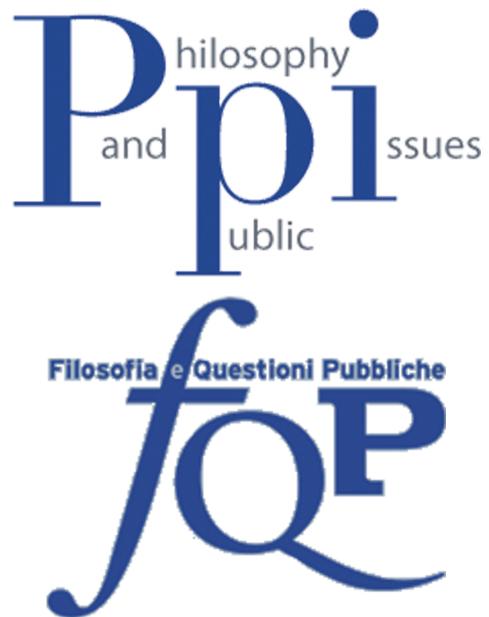


SYMPOSIUM
PEOPLE AND TERRITORY



REPLY

BY
MARGARET MOORE

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Reply

Margaret Moore

I am both grateful and humbled by the attention and care that the contributors to this symposium have given my book, and I will try in this *Reply* to reconstruct the main differences between us as generously as I can and respond to their criticisms.

Let me begin by outlining my basic position on territorial rights. I argue that a ‘people’ (defined in non-cultural and non-statist terms) has jurisdictional rights and the related liberties, claims and entitlements that generally flow from this, subject of course to justice constraints, over land on which members of the group reside, if the group is in legitimate occupancy of the land. There is, at the core of the argument, a theory about the relationship between people and place, and my substantive argument begins by thinking about why territory or place matters. Individuals, I argue, have a plurality of relations both with each other and with the land on which they live, and it is this the complex of valuable relations involving people and land that explains the ‘attachment’ of a particular community to a particular geographical site. Such attachments ground (interest-based) ‘residency rights’ of individuals and (interest-based) occupancy rights of groups. These rights are necessary to address what I call ‘the attachment problem’, which is the problem of how to justify particular pieces of territory for particular groups. Cara Nine’s

paper is focused on the account of place-related rights developed in chapter three.

I argue that, in order to manage residency, occupancy and other rights collectively, people require territorial control. On my view, territory is a geographical domain of jurisdictional authority, and the right to hold territory—to have jurisdiction, to have some control over borders and natural resources—is justified in terms of the moral value of collective self-determination, which in turn is predicated on these collective rights and identities.

The comments and criticisms above are all challenging in different ways, and raise questions about almost every aspect of my argument. In addition to Nine's criticisms of my argument for place-related rights, Ian Carter, in his chapter, examines the idea of collective self-determination and its relationship to individual self-determination. He also analyzes different possible configurations of the relationship between democracy and self-determination that might be implied by my account. In chapters four and five, I argue for the superiority of my theory vis-à-vis other theories of territory, and both Kok-Chor Tan and Pierce Randall raise different sorts of questions about my negative argument. In the remaining chapters six to ten, I apply my theory to issues of boundary drawing, secession, immigration, control over resources, and defense of territory. The relationship between the justificatory argument developed in chapter three and their implications in later chapter is discussed particularly by Bufacchi and Simmons, in terms of methodological worries about my rights-based justificatory argument and the relationship to the so-called applications of my theory. As both Bufacchi and Carter approach my argument by raising fairly fundamental methodological issues—my reliance on an interest-based accounts of rights, how I deal with conflicts amongst rights, how

I determine the scope of territorial rights—I will deal with their arguments together, and first in the Response that follows.

I Methodological Challenges Bufacchi and Simmons

In his chapter, Vittorio Bufacchi argues that my interest-based account of rights is incomplete (p. 111); potentially inflationary (p. 113); and that it can't deal with conflicts amongst rights (p. 114). Simmons' concerns are somewhat different, but they dovetail with these criticisms: he raises questions about the relationship between the descriptive and normative arguments, and expresses the worry that showing that people want *x* does not show that they are entitled to *x*, and that identifying the interest in *x* does not itself show what rights and duties we have.

