**Land, Resources, and Inequality**

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Anna Stilz’s *Territorial Sovereignty*.

Introduction

Anna Stilz’s book[[1]](#endnote-1) will undoubtedly be a focal point for discussions of territorial rights for many years to come. The book recognises that disagreements about territory are deep, pervasive, and resistant to easy solutions. It also demonstrates a profound scholarly integrity. Stilz aims to take existing claims over land seriously, and to show us how and when occupation matters; but she also accepts that the status quo in territorial politics is seriously objectionable in a number of respects, and it is to her credit that she is prepared to embrace implications which are significantly revisionist when that is where the argument leads. Although Stilz does aim to vindicate some of the familiar territorial prerogatives of states, she also signals that the control states have come to expect over land and resources must be qualified in several important ways.

Whereas control over land and resources can undoubtedly serve important interests of insiders, it could also potentially serve the interests of outsiders too. Land is in that sense a highly rivalrous good. As Twain reportedly said, they’re not making it anymore; to the contrary, sea level rise now threatens to unmake swathes of coastal territory. But at a time when many parts of the world are now quite densely populated, demand is not expected to diminish any time soon. Natural resources too are the locus for intense struggles for control.[[2]](#endnote-2) We urgently need, as a consequence, the kind of careful and thorough guidance which Stilz’s book seeks to provide, if we are to arrive at just resolutions to these conflicts. While I find much of what she argues compelling, this response will focus on one central issue which still divides us. Stilz does not believe that our best theory of territory can, or should, be underpinned by any strongly egalitarian ethic. I will argue, by contrast, that justice in the allocation of land and natural resources necessarily involves recourse to comparative principles. Without them, or so I will suggest, we cannot adequately weigh up or balance competing non-basic claims. As a result, the challenge of working up a viable egalitarian theory of territorial justice is one we must continue to grapple with.

The Fair Allocation of Land

All of us need some land on which to stand, and upon which we can secure the requisites of a decent life (such as food and shelter). A primary task of a theory of territory, therefore, will be to safeguard our basic right to a space in which to live our lives securely. What Stilz calls the Minimalist Proviso suggests that any right to exclude outsiders from our territory is attenuated when those outsiders cannot meet their basic rights where they are. Fortunately, at the time of writing, our world contains more than enough land to serve everyone’s basic need to *be* somewhere. But this most fundamental need is still threatened on occasion. Climate change, for instance, threatens to inundate some people’s homes entirely. As a result, taking even this basic right seriously will have important implications for debates on migration (pp. 169-173).

Once everyone’s basic right to territory is secure, there will still be what I shall call a ‘remainder’ – a quantity of territory which is not currently necessary to meet anyone’s right to a place to be. The second major task of a theory of territory will be to fairly allocate access to this remainder. We should certainly reject ideas such as ‘might makes right,’ or victors’ justice. We need a positive normative argument for current patterns of control over territory, which cannot be self-justifying. Many of us, after all, would prefer access to more rather than less land, and respect for our basic moral equality surely demands that we give some more powerful justification for exclusion. On Stilz’s terms, we all have (often distinctive) ‘practice-based interests’ in access to some portion of the remainder (p. 174). A serviceable account of territorial justice will furnish us with some constraint on justifiable holdings which pays due heed to this fact.

