

Territorial Sovereignty and Humankind's Common Heritage*

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Introduction

Anna Stilz's *Territorial Sovereignty* covers an impressively wide terrain, from the state's right to rule over a territory to the right to secede, from cultural neutrality to equitable access to natural resources, from collective self-determination to cooperation with international institutions, from coercive to noncoercive responses to the commission of injustice.

In this paper, I examine Stilz's account and defence of territorial sovereignty in the light of the view that there are landmarks (monuments, geological structures, and landscapes) which are located in and subject to the jurisdiction of sovereign states, but which are deemed to be of outstanding value to humankind as a whole, irrespective of whatever economic value they might have. Put differently, I am interested in bringing Stilz's account to bear on the notion of humankind's common *heritage*.

I stress 'heritage', for quite often, humankind is said to own global systemic systems such as transboundary rivers and forests, species, unoccupied areas of the earth such as Antarctica and the oceans, whose value partly reside in the fact that they contain extractable natural resources. The question of who, if anyone, has rights over natural resources with extractive value is attracting growing interest in the contemporary political philosophy of territory, justice, and natural resources.¹

By 'heritage', however, I have in mind something else: I mean that which we inherit from our ancestors, which we value here and now and which we seek to transmit to our successors for reasons which have nothing to do with its extractive value. The question of who, if anyone, has rights over humankind's common heritage thus understood is largely neglected. To the extent that contemporary moral and political philosophy addresses interests outsiders might have in the state's decisions regarding its territory, it focuses on would-be migrants (who have an interest in establishing residence on that territory) or on those individuals who are affected by the state's decisions with respect to its natural resources. It does not consider interests they might have in those landmarks which there are independent reasons to believe (more on which below) are part of humankind's common heritage.

This particular question – the value of, and our duties towards, humankind's common heritage – suffers from serious neglect in moral and political philosophy. If only for this reason, it is worth examining in its own right: that is one of my aims here. (I offer a fuller treatment in Fabre 2021.) My other aim is to show what a singularly sophisticated and illuminating defence of territorial rights might tell us about it.

*This paper was presented at a roundtable on Anna Stilz's *Territorial Sovereignty* (Stilz 2019) at the 2020 Eastern Division Meeting of the American Philosophical Association. I am grateful to the roundtable's organiser, Avery Kohlers, and to Anna Stilz, for giving me the opportunity to write this paper; to the audience for an interesting discussion; and to an anonymous reviewer for useful suggestions. Page numbers throughout the paper refer to the book.

¹ Stilz's brief remarks on this issue, which oppose Chris Armstrong's cosmopolitan proposal and are sympathetic to Margaret Moore's account, are on pp. 229 and 233 respectively. See also Armstrong 2017; Moore 2015; Nine 2014; 2019; Mancilla 2016; 2018.

At first glance, the signs are not particularly promising. Indeed, it might seem that Stilz's account has little to say about humankind's common heritage. On her view, the territorial state both instantiates and is justified by appeal to the core values of occupancy, basic justice and collective self-determination. Yet, outsiders do not (in the case at hand) seek to occupy the territory on which those landmarks are located; it is not clear that their basic rights are undermined by the state's failure to preserve those landmarks; and it is clear that to confer on them decisional rights over the latter would impair the state's, or, rather, its citizens', right to collective self-determination.

As we shall see, however, with a bit of reconstruction, one can extract from *Territorial Sovereignty* an interesting set of claims about humankind's common heritage. In s.2, I provide a brief sketch and defence of that notion. In s.3, I show that Stilz does not have the argumentative resources to make the state's right to rule over its territory conditional upon its common-heritage based decisions, but that she can nevertheless support the weaker claim that those decisions are subject to evaluation at the bar of justice. Section 5 concludes.

Two final words. First, in this paper, I restrict myself to immovable landmarks. Moveable objects, such as paintings, musical scores, artefacts, archives, etc., raise specific questions which I cannot hope to tackle here, notably with respect to repatriation and bans on their exportation.

Second, papers on someone else's work, particularly when written for symposia, tend to fall in two categories: either they articulate deep disagreements with the author and seek to show where and why he or she has got it wrong; or (in far fewer cases) they seek to bring the author's account to bear, sympathetically, on issues which the latter has not fully addressed. This paper falls firmly within the second category. As we shall see at various junctures, there is much here with which (I think) Stilz will agree. I learnt at least as much from her defence of territorial sovereignty by thinking about those cases as I did by rehearsing (in my mind) my objections to it – hence my focus here.

