

## ORIGINAL ARTICLE

# Territory, self-determination, and climate change: Reflections on Anna Stilz's *Territorial Sovereignty: A Philosophical Exploration*

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The assertion of territorial claims is one of the longest standing political issues in the world and, as the number of ongoing disputes shows, has lost none of its significance in contemporary times. Humans long for a place they can call “theirs”: whether that involves an individual being able to have a “room of one’s own” (Woolf, 1929) within a household, or being able to control the behavior of people within certain spaces and the movement of goods and people across them. Although claims to land and to territory have always featured in political philosophy, in the last decade there has been increased interest in the subject. Classic liberal political philosophy conceived of rights to territory largely as, or at least evolved from, property rights. The more recent work, to which Anna Stilz’s thought-provoking book is a very welcome contribution, allows that there might be better ways of conceiving of people’s relationships to land and to territory than in terms of property, or at the very least not in terms of “full liberal ownership”.<sup>1</sup>

It is not possible to do justice to any, let alone all of Stilz’s ideas in the space of a short commentary. Instead, I consider what Stilz’s theory has to say about how to conceive of and respond to the phenomenon of global climate change. This might seem strange to people who conceive of climate change entirely as a matter of what is going on in the atmosphere. However, climate change will not only have potentially severe impacts upon the land surface, but might, if unchecked lead to certain states, namely some of the Small Island States (SISs) losing their territory due to sea level rise. Moreover, significant proportions of the earth’s carbon sinks are located in the land and seas of different countries. To keep atmospheric concentrations of greenhouse gases (GHGs) at a manageable level, it is necessary to maintain (even create) carbon sink capacity as well as to reduce GHG emissions (e.g., by reducing fossil fuel consumption). Indeed, Stilz devotes some time in her book to both these issues.

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Chapter 6 discusses the rights of SISs should they become uninhabitable, and chapter 8 is devoted to management of carbon sinks. The latter half of this commentary will focus on this discussion of forest management. Before then, I wish to propose an extension to Stilz's basic theory. In this first half of this commentary, I will suggest that as well as the "right of occupancy," the interest in "located life plans" justifies a second pre-institutional right. I will call this the right against nonspatial removal (right against NSR).<sup>2</sup> The case for this right begins in the next section.

## 1 | MORE THAN OCCUPANCY

The "right against NSR" is, admittedly, an inelegant term. Perhaps this is because it is intended to capture a rather unusual idea, namely that *places can be removed from people*. However, let us start with the more familiar idea that people can be removed from places.

To remove people from a particular place, one removes them from the geographical space in which the place is located and prevents their return. Stilz gives plenty of historical examples and argues that these constitute an injustice to those who are moved, not only because such actions are normally carried out with the use of force, but also because removing people from a place *disrupts their located life plans* (2019, 41).

Here, it is important to distinguish between places and spaces. "Place," as opposed to mere "space" has a distinctive feel to it, a character. Places, whether big or small are replete with meanings. They are where social relationships develop; they are also created and maintained by those social relationships. Places can be big or small, they can be nested within or overlap with others. Places are socialized spaces and all socialized human beings will have developed their character and capacities within places. In the course of living their lives, they will live in certain places, and may *form expectations to live their lives in particular places*. Depending on both the physical characteristics and the social meanings attached to those characteristics, some patterns of behavior and courses of action will be "live options" to individuals who inhabit the places, and some may be proscribed or simply not physically available. As Stilz notes "Suppose you run a dairy farm, an economic practice that structures much of your life. You could not continue to pursue this practice if you were moved, say to Siberia or the American Southwest. Our religious, cultural or recreational activities also often have place-based components: think of how dog-sled racing belongs in the Arctic and surfing in coastal areas, or how religions incorporate places or natural formations into their rituals of observance" (2019, 41).

The plans that people make for themselves and which give their lives purpose and meaning will be carried out in certain places and structured by the options available in those places. Stilz distinguishes four analytically distinct ways in which life plans require a location: *economic practices, membership in cultural or religious organisations, personal relationships* and *attachment to a locality* (2019, 43). In particular, Stilz suggests that while economic practices and membership in organizations require certain types of place, personal relationships, and attachment to a locality requires particular, specific places. These latter two cannot, even in principle, be recreated elsewhere (2019, 44).

