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Occupancy rights: dynamic as well as located

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ABSTRACT

Anna Stilz's *Territorial Sovereignty* (2019) aims to be a revisionist account of territorial rights that puts the value of individual autonomy first, without giving up the value of collective self-determination. In what follows I examine Stilz's definition of occupancy rights and her emphasis on the moral relevance of what she calls 'located' life plans. I suggest that, if it aims at being truly revisionist, her theory should work with a broader definition of occupancy. So long as it doesn't, these rights will be mainly the preserve of groups of settlers and peoples with predictable patterns of movement. Moreover, insofar as occupancy rights ground collective rights to self-determination, they actually have the potential to trump individual rights to what I call 'dynamic' or non-located occupancy. This is worrying, I claim, for at least two reasons. First, rights to dynamic occupancy are arguably as central for respecting individual autonomy as rights to located occupancy. And second, rights to dynamic occupancy should be seen as key in helping to form the kind of political allegiances required to overcome the most pressing collective action problems that humanity faces.

KEYWORDS Anna Stilz; occupancy rights; self-determination; territorial rights

In *Territorial Sovereignty: A Philosophical Exploration*, Anna Stilz (2019) develops a theory that seeks to morally justify the existence of a global political order made up of territorial states, while being revisionist in two central aspects: the rights to control borders and natural resources are much more limited than what they are today, and conditional upon the fulfillment of what Stilz calls the 'basic territorial interests' of everyone on earth.¹

In this brief text, I examine Stilz's definition of occupancy rights and her emphasis on the moral relevance of what she calls 'located' life plans. I suggest that, if it aims at being truly revisionist, her theory should work with a broader definition of occupancy. So long as it does not, occupancy rights will mainly be the preserve of groups of sedentes and members of peoples with predictable patterns of movement (to wit, nomadic groups²). Moreover, insofar as occupancy rights ground collective rights to self-determination, the latter have the potential to trump individual rights to what I call 'dynamic' occupancy. This is worrying, I claim, for at least two

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reasons. First, rights to dynamic occupancy are arguably as central for respecting individual autonomy as rights to located occupancy. Second, rights to dynamic occupancy should be considered as key in helping to form the kind of political allegiances required to overcome the most pressing collective action problems that humanity faces – paradigmatically among them, the climate crisis.

The importance of located and dynamic life plans for individual autonomy

One of the three core moral values that, according to Stilz, are best defended by a world system of geographically delimited and self-determining states is the right of occupancy (the other two are basic justice for individuals and collective self-determination). Occupancy rights are primitive rights (Stilz takes this term from Grotius), meaning rights that are pre-institutional or – to use the old philosophical jargon – natural. They are not exactly property rights (which come later to specify the former, and do require institutions), but they do amount to a claim against others, i.e. they generate duties. They are defined by Stilz as ‘the right [of people] to permanently reside *in that place*; to participate in the social, cultural and economic practices ongoing *there*; to be immune from expropriation or removal; and to return if they leave temporarily’ (Stilz, 2019, p. 35).

What Stilz is interested in defending is thus not just the generic right of individuals to have some place to be, but also the specific right of individuals to be in a particular place – which is their place of residence. What justifies occupancy in being a right is, according to Stilz, its paramount importance for individual life plans and projects. The explicit premise is that the comprehensive projects of people are tied to specific places, and that ‘stable territorial occupancy is a necessary background condition for wellbeing and personal autonomy’ (Stilz, 2019, p. 40).

But, are ‘located’ life plans – as Stilz calls them – as important as she takes them to be? Instead of arguing against the relevance of located life plans, I invite Stilz to consider the possibility that dynamic life plans might be just as weighty for the sake of individual autonomy, and that they do not stand in opposition, but rather along a continuum with the former. Acknowledging this, in my view, does not require giving up the idea of occupancy rights, but rather redefining occupancy as its first meaning in the dictionary suggests: to occupy is ‘to employ, to make use of’ (like dancers occupying the scene) (occupy, v. 2020). Accordingly, occupancy rights should not be narrowly understood as rights to settle permanently in a specific place, but broadly understood as rights to occupy the space freely – where settling down is one, but not the only, way to occupy. Ultimately, occupancy rights could be seen as an expression of the right to freedom of movement.

In this section, I revise four morally relevant characteristics of located life plans, i.e. plans that are tied for their realization to being in a particular space or to moving predictably with others along a particular space. I then show how these characteristics can also be found in what I call 'dynamic' life plans, i.e. plans that are tied for their realization to more than one space. I then point to Stilz's criticism of the right to freedom of movement as a basic human right and suggest, contra Stilz, that there is no morally qualitative difference between this right and the right to stay.

