Unwanted Compatriots: Alienation, Migration, and Political Autonomy

Michael Blake

Anna Stilz's *Territorial Sovereignty: A Philosophical Exploration* is an excellent—and welcome—book, for at least three reasons.[1] The contemporary importance of her topic is, or should be, obvious. The book, moreover, has Stilz's characteristic blend of theoretical rigor and empirical applicability; it builds upon, and deepens, her earlier work on the moral foundations of the political community, and extends that work into a robust account of how the state might justify its territorial claims.[2] The book, finally, demonstrates a key virtue of Stilz's work—which is her combination of the abstract ideas of Kantian theory with a recognition of the need for particular and local norms. However much philosophers love theory, they—like other humans—must live within the specific and the particular; Stilz's work is singularly cognizant of this fact. Her work—in this book and elsewhere—begins with a recognition that theory must begin with actual humans and their actual wills rather than those wills theorists think people *ought* to have. After the presidency of Donald Trump, the importance of accounting for what citizens *actually* think should be clear.[3] Many political philosophers have thought it enough to imagine, from the armchair, what citizens should accept as reasons for political legitimacy; Stilz reminds us that political societies live and die on the basis of what citizens genuinely accept—and that philosophers should be modest enough to admit that they cannot predict what their fellow citizens are willing to endorse.

This leads, however, to the difficulty I want to discuss with Stilz's book. The actual will of actual citizens, to put it most simply, is likely to reflect a great many things—not all of which are noble or respectable. It might reflect morally

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defensible ideals; it might also reflect a mere preference for the local or a small-minded nativism. The question is how, and when, to give moral weight to such preferences for the familiar. My concern is that there seem to be two distinct answers to this question at two different points in the book. In the discussion of self-determination, it seems as though weight must be given to the mere fact of political preferences without considering whether or not those preferences are reasonable, or reflective of morally defensible beliefs. The preferences can be outweighed, of course; but they are presumptively worthy of respect: the mere desire not to be compatriots with someone of a particular group is presumed right until it is shown to be wrong. In her discussion of immigration, in contrast, the duty to admit harmless migration demands a showing of something more objectively weighty than a mere preference; *harm* must be proven before the mere preference is given any particular weight. There is, in short, a seeming difference in the moral weight of simply not wanting to do politics with a particular sort of person. The mere desire not to be compatriots with some set of current fellow citizens is sufficient to justify some alteration in political allegiance; the mere desire not to be compatriots with some set of prospective migrants is not similarly sufficient to justify their exclusion. The fact of a compatriot being unwanted, that is, seems to have more weight within the existing borders than at the borders; and I can—as of yet—see no particular reason why.

One final note before I begin. My intention here is not to diminish Stilz's achievement by catching her in self-contradiction; even if that were possible—and I have to say I have every confidence that Stilz can defend her view—it would not be the manner in which I would like to proceed. Instead, I want simply to note that I do not see any adequate justification for treating political preferences differently than mere preferences; I am not insisting that no such grounding could be obtained. Indeed, my purpose here is to invite Stilz to discuss that grounding more explicitly—or, perhaps, to show that my reading of her view is mistaken.

Self-determination

Self-determination—the focus of the second part of Stilz's volume—is a complex topic, and its complexity is reflected in Stilz's nuanced vision of self-determination and legitimacy. This view, however, is distinctive precisely because of her insistence that the most plausible account of self-determination will be a variant of "actual consent theory." Self-determination, then, is grounded on the *actual* will

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of people doing politics together. On Stilz's account, the citizens of a legitimate state are understood as having two aspects: they are both the rulers and the ruled; thus, legitimacy demands some degree of active engagement with the process of ruling. People are understood as "takers" (in Stilz's words) of political authority, in part; but for that political authority to act with legitimacy, people must also take an active role in the "making" of that authority. The legitimate state, thus, is one in which an omnilateral will engages in both the making and the acceptance of political authority, and the political autonomy of the state is grounded in the personal autonomy of the person, as that person acts both to affirm and to make (together with fellow citizens) the political rules of his or her association. The framing of Stilz's view is, in broad terms, Kantian—but it is worth emphasizing that her view is distinctive, in demanding that the "making" of the law must be, on her account, understood in practical and active terms; and that the state is self-determining, on her account, only when the citizens take an active and ongoing role in the process of rule making. Legitimate authority is derived not simply from institutional form and the availability of reasons that might be given in defense of political rules or norms; that authority also requires *active* citizens who are actually engaged in the process of political self-government.

