the Union with Scotland Act 1706 (in force from 1707) and reinstated in 1998 with the Scottish → *devolution* (Scotland Act 1998 (UK)); Nicolini, 'Narrators of Fables or Framers of the Constitution?' 156-57).

2 Borders are related to territory and → *territoriality*. Territory is still our dominant paradigm, as the idea of the territorial state upholds. Both items have political connotations. Whereas territory refers to a tract of land under the domain of a political authority, territoriality points to a territory made politically meaningful through processes of spatial production (Nicolini (2022) 23). Territoriality is thus 'the spatial expression of the idea of exclusive sovereignty' (Delaney 36) and the 'organizing principle of political and social life' (Anderson and O'Dowd 594).

3 Several factors currently undermine the concept of borders. Firstly, globalization and its derivatives, such as free movement of goods, capital, and workers, favour border fluidity (→ *Goods, Free Circulation of*; → *Capital, Free Flow of*); processes of supranational integration do the same (Nicolini (2022) 151). Secondly, global mass migration and refugeeism unleash millions of migrants, which makes borders become blurred. Finally, transnational phenomena such as climate change overrun the world's borders and trigger a 'transformation of the political' ([emphasis in original] Mann and Wainwright 28). In contractarian terms, these phenomena alter the organizing themes within political communities (Nicolini (2021)).

4 In an epoch like ours, the idea of the Anthropocene has the power to undermine borders. Not only does humanity play a pivotal role in spatially reshuffling the Earth, but it is also able to master the forces of nature and manipulate the space-place-environment nexus, thus going well beyond the 'planetary limits' (or 'boundaries': Yusoff 266) which traditionally outline 'the safe operating space for humanity' (Rockström et al. 472) as well as the 'thresholds beyond which large-scale, comparatively sudden environmental changes will produce major problems' (Kelman 147).

2. Definition and Subtexts

5 The legal significance of borders is associated with territorial → *sovereignty* and the → *Westphalian system*. International law, geopolitics, and international relations have traditionally focused on 'natural borders', into which physiographic elements have been turned. For example, the components of the troposphere (eg, the watersheds) and hydrosphere (eg, the rivers) are turned into 'natural' borders; the seabed into EEZs; and outer space into 'global commons' (Nicolini (2022) 48). In ancient Rome, for example, coasts were labelled *arcifinios*, ie, possessing 'limits that form a natural defense' (Ochoa Espejo 33). The idea that borders are somewhat natural features is associated with the Westphalian system; consequently, we take for granted that nature has predetermined 'the limits for sovereignty' (Diener and Hagen 41-42). Borders are not 'natural', but politico-legal artefacts (Johnson 195).

6 Related, as they are, to the → *jurisdiction* of states, they demarcate territorial legal systems. ‘Territory, therefore, has an inside and an outside’ that is marked by a boundary (Blomley 3), often reflecting the ‘split geographies of “us” and “them”, “civilization” and “barbarism”, “Good” and “Evil”’ (Gregory 11). In dividing the Earth’s surface into → *nation states* (Diener and Hagen 1–4), borders outline the bounded space within which they possess legitimate political power and justify a variety of legal measures to monitor state borders: border and → *immigration* control, → *custom* and border protection, border patrolling, etc. State activities are not confined within such precincts; extraterritoriality allows them to carry out several undertakings outside, or across, borders to protect and pursue their own interests, as well as those of their communities (→ *extraterritorial application of constitutional rights*).

7 Border is used interchangeably with ‘frontier’, ‘margin’, and ‘boundary’, as in the → *Palmas Island Arbitration* (1928) (PCA). ‘Limit’ and ‘boundary’ refer to the line marking the border (Boucher; Munge Sone 326). ‘Margin’ designates the outcome of bordering processes; but border has a broader meaning which comprises both the line and the bordering areas (Gadal and Jeansoulin). ‘Frontier’ points to the line and the lands laying on both of its sides. It also refers to the imagined line ‘between the occupied and unoccupied parts of the country’ (Oxford English Dictionary). The geo-linguistic Scottish frontier is related to the formation of the Scottish nation; the United States (‘US’) frontier, for example, stimulated the forging of the US constitutional identity under the Constitution (see Delledonne). It also denotes the frontier of civilization, whereby colonial powers imagined the geographies of the colonized lands thus making them functional to their own interests and trading companies (→ *colonialism*; → *colonization*).

