

The State's Imperial Shadows

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Anna Stilz's *Territorial Sovereignty: A Philosophical Exploration* offers a qualified moral justification for organizing our world as "autonomous, bounded, spatially defined, jurisdictional units" (p. 5).¹ While she recognizes the historically contingent and unjust processes that have given rise to the world of nation-states, Stilz rejects the cosmopolitan view that the state system is entirely unjustifiable from a moral point of view. On her account, there are three core values that are best realized through a territorially organized system of rule. These are a right of occupancy, which recognizes that people pursue located life plans; establishing basic justice, which depends on a legal framework for the specification of rights and duties; and collective self-determination, whereby individuals share in a collective political venture.

These three values provide a moral defense of the state system, but not necessarily one that simply affirms the institutional status quo. Stilz calls for extensive revisions of the state system in several respects. For instance, her account of self-determination prioritizes individual participation in a shared political will that is reflected in the state's actions and policies. As a result, alienation from this shared will can require revisions to internal sovereignty toward more decentralized structures that better realize the shared political will of alienated groups. Equally important are Stilz's limitations on the state's external sovereignty. While, on her view, states retain a "right to exclude," this right is limited in two ways. First, states do not have rights to exclude persons whose "fundamental territorial interests are pervasively threatened" (p. 187). This group extends beyond the category of refugees as currently defined by international law to include those whose subsistence needs are not being met and the growing number of climate refugees.

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Moreover, even against those Stilz calls “opportunity migrants,” the state retains only a conditional right to exclude. Her approach also relaxes the claim of permanent sovereignty over natural resources, moving away from a property right to a jurisdictional right (p. 221). On the latter view, states and, importantly, self-determining communities within states, retain a right to make and enforce laws related to the management of resources on land they occupy, but their right to exclude outsiders from these resources is more limited and subject to duties of environmental justice that require international coordination. The exclusion of outsiders is conditional and predicated on whether their use of natural resources undermines or threatens the core values of occupancy and self-determination (p. 246). Finally, there is room in Stilz’s account for corrective justice and duties of global justice.

This defense of territorial sovereignty extends and expands the insights of Stilz’s first book, *Liberal Loyalty: Freedom, Obligation, and the State*. There too, she takes up the cosmopolitan challenge, arguing against the view that the delimitation of rights and resources by citizenship could not be justified. In both texts, what distinguishes her approach is her effort to begin from the set of assumptions shared by the cosmopolitan position she counters. As she puts it in *Liberal Loyalty*, an argument for the “moral force” of political membership should be articulated on “impartial, universal, and extra-institutional grounds.”² A similar orientation structures *Territorial Sovereignty*. The right to occupancy—“the right of individuals to live in a certain area; to make use of that space for their valued social, cultural, and economic practices”—functions here as the pre-institutional and universal grounds from which the justification of territorial sovereignty begins (p. 39).

Having begun here, however, *Territorial Sovereignty*, like *Liberal Loyalty*, offers a robust defense of collective self-determination. “Self-determination is important,” Stilz argues, “because it enables individuals to relate in a distinctive way to coercive state institutions. When an individual is ruled by institutions that are shaped through a cooperative endeavor . . . the potentially ‘alien’ quality of state coercion is mitigated” (p. 141). This defense of collective self-determination has two upshots. First, it does not depend on making a claim about the ascriptive or cultural quality of the collective. Second, despite this, it still gives us strong reasons to reject functionalist accounts of state sovereignty, which only highlight the state’s capacity to fulfill basic rights and needs but offer no internal reasons to favor self-determination over alien rule, should the latter be found more effective in fulfilling those functions. In its rejection of functionalism, Stilz’s account of self-

determination shares elements of an anticolonial defense of the state, which rejected the idea that benevolent external rule could ever substitute for collective self-determination.³

In this essay, I would like to suggest avenues for bringing an anticolonial critique to the foreground in our rethinking of territorial sovereignty. In particular, I consider how an account of the co-constitution of imperialism and the nation-state might be a productive site of engagement. In my understanding, the cosmopolitan critique of the nation-state has always had two dimensions that are often entangled. The first, which Stilz focuses on, is normative and emphasizes the morally arbitrary nature of state boundaries. This view may not depend on any claim about the current structure of the state or on its historical emergence. The second is more sociologically or empirically grounded and describes how processes of economic integration and globalization have radically transformed social, economic, and political relations in ways that escape the jurisdiction of the nation-state. I would like to pursue a version of this latter argument. But where many contemporary cosmopolitan scholars understand these transformations to be relatively recent developments, I suggest we think of a longer horizon of entanglements between state and empire. In other words, not only is the rise of the nation-state a historically contingent development that chronologically follows and succeeds a world of empires. The nation-state also emerged within the world of empire and the unequal structures of empire persist in our contemporary world after the end of formal empire.⁴

The very obvious instance in which the nation-state and empire go hand in hand is the case of settler colonialism. The contemporary resurgence of Indigenous political struggles and the growing focus on settler colonialism have laid bare the ways in which the nation-state emerged and persists as a settler institution. I will return to this in the next section.