While I adopt an interest theory of rights, I do not *argue for* it, and so my theory has nothing to say to those people who do not believe in either individual or collective rights, or who hold a different theory of rights. However, the criticisms of Bufacchi and Simmons are such that, if I am vulnerable to them, then, this is true of all people who hold an interest theory of rights, at the stage of political theorizing that we are at (as Simmons himself concedes). I believe nevertheless that there is merit in the methodological approach I adopt, and that the more ambitious alternative that would satisfy their worries is so ambitious that it may actually stymie progress on ethical and political theory.

Let me turn to their specific criticisms. Bufacchi points out that just showing that there is a morally important human interest in something does not translate into a right to something: “the fact that territories are necessary for our collective self-determination, and that there is value in self-determination, is per

se not sufficient to establish a right to territory”, he writes (p. 112). He raises questions about what to do when rights conflict, and, the potential inflationary implications of an interest based account.

Simmons raises similar worries, but focuses on the scope of the right, and how we can generate the precise shape and content from identifying the interest in the right. “[W]hat is less satisfactory—in Moore’s account and in the others I have mentioned—is that nations (states, groups)’ broad overarching rights of self-determination seem mostly to be discussed as if we not only know and agree on what it means to be self determining but we know and agree about which more specific rights are implied by the right of self-determination. In fact, neither of these subjects seems to me to have been satisfactorily resolved (or even very carefully addressed) in the existing theoretical literature” (pp. 59-60).

I agree that on an interest theory of rights, it is not sufficient just to point to the human interest which is protected or promoted by a right. As Bufacchi points out, more needs to be done. The right has to be described in a way that the duties that are generated by the right can be discharged without excessive cost by the duty-bearer. Rights possess moral stringency at least in the sense that they override welfarist considerations that may compete with them, but rights can conflict, or more accurately, the duties that are generated by the right can conflict. It is important, therefore, in thinking about the right, that we consider not only whether the right protects a morally important human interest, but the cost of that right, especially the cost to the duty-bearer, and how the right can cohere with other rights that the person may also possess. Bufacchi interprets my claim that rights will conflict as evidence that I am assuming that all territorial rights are claim rights (p. 114), but this is not true: in my view,

claims to freedom that impose, at least in the first instance, duties of non-interference may conflict, too, because they typically involve more than just the one duty. For example, my right to be free of coercion (which is a liberty right) not only generates a duty on you to not coerce me, but may also generate duties to protect people from coercion, to prosecute offenders, to educate people about the harms of coercion, and so on.¹ We should expect that a human interest that is sufficiently important to be protected by rights, will generate what Waldron argued was a ‘wave’ of duties that are related to the interest. Waldron proposed ways to think about how to deal with conflicts among rights, appealing especially to the closeness and directness of the duty to protecting the human interest in question. Of course, in a perfectly complete theory, the scope of a right to x would be dealt with in a theory that explains X’s limits vis-à-vis other rights that are based on those human interests that are important enough that they too will generate duties that we might expect would conflict (though not necessarily conflict, as we can then pare down the rights accordingly). To figure out all this in advance would require that we have a full theory of moral value, generated by reflection on the moral value of various human interests, and a full account of the duties that this gives rise to, which potentially might conflict, thereby establishing limits with all these rights and duties in place. This is a very ambitious model of what is necessary to give an account of territorial rights (or any kind of right) in moral and political theory. As Simmons points out, I do not do that, but neither do any of the other theorists that he considers (nationalists, statist, functionalists and so on). I do have a picture of a coherent set of rights and duties in view *as an aim* for moral and political philosophy generally, but I do not think that progress on different dimensions requires that we are able to

¹ J. Waldron, ‘Rights in Conflict’, *Ethics*, vol. 99, no. 3 (1989), 503-519.

articulate a complete account of values, rights and duties first. What I try to do is make progress with a more limited aim: to discuss the obvious and directly relevant duties that are generated by my account of territorial rights. I do this throughout the book, (with respect to public policy re: housing (p. 42, p. 67); with respect to control over resources (ch. 8) and borders (ch. 9) and the implications of past injustice (ch. 7). In each case, I do not discuss every possible limit, but I do discuss *obvious* tensions among rights and how these suggest limits to the rights themselves. I discuss, for example, limits on the state's control of borders or control over resources, which are generated by recognizing a right to subsistence. In this way, I try to prune the scope of territorial rights, both by looking at what was directly justified by the value of self-determination, and at the costs of holding others to the duty, where the cost is ascertained by looking at the obvious challenges posed by other rights.