8 Border is a synonym of borderland. Within national boundaries, borderlands coincide with ‘state borders;’ in the US, these are the Northern states bordering on Canada (Blocher 243). In international law, borderland regions usually belong to a state but are inhabited by people identifying with ‘rival political communities’ (Moore 123). This is the case of → *Northern Ireland*, which the Irish Border severs from the Republic of Ireland; its relations with the European Union (‘EU’) are now regulated by the Northern Ireland Protocol annexed to the Withdrawal Agreement, which prevents a backstop as a result of the United Kingdom leaving the EU (European Union (Withdrawal Agreement) Act 2020, cl. 1 (UK), as amended by Decision No 3/2023 of the Joint Committee established by the Withdrawal Agreement on 3 July 2023). The same holds true for the recently created Indian Union Territories of ‘Jammu and Kashmir’ and ‘Ladakh’, which were carved out of the former State of Jammu and → *Kashmir* in 2019 (see Constitution of India: 26 January 1950 (as Amended to 16 September 2016) (India) Schedules I and II, as amended by the Jammu and Kashmir Reorganization Act (2019)). The Indo-Pakistani border is the Line of Control demarcated by the 1949 Karachi Agreement and confirmed by the 1972 Shimla Agreement (Kashmir).

3. Cross-Disciplinary Interactions

9 Borders, as political artefacts, entail a dialogue between law, geography, and social sciences. The term points to a composite of distinct, albeit interlocked, connections: the physical, the imaginative, and the politico-legal. It is therefore difficult to draw a clear divide between the law and the non-legal variables—such as the geographical ones— affecting bordering processes. Borders embed the relationship between a community and its territory. Indeed, they outline a ‘territorialized’ paradigm, which Maitland defined as ‘legal geography’: communities are claimants asserting an exclusive relation with a specific territory (Maitland 6). This close connection between land, community, and law highlights

legal, economic, and social interactions between territory and institutionalized communities (Nicolini (2022) 36 and 171).

10 The study of 'legal' borders overlaps with political studies and international relations. Bordering processes and practices aim at asserting states' exclusive sovereignty over a territory, which are usually formalized by international treaties. Borders are also part of human geographic studies; concepts such as 'place', 'space', and 'landscape' supplement lawyers with the material scenario for bordering processes. Sociology, ethnology, and anthropology shed light on the legally relevant interactions between ethnic groups and socially constructed boundaries, also disclosing the dynamics of boundary-making and bounded cultural spaces (Delaney 39-49; Blomley).

11 'Legal' borders share fields of research with linguistics. Geographical linguistics draws boundaries, such as *isoglosses*, which may act as prerequisites upon which borders may be demarcated (Nicolini (2022) 178 and 190). There are also noticeable overlaps, say, when it comes to considering place-names and borders. Not only do 'America' and 'Europe' designate two continents, but they also act as shorthand for the US and the EU respectively.

4. Legal Geopolitics and Cartography

12 Geopolitics also offer insights on how 'the relationship of geographical space to politics' influences the making of boundaries (Cohen 17). These interactions are apparent with regard to the production of maps—and, more recently, GIS; geodetical surveying, cartography, and photogrammetry allow us to record and represent physical features functional to borders. Interactions between geopolitics and cartography trigger the triad of 'bordering, ordering and othering' (Tripathi and Chaturvedi 173). Modern cartography has been servient to the dissemination and establishment of Western legal geopolitics; as a 'cognitive mode of gaining control over the world', and of 'synthesizing cultural and geographical information', it allowed colonial powers to draw lines of separation and domination (Black 17). Therefore, colonial → *maps* outlined borders on 'depopulated, often void of human traces, visually 'empty' spaces (Gordon and Klein 2001).