The example of nonsettler colonialism, which characterized the highpoint of European imperial expansion, suggests another connection. Writing just as World War I began, W. E. B. Du Bois remarked on a surprising feature of the “new imperialism” of the late nineteenth and early twentieth centuries. Rather than the “merchant prince” or the “aristocratic monopoly” of imperialisms past, the imperial expansion of his day was led by “a new democratic nation composed of united capital and labor.” To highlight the relationship between imperial domination abroad and growing democratization at home, in the forms of suffrage expansion, early welfare provision, and workers’ protection, Du Bois deployed

the term “democratic despotism.”⁵ His point was that these developments did not simply overlap by historical accident. Instead, there was a parasitic character to the democratic nation-state, insofar as it relied on extraction and exploitation abroad. The imperial periphery followed the state system like a “dark colonial shadow.”⁶ It was perpetually backgrounded and disavowed, but also inescapably linked to the state.

Contemporary political theorists like James Tully and Jennifer Pitts have argued that even after the end of formal empire, hierarchical, economic, and political relations continue to function in similar ways.⁷ At times, these new relations replicate and repurpose older ones. For instance, the CFA franc, used by fourteen African countries, is pegged to the euro as it had been to the franc before. For a fixed rate of exchange and unlimited convertibility between CFAs and euros, African states must deposit 50 percent of their foreign exchange reserves in France and France retains what amounts to a veto on two central banks in the CFA zone. This relation persistently raises the question of “monetary imperialism” or “neocolonialism.”⁸ At other moments, the unequal relations take new forms. For instance, institutions of global governance such as the International Monetary Fund and the World Bank, Tully argues, have produced “low-intensity constitutional democratisation of the former colonies” while empowering “quasi-constitutional transnational and international legal regimes” to override the state sovereignty of weak states.⁹

Viewed in this light, the conception of the world as structured by autonomous and bounded political jurisdiction is simultaneously an illusion and an aspiration. It is an illusion insofar as it obscures the parasitical and imperial entanglements of the state and hides from view the internal contestations for decolonization by Indigenous communities. It is aspirational insofar as it has grounded demands for self-determination and served as a resource in struggles over international equality. Stilz might have something like this aspirational view in mind when she outlines global justice duties, which include ensuring “fair terms of economic cooperation,” realizing “fair background conditions for self-determination,” and reparations (pp. 16–17).

I am sympathetic to this vision of global justice. I also recognize that the argument for imperial continuity and persistence is controversial and open to much contestation. For the purposes of this essay and the questions I would like to pose, I invite Stilz and readers to assume in a broad sense that our world of nation-states is deeply structured by imperialism’s past and present. I want to

use this picture of the world to press two lines of questions: First, what is the distinctive wrong of settler colonialism? In this I seek clarification about the possibilities and limits of the occupancy right as a way of understanding settler colonialism. Second, I ask what kinds of claims and rights might come into view if our world is structured by imperial (that is, nonterritorial) relations. Here, I would like to probe whether imperial and neoimperial relations might require more than corrective justice. I pursue these two questions in turn.

THE WRONG OF SETTLER COLONIALISM

Indigenous theorists and scholars of settler colonialism have long argued that colonial dispossession is not an event in the past but an ongoing process of territorial acquisition. The dispossessive logic, which is tied to the elimination of Indigenous people, distinguishes settler colonialism from nonsettler forms where exploitation depends on the labor of the colonized.¹⁰ The critique of dispossession, Robert Nichols has recently argued, seems to put Indigenous theorists, activists, and their allies in a conceptual and political bind because it appears to assume prior possession. In order to critique settlement, Indigenous people are called on to affirm a prior proprietary right in the land, a position many reject as an alien imposition. Rather than reading this as the limit of Indigenous critique, Nichols productively reconstructs how this seeming bind actually reveals the centrality of theft to the making of proprietary relations.¹¹ Dispossession, on Nichols's view, involves two simultaneous acts: the first transforms nonproprietary relations into proprietary ones, and the second transfers the new relations of title and control. In this way, theft and property are linked in one recursive chain.