II

Rights Conflicts Over Place and Resources Simmons, Nine, and Mancilla

One of the interests that I argued was sufficiently morally important to be protected by rights was an interest in stability of place, as a place that we care about and are attached to, as a locus for our other relationships, and our plans and projects. There are two sorts of objections to this part of the argument, somewhat in tension with one other.

One might claim, as does Simmons, that my appeal to the fact that human beings care about place does not itself show that they have a normatively relevant interest. I agree that this is tricky, but I do not appeal simplistically to people's subjective wants and attachments. I cite empirical evidence about people who have

been dispossessed of their land, or exiled from the place that they lived in. I appeal to the role that land or place plays in people's lives and why we might think that this is morally important, connected as it is with other interests (in relationships, in autonomy) that we do give moral importance to. I agree with Simmons that the rights over place at the beginning of my argument cannot just stem from subjective preferences. As Simmons says, "The fact that a collective wants to maximize its wealth, wants to keep other groups from using or profiting from what is closer to us, or wants to exclude immigrants seems to give us little reason to think that a basic group right is at issue." This is right: what needs to be shown is whether people have a legitimate interest, which is sufficiently weighty that we should protect it, in controlling their environment in these important ways. This is why I argue that a group—based *desire* to have control over unoccupied islands does not reflect a morally significant interest in self-determination. It is, I argue, a kind of property claim, and so requires an impartial body (like an international body) to regulate these (property) claims. I also try to show, by citing evidence of peoples' trauma at forcible displacement and by reflection on the preconditions for having control over the background conditions of their existence, what would be needed for groups to be collectively self-determining. I then try to limit this kind of right when there is a legitimate weighty interest of another kind, which can conflict with it. No doubt there will be, in Millian spirit, some disagreement over the precise lines where limits should be drawn. I have a sufficientarian approach to basic rights to redistribution, whereas others may have a more egalitarian view, and this dispute is germane to debate on the state's right to resources. The idea here is that we should argue about these interests, bringing to bear evidence and critical reflection on what people need to live worthwhile lives and have some control as collectives over the conditions in which they live.

This does not generate clearly and precisely the exact limits of each right, for that would require a full assessment, not only of that right but its relationship to all other important human interests, and the duties that these rights might generate. Nevertheless, I think it does represent moral progress to indicate in a number of respects (resources, boundaries) what those limits might be.

Somewhat in tension with Simmons' reservations about such arguments, Cara Nine accepts that people do have place-related rights, which are based on deep-seated human interests. Her challenge is quite different from Simmons': she points out that the very same arguments that justify control over territory, understood as geographic space and community land, should generate a right to a home, understood as a private space that is as important, perhaps more important, to human functioning. In her view, I do not recognize the full implications of my own argument, but that the kind of argument that I am developing, and the way that I argue for place-related rights, is convincing.

Here again, let me emphasize the limits of my argument. This is not a book about place-related rights but about *territorial* rights, and I erect my argument for territorial rights on two kinds of place-related rights: rights of residency and rights of occupancy. It may well be that there are other kinds of place-related rights, which we have only begun to theorize, and that once we recognize that people are both territorial animals and migratory animals, we need to have a carefully balanced theory that gives due recognition to both kinds of human interests. I did at times recognize that a full theory of place-related rights could be developed, and that parts of my argument would have implications for other debates. For example, in chapter 3, footnote 7, I noted that the justifications I offered for the importance of place might have implications for how we think

about tenants' rights. However, then, in the spirit of my interest-based theory of rights, and aware of the possibility of a conflict among rights, I pointed out (p. 67) that, if a right of residency was interpreted to permit tenants to stay in their dwellings in spite of their failure to pay their rent, it would not be compatible with a market-based economy in rental housing. This, I argued, was a case where rights need to be balanced: markets themselves are not morally free zones, but are justified almost entirely as third-best non-ideal institutional arrangements (in terms of efficiency understood in Pareto optimal terms). A strong residency right (or in Nine's terms, a right to a home) that simply allowed non-paying tenants to reside in a home forever could not be reconciled with market arrangements, although I do think that a recognition of place-related rights, which encompassed a home, could result in fairly strong sitting tenant legal rights (p. 67, note 9). In other words, I was aware, to some extent anyway, that my argument had implications for a number of different debates about people and land, but I did not focus on these, but only on the ones directly relevant to my argument for territorial control.