2. Humankind's common heritage

When Notre-Dame Cathedral was engulfed by fire on April 15, 2019, the world (it seemed) watched in horror. On Twitter, Facebook, in newspapers and on TV cables ranging as far afield from Paris as South Africa, China and Chile, people expressed their sorrow at the partial destruction of the church, particularly the collapse of the spire, and anguish at what very nearly happened – the complete destruction of a jewel of Gothic architecture whose value somehow transcends time and space. When President Trump threatened to bomb Iran's cultural sites in the closing days of 2019, in defiance of the laws of war, he elicited outrage, not just on behalf of Iranians but on behalf of the world at large: the ancient city of Persepolis, for example, is widely regarded as one of the world's most significant archaeological sites.

The thought that there are landmarks – some human-made, others natural, others still at the intersection of the human and the natural world – which have universal value is a familiar one. These landmarks (should) matter to all of us, even if they are not part of our national or localised heritage, and even if we will never see them. That thought is at the heart of the World Heritage Convention, which was adopted by the General Conference of the United Nations Economic, Social and Cultural Organisation in 1972. To-date, 1121 sites deemed of outstanding universal value are on the UNESCO's World Heritage list – ranging from Notre-Dame Cathedral to (e.g.) the Great Smoky Mountains in the US, Lake Baikal in Russia, Fort Jesus in Mombasa, Timbuktu and the Old City of Jerusalem. The overwhelming majority of those sites are located within territorially bounded states, but 39 are transboundary. Member states commit

to work towards preserving those sites, are under a duty regularly to report on the state of conservation of their landmarks, and have access to some funding for their maintenance.²

The notion of humankind's common heritage and of its universal value is not without raising some concerns, not least regarding conflicting interpretations of what it means for a landmark to have outstanding universal value, and, relatedly, regarding the risks of undue cultural appropriation, particularly on the part of former colonial or quasi-colonial powers towards peoples and territories which they once held in their grip. (Smith 2006; Gonzalez-Ruibal 2009; Hodder 2010; Harrison 2013; Brumann 2018). Nevertheless, while we should remain highly sensitive to and respectful of localised understandings of the value of a given landmark, we ought not to reject the common-heritage view out of hand.

Instead, we (ought to) value those landmarks, in so far as they are deemed to have outstanding universal value, in at least two ways. First, we (ought to) value them for our sake and for the sake of our successors, *qua* human beings: we are also part of a long, unbroken chain of history, which manifests itself in part through what our ancestors have built and made of that world. Those landmarks tell us something about our common, shared past – both good and bad: while ‘heritage’ is usually construed as something to be celebrated, it can have negative valence too – in the form of landmarks of crimes which, in the now standard phrase, have shocked the conscience of humankind. Indeed, the complex of Auschwitz-Birkenau is on the World Heritage's list; in a relevantly similar vein, the Central Slave and Ivory Trade Route has been a candidate for inclusion since 2006.³

Second, we (ought to) value them for the sake of fellow human beings who have a particular stake in those landmarks. It ought to matter to all of us that those landmarks are of special importance to some of our fellow human beings. To illustrate, in 2019, the World Heritage added Burkina Faso's ancient ferrous metallurgy sites to its list, on three grounds (criteria (iii), (iv) and (vi) respectively): they are ‘a unique or at least exceptional testimony to a cultural tradition’, as well as ‘an outstanding example of a type of...technological ensemble’, and are ‘directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.’ Those furnaces are significant to Burkina Faso's communities in a way that they are not (I surmise) to the people of Myanmar, and perhaps to Buddhists worldwide, who also saw, that year, the inscription of the list of the sacred site of Bagan. But I would hope that it matters, or at any rate that it should matter to all of us, for the sake of each of those two communities, that their heritage is also of value to them.⁴

3. A Stilzean account

² The website for the World Heritage has an abundance of information and resources, not least the List. See <https://whc.unesco.org>. In 2001, UNESCO adopted a Convention for the Protection of Underwater Cultural Heritage. In 2003, it adopted a Convention for the Safeguarding of Intangible Cultural Heritage. On the universal value of humankind's common heritage, as it is understood by UNESCO and its member states, see, e.g., Labadi 2013 and Meskell 2019. For an illuminating philosophical account of that notion, see (Matthes 2015).

³ On the former, see <https://whc.unesco.org/en/list/31/>; on the latter, see <https://whc.unesco.org/en/tentativelists/2095/>. I develop that point in Fabre 2016, 304.

⁴ On Burkina Faso's metallurgy sites, see <https://whc.unesco.org/en/list/1602>. On Bagan, see <https://whc.unesco.org/en/list/1588>. The ten criteria for inclusion on the list are listed at <https://whc.unesco.org/en/criteria/>. There is a distinction between my valuing *x*, and my recognising and respecting that *x* is valuable to you: the former might give me reasons for actions which the latter will not. (Matthes 2015). Thus, it does not follow from the fact that I recognise that a community values a particular landmark, that I too value that landmark. At the same time, it seems possible for me to value something precisely because it is of value to you.

