
*Sovereignty Conflicts and International Law and Politics.
A Distributive Justice Issue*

Jorge Emilio Nuñez. London: Routledge, 2017, 185 pp.

Territorial disputes in the international arena can be included among the oldest, most persistent and frequent problems within the broad spectrum of politics; and a quick look at the current state of international politics serves as an illustration of this. Both Canada and Denmark claim sovereignty over Hans Island; Israel and Palestine have different criteria regarding the political, though not necessarily legal, importance of the so-called “Green Line”; Russia and Ukraine disagree on who owns the Crimea region. In Latin America, Colombia and Venezuela have a dispute over Los Monjes Islands; Honduras and El Salvador do the same over Conejo Island; Nicaragua asserts that Costa Rica has stolen Guanacaste. These are just some examples, but they give us a clear idea of the magnitude of the problem: the international situation as regards territorial conflicts is much more convoluted than one might believe at first glance.

It can be stated that the causes of these disagreements can be manifold: mere expansionist aspirations of some states; their desire for resources that are not in their territories; an attempt to enforce rights based on historical, religious or ethnic reasons; and so on. Regardless of the causes, it is reprehensible that these conflicts exist, but it is more reprehensible that politicians do not take serious action to solve them; and even worse, that they do not even try to do so. Given this panorama, it could be asked: Why international territorial disputes should be solved? Just as there are diverse causes of the origin of such conflicts, there are also multiple reasons for solving them. There are two basic ones: First, states form a community, and any community needs to solve its problems for its members to live peacefully with one another. The second is conceptual and it is at the basis of any other reason. It evokes Immanuel Kant’s practical political, legal and moral thought (Kant, 1785, 1793, 1795), whereby the field of social relations is basically divided into the national, international, and cosmopolitan areas, which are closely connected to each other. Thus, the second reason implies that international territorial disputes must be solved not only to keep order in the international community but also to avoid negative consequences in the national sphere.

In this context and taking special account of the need to find solutions, Jorge Emilio Nuñez published his book *Sovereignty Conflicts and International Law and Politics. A Distributive Justice Issue* (Routledge, 2017). The relevance of the book lies in

two concomitant aspects. First, and contrary to authors like Quackenbusch (2015), Jeutner (2017) and Gibler (2018) who analyze the above-mentioned problems from a single point of view, Nuñez uses a multidimensional perspective, which is political, legal and moral. Such a multidimensional vision makes it possible to get a more accurate approach to such conflicts and their potential solutions. Second, the book does not deal with every kind of international territorial conflict, but with a particular kind of them, namely, “disputes between two sovereign states (*de jure* and *de facto*) over the sovereignty of a populated non-sovereign third territory” (p. 7). More specifically, Nuñez has in mind real conflicts like those of Gibraltar, Kashmir and the Kuril Islands (p. 7; 139), to which few reasonable solutions have, in practice, been offered.

The book comprises seven chapters interconnected by means of a central argument, namely, these disputes can be solved by applying the *egalitarian shared-sovereignty* model. This would be the result of using the Rawlsian methodology, but not the Rawlsian theory (p. 11). It does not necessarily imply sharing Rawls’ political and philosophical assumptions; however, it entails accepting that some points of Rawls’ procedural vision can be effective in proposing solutions to political–territorial conflicts. On these grounds, the book offers an original theoretical mechanism to find solutions to concrete problems. Thus, in the first chapter, *Sovereignty conflicts as a distributive justice dilemma*, Nuñez explains that the solutions to the conflicts that he has in mind are a matter of distributive justice, because they ultimately refer to the “allocation of benefits and burdens in relation to wealth and income” (p. 4). This leads the author to assume the above-mentioned Rawlsian methodology, giving special weight to the consensual character and the concept of original position. The author stresses that it is an ideal, theoretical exercise, so he does not claim that we necessarily have to use it in practice (p. 8). Chapter two *Limited sovereignty* points out that no absolute sovereignty exists or has ever existed. On the contrary, it has been limited in two ways: by *dividing* (two or more states split power among themselves) and by *sharing* (states are united by a relationship that does not split power). Nuñez gives preference to the latter.

