

Territoriality, Sovereignty and Secession: An Interview with Anna Stilz

Territorialidad, soberanía y secesión: una entrevista con Anna Stilz

Sergi Morales-Gálvez
Universitat Pompeu Fabra

ABSTRACT Anna Stilz is Laurance S. Rockefeller Professor of Politics at the University Center for Human Values at Princeton University. She is an important figure in contemporary political philosophy, especially in branches related to political authority, membership and obligation, territorial rights, nationalism, self-determination and language rights, inter alia. In this interview, we aim to elucidate the main arguments and normative claims of her book *Territorial Sovereignty*, especially the controversial topic of self-determination and secession.

KEY WORDS Self-determination; Secession; Territorial Rights; Obligation.

RESUMEN Anna Stilz es profesora Laurance S. Rockefeller de Política en el Centro Universitario de Valores Humanos de la Universidad de Princeton. Es una figura importante en la filosofía política contemporánea, especialmente en ramas relacionadas con la autoridad política, membresía y obligación, derechos territoriales, nacionalismo, autodeterminación y derechos lingüísticos, entre otros. En esta entrevista pretendemos dilucidar con ella los principales argumentos y reclamos normativos de su libro *Soberanía Territorial*, especialmente sobre el controvertido tema de la autodeterminación y la secesión.

PALABRAS CLAVE autodeterminación; secesión; derechos territoriales; obligación.

RECIBIDO <i>RECEIVED</i>	14/09/2020
APROBADO <i>APPROVED</i>	07/11/2020
PUBLICADO <i>PUBLISHED</i>	30/1/2021

NOTE OF THE AUTHOR

Sergi Morales-Gálvez, Political Theory Research Group, Department of Political and Social Sciences, Universitat Pompeu Fabra (Barcelona).

Mail: sergi.moralesg@upf.edu

Address: C/Ramon Trias Fargas, 25-27. 08005, Barcelona.

Orcid: <https://orcid.org/0000-0001-5790-5837>

Anna Stilz is Laurance S. Rockefeller Professor of Politics at the University Center for Human Values at Princeton University. She is an important figure in contemporary political philosophy, especially in branches related to political authority, membership and obligation, territorial rights, nationalism, self-determination and language rights, inter alia. Stilz is also Editor-in-Chief of *Philosophy and Public Affairs* and co-editor for Social and Political Philosophy at the *Stanford Encyclopedia for Philosophy*.

Her first influential publication *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton University Press, 2009) deals with issues of political membership and obligation. A decade later, Oxford University Press published her last and insightful monograph *Territorial Sovereignty: A Philosophical Exploration* (2019). In this book she aims to provide three moral justifications to territorially bounded political authority: rights of occupancy, basic justice and collective self-determination.

In this interview, we aim to elucidate the main arguments and normative claims of her *Territorial Sovereignty*, especially the controversial topic of self-determination and secession.

Sergi Morales-Gálvez (SMG): In your book you provide a qualified defence of territorially bounded political authority, examining how we might properly demarcate geographical membership boundaries within that system. You say that a legitimate territorial jurisdiction must satisfy three conditions: rightful occupancy, basic justice and self-determination. Could you elaborate on these points and tell us why you think they are important? Specially vis-à-vis more functionalist and nationalist ways to justify territorial political authority.

Anna Stilz (AS): Sure, I would be happy to. In my book, I argue that three core values are served by organizing our world as a structure of self-governing territorial units.

The first core value I call *the right of occupancy*. I argue that an important aim of a just international system is to protect people's claims to the regions they not unjustly occupy. Occupancy is a right to reside permanently in a particular space and to make use of that area for social, cultural, and economic practices. It also includes a claim against others not to move one from that area, to allow one to return to it, and not to interfere with one's use of the space in ways that undermine the located practices in which one is engaged. I argue that occupancy rights are grounded in the role that geographical places play in individuals' central life-plans, and in their interest in controlling and revising their commitments to these plans. Because individuals' life-plans are

often bound up with specific geographic locations, interference with their use and possession of these places undermines people's autonomy and well-being, by undermining the lives that they have built.