Stilz does not aim to give a critique of settler colonialism in this book, but it is worth thinking about how they may be put together. A potentially promising feature of Stilz's "occupancy right" is that it suggests one does not need to accept a possessive/proprietary structure at all to critique settler colonialism. The right to occupancy is not a full-fledged property right that requires legal institutionalization. Instead, occupation recognizes "the connection between a place and people's comprehensive goals and pursuits" (p. 40). We have "located life plans," and the wrong of settler colonialism, on this view, is that it makes it impossible for us to pursue our "situated goals, relationships, and projects" (p. 41). I think this captures an important part of the Indigenous critique of settler colonialism. In other words, the charge of dispossession can be read as being less about ownership

than about the rupture of located life plans made possible by the occupancy of a specific place.

But if this seems promising, the pre-institutional framing of occupancy raises other challenges. As a pre-institutional right, occupancy is equivalent to a natural right (p. 39). It is important that occupancy is constructed in this way because it can stand as a universal right that obligates all not to violate it. Stilz gives the following example to illustrate this point: “What about people who lack legal institutions, such as non-state tribes? . . . The Navajos did not form a state with a defined territory and a mature legal system, so their removal did not obviously violate any state’s jurisdiction” (p. 38). Yet we still want to say they were dispossessed, and we could do so not by claiming they had property rights or had formed a state, but instead by pointing to the violation of their occupancy rights.

Although the universality of a pre-institutional right is important, this framing might have the unintended effect of conceiving of institutions as state-like structures and the institutionalization of our relations with the land as primarily taking the form of property relations. It is not clear that either must be the case. Indigenous communities ranged widely in their institutions of governance and had conventions around land use that did not correspond to property rights. While for Stilz, even Robinson Crusoe alone on his island has the right of occupancy (p. 43), the realization or activation of this right might be better understood as institutional insofar as it depends on collective agreements about how to relate to and use the land. This matters because it allows us to glimpse institutionalized ways of relating to land and other people that do not correspond to a property regime or to state structures. Moreover, it avoids ranking proprietary rights over and above alternative institutional configurations to the land.

Stilz is not unaware that there can be other social conventions that govern relations to the land. To return to the example of the Navajo, she argues that while they might have conventions among one another about land use, these conventions “cannot explain how an outsider should regard their practices” (p. 39). Unlike the universal right to occupancy, these conventions do not oblige outsiders to respect the Navajo’s rights to engage in their located life plans. But if we can understand the conventions as part of the Navajo’s practices of collective self-determination, why can we not accord the Navajo protections like those accorded to instituted political communities, including the qualified right to exclude? While this might appear to force the Navajo to conform to a standard of statehood that is not their own, Stilz’s own definition of the state is quite capacious, requiring only

“binding collective rule setting and . . . the ability to enforce its determination in case of disputes.” As she notes, this definition includes indigenous institutions and decision-making procedures (p. 14).

To put the worry sharply, the distinction between pre-institutional occupancy rights and institutionalized property rights might replicate a hierarchy between communities organized as states and those communities that do not have state-like structures and thus are seen to be closer to a state of nature or in some way pre-political. This is why in the above comments I have sought to differentiate a natural right of occupancy and its organization through collective institutions and conventions. Viewed in this way, the wrong of settler colonialism is not only about the violation of a natural right but also the destruction of the social and political conditions through which Indigenous people effectively realized or exercised that right.

A second concern has to do with Stilz’s limitation on intergenerational claims. As I noted above, the Indigenous critique of settler colonialism identifies the ways in which dispossession is ongoing. On this view, present-day Indigenous communities are as much victims of settler colonialism as were their ancestors at the initial moment of genocide and expulsion. Stilz is skeptical of this view because it transforms occupancy into a property-like right that entails inheritance. The right of occupancy, she argues, is best understood as “nontransmissible claims to use our commonly owned earth” (p. 79). As a result, rights of return are limited to cases where expelled Indigenous communities are unable to establish located life plans in their new residence or lack lands that are central to cultural and religious projects (p. 81).