13 Cartographic representation of borders encouraged abandoning traditional bordering processes based on natural features (so-called theory of natural boundaries: Boucher). In providing states with new, powerful, tools (Thompson Ford 135), maps allowed states to select only natural features functional to their geopolitical goals (Diener and Hagen 42). For example, African territories were mainly delimited after 'astronomic' and 'mathematical lines', whereas 'geographical features' made up 'a mere twenty-six percent' (Abraham 63; Nicolini (2022) 188). This allowed Western countries to establish 'legal' and cultural control over the less-developed, ie inferior, groups, who were both 'dispossessed by established Western cartography' and their 'understanding of territory and boundaries [neglected]' (Black 19).

B. Historical Evolution

1. Origins: Antiquity

14 Although they seem to be permanent human artefacts, our current conception of borders is a contingent one. Not only has their meaning evolved over time, but they have also manifested themselves diatopically; such lines served different functions among nomadic people, hunter-gatherers, and ancient civilizations around the world (Brotton; Diener and Hagen 20-27).

15 Bordering processes are politico-legal phenomena. Schmitt suggests that *nomos* derives from ancient Greek *nemeîn* ('to divide'), thus referring to 'the immediate form in which the political and social order of a people becomes spatially visible' (Schmitt 70). Maitland termed this legally significant spatial relation 'belongs of public law' (Maitland 11). This was apparent in Ancient Rome and → *China*. The Great Wall of China and Rome's *limes* separated internal and outer spaces; but neither of them was formally a border. In ancient Rome, in particular, the *limes* shaped the inner 'legal space', where the law applied, (Kerneis 3-4); its outer parts were 'floating' zones without specifiable boundaries (Kratochwil 35-36). This situation changed during the Empire, when Germanic tribes became a threat for the *res publica*. The conception of the *ager publicus* as an unlimited public domain was replaced by the idea of boundary separating the 'legal Roman space' and the Barbarian one; 'in between, stood the border, the new border' (Kerneis 3-4; Brunet-Jailly 634).

2. Middle Ages

16 During the Middle Ages, the politico-legal organizing theme—that is feudalism—was more familiar with 'areas' rather than with lines (Black 123). Borders were still floating zones related to the exercise of political *dominium* over 'cities and territories, which, rather than having clear boundaries', had 'somewhat vague borderlands' (Brunet-Jailly 635).

17 The 878 BC Treaty of Wedmore provides an example of how to draw fuzzy borders. Through this treaty, Guthrum, the Danish King, and Alfred, King of Wessex, asserted their respective 'belongs of public law' on a specific territory, and established a closer connection between land, community, and law. It is the so-called Danelaw, ie the territory subject to Danish law and demarcated through a boundary running roughly from Chester to London. The Danelaw defined the legal relationship between the territory and the community, established a legal system, while being also a boundary delimiting the same Danelaw (Nicolini (2022) 191).

3. State Borders and Colonialism

18 The Mediaeval 'areal' order was superseded by the Westphalian order, based on the equation between sovereignty and territory. This shift was facilitated by the power of mapping, which 'allowed rulers to have a spatial view of their possessions': 'borderland or border regions ... became boundaries or frontiers' (Brunet-Jailly 635). The new state order prompted the conclusion of several international treaties whereby borders were demarcated. The first documented treaty is the 1323 Treaty of Pähkinälinna between Sweden and Novgorod. Several others followed: the 1546 Anglo-French Treaty of Ardres, the 1555 Treaty of Augsburg, the 1659 Treaty of the Pyrenees, etc (Black 123; Benton).

19 The 1648 Treaty of Westphalia inaugurated a territorial approach to borders which still permeates international law. European powers projected this approach onto the whole earth through → *colonialism*. This led to the creation of linear borders in America, Africa, and Asia. Colonial policy disregarded borderless communities, which were divided among different states with the aim of creating political entities based on territorial jurisdictions. The Berlin West Africa Conference (1884-85) led to the partition of Africa and the establishment of borders across the continent. For example, the Tanzania-Malawi border was demarcated by the Anglo-German Treaty (Heligoland-Zanzibar Treaty) (1890), but it is still challenged by Tanzania (Maluwa). In Asia, the India-Nepal border was consolidated between 1814 and 1857; and the Durand line between Pakistan and Afghanistan was servient to consolidate British control over India (Tripathi 2020). The 1869 Treaty of Peking established Russian and Chinese areas of influence in Central Asia; the border remained

fuzzy until 1949, when China formally extended its sovereignty to the Sinkiang region (Kratochwil 31).