I believe occupancy is an individual right, though the justification for the right is in part that it enables individuals to participate in collective social practices. I further hold that the right of occupancy is limited: we should understand it as a kind of use-right. That means it confers a lesser claim to exclude than a full property right does, which is important for my views about migration and natural resources. Finally, I also reject the view that occupancy depends on a "clean" chain of historical title.

I argue that a state will have a right to rule a population of occupants and their territory if it satisfies the second and third core values that underpin territorial sovereignty, on my view: *basic justice and collective self-determination*. *Basic justice* requires the existence of states with functioning legal systems that can specify, interpret, and enforce individual rights. There are important reasons—to do with the state's role in establishing clear definitions of property, contract, and tort, and in providing essential public goods—to believe that to carry out these tasks, states need to be territorially defined. Yet to have the right to rule, states must respect the value of *basic justice*, by recognizing and protecting fundamental rights to security, subsistence, core elements of personal autonomy and deliberative freedom for their citizens, and respecting these rights for outsiders. Basic justice highlights core state protections necessary to guarantee individuals the ability to form, revise, and carry out self-endorsed commitments in central areas of their lives.

In addition to meeting a standard of basic justice, I argue that a legitimate state must also enable the collective self-determination of its population. To have a right to rule a population and its territory, a state must represent its subjects' *shared political will*. A group shares a political will when they are jointly committed to a common political enterprise, and to certain values, procedures, and institutions by which they believe their enterprise should be structured. In using the language of "shared will," I do not imply that political groups need share a consensus on specific laws or policies. In a diverse society, a shared political will instead takes the form of a widely held intention to associate together politically and to support common political institutions. Ordinary political disagreement is thus perfectly compatible with the existence of a shared will as I understand it. Collective self-determination is important for the political co-operators who make up this group, because it facilitates their *non-alienation*, allowing them to be ruled in a way that reflects their convictions about how their society should be arranged. This

enables co-operators to relate to their state's institutions in a valuable way, as an institution they accept and believe to be appropriate, rather than as a hostile, dominating, or alien power.

My account provides an alternative to prevailing *functionalist* theories, which hold that the justice of the state's institutions suffices to ground a right to govern its territory and population. I argue that a pure functionalist theory has difficulty explaining why a state may claim jurisdiction only over a specific territory and group of people. So long as a state protects human rights, or provides reasonably just governance, why can't it extend its boundaries by extending its rule? The functionalist seems committed to authorizing such an extension, at least if it could be carried out without violating rights, perhaps by annexing occupied territories in the aftermath of a just war or humanitarian intervention.

My account also differs from nationalist approaches by providing a distinct account of the value of self-determination. Standard liberal-nationalist accounts of self-determination ground it in the significance of national culture. Political self-determination rights, on their view, provide a vehicle for preserving national cultures. While I agree with nationalists that collective self-determination is important, I do not see its significance as deriving from national culture. Instead, I argue that self-determination is important because it enables individuals to avoid alienation while subject to coercive state institutions. I also define "peoples" differently than the nationalist does: for me, "the people" is defined not by shared cultural characteristics, but by their willingness to engage in political cooperation together. I thus open the door to multinational peoples.

SMG: In this special issue, we are very concerned with your third condition to justify political authority and territorial sovereignty, namely, self-determination. In the book you mention that self-determination implies that the "state must represent the shared will of a significant majority of its rightful occupants, under conditions where those who dissent from this shared will lack any right to an institutional alternative" (2019, p. 21). In your account, a shared will implies a commitment to associate together politically; to support specific and shared political institutions. That said, what do you mean when you mention the lack of institutional alternatives for those who dissent from this shared will? In case of having an institutional alternative, what it should imply?

AS: One of the key conclusions of my book is that the value of collective self-determination applies not just to the peoples of historic nation-states, but also to persistently alienated territorial minorities, such as indigenous peoples and other internal minorities. For self-determination to be guaranteed universally,

states must afford autonomous self-government to qualified minorities, abandoning a unitary legal order in favor of constitutional pluralism.

In order to be able to claim self-determination, on my view, a minority must be capable of territorial organization in representative institutions. A small handful of disaffected individuals cannot simply opt out of the state. In my view, this is because people have morally mandatory duties of justice that require them to cooperate in structures of territorial authority. We cannot establish a unitary interpretation of property and contractual rights, enforce those rights, punish violators, provide public goods, and so on, unless individuals uphold territorially-based institutions.