Removing a person from the place in which they live thus counts as one of the most extreme forms of interference in a person's life plans. It can even render those plans impossible. Accordingly, Stilz argues that there is a pre-institutional *right to occupancy*, held by all individuals. This is a right to remain in a specific place (in particular within the territory occupied by fellow members of a self-determining people) and not to be removed from it. As well as the most common violations due to forced removal, Stilz argues that this right to occupancy can be transgressed when the unintended consequences of peoples' actions result in others having to relocate out of necessity. On her theory, citizens of SISs that are rendered uninhabitable by rising sea levels are denied their right to occupancy through anthropogenic climate change. These citizens may not have been territorially dispossessed by force,

but they are territorially dispossessed nevertheless.<sup>3</sup> They will have to migrate: to leave the place in which their life plans are carried out and relocate to a different place.

The removal of people from places is enacted through spatial methods: the victims are denied access to the geographic space in which the place is located. By contrast, the removal of *places* from *people(s)* does not occur by spatial means: a place can disappear from under one's feet. Recall that places, unlike spaces, are constituted by having a certain character, a certain collection of physical and biological attributes and features, plus particular understandings of those attributes shared by the people who inhabit that place. This means that a place can be lost if those meanings, or those particular physical and biological attributes change within that geographical space.

As it is these physical and biological attributes and the meanings and patterns of behavior attached to them which construct and constrain individuals' located life-plans, swift or severe changes to the physical and social constituents of any place can likewise disrupt the life plans of the individuals who live in that area.

Climate change is doing just this. For example, the Inuit Circumpolar Conference (ICC) complained that their traditional hunting practices are being compromised. The health and numbers of land-based Arctic species has decreased, and their migratory patterns have changed, whereas on the coast, thinning ice makes it more difficult to land whales. Traditional wild plant foods are less available. Moreover, what is hunted or gathered, is less easy to preserve with traditional methods of food preservation and storage (ICC 2005, 39–54).

All of these traditional practices, and with them, according to the petition, changes in social relationships and even the “cultural survival of the Inuit as a distinct and unique society” (ICC 2005, 67) are at risk. According to the then-leader of the Inuit Circumpolar Conference, the Inuit have a “Right to be Cold” (Watt-Cloutier 2015). By this, Watt-Cloutier means a right to live in a place with an Arctic climate, topography, animals, and plants, where traditional subsistence and other practices may be continued.

To put this in Stilz's terms, we might say these Inuit people cannot carry out their located life-plans. The life plans of many Inuit members are based on the traditional activities of hunting, fishing, and gathering certain plant species. All of these are all adapted to the Arctic environment and so the Inuit cannot carry out their located life plans anywhere else. But now, because of the changes in environmental conditions in the Arctic, their ability to carry out their located life-plans is now under threat without any change in their spatial location.<sup>4</sup>

As noted earlier, Stilz grounds the right to occupancy on the importance of individuals' interests in being able to carry out their located life plans. The pre-institutional right to occupancy ensures that people are not removed from the places where they carry out their located life plans. If an individual's located life plans can also be severely disrupted—even rendered impossible—due to the loss of the features which make a place *that place* then there should, similarly be a pre-institutional right to protect against such disruption. Hence, we have the case for the right against non-spatial removal.<sup>5</sup>

What might this right entail? It is a little more difficult to set out the corresponding duties and identify transgressions than in the standard cases of removal. This is due to the incremental nature of the harm (e.g., Lichenburg 2010) meaning that climate change, as a collectively caused problem, requires a collective solution. But there is nothing on Stilz's account that precludes this: in fact she readily acknowledges it. On her account, citizens of small island states are losing their right to occupancy due to collectively caused climate change (chapter 6) and she argues for a duty to organize collectively to limit the increases of GHGs in the atmosphere (chapter 8). One clear implication of recognizing the right against NSR is that it becomes clear that climatic injustices are already happening. One consequence then, is that questions of corrective justice, which Stilz largely avoids in her book, become even more relevant when it comes to making proposals for the here and now. For example, the Inuit

might be owed rectification of various sorts, from material to symbolic (Page and Heyward 2016) for the loss of their located life plans. Questions of corrective justice might also come into play in other parts of Stilz's discussions. The next section illustrates this in the case of her proposal for global carbon sink management.

## 2 | GLOBAL CARBON SINKS, SELF-DETERMINATION, AND CORRECTIVE JUSTICE

As climate change is a collectively caused problem, it requires collectively organized solutions. Stilz devotes a whole chapter to one such solution. She suggests that there ought to be *joint management* of systemic resources, such as global carbon sink capacity. In particular, she focuses on forests, which comprise a large proportion of the global carbon sink, but are also most under threat due to logging, as well as clearance for mining and agriculture.