Stilz repeatedly stresses throughout the book that we own the earth in common and dissents from those who claim that those who exploit natural resources and thus turn them into valuable and usable goods fully own them. She is attuned to the permeable, changeable, multi-faceted dimensions of culture. She is sensitive to historical injustices. She accepts that we have duties towards future generations. While none of those points necessarily commit her to endorsing the view that humankind (e.g.) owns those landmarks and must preserve them, at any one time, for the sake of its predecessors and its successors, none commits her to conferring on states and their citizenries, at any one time, exclusive control over them.

With that in mind, then, what, if anything, can her account tell us about a state's sovereignty rights over sites which are located on its territory but which are deemed to be part of humankind's common heritage so construed? (By 'deemed' I mean either that they are, as a matter of fact, on the World Heritage List, or that there are good reasons for thinking that they ought to be.)

To answer this question, we need to turn to ch.8, in which Stilz outlines states' international responsibilities with respect to the natural resources found within their territory. Now, as she stresses in the book and reiterates in her article for this symposium, she thinks that the territorially bounded state is the institution which best ensures that those who live within its borders enjoy the autonomy-based rights to occupancy, basic justice, and collective self-determination. However, she also thinks that the state's legitimacy is conditional upon not violating outsiders' same rights. Thus, against proponents of the view that the state fully owns those natural resources, Stilz argues that the state must, as a condition of its having the right to rule, take into account the territorial interests of outsiders who might be threatened by its decisions in respect of those resources. Against radical cosmopolitans, who claim that the resources of the earth should be distributed equally amongst all human beings, she notes that an adequate proposal for natural resources rights must be sensitive to the fact that individuals' interests in occupancy and collective self-determination are particular to the resources which happen to be on their territory: I don't have the same connection to the Great Himalayan National Park as do those who live on the foothills of the Himalayas, and that, surely, matters.

Instead, Stilz favours a limited principle of sovereignty over natural resources. On her view, 'groups who occupy a territory should have [presumptive] rights of *jurisdiction* over its natural resources, including the right to decide how they are to be managed and used' (p. 224). Those rights are conditional upon the state's decision not having a significantly adverse impact on outsiders' basic rights to the necessities of life, to forming and implementing located life plans, to live under minimally just institutions and to collectively determine their own future. As Stilz stresses, 'when fundamental territorial interests are *not* significantly impacted, resource management decisions need not be accountable to the interests of outsiders' (p. 240). Above that threshold, the state retains the right to make decisions with respect to its natural resources.

Now, as I noted at the outset, some landmarks are valuable, not merely as part of humankind's common heritage, but for instrumental reasons. In August 2019, as repair work on Notre-Dame was under way, the world's attention turned to other fires, in the Amazon rainforest this time. These are regular occurrences, which inflict untold damage on homes, animal species, and the planet's ecosystems. Anger at what many regard as the Brazilian authorities' unconscionably reckless approach to deforestation has focused on its environmental impact for present and future generations. Aptly, Stilz illustrates her limited-sovereignty principle with the case of forest management. Suppose that a state authorises the rapid destruction of its forests, as a result of which the earth's capacity for sinking carbon emissions is drastically reduced and distant outsiders' prospects for living a minimally decent life in their own territory are under threat (due to rising sea levels, for example, or rapid desertification). That

state is derelict in its duty to those outsiders not to violate their basic rights: in other words, it lacks the right to exercise its sovereignty over its forests in this particular way.

So far so good. Interestingly, however, the Central Amazon Conservation Complex, which is located in seven states, is protected by the World Heritage at the bar of two of UNESCO's ten criteria for inclusion: it represents 'significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals' (criterion ix); it contains 'the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation' (criterion x).⁵ Yet, outsiders' universal-value interest in it is not urgent enough, on Stilz's account of the conditions for legitimate territorial sovereignty, to make those seven states' right to rule over their portion of the Basin conditional upon not destroying it, *a fortiori* on preserving it. For by definition, those outsiders do not have occupancy and self-determination interests in the Basin; nor are their interests *qua* 'universal valuers' (as it were), in the basic necessities of life, harmed by the destruction of the Basin. The same point applies to landmarks such as Notre-Dame Cathedral: if the French state decided, on behalf and at the behest of a majority of the French people, *not* to restore Notre-Dame, notwithstanding outsiders' interest in its preservation, it could do so without impairing its territorial rights. More strongly still, on Stilz's account, a state could destroy *all* of its World Heritage sites (or sites of similarly outstanding universal value) and yet retain its right to rule over its entire territory so long as it would not thereby impair outsiders' own territorial interests. Given that few natural landmarks are – like the Central Amazonian Basin – necessary for the fulfilment of outsiders' territorial interests, and that (as far as I can see) no human-made landmarks are, this leaves humankind's common heritage beyond the reach of Stilz's account of the state's legitimate right to rule over its territory.

