

'When Do States Have Territorial Rights?'

Anna Stilz

Anna Stilz received her Ph.D. in Government from Harvard University in 2005. In 2005-2006, she was a postdoctoral fellow at the Berlin Program in Advanced German and European Studies at the Freie Universität Berlin. From 2006-2008, she taught in the Political Science department at Columbia University, and this fall she joined the Politics department at Princeton University. Her research interests include the history of political thought (particularly in the 17th-18th Centuries); nationalism; political obligation, authority, and state legitimacy; and theories of collective agency. Her first book, *Liberal Loyalty: Freedom, Obligation, and the State*, is forthcoming from Princeton University Press in spring 2009. Other publications include "Hume, Modern Patriotism, and Commercial Society," in *History of European Ideas*, Vol. 29, Issue 1, 2003, 15-32.

Introduction to the paper delivered on November 10, 2008: "Why Do States Have Territorial Rights?"

Stilz's seminar paper focuses on the question of state territorial rights. What gives a particular state the right to exercise jurisdiction and enforcement power over a particular territory? Why does the state of Denmark have rights over the territory of Denmark, and not over the territory of Norway, and vice versa? State territorial rights include:

- Jurisdiction over those within territory
- Control of public land and resources
- Right to tax and regulate private property
- Rights to control borders
- Rights to limit or prohibit dismemberment of territory

Stilz's paper asks: what could justify a state's claim to this bundle of territorial rights? From where might the state obtain these rights over territory, and how would we know if its claim to these rights is good?

Stilz first considers a popular argument that purports to ground state territorial rights in citizens' rights of land ownership, and she claims that we should reject this approach. On this argument, a people (taken individually or collectively) holds property rights in a territory, and that the people delegates aspects of their property rights to the state, by authorizing its jurisdiction. So the state only has jurisdiction over territory insofar as its people *owns* the territory.

A version of this ownership-based argument for state territorial rights was classically defended by John Locke. Different forms of it have more recently been put forward by A. John Simmons, Tamar Meisels, and David Miller. Some of these

thinkers (e.g. Simmons) derive the state's right to territory from the property rights of an aggregate of individuals, whereas others (e.g. Meisels, Miller) derive the state's rights to territory from the collective property rights of a national group. But both sets of thinkers claim that the state's rights over territory are derived from the people's prior ownership rights in the territory.

Stilz argues that we should reject any derivation of the state's right to territory from the ownership rights of the people. Rather than considering state jurisdiction to be *derived* from the people's prior property rights, Stilz claims that we should consider state jurisdictional rights to be primitive. She presents an alternative Kantian account of state rights to territory, according to which individuals can only claim property rights under state authority. On this view, a state's claim to jurisdiction over territory is justified if that state imposes a system of property law that meets certain basic conditions of legitimacy. Individual property rights are creatures of law, and the reason that states have rights over territory is that states are necessary to define and enforce the property rights of individuals. State claims to jurisdiction are thus prior to the property claims of individuals, not derived from them. Stilz argues that this Kantian approach allows us to make better sense of state territorial rights.

Not much has been written about state territorial rights. For more on the Kantian theory of the state, members of the seminar may download a chapter from Stilz's forthcoming book ([Cambridge](#) | [Visitor](#)). Some relevant contemporary sources include:

A. John Simmons, "On the Territorial Rights of States," *Philosophical Issues*, 11 (2001).

Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 16 *Yale Journal of International Law*, vol. 189 (1991); and "Consent, Contract, and Territory," *Minnesota Law Review*, 74:1 (1989).

Allen Buchanan, *Secession* (Boulder, CO: Westview Press, 1991); and "The Making and Unmaking of Boundaries: What Liberalism Has to Say," in *States, Nations, and Borders: The ethics of making boundaries*, ed. Buchanan and Moore, (Cambridge: CUP, 2003).

Tamar Meisels, *Territorial Rights* (Dordrecht: Springer, 2005).

David Miller, *National Responsibility and Global Justice*, (Oxford: OUP, 2007), esp. ch. 8: "Immigration and Territorial Rights."

Cara Nine, "[A Lockean Theory of Territory.](#)" *Political Studies*, 2008, vol. 56, 148-165.

Hillel Steiner, "Territorial Justice," in Simon Caney, David George, Peter Jones, ed. *National Right, International Obligations*, (Boulder, Co: Westview Press, 1996).

Jeremy Waldron, "[Superseding Historic Injustice.](#)" *Ethics*, vol. 103, October 1992.

The two most relevant historical texts for the paper are:

John Locke, *Second Treatise of Government*, ed. Peter Laslett (Cambridge: CUP, 1988), especially chapters 5, 7, and 8.

Immanuel Kant, *The Metaphysics of Morals*, in *Kant's Practical Philosophy*, ed. Mary Gregor, (Cambridge: CUP, 1999), especially Part I: The Doctrine of Right (see the discussion of property in the section called "Private Right"--from 6:245-6:270--and the transition to, and initial discussion of, Public Right--from 6:306-6:331, in the Prussian Academy pagination, found in the margins of most translations).