There are some alienated minorities—for example, dispersed, disaffected ideological groups, such as socialists—who may be unable to fulfil this “territorial organization” condition. My view thus places certain functional feasibility requirements on self-determination. Many justice-related functions, like defining property rights, resolving disputes, preventing violence, implementing environmental, zoning, transportation and economic policy, and so on, cannot be delivered in “patchwork” form, house-by-house or neighborhood-by-neighborhood. These functions require the construction of a unified system of law that governs a continuous area. There may be no feasible, minimally just institutional alternative for minorities that are very small or highly dispersed. There are also important reasons not to constantly renegotiate territorial boundaries in ways that could prove destabilizing to just institutions. This does not mean that territorial changes should never be made, but that they should not be made lightly or for trivial reasons. In some cases, then, disaffected minorities will lack a right to self-determination and can be required to cooperate in existing institutions despite their alienation. So the feasibility of alternative territorial institutions imposes an important practical limit on self-determination claims.

Finally, there are cases where a persistently alienated minority has a *pro tanto* claim to self-determination—they could feasibly organize alternative territorial institutions—but if we allowed them to do this, terrible consequences would likely result. If affording internal autonomy or secession to a particular minority would lead to civil war, ethnic conflict, human rights violations, and so on, I believe it is permissible to override this minority’s claim for self-determination. An overridden claim to self-determination does not disappear, although it is deferred: the governing state might be required to redraw political boundaries to afford greater self-determination in the future, once the scenario becomes more stable. On my view, self-determination claims must always be weighed

against a variety of competing concerns in a careful contextual assessment to determine whether they support an all-things-considered right.

SMG: I would like to go back to the question of self-determination as a shared will to support specific and shared political institutions. This is quite a minimal requirement to justify territorial authority, especially if you compare it with some nationalist alternatives where individuals should share not only institutions, but also language, national belonging or culture. However, this 'shared will' is precisely what is at stake in matters of territorial jurisdiction. Some minorities (i.e. stateless nations, or indigenous groups) claim that they are not part (or that they do not want to be part) of this will. They claim to be a different demos with a different shared will. How does your theory account for that? Is it related to the 'institutional alternative' clause mentioned in our previous question?

AS: Yes, many minorities claim not to take part in the shared will of the state that currently governs them. As you say, often these groups claim to be a different demos with a different shared will. My theory holds that persistently alienated internal minorities who do not affirm their participation in their current state will often have claims to self-determination. This means the overarching state should be prepared to redraw its political boundaries to afford these minorities greater self-governance. On my view, if a group (1) finds itself unable, over a significant period, to affirm political participation in their current state; (2) possesses representative, territorially based practices of political cooperation that can be more willingly affirmed; and (3) has the political capacity to construct minimally just institutions on the basis of those practices, then they have a moral claim to collective self-governance, and the state has a weighty but defeasible reason to recognize that claim, affording them territorial autonomy (see the discussion in section 5.5 of *Territorial Sovereignty*). Of course, built into these conditions is the idea that only groups who are capable of organizing alternative territorial institutions can claim self-determination —so, as noted above, small, dispersed minorities may not be able to do so. I also hold that self-determination claims can sometimes permissibly be overridden, in cases where granting them would lead to dire catastrophe, as I explained earlier.

SMG: You champion the notion that "states should be required to adopt a decentralized, pluralistic structure that facilitates self-determination for their indigenous peoples and various substate minorities" (2019, p. 12). You argue that this is relevant to secure the autonomy of individuals and correspondence between individuals' judgment and autonomy and their political institutions. This, however, begs a problematic question: how should it be determined who is

entitled to this 'internal self-determination'? In other words, who is the subject, the demos, enjoying such a right?

AS: On my view, *any* persistently alienated group with representative practices and the capacity to construct minimally just territorial institutions is entitled to self-determination. To claim self-determination, groups need not share a culture, traditions, or identifying features beyond their disaffection from existing structures and a willingness to govern themselves together through alternative institutions. Any persistently alienated permanent minority —no matter what unites them— has a claim to self-determination, so long as an alternative territorial unit is feasible for them at reasonable cost. As I argue in the book, I believe the UN Declaration on Indigenous Peoples, which affords indigenous peoples “the right to autonomy or self-government in matters relating to their internal and local affairs,” provides a model that should be applied to a range of other minorities.