In somewhat similar spirit, Alejandra Mancilla points to a number of competing interests which my discussion of territory and resources either didn't address at all, or touched on briefly but not in the kind of depth that was warranted. I argued that we are under an obligation to establish a multi-lateral agency or agencies with jurisdictional powers over those resources that are not directly related to self-determination (to administer the commercial fishery, the deep seabed, small uninhabited islands and so on). She notes that I say little about how these agencies should be organized, but only briefly suggested different possible mechanisms to achieve international regulation, such as establishing an international agency with full coercive powers over a range of such issues, to the more limited, and achievable, goal of some kind of agreement on common principles to

regulate these resources. I agree that there is a lot of work still to do in considering the normative shape that such agencies should take; and that we have some models to rely on—the International Seabed authority; The Commission for the Conservation of Antarctica Marine Living Resources; and so on. It is moreover far from obvious that the participants ought to be confined to states, rather than include, say, conservation NGOs, especially if these regulatory bodies are mainly supposed to fill an environmental trusteeship role. There is also further work to be done, which I did not consider, on what to do with unoccupied territory within states that is presently uninhabitable but could become habitable; and here again I think that the right to subsistence may play an important role in considering how to regulate the initial right of occupancy in the current international order (rather than in the Bermuda scenario that structures the book), and that this is a further important line of inquiry.

In my book, I argue that the right to control natural resources, which I justify as necessary for collective self-determination, needs to be constrained by subsistence rights. Mancilla is correct to note that I focus only on the immediate survival of particular existing individuals, but not the medium and long term survival of persons, including persons not yet born. I welcome this as a friendly amendment to my theory: I agree that control over resources may also be constrained by the need to preserve carbon sinks, or key water resources, or biodiversity hotspots, which are important for regulating the planet's overall climate. It is not that my theory lacks the conceptual resources to deal with this, as I think my constraint (a subsistence principle) also applies in this case. The more serious problem is that we lack the institutional mechanisms to reliably ensure that these areas will be protected, and ensure the medium and long-term health of human beings, including those yet to be born. This is a problem of feasibility,

which Mancilla also raises, and which I discuss at the end of this Reply.

III The Moral Value of Self-determination Ian Carter

Carter notes that the account of territorial rights is based on the collective right of self-determination, and that that collective right is held by a ‘people’. As a self-identified liberal theorist, Carter is interested in the crucial step from individual attachments to collective attachments, and from individual agency to collective agency, noting that individual freedom and collective freedom are distinct and not always compatible. I also claim liberal credentials, arguing that the value of self-determination derives ultimately from *the value it has for individuals*. So I claim that my account is value-individualist even if territorial rights are collective in the sense that they attach to collective agents.

Carter outlines a number of possible positions on collective and individual autonomy, and their relationship to democracy, which are logically prior to liberal worries about the special interests of minorities (which I do address, pp. 61-2). His argument is pitched at a more fundamental level of analysis.

On the relationship between collective self-determination and democracy, Carter notes that my terminology tends to avoid language that could be interpreted as requiring democratic governance, making use of more neutral terms like ‘political institutions of self-determination’. There are though a number of possible relations between the two, which Carter considers: 1 - that a people’s collective control over a territory can be morally valid (valuable) even if the political culture of that people is not democratic; 2—that a people has a general moral power to exercise jurisdictional control over a territory, but the moral

legitimacy of any actual exercises of that jurisdictional control depends on those exercises of jurisdictional control being the outcomes of democratic procedures; and 3—that territorial rights are justified by self-determination and collective self-determination requires democratic control (p. 7). My position is 1—that a people is self-determining if it has institutional mechanisms that allow it to make collective decisions over important areas of life, and if these collective decisions are respected by outsiders and thus free of external interference or the threat of interference. This is close to the international norm. On this view, collective agents are viewed “as opaque” presumably because we do not inquire how exactly those collective decisions are made (although the presence of active dissent negates the presumption). It is not co-extensive with liberal non-interference, because I also argue that self-determination requires relations of non-domination, which is a more demanding position, since it suggests that we should eliminate dominating power relations and not just ensure non-interference.