4. Contemporary Era

20 In the aftermath of the Second World War, → *decolonization* confirmed the ‘territorial trap’ (Agnew) into which European powers had led the world during the colonial era. Former colonial empires, such as the British Raj, split into several nation states (Chaturvedi); groups started claiming the creation of territorial states based on ethnic grounds (→ *Ethnicity*). When the representatives of the newly independent African states met in Addis Ababa in 1963 to create the Organisation for African Unity (Charter of the Organization of African Unity (1963); → *African Union (AU)*), they conformed to colonial borders. The 2000 Constitutive Act of the African Union does the same (Constitutive Act of the African Union (2001), Art. 4(b)).

21 Bordering processes gained new ground after the → *Cold War (1947-91)*. The dissolution of the Communist block and the collapse of the Iron Curtain led to the creation of new independent states carved out of former multinational entities (eg, Yugoslavia, Czechoslovakia, and the Union of Soviet Socialist Republics (→ *Yugoslavia, Dissolution of*; → *Czechoslovakia, Dissolution of*)). This led to the revival of borders; but the criteria upon which former bordering processes had been carried out were challenged. In order to avoid → *secession*, borders should have been demarcated upon ethnic, religious, and cultural lines.

22 Neo-colonial geopolitics are apparent in how Western countries advocate for the policing of several weak states. Western interventions are aimed at ‘preserving and deepening’ Western ‘geolegalities’, ie, ‘the dominance of the Global North over the Global South’. In reflecting what has been termed as the ‘Global Apartheid’ (Ceciliano Navarro et al), this is a legacy of the colonial attitude in the realm of politics and law. Such interventions tend to make borders fit into Global North geopolitics, but, at the same time, borders are being blurred (Smith 149-50).

C. Comparative Description

1. International Law

23 International law and international relations traditionally revolve around the sanctity and integrity of borders (Abraham 61). International law has elaborated its own practices when addressing territorial issues and bordering processes (see → *Frontier Dispute Case (Burkina Faso/Republic of Mali)* (1986) (ICJ); → *Territory, acquisition*; → *Cession*; → *Annexation*).

24 There is a vast array of territorial, basin, and maritime border disputes (see → *Boundary Disputes in Africa*; → *Boundary Disputes in Latin America*; → *Maritime Delimitation Cases before International Courts and Tribunals*). The latter are usually related to the delimitation of the ‘Earth’s water surface areas’ (the → *exclusive economic zone* and the → *continental shelf*) using ‘physiographic or geopolitical criteria’ (Hasan et al).

25 The consequences of territorial integrity are twofold. On the one hand, nation states advocate for borders corresponding with larger nationality groups; on the other, this has not always been the case. Colonialism and geopolitical considerations divided ethnic communities among different states. The → *United Nations Charter* contains a patent contradiction, inasmuch as it encourages ‘self-determination of people’ but, at the same time, considers territorial integrity as a cardinal tenet of international law (Charter of the United Nations, Arts 1 and 2(4)) (→ *self-determination*; → *self-determination*). A variant of the → *uti possidetis doctrine*, this attitude also percolates state succession (Vienna

Convention (1996) Part I General Provisions, Art. 11). Russia's annexation of Crimea, the independence of Kosovo, the ongoing Israeli-Palestinian conflict, East Timor, and South → *Sudan* are some major examples of how disputed areas and tracts of land are intractable under international law.