At this juncture, Stilz has two options. On the one hand, she could offer a more expansive conception of legitimacy – one which makes it a condition of the state's right to rule that it respect not just outsiders' fundamental territorial interests but also their interest in landmarks of outstanding universal value. Were she to do so, she would have to accept greater constraints on the state's territorial rights than she seems willing to do. On the other hand, she could extract from her account as it stands the argumentative resources necessary to show that states are under a moral duty to protect humankind's common heritage at the bar of justice though have the right not to do so.

For what it is worth, I believe that failing to condition the state's territorial rights on respect for humankind's common heritage is a strike against Stilz's account. For it seems to me not merely that we have strong interests in the preservation of and access to our common heritage, but also that we have strong claims that it should be preserved; more strongly still, I believe that we are also under an *enforceable* duty of justice both *vis-à-vis* our ancestors, towards one another, and to future generations, to work towards preserving those landmarks, and granting access to them (subject to not damaging them).⁶ To put my criticism in more general terms: respect for basic rights is too minimalist a constraint on the state's right to rule over a given territory. Partly for this reason, but also in keeping with the constructive spirit of my response, in the remainder of this section, I explore the second option.

⁵ See <https://whc.unesco.org/en/list/998>. The Basin is located in Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.

⁶ I defend that claim in Fabre 2021.

On Stilz's view, a state can be legitimate and yet act unjustly. Put differently, it has the right to do wrong. For justice does not merely require that individuals' fundamental territorial interests be met: it requires that their autonomy-based interest in framing and revising a conception of the good life be respected (e.g., p.11, pp.99-102), and that, as they own the earth in common, they be given a fair share of the economic value of the earth's resources (e.g., pp.61-62). On the first count, it is unjust for a state to close its borders to harmless would-be migrants whose conception of the good involves availing themselves of its opportunities - but unless those migrants' life depends on it, that state has the right so to act. On the second count, it is unjust for a state to refuse to share the product of the natural resources which happen to be located on its territory - but unless outsiders' basic needs are at stake, it also has the right so to act. That is to say: outsiders are under a duty not to take coercive steps to force that state, in either case, to act justly; but they may seek to persuade its authorities to cooperate towards the co-management of those resources (pp.237-246).

Now, as we saw above, to say that a landmark has outstanding universal value is to imply that humankind has an interest in its preservation and accessibility. If closing borders is unjust towards harmless economic migrants, it is *a fortiori* unjust towards harmless temporary visitors whose conception of the good involves seeing and paying their respect to that landmark and in so doing learning about or reaffirming their membership in humankind as a whole, be it to honor the best of what humans are capable, or to commemorate the worst. Note that this is compatible with Stilz's view that access may be restricted if it would threaten the state's fundamental territorial interests; it is also compatible with imposing restrictions on access as a means, precisely, to preserve the landmark, as (for example) the Venetian authorities are currently doing, to limit the number of tourists into the city.

Furthermore, we have some rights of ownership over some of its natural constitutive parts, notably access but also (I submit) management. While we can exercise our right to access single-handedly, as it were, we must necessarily entrust our management rights to some institution - such as, straightforwardly, the state on whose territory the landmark is located. That state, thus, is under a duty to manage the landmark in such a way as to ensure its continuing existence, and (if appropriate) to take part and support international organisations whose aim is to preserve humankind's common heritage. Were it derelict in those duties, it would violate our rights over it and would act unjustly. In so far as it would nevertheless have the right so to act, outsiders may not take coercive measures such as economic sanctions, expulsion from international organisations, reduction in foreign aid, and similar steps as are warranted by violations of basic rights (p. 245). Yet, precisely because it would act unjustly, it would be open for outsiders to seek rationally to persuade it, and its people, to change course.

4. Conclusion

I have argued that Stilz's account of territorial sovereignty can, up to a point, accommodate the view that a state must take into account outsiders' interests in those of its landmarks which have outstanding universal value. Only up to a point, though: for as I have also argued, it does not make the protection of those interests an enforceable requirement of justice. While Stilz would, I surmise, happily bite this particular bullet, others (of whom I am one) would not. A full defence of that stronger view must await another occasion.

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