Stilz argues that states have a duty to sign up to an international mitigation treaty to stabilize atmospheric GHG concentrations. As well as curbing levels of GHG emissions, the parties to the treaty should set up an agreed baseline of rates of forest degrading activities (such as logging or mining) and an independent international co-management agency that oversees people's activities and with which proposed changes to the baseline rates can be negotiated. Most importantly, forested countries are owed compensation for refraining from degrading their forests: both for "the opportunity costs in terms of forgone economic development and for the direct costs of protecting the forests" (2019, 243).<sup>6</sup> Developing countries are morally entitled to withdraw their participation if such compensation is not made available. Stilz's proposal thus acknowledges developing countries' interest in economic development, which may be best served by logging or mining, and at the same time does not unreasonably constrain their interest in self-determination (2019, 243).

Few would quarrel with the view that rights to self-determination can be curtailed if decisions made by the self-determining collective jeopardize fundamental interests of outsiders. But Stilz's proposal, as she describes it, leads to some interesting questions about the nature and value of self-determination. I also believe that it obscures an important issue of historical injustice. For ease of discussion, I will assume that there are at least some cases where the developing country does in fact have a legitimate territorial right over the forested areas in question.<sup>7</sup>

First, take Stilz's view that less developed states entitled to compensation for refraining from exploiting their forests in ways that may degrade sink capacity and are even entitled to withdraw from the treaty if such compensation is not forthcoming. This is unusual. In all other parts of her work (and in agreement with almost all other global justice theorists), Stilz argues that the right to self-determination does not include the right to act in ways that harm others. Therefore, the most obvious reason for Stilz's suggested constraints on self-determination is to prevent others being harmed from climate change.<sup>8</sup> However, on her proposal, less developed states are compensated for refraining from action that harms others. In most cases, agents are not regarded as being morally entitled to compensation for agreeing to refrain from harming others. The course of action is simply morally impermissible and the demand for compensation in return for restraint is simply known as a threat.

Without further explanation then, Stilz's stipulation that developing countries need not sign up to a treaty that regulates their forestry practices unless compensation is provided is simply inconsistent with the general liberal prohibition on harming others. What kind of further explanation might there be? The most obvious one appeals to goal of ending global poverty. With "constrained development" (Page 2012, 315) and without compensation, citizens of developing countries will remain in serious poverty; an injustice at least as bad as exacerbating the risks of severe climatic impacts on others. The

compensation is required in order that developing countries can combat the severe poverty faced by many of their citizens. The problem of climate change thus seems like a tragic situation: developing countries have the dilemma of exacerbating climate change through deforestation or having their citizens continue to live in morally intolerable conditions. However, other countries are in a position to help avoid this tragic situation by providing funds to enable development. They thus have duties (and duties of justice) —to do so. However, according to this explanation, the rationale for “compensation” is actually a general (and distributive) duty to alleviate global poverty, not a specific (and rectificatory), duty to recognize a loss of self-determination.<sup>9</sup> It is not the compensation *per se* which renders the constraint on self-determination reasonable, but the fact that serious harm to others will occur should deforestation occur. This not to rule out that compensation might be *politically* necessary to achieve compliance, or that it might be politically more palatable for some governments in the developing world to talk about compensation and entitlement rather than development aid with its connotations of charity. It is simply to clarify the role that compensation plays in Stilz’s philosophical exploration.

Another possible explanation is as follows: the tragic situation faced by developing countries is not merely a misfortune caused by the vagaries of Nature. Rather, it is due to developed countries having emitted vast amounts of carbon dioxide in the recent past. Countries that industrialized early experienced no limits on their self-determination when it came to deciding what to do with their natural resources. In Europe, massive deforestation occurred for centuries and industrializing countries the world commandeered huge amounts of natural resources and carbon sink capacity.<sup>10</sup> They did not, for example, have shown that no other paths of development were viable, as Stilz now demands of developing countries (2019, 243) or limit their activities in any way. Developing countries enjoy a lesser degree of self-determination than developed countries when it comes to how to use their natural resources. There is an historic inequality, which *prima facie*, ought to be rectified.<sup>11</sup>

If this explanation is accepted, however, compensation is but one possible means of rectifying this inequality. Another would be to demand that developed countries drastically reduce their GHG emissions so that developing countries can pursue their own preferred path of economic development, as free of constraints as developed countries were throughout the 20<sup>th</sup> century. Given the importance that Stilz places on self-determination throughout her work, it is puzzling that she does not consider whether developing countries could have the moral right to insist upon this solution. After all, this honors and preserves their self-determination, whereas requiring them to accept compensation in return for refraining from deforestation-driven development can be seen as a constraint in itself. Unless the offer of compensation can, morally speaking, be refused in favor of proceeding with deforestation (a point on which Stilz is silent) the fact that there is such an offer does not make the constraint on freedom any less of a constraint.<sup>12</sup>

Stilz thus faces a dilemma. Are developing countries morally entitled to refuse to participate in a global mitigation treaty when compensation is offered, or are they not? If they are, then they are able to act in ways that, all things considered, would harm others, contrary to her arguments about the limits in of self-determination in chapter 6. It would then fall on the developed world to cut back its emissions and take any other measures to prevent such harms.<sup>13</sup> If developing countries are not able to refuse, they suffer a serious constraint to their self-determination—one which her proposal, as it stands, does not appear to recognize.