2. Constitutional Law

26 The relation between borders and constitutional law is partly unchartered (Doyle; Nicolini (2022) 24). Scholars have mainly focused on whether constitutions enshrine—or constitutionalize—secession or some forms of annexation. This is the case of the Russian Constitution, which expressly contains procedures to annex territories, such as in the case of Crimea in 2014 (Art. 65(2) Constitution of the Russian Federation: 12 December 1993 (as Amended to 21 July 2014) (Russ)).

27 Constitutional texts outline the *constitutional regime* of territory (Nicolini (2022) 24): they may refer to territorial borders and boundaries (Art. 1(2) Constitution of Eritrea: 23 May 1997 (Eri); Art. 2 Constitution of the Kingdom of Cambodia: 21 September 1993 (as Amended to 2008) (Cambodia); Art. 42 Constitution of the United Mexican States: 5 February 1917 (as Amended to 2018) (Mex); Art. 2 Constitution of Nepal: 20 September 2015 (Nepal); Belize Constitution Act (Cap. 4): 21 September 1981 (as Amended to 2011) (Belize), Schedule 1), to demarcation processes (Art. 75(15) Constitution of Argentina: 1 May 1853 (reinst. 1983, as Amended to 1994) (Arg)), and surveys of its main geographical features (Notice No 2 of 1990 (1990) (Namib); Art. 1 Constitution of the Republic of Namibia: 9 February 1990 (as Amended to 2014) (Namib)). Art. 84 Constitution of El Salvador: 15 December 1983 (as Amended to 2014) (El Sal) also refers to several international treaties on territorial limits, as well as to → *islands*, islets, and cays enumerated by the judgment of the → *Central American Court of Justice (CACJ)* pronounced on 9 March 1917 (*El Salvador v Nicaragua*; for more examples see Nicolini (2022) 24). In supranational organizations, such as the EU, member states' territory defines the territorial scope of the Treaties (Treaty on European Union (as amended to 2012), Art. 52).

28 Borders may denote the frontier of what may be termed as constitutional civilization. The US Constitution, for example, employs the term 'territory' in relation to those tracts of land laying beyond the borders and 'over which the United States exercise jurisdiction' (Bacon 101; Art. IV Section 3 Constitution of the United States of America: 17 September 1787 (as Amended to 1992) (US), also called the 'Territorial Clause'). When it comes to the 'well bounded order of politics' (Ashley 238), 'territory' is replaced by 'land': under the US Constitution "Law of the Land" is synonymous with "due process of law" (Mullen 737) (→ *due process*).

3. Borders in Progress

29 The practice of bordering can be a 'work in progress', as in the case of aggregative, and often multi-ethnic, → *types of federalism*. In aggregative federations, demarcation usually overlaps with the boundaries of pre-existing → *component federal units*, which have come together and created a new federation. The US, Australia, and Canada accrued their territory by admitting new states carved out of former federal territories (Art. IV Section 3 cl. 1 Constitution of the United States; Section 146 Constitution of Canada (Canadian Constitution Acts, 1867 to 1982): 1 January 1982 (as Amended to 2011) (Can); Newfoundland Act (1949) (Can); Section 121 Commonwealth of Australia Constitution Act: 9 July 1900 (consolidated as of 4 September 2013) (Austl)).

30 Former independent polities within a colonial empire may be gradually admitted as units into a new federation, as in Malaysia (Section 2(a) Constitution of Malaysia: 31 August 1957 (as Amended to 1 May 2009) (Malay); on the admission on Sabah, Sarawak, and Singapore in 1963 see Jayakumar; Singapore seceded in 1964) and India (Section 2 Constitution of India: 26 January 1950 (as Amended to 16 September 2016) (India)).

31 Assuming that the EU is a federalizing process, its original demarcation coincided with the boundaries of the six founding member states. Its process of demarcation is a ‘work in progress’, since it accrues its territory by virtue of the admission of new member states, which are existing sovereign, independent states (Art. 49 Treaty on European Union; see Lonardo 19 and 136). The admission of new member states therefore entails a re-bordering process which is similar to that which characterizes the admission of new states into the US (Art. IV Section 3 Constitution of the United States of America).