While these caveats are fairly constrained, they still open up significant space for Indigenous communities to make claims on former homelands. But I would like to consider one extension of the intergenerational claim. What if the moment did not only violate primitive occupancy rights but also destroyed practices of self-determination, which include “institutions that incentivize people to save for a future generation”? (pp. 79–80). Certain Indigenous conventions around land use, for instance, were not only concerned with the present generation but also with the management of resources for future generations and with a nonanthropocentric view. For instance, Indigenous communities did not singularly focus on agriculture and grazing, but also managed habitats so that they would complement each other. According to Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, these practices have meant that the global

decline of biodiversity has proceeded at a much slower rate on lands controlled by Indigenous peoples.¹²

When present-day Indigenous communities say settler colonialism is ongoing, they might be understood to mean not that their right to occupy the same land as their ancestors is being undermined, but instead that their ability to participate in the institutions that govern land use and to plan for future generations is severed. The inheritance to be rectified is not occupancy as such but rather how occupancy has been constituted as part of collective and intergenerational practices of relating to the land and to political community. We can reframe the argument for intergenerational claims through this lens. Indigenous communities have continued the struggle of their ancestors not only by demanding land back but also by retaining their institutions of self-determination under severely constrained conditions. In her study of the Kahnawà:ke, a Mohawk nation that is part of the Haudenosaunee confederacy, Audra Simpson calls this an Indigenous politics of refusal. This refusal insists on the ongoing sovereignty of the Mohawk as a nation that transcends the boundaries of the United States and Canada.¹³ Viewed in this light, the demand for land to be returned is not simply a turn to previously existing occupancy but an attempt to create the located conditions that enable ongoing efforts to realize the aspiration of collective self-determination.

THE IMPERIAL PAST AND PRESENT OF THE NATION-STATE

I want to now turn to the nation-state's external imperial relations. In the context of historical and ongoing relations structured by imperialism, as in the example above of French monetary imperialism in Francophone Africa, is it possible to make claims beyond reparations and other duties of global justice? I would like to pursue this question by drawing on an argument that Tendayi Achiume has developed in relation to migration. Achiume argues that given the persistent and persistently unequal associations between the Global South and the Global North, "Third World peoples are entitled to operative equality within this association. As co-sovereign members of neocolonial empire, they are entitled to a say in the vehicles of effective collective self-determination within it."¹⁴ Achiume draws here on Lea Ypi's account of colonialism in which colonialism amounts to a form of unequal and transnational political association. She also draws on a version of Arash Abizadeh's "All Subjected Principle," which establishes that all of those affected by a decision have the right to participate in shaping the decision.¹⁵

Understood not as political strangers but as subordinated members of a transnational community, colonial and neocolonial peoples are part of an extraterritorial demos. As insiders within this extraterritorial demos, people from the Global South cannot be excluded and their migration to the imperial/neoperial metropole is a matter of corrective and distributive justice.¹⁶

This argument for the right of migrants might be incorporated into Stilz's framework in at least two ways. First, it could be included as part of the frame of global justice duties Stilz lays out. Achiume's argument for "migration as decolonization" would be part and parcel of Stilz's proposed program of "reparations and structural reforms" (p. 17).¹⁷ Second, the admission of migrants from the developing world could also be part of the trade-off of calculations that come into play when the state exercises its conditional right to exclude. According to Stilz, these calculations are based on balancing a state's "reasonable showing of harm" against migrants' interests in relocation (p. 213). Historical and contemporary coercive relations between the presumptive host state and the migrants' home state could be part of the evaluation of what Stilz calls the weightiness of the migrants' interests.

The wider framework from which Achiume makes the argument about migration, however, raises a different set of questions. Can pervasive and persistent extraterritorial political and economic relations ground a right to equal participation? To return to the CFA zone, what if citizens of Senegal demand not migration or delinking but instead the right to participate in the political institutions that govern French trade and the monetary policies that are used to coerce them? How pervasive and persistent would such relations have to be to consider this possibility within the framework of *Territorial Sovereignty*? And what kinds of rights could such relations give rise to? That such demands might emerge from a colonial/neocolonial context is not out of the question. Arguments for a transnational French federation were central to anticolonial demands after World War II and into the 1960s.¹⁸ While this project ultimately failed in Francophone Africa, with the metropole refusing to agree to a system of equal representation, a vision of integration won out in Martinique, French Guiana, Guadeloupe, and Réunion. The demands for extraterritorial rights to equal participation, predicated on historical and contemporary relations of coercion, are more difficult to contain within Stilz's framework than the specific case of migration discussed above.

Finally, Achiume's framework also points us back to the ways in which the image of a world of bounded states functions as an illusion that renders invisible

the extraterritorial and unequal relations that mark the state system. Under these conditions, does a defense of territorial sovereignty, even one that envisions substantial revisions to the rights of the state, end up reinforcing this illusion? Stilz distinguishes her position from an “institutionally conservative approach” that simply takes states as they are, as is the case with John Rawls’s law of peoples (p. 8). But insofar as the territorial state’s extraterritorial relations are absent from her account of the state, we might end up with a normative picture that still leans closer to the institutional status quo than it should. That is, if we started with the picture of imperial and neoimperial relations that structure our world, as Achiume suggests we should, we might have to advance even more radical departures from the territorial state than Stilz ends up endorsing.