I reject interpretation # 2 as too restrictive. Not all decisions need to be made democratically in order to be legitimate. They could be in accordance with justice, for example, or established custom. Moreover, established custom could suggest a different procedural mechanism for producing elites than standard majoritarian democracy. This non-democratic form could be consistent with collective self-determination if the leaders that were thereby chosen were recognized (internally and externally) as having the right to speak on behalf of the people. Of course, all exercises of coercion prompt a demand for justification and democratic government is one important reply to this demand.

I reject interpretation # 3 on the grounds that it's just not true that democratic governance, justice and collective agency are

tightly linked such that one (collective self-determination) is valuable only if the others (either democracy or justice) are in place. I believe that democracy and collective self-determination are linked historically and in terms of some key fundamental principles, but they do not require the presence of the other in order to realize their key value. Each of them—democracy, self-determination, and justice—represents an important source of legitimacy, but they respond to different concerns and questions. Justice is an answer to the question: What substantive principles ought a group live in accordance with? And the answer is that the principles ought to be principles that pass some kind of bar of justice (however that is defined). Democracy is an answer to questions of procedural decision-making: How should the government be chosen? How should the rules and practices of the society be decided? And collective self-determination is an answer to the question: why ought a group, or people, exercise jurisdiction over its own life? Of course, it is desirable that a group that has jurisdictional authority be organized democratically and that the rules that they make are substantively just (or not unjust), but these are not necessary to their possession of territorial rights, nor to realize the value of collective self-determination.

The value of collective self-determination appeals to the idea that most individuals see themselves not just as free-floating individuals, but as embedded in a complex of relations with other people, and with place, and that often these group-based identities and attachments and relations are an important part of what gives value to their lives. Institutions of collective self-determination are the institutional means by which individuals, as members of groups, control the collective conditions of their existence, shape their relations with each other, and their interactions as members of these groups. Their exercise of

jurisdiction is necessary to protect the interests and goods that arise from these relationships.

It might be objected, at this point, that, while this explains the value of collective self-determination, it does so in a way that fails the value-individualist test. It appeals to the idea that relationships and collective identities are valuable, but in fact not all individuals will share the collective identity. There are two concerns embedded in this observation. The first is that my argument, at base, is suspiciously collectivist and communitarian. I have already explained why I reject this. I offer reasons for valuing these political institutions of self-determination: they give expression to the communities in which people live; they express people's identities; and they are an important forum in which collective autonomy can be expressed. This is value-individualist in a broad sense, because it recognizes that these collective identities and these relationships only matter because they matter to individual people. They are not 'objectively' or intrinsically valuable 'in themselves' but their value has to be connected appropriately to individuals: it is individual human beings, after all, who, ultimately, live lives, experience happiness and sadness, pleasure and joy and various other kinds of well-being. And it would be an impoverished view of our lives and its value if we could only recognize those interests that each individual has as individuals, over their individual lives.

Perhaps though the concern about value-individualism is based on the fact that the right-holder is a group and there will inevitably be some people who don't share the group—based identity. I agree that there will always be dissenters, and that this raises a very interesting and important question of political obligation. This would be a very serious problem for my theory if I were a libertarian or an anarchist, because I would have no resources to include them in the political project. I do think

however that there are good reasons why people are subject to political authority, and so there is no problem for me in particular in explaining political obligation. In my book, I argue that the state has to recognize the individual and collective rights of people, and I believe that, as long as it does that, and treats people fairly, people have an obligation to obey. If an individual dissenter is not part of the collective, the state is not violating his or her rights in recognizing the collective rights of people who are members of right-holding collectives.