In the third chapter, *What should “shared sovereignty” mean?* the author presents five concurrent requirements for the mechanism of shared sovereignty to be able to solve territorial conflicts: genuine sharing of obligations and rights over the third territory; respect for the principle of non-interference in domestic affairs; international equality between states; distribution and allocation of competences according to a Rawlsian methodology; and the representation of the population of the third territory in the—hypothetical—negotiation (pp. 52–55). The combination of all these five requirements leads to a consensual that Nuñez refers to as “egalitarian shared sovereignty”. Here, “egalitarian” does not mean equality in terms of riches of the states and the non-sovereign third territory, but that they are on an equal footing during the discussion and that the three agents must approve the decision (p. 137).

The central idea of chapter fourth, *How far can sovereign states cooperate together and limit their freedom without sacrificing their sovereignty?*, is that not every form of shared sovereignty is just, fair or egalitarian (p. 58) in terms of power. In this sense,

one of the characteristics of the egalitarian shared sovereignty model is that it does not bring impositions or domination for any of the parties, neither for the states in dispute nor for the third territory. This is a non-negotiable point. In chapter five, *Why is shared sovereignty desirable?*, the author concedes that there is a wide range of remedies for international territorial disputes, that can be divided into three categories: a) unilateral solutions; b) international–multilateral approaches; and c) bilateral approaches. Nevertheless, none of them is adequate to solve the problem addressed by the author, as these categories always have “a certain degree of uncertainty that make us doubt about the value of their application” (p. 95).

Chapter six, *How can shared sovereignty be just?*, is the most important one. Here, it is argued that the shared-sovereignty consensual model is the best option, inasmuch as it leads to a situation where the claimants in a sovereignty conflict leave aside reasons that may work against a final and peaceful solution (p. 99) and guarantees that all are the “simultaneously supreme authority” (p. 137). The explanation addresses two concrete topics: *who* a legitimate claiming party is (p. 102) and *what* the competing parties will discuss (p. 108). A legitimate claiming party is one who has a “colorable claim”, i.e. who appears “to have a probable cause to support their intended right to claim” (p. 103) based on: (a) historical entitlements; (b) the legal status of these claims; or (c) moral considerations. These are not the only criteria, though they are the most common ones. What the parties should discuss is the principles that must regulate the negotiation. At this point, Nuñez uses the Rawlsian methodology. He applies in the international sphere concepts that one can find in *A Theory of Justice* for the national sphere. According to Nuñez, this means that the representatives of the two sovereign states and the non-sovereign third territory are in an original position and under a veil of ignorance, so they are mutually disinterested (p. 112). Under these circumstances, they do not know whom they represent (p. 113) and ignore aspects of their individuality, although they do manage some information about the conflict (p. 113). The final chapter, *How should shared sovereignty work in practice?*, offers examples of how the egalitarian shared sovereignty model might work in practice, such as Gibraltar. There are four areas that must always be taken into account in practice: law, territory, population and government.

The reader will notice that the book is very well articulated, both structurally and conceptually. Another of Nuñez’s merits is to face such a complex problem in a clear and precise way. However, there is an important flaw at the core of the proposal. The Rawlsian methodology constitutes one of the most persuasive liberal methodologies; yet, Nuñez creates the misleading impression that the egalitarian shared sovereignty model is the only, final and perfect notion of justice for the kind of conflicts object of this study. The validity of this thought is questionable given that in real life, as Amartya Sen (2009: 141-143) has expressed, states comprehend many identities, individual and collective, that have very different visions about what is just. Therefore, the existence of Rawlsian representatives of states is an abstraction that tends to oversimplify the political and moral issue of identities and justice. The same applies for the Rawlsian representatives of the non-sovereign third territory. The solution that Nuñez

proposes for solving territorial conflicts runs the risk of lacking real political legitimacy. Nuñez could contend that the book only suggests a hypothetical, ideal model, but how far is it possible and convenient to separate an ideal political proposal from what happens in reality?

In conclusion, despite the objection raised, the author's proposal is original, daring, well thought-out, clear and reasonable. This is the reason why this book should be read by anyone who has an interest in approaching a solution to international disputes in which two states claim sovereignty over a third territory.

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