Specifically, Stilz’s account requires us to find some way of ensuring that the appropriation of land by one actor or group should not prevent others from appropriating in a ‘similar’ way (p. 157). This formulation calls to mind Locke’s claim that we should leave others with ‘enough and as good,’ and like his famous claim, Stilz’s proviso remains somewhat elusive (to me at least). By what standard can we determine whether this permission has been respected or exceeded? One option would be to embrace an explicitly *egalitarian* rendering of this proviso. Acts of appropriation would then be permissible so long as they left others with equally good access to land, in some sense to be further specified. Stilz, however, doubts whether an egalitarian proviso can be either operable or fair. How would we know an equal distribution of land when we had it? How could we wholeheartedly endorse any particular egalitarian metric by way of which to calculate equal holdings if we recognised, as we should, the very diverse ways in which land advances people’s projects? Although Stilz raises pertinent worries about some egalitarian metrics for fair distribution, I am not convinced that these show that the prospect of a plausible egalitarian account is a forlorn one, however. Stilz certainly provides sound reasons for suspicion about resourcist conceptions of equality in land holdings. In rejecting the idea of *equal per capita quantities* of land, for instance, she rightly notes that such a metric ‘will favor those ways of life that happen to require less space…while grossly disadvantaging others’ (p.161). Insisting on equal shares might set back the projects of pastoralists, whose most cherished projects require access to disproportionately large quantities of land. At the same time, it will give city-dwellers land which they do *not* require in order to (equally) advance their favoured projects (p.160). This is a compelling worry, but note that it will resonate with anyone who believes that welfare or well-being provides the correct currency for egalitarian justice (or land justice more narrowly). For welfarist egalitarians too the resourcist’s insistence on access to strictly equal quantities of land is a profound mistake, because it disregards our varying abilities to ‘convert’ access to land into well-being. The welfarist will have similar concerns about the *equal per capita market value* metric, which Stilz also wants to reject. Stilz recognises the overlap, here, between her worries and Amartya Sen’s well-known critique of resourcist conceptions of equality (p. 161). The resourcist, Sen claimed, inappropriately fetishizes external goods as if they (or their distribution) mattered in themselves. For Sen, of course, what we should care about is what people can *do or be* as a consequence of their access to external goods.[[3]](#endnote-3) We are led, on his view, to a metric which sits somewhere within the broad family of well-being-oriented views. Stilz, nevertheless, is sceptical about the prospects for such a view. In particular, she argues that my own equal access to well-being view cannot be operationalised without doing an injustice to people’s different ways of relating to land (p.184).[[4]](#endnote-4)

This reticence about egalitarian principles raises a quandary, however. Stilz maintains that our ability to avail of our practice-based (and therefore non-basic) interests in land ought to be ‘similar’ (p. 157), and that conflicting practice-based interests in particular bits of territory must therefore be ‘balanced’ (p. 175). But what means do we have of balancing competing interests, once we have rejected an egalitarian metric? Stilz’s claim is that as well as embracing a Minimalist Proviso (safeguarding our basic right to a place to be), we should also commit to a ‘Full Proviso’ which ensures that our practice-based claims on what I am calling ‘the remainder’ are appropriately limited and balanced. This Full Proviso will grant everyone ‘a chance to pursue the place-based projects that matter to them, so long as they do not deny anyone else the chance to do the same’ (p.174). Given that so much of the book is consummately precise, this formulation stands out to me for its relative openness. We are entitled to ‘a’ chance, we are told, and we should not deprive others of ‘the’ chance. Should we have in mind, here, a sufficient chance? If the account presumes some notion of a threshold of opportunity to sufficiently advance practice-based interests, that notion is not fleshed out. Or should we have in mind a (roughly?) equal chance? We need to know the answer to that question in order to know whether, if one group has its practice-based interests satisfied to a greater degree than another, this represents an injustice. Perhaps there is a dilemma here. If it does not represent an injustice, then what does it mean to demand that their access to the remainder remains appropriately ‘similar’? If it does represent an injustice, then how can we explain why without leaning on some background account of how land serves our well-being of the sort defended by welfarist egalitarians? My view is that we cannot explain the demands of justice in these rivalrous or competitive cases without adopting an explicitly comparative standard. Justice mandates a concern with people’s comparative or relative opportunities to advance their ‘place-related projects,’ and indeed with the comparative force of their claims to do so in any particular place. Access cannot be judged to be similar if one group has its practice-based interests largely satisfied while another group’s remain largely unsatisfied.

Stilz recognises this challenge, which underpins a hypothetical case she calls ‘Resettlement.’ I believe it is worth quoting in full:

*Two groups, A and B, each with a population of 10,000, both lose their territories because of climate change. They are resettled to an uninhabited island. Group A is given 70 percent of the island, while Group B is given 30 percent. Basic territorial interests are protected for the members of both groups, and each group has a territory in which to pursue their practice-based interests. Under the Full Proviso, then, this allocation seems acceptable. But is it fair to allocate the territory in this way?* (pp. 182-3).

At first glance, the allocation seems decidedly *un*fair, because one group has 70 percent and the other 30 percent - and hence, it appears, wholly *dis*similar opportunities to advance their practice-based interests. Isn’t such a settlement simply inequitable?