4. Territorial Constitution

32 Borders also outline the ‘territorial constitution’, which indicates the geographical feature of federal constitutions, ie, the governance through component federal units. Within federal contexts, authority is distributed both vertically and geographically. Whereas the former denotes the allotment of powers between the different orders of government, the latter means that both units’ constitutive elements (people, government, and territory), and boundaries are demarcated on a geographical basis (Walker 248; Nicolini (2019)). The territorial constitution fills the gap in the traditional definition of federalizing processes, since it establishes an immediate relation between constitutions, subnational communities, and their demarcated territory. These elements count as units’ features; at the same time, they complement the federal constitutional identity (Nicolini (2022) 217).

33 The territorial constitution comprises mechanisms of geographical configuration such as regional demarcation and territorial alteration. Both allow the territorial constitution to work; demarcation presides the division of a country’s internal territory into two or more territorial constituent units (Ramutsindela and Simon), whereas alteration entails either the total or the partial reconfiguration of a country’s territorial constitution (Nicolini (2022) 220–21).

34 In multi-ethnic federations, the territorial constitution provides arrangements establishing multi- or bi-ethnic constitutional frameworks. Ethnic-based units enhance consociational participation and geographical cohesion, and complement power sharing, ie, political and legal arrangements that allow divided groups to share responsibilities in the governments of their respective federations. In devolutionary federations, units’ borders were drawn up by → *constituent assemblies*, which were carved out of the map of former unitary states or colonies, as in Italy, India, and South Africa (Nicolini (2022); Bhattacharyya; Muthien and Khosa).

35 Whilst securing units’ territorial identity, federal constitutions lay down the procedures for altering units’ borders. These are considered ‘indestructible states’ but, at the same time, constitutions establish an enduring union of ‘destructible’ units. Mechanisms of territorial alteration vary across jurisdictions (for an overview see Nicolini (2022), 233–41). They may require the consent of the affected units, such as in the US, Malaysia, India, South Africa, Canada, and Pakistan (Art. IV s 3 Constitution of the US; Section 2(a) Constitution of Malaysia; Section 2 Constitution of the Republic of India; Section 74(3) Constitution of the Republic of South Africa: 18 December 1996 (as Amended to 2012) (S Afr); Section 43 Constitution Act of Canada; Art. 239 Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 2017) (Pak)). A territorial referendum is required by the German Basic Law (Art. 29 Basic Law for the Federal Republic of Germany: 23 May 1949 (as Amended to 13 July 2017) (Ger)), and by the Constitutions of Italy, Switzerland,

Australia, and Ethiopia (Art. 132 Constitution of the Republic of Italy: 27 December 1947 (as Amended to 2012) (It); Art. 53(2)–(3) Federal Constitution of the Swiss Confederation: 18 April 1999 (as Amended to 2018) (Switz); Section 124 Commonwealth of Australia Constitution Act; Art. 47(3) Constitution of the Federal Democratic Republic of Ethiopia: 8 December 1994 (Eth)) (→ *direct democracy*). The constitutions of Australia and Switzerland contain ad hoc provisions for altering limits of States (Section 123 Commonwealth of Australia Constitution Act; Art. 53(4) Federal Constitution of the Swiss Confederation).

D. Comparative Assessment

1. Illegal Borders

36 Flaws between the constitutional regime of borders and their operational rules are usually triggered by disputes affecting state territorial integrity. Two or more states may consider a territory as *the* constitutive feature of their constitutional legal systems. Territories are thus contended: part of a state territory may be conquered, annexed, occupied, or claimed by other states. Territories may separate from a state by virtue of secession or be incorporated into another state.

37 A new *operational regime* thus replaces the constitutional one, which generates a new relationship between space, law, and territory. These territories ‘reflect and incorporate features of the [new] social order that creates them’, and ‘are fundamentally *constitutive* of [such] orders’ ([emphasis in original] Delaney 10). There are Maitland’s ‘belongs of public law’: two organized communities that are separated politically and territorially claim *dominium* over their respective territorial space—and perhaps over the whole state territory.