Stilz mentions four significant features of located life plans which, taken together, purportedly show that people have both plan-based interests in continuous occupancy, as well as a control interest, i.e. an interest in being 'in charge of revising the commitments that are fundamental to their lives' (Stilz, 2019, p. 44). First, many economic practices are tied to specific places, and those who engage in them would be 'significantly dislocated' if they could not maintain them. Stilz's examples are the Sioux economy, based on the hunt of wild buffalo, and white-collar professional jobs in the modern US. Second, membership in religious, cultural and social organizations requires access to the places where they occur (like churches, schools and meeting-houses). Third, personal relationships are essential to personal well-being and keeping them – Stilz claims – 'requires living near enough to do so' (Stilz, 2019, p. 43). Fourth and finally, some people identify themselves with specific geographic places to the point that their life projects are based on this identification. This 'attachment to locality' is exhibited, for example, by Native American groups (the Taos Pueblo and the Sioux) and the highland culture of Switzerland.

What is telling about this list is that these same features (1 to 3 straightforwardly, and 4 if interpreted slightly differently) hold equally for dynamic life plans. Stilz herself acknowledges, in fact, that 1 and 2 above do not refer necessarily to a specific place, but to a kind of place, and many dynamic life plans are just about that; namely, about moving between places of a certain kind. Take, for example, an academic who takes it as part of her professional development to spend time abroad on a routine basis; or a geologist whose consultancy firm requires him to spend long periods living abroad; or a top-notch surfer whose income depends upon being granted access to those countries with the most challenging waves on offer. All these people would, using Stilz's words, be 'significantly dislocated' and economically harmed were they not able to occupy the spaces they wish to occupy. Membership in certain kinds of organizations, meanwhile, sometimes requires a fixed location, but sometimes it does not: the whole point of being a church missionary is to be able to live and work far from one's habitual residency; and the attraction for many workers and volunteers in social organizations is precisely to get to know and live in different places all over the world. For people with dynamic life plans such as these, Stilz's description of the third

characteristic, which regards personal relationships, will come as a surprise. For, who said that keeping personal relationships requires living nearby? For the millions who have had rather ambulant lives around planet Earth, it is pretty clear that what continued personal relationships require is the possibility to communicate and to visit each other and maybe even stay with each other for a while. Close friends are not necessarily friends who live close by. Fourth and finally, just as there are some whose attachment is to specific localities around the globe, there are others whose attachment is to multiple, or to more extended areas. And, why should we favor the former over the latter? This moral priority given to located life plans suggests – in my view – a bias in favor of settlers' way of life over others. The theory thus fails to recognize that individual autonomy is about moving just as much as about staying put. Furthermore, it is telling that the two examples that Stilz mentions as showing 'attachment to locality' regard *peoples* rather than *people*: it is Native American *groups* and the Swiss highland *culture* (rather than individuals within them) which are described as being tied to their place in such a tight manner.

Stilz's criticism of the right to freedom of movement as a human right, moreover, fails to show in my view that it is of a qualitatively different kind than the right to occupy on a permanent basis. She raises three worries: it is wholly beneficiary-centered; the liberty interest cited is implausibly broad; and our general interest in freedom from restriction does not seem weighty enough to ground a right (Stilz, 2019, pp. 203–204).

Regarding beneficiary-centeredness, Stilz claims that defenders of freedom of movement invoke its importance for accessing life options, but do not say enough about 'the impacts that migration flows may have on the life plans of those who are already settled' (Stilz, 2019, p. 203). One could, however, turn the same argument around, and complain that defenders of located occupancy rights invoke their importance for keeping certain life options, but say little about the impacts that migration restrictions may have on those with dynamic life plans. Stilz can reply that she has already shown why one kind of interest is morally weightier than the other, but my response would be that still more needs to be said before giving dynamic occupancy a subordinate status.

Regarding the implausibly broad interest in freedom purportedly invoked by open borders' defenders, I think Stilz misconstrues it when she says it rests on the idea that any restriction by the state over individuals is presumptively wrong. The claim made by advocates of freedom of movement is not that any restriction is wrong, but rather that it has to be justified both to those who are let in and to those who are left out. I can totally agree that I should not enter my neighbor's sauna if I do not ask her for permission first. That does not diminish my liberty in any objectionable way (even though it might reduce my potential well-being). I know that by respecting property laws and the

right to privacy I will be better off too, and I am thus happy to comply with this restriction of movement. The analogy, however, does not hold in the relationship between states and individual outsiders, where states unilaterally control their borders and do not consult with the latter about the benefits or costs of such exclusion.³ One does not have to be libertarian to find this procedure objectionable. Rather, one must be so used to such an arrangement that one takes it to be as inevitable as the laws of gravity.