In response, Stilz again makes the kind of move a welfarist will be drawn towards. She suggests that we do not *know* if the distribution in Resettlement is unfair. That conclusion cannot simply be read off from A’s and B’s holdings. To the contrary, it depends on the projects of the two groups. Group B might be city-dwellers who are equally satisfied (as A), albeit with much less space. Group A, by contrast, might be pastoralists, who require a lot of land in order to advance the projects which matter to them. If so, what is the problem with this allocation?

This is a good response in one respect. We *should* be concerned with what each group can do, or be, as a result of their holdings. If Group A *are* pastoralists and Group B *are* city-dwellers, there may be no injustice for us to object to. Each could plausibly possess an equal chance to advance the projects that matter *to them*. But Stilz’s is nevertheless not a fully satisfying response. To see why, imagine that it is in fact Group A who are the city-dwellers, and Group B who are the pastoralists. On my view, the allocation in Resettlement now looks highly unjust. Group B will struggle to fulfil their projects in what land they have available, whereas Group A now command what is to them a considerable surplus. It is entirely possible that they will end up hiring it out to the pastoralists, and enriching themselves in the process. Does Stilz believe this situation would be unjust? I am not certain. Neither am I certain, given its rather open formulation, whether the Full Proviso picks up on any unfairness in this distribution. But a satisfying proviso ought to. Group A has been given, arbitrarily, a much greater opportunity to deliver on the projects which matter to its members; Group B, by contrast, has a much inferior opportunity. If we repudiate any attempt to measure and compare the well-being people derive from land (p. 185), however, we may not possess the tools to say so.

Stilz also worries about welfarist egalitarian views, however. But her critique of welfarist egalitarians views is not complete. Stilz raises pertinent worries about hedonistic and preference-based views of welfare (p. 184). She does not explicitly discuss, however, the prospects of an objective, or at least partly objective, account of well-being. On that kind of view, we should be prepared to say that some activities or relationships are just good for us (though in some cases – and perhaps many cases – our *endorsement* of options can also be constitutive of our well-being, and our non-endorsement can cancel the supposed contribution of some activity or relationship to our well-being). Unless there is some reason for treating objective list theories of well-being as obviously eccentric, I would have liked to hear more about their prospects. In particular, I would have liked to have seen an examination of whether there might not be some way of capturing at least some of Stilz’s concerns about the value of place-related attachment (and perhaps other territorial interests besides) *within* the language of objective list theories of well-being.

Some of Stilz’s arguments suggest, to this reader, that such an account might not be entirely without hope. The account of ‘fundamental territorial interests,’ for instance, suggests precisely that we can ‘abstract away from the peculiarities’ of a community’s relationship with land, and seek out those ‘features that various conceptions of land share’ (p.166). That thought seems to suggest an account of generic human interests of the sort that objective theories of well-being defend. Stilz’s worry, I suspect, will be that beyond establishing that we are all likely to *have* ‘practice-based interests’ in land, we are unlikely to be able to say anything authoritative, from the outside, about how those practices feed into our well-being in different cases - or at least not authoritative enough to underpin binding public decisions about allocation. Perhaps our various projects are simply incommensurable at some deep level (p.184). While I do not have any easy answers here, I believe that in many cases our intuitions will in fact be reasonably clear. A scenario in which the city-dwellers are given 70 percent of the island and the pastoralists 30 percent is one such case, I would argue. Moreover, it seems to me that giving positive content to the Full Proviso’s claim to deliver ‘similar’ access to land *requires* some method of comparison in such cases. Without it, the Full Proviso will collapse back into an implausibly permissive defence of adequate options – a license, that is, for undeserved and undefended inequality.

Natural Resources

Stilz also seeks to investigate whether the resource sovereignty states currently enjoy can plausibly be defended. Here too her conclusions are significantly revisionist. Notably, for instance, she offers no defence of the idea of communal ownership of natural resources – a convention which, she claims, is not obviously vital to advancing our fundamental territorial interests (p. 221). This is a liberating move, since it means that (in principle) the income derived from extracting and exploiting natural resources can be shared for purposes of global justice. Instead, Stilz is primarily interested in arguments for communal *jurisdiction* over resources, a practice which appears more closely related to fundamental territorial interests.