38 The 1974 Turkish invasion of → *Cyprus* split the island into two parts; the north fell under a new operational rule that superseded the regime enshrined in the 1960 Constitution (Arts 181 and 185 Constitution of the Republic of Cyprus: 6 July 1960 (as Amended to 2013) (Cyprus)); the 1975 and 1983 Turkish Republics in Northern Cyprus created ‘an indivisible whole with its territory and people’ (Arts 2(1) and 111(2) Constitution of the Turkish Republic of Northern Cyprus: 5 May 1985 (Turkish Republic of Northern Cyprus (disputed))). The same occurs in → *Taiwan*, whose constitution still refers to the pre-1949 territorial arrangements (Art. 4 Constitution of Taiwan (Republic of China): 1947 (as Amended to 2005) (Taiwan)). The establishment of the People’s Republic of China (1949) made these claims ‘illusory’ and ‘fictional’. Adapting the constitutional borders to the current situation, however, would entail ‘renouncing the “One China” legacy by claiming independence from China’ (Liu 52). Likewise, in Argentina, the territorial constitutional regime still projects its imaginative geography onto the Falkland Islands (*Islas Malvinas*), South Georgia (*Georgias del Sur*), the South Sandwich Islands (*Sandwich del Sur*), and their maritime and insular dependencies (First Temporary Provision Constitution of Argentina: 1 May 1853 (reinst. 1983, as Amended to 1994) (Arg)).

39 The operational rule creates different borders: besides the *de jure* one, there is also a *de facto* border running along the ‘Green Line’ (in Cyprus) and the Taiwan Strait—in Taiwan—which express the flaw between the territorial constitutional regime and its operational rule. The flaw generates ‘illegal’ spaces and borders—the north occupied by Turkey; mainland China—and, odd as it may seem, it draws an illegal-albeit-legally-relevant space: interferences, influences, and remnants of the original demarcation cross the illegal borders, which are not in themselves obstacles to communication. The same holds true for the Israeli-Palestinian situation, which is a ‘legal’ geography of ‘illegal’ spaces, and where

the relations between community and territory and the process of redrawing borders are extremely controversial (Sandler; Sahadžić).

2. Litigating Borders

40 When considering border disputes, scholars usually focus on controversies between sovereign states. Disputes also arise under constitutional arrangements. 'Territorial' constitutional litigation between component federal units is usually settled by national constitutional adjudicators. Usually, such kinds of disputes are not settled via → *judicial review* of legislation, but through arbitration processes, which are also intended to guarantee the supremacy of the constitution by settling cases and controversies between public institutions, in general, and national and subnational units, in particular (→ *supremacy / primacy*).

41 Disputes arise when it comes to drawing boundaries on the watershed of mountain chains: in Italy a dispute between the Veneto and the Trentino-Alto Adige/Südtirol regions concerning the border running through the Marmolada Glacier was settled by the → *Constitutional Court of Italy (La Corte Costituzionale Della Repubblica Italiana)* with Decision No 743 of 1988 (1988) (It). The → *Supreme Court of the United States* also settled disputes related to state borders, drawing them through lakes and rivers, demarcating their riparian jurisdictions, and addressing the equitable apportionment of basin waters. In *Michigan v Wisconsin* (1926) (US), the Michigan-Wisconsin border was drawn on Lake Superior via the Montreal River, Lake of the Desert, and Menominee River to Green Bay, and thence through the centre of the most usual ship channel to the centre of Lake Michigan. The New Jersey-Delaware river boundaries were settled in two judgments (*New Jersey v Delaware* (1934) (US) and *New Jersey v Delaware* (2008)). *Florida v Georgia* (2018) regarded the waters of the Apalachicola-Chattahoochee-Flint River Basin.