There is however still a worry about the presence of substantial minorities who don't see themselves as part of the political project that's taking place where they live. This is a problem for the long-term health or viability of the political community. I try to deal with this by suggesting a number of institutional arrangements in cases where people constitute different collectives. These range from secession to various mechanisms for power-sharing (both at the executive level and territorially, as in a federal or confederal arrangement).²

² On the issue of dissenters, it is interesting that there is an analogous problem in democratic theory. Democracy is widely recognized as a valuable institution, but, like self-determination, its value cannot be reduced to a particular value for individuals, or an enhancement to individual self-determination. Even when every person is entitled to vote, it doesn't make democratic decision-making enhances individual self-determination, for reasons noted by both Allen Buchanan, "Democracy and Secession" in Margaret Moore, ed., *National Self-determination and Secession* (Oxford: Oxford University Press, 1998) and Andrew Altman and Christopher H. Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009)—viz., that no individual in fact controls the outcomes of democratic decisions.

IV

Is my theory better than its principal rivals?

Tan and Randall

My account claims to be distinct from the principal rivals. It is distinct from nationalist theory because I deny that people need to share a particular culture in order to be a people. It is distinct from voluntarism because I argue that choice alone is insufficient to indicate a shared commitment to uphold a political order, and be a people of the right kind. It is also distinct from functionalist/statist arguments, because I argue that the ultimate holder of territorial rights is not a state, but a group that I call ‘a people’. In many cases, as A.J. Simmons notes, these different theories converge in the sense that they frequently pick out the same group as entitled to hold territorial rights, but for different reasons. This is hardly surprising, since, although a voluntarist account privileges choice, it could be that the reason why individuals make the choice that they do is that the choosers have a deeper relationship with one another, e.g., they share a culture or a political identity. A similar logic applies to a political identity account: it could be that the reason why people have a shared political identity is rooted in the fact that they share a culture, or it could be because they have shared a state and it is this that has forged their identity. In addition, functionalist considerations can never be entirely set aside: if one thinks that the justification for holding territorial rights is to realize justice or self-determination, then, the holder of the right has to be at least capable of these things. It has to be functional relative to the justificatory good. It is nevertheless important to be clear about what is doing the work in the argument, even if there is some convergence on real world cases. This is especially true if we adopt a broader methodological commitment to Rawlsian reflective equilibrium, which require us to reject some commitments and accept others, honing both principles and policies in accordance with their consistency with

each other, and with our deeper normative commitments, or ‘fixed points’ from which we are to reason. For something as basic as our rights over territory, much might hang on the arguments that we accept, even if there is a broad consensus in practice on a range of cases.

In writing the book, I tried to navigate what sometimes seemed a fairly narrow path between cultural nationalism on the one hand and justice/functionalist theories on the other, while also avoiding voluntarism, and it is somewhat gratifying that I am identified in the preceding Comments as both a species of cultural nationalism, by Kok-Chor Tan (p. 79), and as similar to, indeed on all fours with, Stiliz and the various functionalist/statist arguments that she makes, by Pierce Randall (p. 98). Perhaps perversely, I think that the fact that I am identified with two quite distinct theories, which are in many ways the opposite of one another, shows that I successfully navigated these rocks, at least in the sense that there is disagreement on how best to describe my position. Whether my argument as a whole is successful or convincing is another matter, of course, and I hope in what follows to go some way to addressing some of the concerns raised.

Both Tan and Randall adopt a similar critical strategy. They aim to show that my theory collapses into another kind of account—for Tan, it is a species of cultural nationalism and for Randall, it is a similar strategy to that adopted by Stiliz, which places it in the functionalist-statist camp. Then they show that it is not superior to its rivals: Tan claims that a conventionalist account of our internationally recognized territorial rights is superior; and Randall, more modestly, claims that Stiliz’s account is able to deal with hard cases—of acquisition and failed states—as well as mine, which means that my account cannot claim superiority.

On the issue of whether it is appropriate to assimilate my account to a cultural nationalist one, Tan notes that my account focuses on the “political identity of the people centred around.. common political projects and commitments, public institutions and practices” and that this can be called a political culture. “In this regard”, Tan writes, “the dispute between Moore and the nationalist is an internal one, that is a disagreement over what the morally relevant cultural feature ought to be” (Tan, p. 80). This is not accurate: I offer an account, not in relation to history and culture, but in relation to political identity and presence. This is the work that occupancy rights do in my theory: occupancy justifies the connection to a particular place. Tan misunderstands this, and then asks how such an account can justify rival claims to the Spratley Islands, which are unoccupied and to which a number of claimants make historical and cultural arguments for territorial authority. I do not however appeal to history and culture to justify state jurisdiction, and in the case of contested unoccupied islands, where my key feature of presence (or occupancy) is absent, I regard the claim to be a kind of property claim, but not one that implicates self-determination, and not therefore a claim that can confer territorial rights.