Whatever our answers to these questions, by centering and persuasively defending a vision of collective self-determination in which located-life plans play a significant role, Stilz articulates an important challenge to cosmopolitan and postcolonial projects that seek to articulate visions of political rights, membership, and authority on the grounds of these extraterritorial relations. In order to avoid the problem of alienating and arbitrary exercises of coercive power, such projects have to attend to the political and moral value of collective authorization where “cooperators . . . share a commitment to self-organized procedures that they accept as an appropriate way to establish justice among themselves” (p. 257). Both the process of reaching more cosmopolitan institutions and the practices of those institutions once they are realized should accord with this value of collective self-determination.

NOTES

- ¹ Anna Stilz, *Territorial Sovereignty: A Philosophical Exploration* (Oxford: Oxford University Press, 2019). All parenthetical page references to Stilz in this essay refer to this book.
- ² Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton, N.J.: Princeton University Press, 2009), p. 20.
- ³ For this argument, see Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton, N.J.: Princeton University Press, 2019), ch. 3.
- ⁴ For a recent version of this argument, see Mahmood Mamdani, *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (Cambridge, Mass.: Harvard University Press, 2020).
- ⁵ W. E. B. Du Bois, “The African Roots of War” (1915), in W. E. B. Du Bois, *W. E. B. Du Bois’s International Writings*, ed. Adom Getachew and Jennifer Pitts (New York: Cambridge University Press, forthcoming).
- ⁶ W. E. B. Du Bois, “Worlds of Color” (1925), in *ibid.*
- ⁷ James Tully, *Public Philosophy in a New Key*, vol. 2, *Imperialism and Civic Freedom* (New York: Cambridge University Press, 2008); and Jennifer Pitts, “Intervention and Sovereign Equality: Legacies of Vattel,” in Stefano Recchia and Jennifer M. Welsh, eds., *Just and Unjust Military Intervention: European Thinkers from Vitoria to Mill* (New York: Cambridge University Press, 2013), pp. 134–35.

- ⁸ Ndongo Samba Sylla, "The CFA Franc: French Monetary Imperialism in Africa," *Review of African Political Economy*, May 18, 2017, oape.net/2017/05/18/cfa-franc-french-monetary-imperialism-africa/.
- ⁹ James Tully, "The Imperial Roles of Modern Constitutional Democracy," ch. 7, *Public Philosophy in New Key*, p. 216.
- ¹⁰ Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006), pp. 387–409; and Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham, N.C.: Duke University Press, 2014), p. 19.
- ¹¹ Robert Nichols, *Theft Is Property! Dispossession and Critical Theory* (Durham, N.C.: Duke University Press, 2020).
- ¹² Annie Sneed, "What Conservation Efforts Can Learn from Indigenous Communities," *Scientific American*, May 29, 2019, www.scientificamerican.com/article/what-conservation-efforts-can-learn-from-indigenous-communities/.
- ¹³ Simpson, *Mohawk Interruptus*, p. 11.
- ¹⁴ E. Tendayi Achiume, "Migration as Decolonization," *Stanford Law Review* 71, no. 6 (June 2019), pp. 1509–74, at p. 1520.
- ¹⁵ Ibid., pp. 1534, 1548; Lea Ypi, "What's Wrong with Colonialism," *Philosophy & Public Affairs* 41, no. 2 (Spring 2013), pp. 158–91; and Arash Abizadeh, "Closed Borders, Human Rights, and Democratic Legitimation," in *Driven from Home: Protecting the Rights of Forced Migrants*, ed. David Hollenbach (Washington, D.C.: Georgetown University Press, 2010), pp. 147–68.
- ¹⁶ Achiume, "Migration as Decolonization," p. 1553.
- ¹⁷ Achiume suggests that her proposal is "primarily remedial rather than fully reparatory." Ibid., p. 1553.
- ¹⁸ Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960* (Princeton, N.J.: Princeton University Press, 2014); and Gary Wilder, *Freedom Time: Négritude, Decolonization, and the Future of the World* (Durham, N.C.: Duke University Press, 2015).

Abstract: This essay seeks to consider Anna Stizl's *Territorial Sovereignty: A Philosophical Exploration* in light of settler and nonsettler colonialism and their contemporary legacies. In particular, it examines the intergenerational claims of Indigenous communities and the extraterritorial claims of colonial and neocolonial subjects. The broad aim of this effort is to consider how centering the imperial roots of our contemporary nation-state system transforms our understanding and justifications of territorial sovereignty.

Keywords: settler colonialism, self-determination, empire, extraterritorial, migrants