Stilz's view here is multifaceted, and—to my mind—powerful; she argues that the legitimate state need not be democratic, at least in the conventional senses of that term. However, there are limits on what can be regarded as the product of an omnilateral will, and, hence, there are limits on what can be accepted as a legitimate state. The contours of her account here—including the relationship between her account of self-determination and her conception of territoriality and occupancy rights—need not concern us at the present moment. I want, instead, to note that the omnilateral will must be related, for legitimate authority, to the actual will of the people—or, more precisely, the actual will of a sufficient number of those otherwise prepared to do politics together, whom Stilz terms "cooperators" (a concept ruling out, for instance, theocrats or fascists). That is, an otherwise legitimate state can be rendered illegitimate when and because a sufficient number of those otherwise prepared to play the game of democratic politics do not want to do so with the particular institutions of that particular state. Stilz does not provide any particular threshold past which the legitimate state loses its status as legitimate, but she argues that some such threshold must exist, and that we can sometimes assert that it has been crossed. This issue is brought home nicely in her example called "democratic incorporation":

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> Suppose that instead of extending support to the 2011 Libyan revolutionary movement, France had overthrown Qaddafi's regime, occupied the country, and annexed Libya's territory, much as it annexed Algeria in 1830. Further, suppose that after annexation, France governed Libya reasonably justly and extended its inhabitants democratic participation rights within a wider French republic. Imagine that there were no distinctions between French citizens and "the former Libyans" in terms of their democratic or other rights. Would the former Libyans have had a complaint? (p. 102)

This example is intended by Stilz to rebut the thought that adequacy in liberal rights is sufficient for the creation of legitimate authority. One alternative to her view takes procedural democracy as sufficient for legitimacy.[4] Stilz rejects this view and asserts that the Libyan citizens have a legitimate complaint even against a procedurally fair set of institutions. The annexation, on her view, is "objectionabl[y] unilateral," (p. 102); for Libyans to be ruled by legitimate institutions, those institutions must "in some way reflect their judgments and priorities" (p. 102)—so that the Libyans would have had a moral right to reject incorporation, regardless of how just the postincorporation society (Libya-plus-France) would have been. Instead, for the incorporation to be legitimate, it would have had to reflect the "shared will of a significant majority of the cooperators" (p. 103) within what is currently Libya.

This, I think, is a striking principle; it says—on my reading, at least—that the mere fact of not wanting to do politics with the French is sufficient to render the political society of Libya-plus-France illegitimate. It is not simply the fact of being ruled by Paris rather than Tripoli that is at issue. It is the fact of having to do politics *with the French* that seems to matter.

To see this, we might imagine the following alteration of Stilz's Libya hypothetical, which I will call "inverted democratic incorporation": Let us suppose that the French are so concerned with human rights abuses in Libya that they volunteer to dissolve the French state and to become ruled by a government located in Tripoli —the form of which will be chosen jointly by (current) French and (current) Libyan citizens. The French can be expected to argue in favor of some aspects of French democratic tradition but to make a good-faith oath to seek only those forms of government acceptable to the inhabitants of Libya-plus-France.

Would the people of Libya (or Libya-plus-France) have any moral obligation to accept this proposal? The answer given by Stilz's theory, I think, must be no. It is a "no" not simply because the Libyans would likely be skeptical about relying on Western promises of respect and deference; those concerns are valid, of course,

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but we might imagine institutional ways of avoiding them. It is a no, instead, because when the cooperators of one group have no actual will to do politics with a particular other group, then there is no legitimate political authority held by whatever institutions might be otherwise positioned to rule over the combination of those groups. This comes out nicely, I think, in Stilz's discussion of the end of the British Raj. The Raj might (in theory, at least) have been transformed into a democratic India-plus-Britain; the fact that most Indian cooperators did not want that, though, is a sufficient reason in itself to seek new political institutions, with authority over only Indian territory and Indian persons:

> Many British imperialists were disaffected at the thought that they could no longer continue living in the glorious British Empire. Should their disaffection count as a reason to coerce Indians to continue to be ruled by the Raj? No. While dissenters can permissibly be forced to cooperate against their will when their cooperation is essential to sustaining basic justice for others, that is the only reason they can be permissibly forced to cooperate. Since basic justice for Britain could perfectly well be guaranteed within 'little' Britain, imperialists had no right to coerce the alienated Indians to uphold their imperial identity. Using coercion to force a dissenter to uphold someone else's identity, without any further justice-based rationale, is wrong. (p. 115)

It is worth noting how strong a principle this actually is. The mere fact of being alienated from a particular overarching identity is sufficient to render the institutions grounded in that identity presumptively illegitimate. The fact of alienation thus grounds a presumption that a political society grounded on that identity is wrong; the burden, in short, is on the one demanding allegiance—not the one dissenting from that allegiance. Taken literally, this might seem to legitimate demands for political autonomy that many of us would regard as unpersuasive.

Take, for instance, Forsyth County, Georgia. This county was—between 1912 and 1990—very nearly racially monolithic; it contained only fourteen African American residents in 1990, with even those fourteen residing at the borders of an otherwise white county.[5] Imagine that Forsyth County had become exclusively white—or, perhaps, that it redrew the county borders to exclude the existing nonwhite citizens. Suppose that county then made a claim for political autonomy, based solely on no longer wanting to do politics with the multiethnic polity that grounded the United States; imagine, in short, that the cooperators of Forsyth County said, simply, we want to cooperate only among ourselves—and, since the United States can survive perfectly well as the "little" United States, you have no right to coerce us into remaining a jurisdictionally subordinate

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part of your political community. Forsyth County might insist that it would do justice within its own borders; we might be tempted to doubt the strength of its commitment to justice, but it could reply that the county—having no Black Americans within its jurisdiction—would have no real opportunity to do racial injustice through its domestic policy and could be easily prevented from doing injustice to Black Americans beyond that jurisdiction. The residents of Forsyth County, it might say, want only what the Indians wanted at the dissolution of the Raj: the right to be free from being coerced into upholding another group's identity.

The claims of the actual Forsyth County, I should note, would fail on Stilz's view—but they would fail for contingent reasons. Forsyth County is almost certainly not capable of performing the sort of political autonomy demanded by a legitimate territorial state; and the actual Forsyth County became a (nearly) racially homogeneous county through violent and terroristic dispossession of Black households, thereby immediately contradicting Stilz's principle that self-determination cannot be done on a territory held without right.[6] These facts might seem a partial vindication of Stilz's view. The problem, for me, is that these reasons might fail to hold in particular cases; and that the claims of Forsyth County might, in those hypothetical cases, be taken to have *some* degree of moral power. My own view—which I will not defend here—is that the claims of Forsyth County should not be outweighed, or even trumped, by other moral concerns; rather the claims of Forsyth County, in seeking political institutions from which Black identity could be excluded, should have *no weight at all*. The desire to do politics on the basis of the exclusion of African Americans (or any other racial or ethnic group) is a desire that is, in itself, unjust and incapable of grounding a legitimate political society. If there were an obligation to set up distinctively Indian political institutions after the Raj, I think it would have needed to rest upon more than the mere desire to not do politics with a certain sort of person. This would have been amply possible in the case of the Raj—but it means that the rightfulness of decolonization would have had to made reference to the fundamental injustices involved in the British practices of colonialism, not to legitimacy requiring cooperators to actually identify with their political communities.

My primary purpose in this essay, though, is not to critique Stilz's view of consent; it is, instead, to discuss a tension between that view and her account of migration—and it is to that latter topic that I now turn.

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Immigration

As we have seen, Stilz's view on self-determination is committed to the thought that the desire (on the part of cooperators) to do politics with others is necessary for legitimate authority. Until we show that political community with the unwanted compatriot is demanded by norms of basic justice, we cannot force unwanted community on the cooperator. In the case of immigration, however, something very different seems to hold true. Here, the unwanted compatriot has a right to enter into a political community, unless it can be shown that the migrant would in some way harm the interests of the locals. The presumption, in short, is reversed; instead of having to show that the unwanted association is necessary for justice before it can be insisted upon, there must be some showing based upon justice *before the unwanted association can be resisted*:

> On the conditional model, states have a standing duty to accept migrants if their entry would not set back locals' legitimate interests. I call this the duty to allow harmless migration. Much cross-border movement is harmless, so this standing duty is not trivial. . . . Significant harms generally derive from the dislocations caused by a high rate of migration over a short period of time. (p. 188)

It is not simply that there must be a showing of a lack of will to do politics with the unwanted compatriot; that will must also be accompanied by a demonstration that one's interests are being set back by the outsider. In discussing these potential harms, Stilz discusses such particular goods as national security, an interest in avoiding institutional subversion, the maintenance of public services, and so on (p. 199). What is important for our purposes, however, is that the bare desire not to do politics with the sort of people proposing to enter into political community—which was a significant-enough desire to preclude the accession of Libya into France, even if it could be shown that the society thus produced would be vastly better at defending basic rights than Libya would be without France—has gone from being very nearly a trump card to being very nearly worthless. In self-determination, we are commanded to presume that unwanted political association is wrongful, and then demand an argument in the interest of justice to overcome that presumption. In immigration, we are commanded to presume that the unwanted compatriot has a right to enter into political society with us—and are told that only an argument rooted in serving justice, based upon some significant setback to our interests, can suffice to overcome that presumption.

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Stilz is, of course, cognizant of the fact that preferences regarding political compatriots have a different strength in these two areas of inquiry. She gives us two reasons to think that these distinct presumptions can be harmonized. The first is that in the case of self-determination we ought to privilege cooperators, rather than unreasonable political agents like fascists or racists—and the (mere) associative preferences of those hostile to migration are akin to the irrational views of the fascists (p. 195). The second is that accession and secession—unlike immigration—generally involve a substantial alteration in political institutions (p. 194).

I do not think that either argument is entirely sufficient. The first argument—that we ought to privilege cooperators over those whose beliefs run counter to moral equality—seems to falsely imply that anyone who wants to do politics with only a subset of the world's population must be morally committed to something like fascism. Stilz's notion of a cooperator does not imply that one desires to cooperate with *everyone*; those in India who sought decolonization were not guilty of a failure to value cooperation, and certainly they were not rightly understood as morally akin to fascists. Those who sought the end of the British Raj were not guilty of an irrational belief in the moral inferiority of the British—they simply did not want to do politics with them, especially after their experience of colonial domination. Neither were the (hypothetical) Libyans refusing political integration with the French guilty of any irrational or morally discreditable Francophobia. If this is true in accession and secession, though, it is hard to see why it would be false in the context of migration. If the inhabitants of a modern, sovereign India were to refuse entry to British citizens, and simply cited their belief that they did not want to do politics with those who are (currently) British citizens, it would still seem hard to see why those inhabitants were saying something objectionable in that case but not in the decolonial one. Being a cooperator, after all, does not yet determine the set of persons with whom one will cooperate; we can be cooperators, and good ones, without becoming cosmopolitans.

Stilz acknowledges part of this argument and raises the concept of "institutional usurpation" (p. 193)—in which the institutions of a given society are, in the face of mass migration, reorganized or reinterpreted so as to benefit the migrants or reflect their distinctive interests. This is a useful response—but it is, I think, not quite enough; the question remains as to why a particular showing of concrete effects is required here, whereas in the context of accession or secession it is not. It could, indeed, be possible to imagine an accession between the French and the Libyans in which Libyan interests were guaranteed adequate respect; I

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take it that this would not make the accession morally obligatory. The (hypothetical) Libyans refusing to become compatriots with the French need not provide any showing of the actual effects of accession and sovereignty.

The second argument, similarly, seems somewhat inadequate. It is true that the Libyan accession would create new institutions—while the migration of French citizens into Libya would not. This, however, does not seem quite enough to justify the difference under consideration. In the first place, it seems right to think that institutions ought to be defined not simply with reference to their content —their rules and procedures—but also with reference to their boundaries; that is, with reference to the people over whom those institutions are authoritative. Certainly, the Libyan citizens—in inverse democratic accession—would be within their right to refuse political association with France, even if the new political society was still governed by Tripoli, passed laws in the same buildings as it previously did, and so on. In this example, Libyan institutions are new institutions, simply because they now govern (what was previously understood as) the territory of France. More importantly, though, we must recognize that—as recent events in the United States have demonstrated—people can become alienated from their existing political institutions because of a lack of actual will to do politics with those newly arrived migrants. Right-wing populists have become adept at telling alienated citizens that their troubles stem from a malign conspiracy between global elites and impoverished migrants.[7] Under these circumstances, an unwillingness to do politics with particular others—including, but not limited to, migrants and members of racial minorities—seems predictable. If this lack of will is morally weighty in the case of secession, it seems we stand in need of greater analysis of why it should not be so in the case of migration. The actual will to obey the state is a fragile thing—and migration can, and often does, create alienation toward institutions, even in the absence of objectively verifiable effects upon tangible interests.