I argued in my book that my account is superior to justice/statist theory in part because that approach to justifying territorial rights is vulnerable to the legitimate annexation and failed state objections, that is, the criticism that justice theory cannot explain our intuitions that legitimate (just) states should not annex unjust or failed states. Randall points out the similarities between my account and Stilz’s and claims that it is open to the legitimate state theorist to insist on assistance rather than annexation.

I agree that Stilz’s legitimate state theory of territory represented a significant modification of Kantian or statist theory

by making use of a pre-statist occupancy right in order to solve the attachment problem. However, I also argued in my book that her approach was Kantian in the sense that the general rationale for territorial rights is that states are necessary to secure justice, which she interprets as protecting individual autonomy through establishing a legitimate system of laws within a region. Since I finished writing my book, Annie Stilz has in several manuscripts moved even further away from a Kantian account, in part to render her theory invulnerable to these two objections. *Contra* Randall’s claim, it is not open to the legitimate state theorist simply to insist that “the morally appropriate response to their [an unjust state] lacking territorial rights will usually not be to annex them, but to encourage or to assist such states in building legitimate institutions” (p. 102). The only way to make sense of the intuition that assistance is normatively preferable is to appeal to the idea that it is important that people/states/groups make their own rules over their own lives, that is, to appeal to the value of either individual or collective self-determination.

In a recent work on the wrong of colonialism, Stilz rightly points out that the problem with colonialism is not simply that the colonial rule was unjust and tyrannical, nor that the colonized people were typically denied democratic voice: it is that the subject people were unable to affirm the political institutions their rulers imposed on them.³ This is surely right: colonized people did not simply want better government, nor more efficient government, although probably they wanted that too: they wanted a government that they could identify with as theirs. By emphasizing the importance of subjective affirmation of political institutions, Stilz correctly explains not only the main defect of colonial rule, but a very good response to the annexation and

³ Anna Stilz, “Decolonization and Self-determination”, *Social Philosophy & Policy*, vol. 32, no. 1 (fall 2015), 1-24.

failed state objections. It explains why we should assist people in creating their own effective government, rather than annex the territory, because that way they will be able to realize what Stilz calls “Maker Freedom”.

What exactly is ‘Maker Freedom’? Citing Hegel, Stilz explains that in addition to Objective Freedom—a sphere of personal freedom within which individuals can act—there is also Subjective Freedom, which Stilz identifies as ‘maker freedom’. The central contrast, she argues, is between citizen *as taker*, as recipient of justice and the various benefits and entitlements of the state; and citizen *as maker*, which involves a form of freedom, that is not passive but imagines the citizen as free in relation to the rules and policies of the state. The instrumental argument for requiring subjective affirmation of political institutions is clear and uncontroversial: the state functions better when citizens freely accept its authority, are willing to pay taxes, abide by laws, cooperate with police and state officials. But the intrinsic goods that are realized by subjective affirmation rather depends on what Stilz means by the concept of ‘maker freedom’.

On one interpretation, Stilz means something like what I mean by collective self-determination—the idea that the colonized people want a government that they *identify with*, meaning that the governed and the government (the people who occupy dominant positions in the state) share the same group identity. This is not helpfully described as an issue of freedom, however, because it is not individual freedom that is preserved when a person affirms her political community and its institutions. It is rather a matter of individual people caring about the collective dimensions of their lives and especially their relationships with each other, and viewing the institutions of the state as reflective of their collective identity, on land that they regard as theirs. If Stilz means something like this, in her reference to ‘Maker Freedom’, then she

does escape the criticisms that I made of her account, but only by making her account very similar to my own.