42 In South Africa, the dismantlement of the → *apartheid* regime led to the creation of a feeble form of regionalism. The outcome of the demarcation process was eventually represented by the creation of nine provinces embedded in the 1996 Constitution (Section 103(2) and Schedule 1A Constitution of the Republic of South Africa; De Visser et al 14). Affected areas were also detected, whose incorporation within a province was supposed to be extremely contentious (→ *incorporation of territory*). Litigation proceeded from these affected areas, which were entitled to a → *petition* for a referendum under the 1993 Interim Constitution (Section 124 Interim Constitution of the Republic of South Africa of 1993), but the territorial alteration process was not activated. Several geographical disputes arose; aiming to separate from Limpopo and to join Mpumalanga, for instance, the affected area of Bushbuckridge filed a case before the High Court in Pretoria (*Bushbuckridge Border Committee Case* (1998) (S Afr)). Eventually, Parliament passed the Constitution Twelfth Amendment Act (2005) (S Afr), which disregarded both territorial identity and affected areas' requests. Local communities challenged the Amendment Act before the Constitutional Court, which held that it was unconstitutional, inasmuch as Parliament did not meet the levels of public participation required by the constitution while altering provincial boundaries (*Matatiele Municipality v President of South Africa* (2006) (S Afr)).

3. Crossing Borders and Walls

43 In several areas of the world, → *terrorism* threats and global mass migration have compelled nation states to an increasing securitization of their external borders. Israel built a wall in the Occupied Palestinian Territory on grounds of → *national security* reasons, whose construction the International Court of Justice ('ICJ') considered against international law (→ *Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)* (2004) (ICJ); → *Beit Sourik Village Council v Government of Israel and Commander of the IDF Forces in the West Bank Case (Isr)*

(2004)); India fenced its border with Bangladesh ‘as a matter of national security’ (Tripathi and Chaturvedi). As far as the erection of the US-Mexican border wall is concerned, the US Supreme Court granted President Trump the petition for a writ of certiorari. In the Court’s reasoning, public-finance concerns are ranked as superior with regard to solidarity issues. The barrier may ‘cause irreparable harm to the environment and to individuals’; however, if the federal government were ‘unable to finalize the contracts [for the wall] then the funds at issue will be returned to the Treasury’—and costs borne by the US taxpayers (*Trump v Sierra Club* (2019) (US)).

44 Likewise, EU policies related to migration and refugeeism exhibit such concerns related to securitization. EU policies are undoubtedly inclusive; but EU Treaties and legislation are overpopulated with references to ‘external borders’. Securitization of EU external borders encompasses several methods of ‘border checks and surveillance’, which make it hard for migrants to access the EU. Evidently, the ‘principle of solidarity and fair sharing of responsibility’, which underpins the ‘Area of Freedom, Security and Justice’ laid down by the Treaty on the Functioning of the EU, is a privilege reserved for the EU Member States, whereas third-country nationals must merely be treated fairly when they try to access the EU (Moreno-Lax 31–34).

4. Melting Borders

45 The impact of climate change has several consequences. As for border issues, it will unavoidably trigger huge loss of territories and considerable migrations (White). Owing to rising sea levels, for example, states and insular states face the risk of being ‘entirely underwater’. This will affect states’ rights on their exclusive economic zone and trigger maritime border disputes under Articles 55 and 56 Convention on the Law of the Sea (1982) (‘UNCLOS’) (Leal-Arcas 46). It is unsettled, however, whether the UNCLOS considers the boundaries of an → *exclusive economic zone* as permanent, and whether the submersion of islands would unleash their former seabed to exploitation by other states and economic actors.

E. Conclusions

46 Human beings have been drawing lines dividing the *oikoumenē* since the onset of ancient civilizations, projecting onto the Earth’s surface a variety of contingent conceptions of borders. As this entry upholds, the territorially related conception of border is still the dominant one. Although borders are now constantly blurred by economic, environmental, and migration-related variables, the prevailing conception still reflects Western geopolitical concerns. Securitization corroborates, then, that states have ‘continuing strengths within [their] borders’ (Agnew 74–75). From this, however, it does not follow that, conversant in lines and figures, borders only favour practices of exclusion. Borders also have a performative, relational function, as they shape the territorial identities of those who are inside and outside them. And probably, this is a legacy of the pristine meaning of ‘borders’, ie the ‘floating’ zones with non-specifiable boundaries where groups and ethnicities aimed to introduce their own operational rules and therefore assert their legal spaces and belongs of public law.

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