A number of scholars have made similar moves in recent years, suggesting that protecting communal self-determination must involve reserving control rights for local communities, whereas income rights can safely be relinquished.[[5]](#endnote-5) This is a very useful development, at least from the point of view of those concerned about global inequality. But it does not go far enough. People who care about global injustice *also* have reasons for wanting to limit the control that local communities can exercise over resources. Stilz’s book makes a real advance in taking this thought on board. At the very least, control has to be limited in cases where the exploitation of resources would cause significant harms to outsiders. But in any case, she points out, it is often far from obvious what the positive argument for localising control rights *is*. It is not obvious what the argument for giving locals control rights over undiscovered resources would be, for example. Likewise, there is no obvious argument for giving them control rights over resources which can be extracted without transformative effects on the community (p.233).

Relatedly, Stilz suggests that the argument for local control does not appear to extend to resources contained in *unoccupied* parts of a territory (p.233). To the contrary, these resources seem to be available for projects of international redistribution. Stilz does not attempt to provide us with a distributive principle which would allow us to share access to them fairly. Instead she tells us that we should seek some kind of ‘international convention’ capable of deriving and putting to work ‘fair principles of distributive and environmental justice’ (p.233). It seems to me that an interesting quandary arises here. In the case of land, as we have seen, it is not altogether clear what these fair distributive criteria are meant to be. The goal of ensuring similar access, if taken seriously, appears to require us to employ egalitarian principles which Stilz wants to reject. It seems highly likely that we will face a parallel situation in the case of natural resources. A primary goal of justice must be to ensure that everyone’s basic needs are met. But if this left a remainder of resources which could plausibly advance people’s distinctive projects, how could we ensure that everyone’s claims were suitably balanced *without* availing of some egalitarian principle? Stilz’s thought, in referring to an international convention, may be that we simply have to use fair democratic procedures to resolve these complex issues. But if we can find some procedural route towards fair distributive criteria in the case of resources, then why not employ it in the case of land too?

There is another issue I want to focus on now, however. As noted, Stilz’s argument is compatible with sharing the income from resource exploitation internationally. This, for global egalitarians, is a welcome feature of her account. But two further arguments that Stilz makes appear to render international sharing much less likely. The first argument concerns who gets to decidewhether resources are to be exploited or not. Stilz argues that we can share resource income internationally, without impinging upon communal self-determination, by taxing the extraction or exploitation, rather than the ownership, of natural resources. This option is preferable, it appears, because Stilz endorses a defeasible right of the local community to control resource extraction (p.231). We do not, to be sure, receive a full account of when the defeasible claim is in fact likely to be defeated. But some limits are clear. Exploitation may be forbidden, for instance, when it would seriously harm outsiders – as in the case of the destruction of what Stilz calls ‘global systemic resources’ (pp. 238-9).

This leaves to one side, however, cases in which extraction *would benefit* outsiders – perhaps significantly - but locals nevertheless decide not to extract. Call this, if you like, the problem of ‘hogging.’ Community A would prefer that resource X stays in the ground. If it was extracted, by contrast, it could significantly advance the well-being of many outsiders. Stilz’s account seems to grant the decision whether to extract or not to Community A. But that seems too definitive: surely the answer will depend in part upon how profound or urgent outsiders’ interests in the exploitation of resource X turns out to be. Relatedly, Stilz appears to favour taxes on extraction rather than ownership, presumably because taxes on ownership will objectionably reduce a community’s freedom to decide whether to extract or not.[[6]](#endnote-6) Consider now the second argument. Even if Community A decides it *will* extract the resource in question, legitimate communities, Stilz claims, ‘cannot be *coerced* (e.g. by a foreign power or international body) to share the value of their resources’ (p.236, italics in original). While we might place various forms of economic pressure upon a community, there can be no question of *imposing* a fair distribution: ‘if a people wrongly chooses […] to hoard the profits from their resources, they may not be forced by outsiders to refrain’ (p.240).