Stilz acknowledges a version of this issue in her discussion of the backlash against migration—but, once again, I do not think her response is entirely successful. She takes the lack of felt desire to do politics with migrants to result from citizens being "poorly motivated and unwilling to comply with their moral duties" (p. 201). This seems, however, to beg the question about whether or not there *is* a moral duty to cooperate with prospective migrants. These terms announce that the lack of will to identify with the multiethnic polity created in part by migration is presumptively immoral—a conclusion never made for one whose will is absent in the case of secession and accession. The one who does not wish to be identified

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with the identity comprised in part through the migrant's admission is retrograde, a problem to be to be corrected (if possible) by education; the alienation discussed in cases of accession and secession is taken as a mere fact, to which our ethical theories of territory must accommodate themselves. This dichotomy might be justifiable, but I cannot (yet) see that justification within Stilz's view.

Conclusion

As I noted at the beginning of this essay, my purpose here is not to attack Stilz's book; I take her book to announce the most attractive vision yet available of how we might combine our theoretical approaches to territorial occupancy, political self-determination, and migratory rights. My concern, instead, is that I do not yet see the justification for the significant differences in the manner in which the actual will of political agents is treated. In the context of accession and self-determination, that actual will is given tremendous deference, and is respected until justice requires it to be ignored; in the context of migration, that actual will is given very little deference, and must be supplemented by some account of justice in political or economic rights before it can be respected.

I will conclude by noting that the defense of Stilz's view would be important not simply for reasons of philosophy but also for reasons of practical politics. The citizens of the United States who stormed the Capitol building at the end of the Trump presidency were profoundly alienated from the modern American political community; many were, and still are, convinced that the federal government of the United States no longer reflects their interests but rather those of an amorphous globalist elite. Immigration was the first site at which their alienation was given voice—and it is no accident that Donald Trump announced his candidacy for president by excoriating migrants from Mexico. Political philosophy can have some part to play in the renewal of American—and global—democracy; but only if it is able to deal with the forms of alienation felt by actual citizens and offer guidance for how distinct types of alienation might be understood. Stilz's book is positioned to take the lead in this task. If what I have said here has value, it is only in urging her to be more explicit about how it is that such existing forms of alienation might be understood and, one hopes, overcome.

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.

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[2] Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton, N.J.: Princeton University Press, 2009).
[3] The election of Donald Trump in 2016 came as a shock to most pundits. For a sense of how unexpected that election was, see David A. Graham, "Donald Trump's Stunning Upset," *The Atlantic,* November 8, 2016.
[4] Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956); and Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder, Colo.: Westview, 1996).
[5] Patrick Phillips, *Blood at the Root: A Racial Cleansing in America* (New York: W. W. Norton, 2016).
[6] Ibid.
[7] Julian Borger, "Donald Trump Denounces 'Globalism' in Nationalist Address to the UN," *Guardian*, September 24, 2019, www.theguardian.com/us-news/2019/sep/24/donald-trump-un-address-denounces-globalism.

Abstract: In *Territorial Sovereignty: A Philosophical Exploration*, Anna Stilz argues that legitimate political authority requires the actual—rather than hypothetical—consent of the governed. I argue, however, that her analysis of that consent is inconsistent, in the weight it ascribes to the felt desire to *refrain* from doing politics with some particular group of people. In the context of secession and self-determination, the lack of actual consent to shared political institutions is weighty enough to render such institutions presumptively illegitimate. In the context of migration, however, a lack of actual consent to the presence of newcomers is ascribed nearly no weight, and instead is taken as evidence of irrationality or immoral preferences. I argue that this apparent contradiction must be clarified before Stilz's overall account of self-governance can be accepted.

Keywords: consent, alienation, migration, autonomy, secession, Anna Stilz

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