### 3 | CONCLUSION

This comment piece has sought to highlight two areas in which Stilz’s theory could be further developed. The first concerns her theory of place-based rights. I have suggested that to safeguard these

important interests, we might require more than the right to occupancy. To protect fully individuals' abilities to carry out their located, place-based life plans, we thus need to ensure that people are not removed from places and that places are not removed from people. The right to occupancy achieves the former, the right against NSR, the latter. The second area concerns her idea of self-determination and its value compared to preventing other kinds of injustices, namely the injustices that are likely to arise from the impacts of unchecked global climate change. I have argued that as it stands, her proposal for a global mitigation treaty does not take proper account of the value of and limits to self-determination for developing countries. Either it is too permissive and allows their self-determination to trump the basic interests of others, or it constrains their self-determination without even acknowledging that it is doing so.

This by no means diminishes the value of Stilz's book. It simply shows its richness and the potential for its further development. Moreover, it highlights the challenges for any political theory thrown up by the particularly complex and difficult problem of understanding and responding to anthropogenic climate change.

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## Notes

- <sup>1</sup> The territorial turn began with Avery Kolers (2009) and Cara Nine (2012). See also Margaret Moore (2015).
- <sup>2</sup> "Place identity" and "place attachment" have long been researched in human geography, environmental psychology, and architecture. Stilz has largely eschewed these terms in her work, but it seems she is appealing to something akin to them by her discussion of "located life plans." For an interdisciplinary overview of research on place identity and place attachment, see the contributions to Lanzo and Devine-Wright (2014).
- <sup>3</sup> The term "territorially dispossessed" is taken from Heyward and Ödalen (2016).
- <sup>4</sup> The Inuit's campaign is perhaps the most politically prominent in the formal arena of international politics, but similar concerns apply to many other indigenous groups. For example, as well as the Sami, another Arctic-based indigenous people, it has been argued that climate change will affect the traditional practices and cultural identity of forest peoples (Vogesser 2013) and Andean peoples Fraser (2009). In general, indigenous peoples are among the groups of people more vulnerable to climate impacts, due to social and political marginalisation as well as the fact that their territories are frequently located in delicate environments and thus more susceptible to physical changes.
- <sup>5</sup> Perhaps Stilz would reply that there is no need for a second right: that her concept of an occupancy right can cover cases such as the Inuit. However, in normal use, occupancy has a spatial (and temporal) dimension—it means the "taking up" of a physical space. I therefore suggest that it is reasonable to hold that the right to occupancy does not secure all place-based interests and but is one of a package of rights that do.
- <sup>6</sup> I presume that the compensation Stilz has in mind is largely financial, or else its value can be put in financial terms, for example, technology transfer.
- <sup>7</sup> Historically, much deforestation and mining has been fundamentally unjust, with indigenous groups losing their lives, never mind their located life plans. I put also aside the related concern that development should be properly understood as *human development* and that this might be much less well served by logging, mining, and commercial farming.

- <sup>8</sup> The victims of climate change include the most vulnerable citizens of any particular state, especially those in the developing world, plus future citizens of that state. Developing states that do not take action may potentially wrong their own current or future citizens as well as current and future citizens of other states.
- <sup>9</sup> This explanation seems to bring Stilz's account closer to that of Chris Armstrong (2017).
- <sup>10</sup> Moreover, as GHG emissions have increased massively in developed countries since the end of World War II (as part of a phenomenon known as the Great Acceleration) this is a relatively recent historic inequality and began in the lifetime of many still living today.
- <sup>11</sup> One could of course object that equality of self-determination is not required.
- <sup>12</sup> By analogy, if a local authority issues a compulsory purchase order of a person's house, that person has still been deprived of an important choice and his autonomy is compromised. Of course, it would be worse were he not compensated, but the presence of the compensation does not take away from the fact that his sphere of action was severely curtailed.
- <sup>13</sup> There are four different classes of actions that developed countries might take to *prevent* harm, plus rectifying harm that does occur (Heyward 2013). Measures within each come with their own profiles of risks of injustice and other ethical issues.

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