Finally, regarding our general interest in freedom not being weighty enough to ground a human right, Stiliz claims that one should distinguish between fundamental interests over which we should have some control, and non-fundamental interests. The criterion is that 'the more a freedom can be argued to be an essential institutional means to protect personal autonomy or political participation, the weightier the claim to that freedom will be' (Stiliz, 2019, p. 205). Accordingly, those whose basic territorial interests are unsatisfied, those who wish to reunite with family members, and arguably also those looking for educational, career, and religious opportunities that do not exist at home are granted a right to migrate, which may be enforced upon receiving states. Stiliz also grants a *pro tanto* claim to move to what she calls 'harmless' migrants, i.e. those whose entry would not be harmful and who would be greatly benefitted if admitted (Stiliz, 2019, p. 188). Unless it is their basic rights that are unfulfilled, however, these are not claims of justice that generate perfect duties upon receiving states to accept them, but rather 'imperfect' rights that states may or may not be responsive to (Stiliz does not use the terminology of 'imperfect' rights, but I interpret her as endorsing this position when she says that states morally should, but cannot be enforced to let harmless, but non-needy migrants in). In other words, Stiliz thinks that, while states have a moral duty to let in harmless, but non-needy migrants, they also have a right to do wrong by keeping them out. The right to self-determination of located collectives thus ends up trumping the individual right of dynamic occupancy.

Dynamic life plans and political allegiances

To what I have been saying so far, Stiliz might reply that I am over-stating the cause for dynamic occupancy. After all, even globetrotters need a permanent address, a fixed abode where to retreat after their wanderings. Theories of territory (and political theory in general) need to reflect what the majority of human beings actually do and care for. If it is the case that for an overwhelming majority of people it is located, rather than dynamic life plans, that matter most, then the theory should be responsive to this fact.

Against this, however, one could argue that the fact that located life plans are what the majority care about is not the reason for, but the result of having our world divided into discrete territorial units with the power to control their

borders. We have adapted ourselves to living according to these rules, and it is only the desperate (i.e. those whose basic rights are unfulfilled) or the really keen and stubborn who insist on moving around. In fact, we have got used so much to this way of organizing the world that we have come to take it for granted.⁴ More importantly, even if we acknowledged that we are 'naturally' territorial animals, it is not obvious at all that the borders of our 'natural' territories would coincide with those of current states.

One could add, furthermore, that the global collective action problems that we face today – and of which Stilz is well aware – can only be confronted in a world where individuals have one overarching attachment to the world as their home, rather than to specific localities. Because it is arguable that this attachment will be formed more easily if one is able to roam around freely and associate politically across geographical borders, building such allegiances requires taking the idea of dynamic occupancy rights seriously.⁵

Before concluding, let me briefly address two potential objections to dynamic occupancy. One is that, contrary to what I am saying here, what is required today is people moving around (and especially flying around) less, not more. Dynamic occupancy would seem to add, rather than subtract, to a problem like growing carbon emissions. From an environmental point of view, in short, dynamic occupancy seems like a terrible idea. A short response to this is that it assumes that all human movement now and in the future will use environmentally unfriendly sources, which is not necessarily true. Moreover, even if it were true that air traffic increases due to more mobile individuals, its total impact on global GHG emissions would still be on the low side: currently, the global aviation industry produces around 2% of global carbon emissions. If the environment is what one worries about, transiting towards a meat- and dairy-free population seems much more urgent and efficient, considering that global livestock represents almost 15% of anthropogenic GHG emissions.⁶ Another objection is that dynamic occupancy seems like an elitist privilege to defend: the worst-off are not able to move anywhere, anyway. This objection is misguided for at least two reasons. One is that humans have always been on the move, much more than what those defending the rights of exclusion of located collectives are ready to acknowledge. The other is that defending individual rights of dynamic occupancy is fully compatible with worrying about the unfulfilled rights of those too vulnerable to move. Defending the former does not imply disregarding the latter. To bring in an analogy, this would be like saying that the right to freedom of speech privileges those already well educated and with access to public fora, to the detriment of those whose voices remain unheard. The right answer in the latter case, it seems obvious, is not to restrict freedom of speech, but to find ways in which

to make this right truly universal, so that nobody who wishes to exercise it is left out.

In sum, by emphasizing located occupancy rights and by founding collective self-determination exclusively upon located occupancy, Stiliz's theory precludes the possibility of shared wills constituting themselves across borders and having any independent power of political self-determination. To be fair, in this regard Stiliz's theory is no different from other theories on offer. However, given her explicit aim at being revisionist and her explicit goal of addressing problems of a global nature, these observations might be worth considering.

Notes

1. These are 'about the fulfillment of core human rights, as well as the guarantee of essential material and ecological interests' (Stiliz, 2019, p. 167).
2. Nomadic groups fit Stiliz's account, insofar as they follow a predictable geographical route season after season. One key feature of located life plans, in fact, seems to be their predictability.
3. I will not rehearse the powerful arguments that have already been given against this use of the state's coercive power: see Abizadeh (2008).
4. See Carens (2013, p. 229).
5. Even if one does not believe that people should have a right to political participation beyond their *polis*, one can argue that the right to freedom of movement is vital to keep domestic democracies healthy. As Kieran Oberman puts it, 'in order to make informed and effective contributions to the political process in one's own country, one must have the freedom to talk to, learn from, and cooperate with people living elsewhere' (Oberman, 2016, p. 36).
6. See, respectively, Air Transport Action Group (2) and FAO (2020) for detailed figures.

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No potential conflict of interest was reported by the author.

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