Putting the two arguments together, we can see that the danger of hogging is significant. Communities can hold on to resources – or eventual profits - which would benefit outsiders enormously, and there is no question of forcing them to share even if we are confident they are acting wrongly. It might be useful here to draw a parallel with a case that Mathias Risse developed in his book *On Global Justice*. Imagine, he says, that the population of the United States shrinks to two. These two people are, nevertheless, able to control all of the natural resources within their territory. For these two people to leave others unable to meet their basic needs, when they have such great resources at their disposal, looks obviously unjust.[[7]](#endnote-7) What might Stilz say about such a case? One response she can make is that there is no question of leaving others indigent when locals hog resources – because she has elsewhere endorsed a duty to ameliorate global poverty (p.15), and there are surely other ways of discharging that duty aside from sharing natural resources. If so, the worry about hogging keeping others in poverty dissipates (or at least, it does if some of those other methods of reducing poverty *are* enforceable). As I have argued, however, Risse’s example is too powerful for the good of his own theory.[[8]](#endnote-8) Though he endorses a basic rights proviso, Risse wants to reject egalitarian principles of resource justice. But his imaginary case can be revised in such a way as to show how morally troubling that rejection is. Imagine, then, that the population of the US shrinks to two, who are able to live in great affluence as a result of commanding so many natural resources. Outsiders, by contrast, are situated just above the poverty line. Risse is committed to telling us that there is no injustice in this allocation of natural resources.

Stilz is not committed to that implausible conclusion. Her account is clear that justice would not be served if these two individuals refused to share. Nevertheless, it does hold that outsiders may not oblige them to share. That conclusion is underpinned by Stilz’s view that taking the value of communal self-determination seriously will sometimes require us to allow communities to act wrongly. This is scant consolation, of course, for the outsiders in my version of Risse’s case. They will be consoled, perhaps, by a public recognition that the two Americans are acting wrongly. But they are also commanded not to force the issue should the two Americans persist in hogging their resources or the profits from selling them. We can, to be sure, incentivise communities to act justly. In her excellent discussion of forest justice, Stilz tells us that states which do not comply with fair multilateral rules can (and indeed should) be ‘excluded from the advantages of international cooperation’ (p.245). But in the case of hogging, coercive sanctions are impermissible. This conclusion appears to me to accord self-determination too much weight. Stilz is surely right that not every departure from ideal justice triggers a permission to interfere with others’ actions (p.241). Sometimes the value of autonomy or self-direction will weigh more heavily when all things are considered. But the claim that there can be no question of imposing the fair sharing of natural resources seems to me to be implausibly strong. After all, we typically believe that citizens who refuse to pay just taxes can be compelled to do so, even though coercive measures will undoubtedly reduce their autonomy. So why can’t we compel states which refuse to share their resource wealth according to just criteria? Even if communal self-determination has weight, it is surely not a conversation-stopperof that nature.

Conclusion

Stilz’s book is a great achievement, and in my view the theory she develops in it represents the most formidable challenge that skeptics about the territorial rights of states have yet encountered. It is formidable in part because Stilz takes the views of her opponents so seriously, and is prepared as a result to cede normative territory when it cannot be adequately defended. My response has focused on a relatively small set of issues, although I believe they are vitally important. If we are to take competing claims over land and resources seriously, and ensure that they are appropriately balanced, then we must, I believe, turn to comparative criteria of the sort defended by global egalitarians. Though Stilz has advanced a number of doubts about such criteria, I have suggested that without them there is no prospect of doing justice to competing non-basic interests in land and resources. Furthermore, if we are prepared to endorse just principles for the allocation of resources, we should be prepared to countenance coercive measures by which to implement them.

1. Stilz 2019. All parenthetical references in the main text refer to this work. [↑](#endnote-ref-1)
2. I leave to one side here the question of whether land can be treated as a natural resource. I have suggested it can (Armstrong 2017), whereas Stilz tends to treat it separately. I will follow Stilz’s division, and I do not believe anything momentous flows from it in what follows. [↑](#endnote-ref-2)
3. Sen 1980. [↑](#endnote-ref-3)
4. See Armstrong 2017. [↑](#endnote-ref-4)
5. See for instance Angeli 2015, Dietrich 2018. [↑](#endnote-ref-5)
6. My suggestion is that we should be prepared to be flexible about resource taxes. Sometimes justice will be better served if resources are *not* extracted – in which case a tax on extraction or use makes moral sense (fossil fuels are a good example). In other cases, justice will be served better if resources *are* exploited – perhaps because this will reduce the pressure on scarce resources, or reduce food prices for the poor. If so, taxes on ownership will be a better option. Armstrong 2017, chapter 8. See also Casal 2011. [↑](#endnote-ref-6)
7. Risse 2012: 90. [↑](#endnote-ref-7)
8. Armstrong 2017: 35-38.

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