There is however another interpretation of her remarks about colonialism and ‘maker freedom’ which would distinguish her account from mine. On this interpretation, her reference to ‘maker freedom’ applies to individual persons, rather than to a group or collective agent. If this is so, her theory looks much more like a voluntarist account, in which *individual freedom* is at stake in colonialism, and in replacing unjust and failed states. This move, however, would be deeply problematic, not only practically—as a recipe for political fragmentation, if individuals can freely decide with whom to associate—but also philosophically, because it’s not clear that states or governments can be rendered compatible with *individual freedom*, since decisions, even in a democracy, are made by majority decision, and are coercively enforced. In any case, this voluntarist response is a major departure from Kantianism, which asserted a duty to enter the civil condition, which I think only serves to reinforce my argument that Kantianism cannot respond to these serious objections.

Tan’s critique is more ambitious than Randall’s: he claims not simply that another account could do as well as mine, but that it can do better. He defends a conventionalist account of territorial rights, noting that territorial rights must appeal ultimately to some shared international public system of rules and that, while these rules are arbitrary, they are granted moral standing because they are necessary. Tan writes: “The violation of acknowledged background international standards is what ultimately explains the wrongness of international violations of territorial rights. What was wrong with Saddam Hussein's invasion of Kuwait 1990, or with Russia's incursion into Ukraine and the Crimea, is not that these acts violated the natural rights of states to territory or that

they violated some indisputable historical and cultural entitlements... Ultimately these are wrongful incursions because they felt violated the acceptable norms and rules of international conduct. The world order is fundamentally institutional all the way up, from the domestic to the global domain and this way of understanding territorial rights as implications for our understanding of global justice” (p. 87).

Tan’s analysis here relies on a familiar distinction between internal and external legitimacy, where the former refers to the moral standing of a governing regime or state in relation to its people, and the latter has to do with the moral standing of a state with respect to other states. Tan is right to say that in the external, or international relations, sense, a state is legitimate if it is recognized as an actor among like actors in the community of states, and that this community is rule-governed. But the deeper question—with which my book is concerned—and is somewhat occluded by Tan’s treatment is: what is the moral basis of this institutional practice? After all, a fully institutional approach makes sense only if the institutional rules are justified. The point of my theory is to give us an underlying moral argument for arranging our institutions in one way rather than another. I accept that we live in a public institutional order that confers certain rights on certain kinds of entities; but my concern is to ask what further grounds this kind of rule, or confers privilege *x* on a certain kind of entity. And unless we answer that question, there will be disagreement on what ought to be the rule. Indeed, this is the current state of affairs, where boundaries are viewed, by international law, as inviolable, but there are a number of disputes involving territory where the boundaries are what is precisely in question: secessionist conflicts; irredentist conflicts; contested unoccupied lands; disputes over the sea. Different justifications for these rules suggest different kinds of limits or different

implications, but cannot offer a coherent analysis to address these challenges.

V Feasibility Mancilla, Again

Finally, let me return to the issue of feasibility, which is raised by Alejandra Mancilla's very helpful comments on my treatment of resources and territory. She points to a number of possible scenarios, especially concerning the relationship between resources and territorial rights, which I didn't consider in my original manuscript, and which seems to suggest the need for multilateral institutions, or international governance over systemic commons, or rules governing settlement of newly habitable land, occasioned by global warming. Her claim is not that my theory lacks the conceptual resources to deal with these questions, but that I didn't consider some of these cases (which is true) and that it is not clear how immediately feasible I wanted my theory to be.

I would be of course extremely gratified if my book does spark further research in these areas, even if it does so by revealing the conceptual and theoretical gaps in our theories of territory and resources. On the issue of feasibility, I argue in my book that political theory has to be feasible, not only in the sense that it is not impossible (not in violation of laws of nature, logical consistency and so on), but feasible in the sense that we can map out a path from our current state of affairs to the desired state of affairs, even if the path is indirect and can only be pursued over time. I do not think a normative theory ought to be too captive to feasibility in the crude sense of whether people are likely to agree to the principles proposed. I have no reason to think that a better world order, with a coherent approach to territorial rights, which

may be significantly different from our current institutions and practices, is infeasible in the indirect and long term sense that I propose. Indeed, I hope that debates such as the ones in these pages can contribute to reflection on justifiability of many of our current territorial practices and principles.

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