As to who should identify these groups, I believe they can be self-identifying. Where territorially-based groups organize representative bodies to advocate for greater self-determination, I believe the state is obliged to attend to their claims. I also believe that when a government persistently fails to respond to a minority's qualified demands for self-determination —without being able to point to valid countervailing concerns, such as the threat of conflict— this should provoke international penalties. It is not a matter of internal discretion whether a state should grant autonomy to its indigenous peoples and other persistent minorities. The international community should do more to incentivize states to recognize self-governance for internal minorities, for example by conditioning membership in international organizations or the benefits of international cooperation on the adoption of an internal autonomy scheme.

SMG: I also wonder why you do not make references to federalism and the literature dealing with normative theories of federalism when arguing for a decentralized state. Is this omission on purpose? Does your theory support true devolution? (i.e. decentralize power that cannot be withdrawn by the central government)

AS: While I briefly refer to theories of federalism in Section 5.5 of my book, which deals with the self-determination claims of internal minorities, my main reason for not engaging this topic in extensive detail was simply that self-determination for internal minorities is not my book's core focus. The book is principally concerned with the justification of the territorial states-system as a whole. I wanted to have space to engage a range of other controversial issues raised by territorial sovereignty, like migration, natural resources, and the justification for exclusion. More focus on normative theories of federalism

would have come at the expense of my ability to inquire into these other (to me, quite important and fascinating) topics.

I believe my theory does support robust limits on central governments' discretion to withdraw or rescind the self-governance rights of minorities. As I say on p. 138, "it is not a matter of internal discretion whether a state should grant autonomy to its indigenous peoples or other minorities." I propose that international law should be reformed to institutionalize a qualified right to internal autonomy for minorities, and that a state's persistent refusal to grant self-determination should carry international penalties.

SMG: In your theory, as we have mentioned, there are groups entitled to self-determination, does this include secession? Is secession justifiable in your theory? If so, under what conditions?

AS: I believe secession is sometimes morally justifiable, though we must be careful in specifying the conditions where this is so. Where a minority has additional grievances beyond persistent alienation —i.e., where they have been victims of a current or historical injustice, or failure of political representation— they are especially likely to have a moral right to secede. There are also some scenarios where nearly everyone on a territory supports secession, there is no real prospect of civil or international war and both resulting states, after the secession, will be perfectly viable and able to perform essential legitimating functions. In "near-ideal" scenarios like these, even where there is no injustice, I believe there is often a moral right to secession, and the overarching state is obliged to recognize that right, entering negotiations to arrange for legal separation.

The problem is that many scenarios are not so ideal. Frequently, a bare majority within a territory supports independence, but there is a substantial subgroup that wishes to remain within the overarching state. In situations like this, a fair treatment of both groups' interests in political autonomy will usually tell in favour of federalism rather than secession. A federal solution allows for some measure of fulfilment of the self-determination claims of both groups, enabling those who identify with the overarching state to be governed by it in some areas, while still granted the alienated minority a forum for collective decision-making in areas of concern to them.

Sometimes, as I have said, even where a group has a strong moral claim to secession, recognizing their claim would have catastrophic consequences, and so their claim should be overridden. I believe claims to self-determination must always be weighed against a range of competing concerns, such as the possibility of civil or international war or ethnic conflict, a high probability of human rights violations, and so on. The moral reasons in favour of self-

determination are defeasible: in any concrete case, we will need to balance the claims of minorities against a range of countervailing reasons. Such an assessment is necessary to determine (i) whether the minority has an all-things-considered right to self-determination, and (ii) which institutional vehicle is most appropriate for fulfilling that right.

Because the institutional implications of self-determination depend on a complex balance of competing moral reasons, I do not think international law should recognize a right to unilateral secession (though there may be moral rights to secession that a particular government ought to recognize). But I do think that internal autonomy is a feasible and fitting response to minority self-determination claims in a wide range of circumstances, and that international law should be reformed to recognize a qualified right to internal autonomy for minorities, and to incentivize states to adopt decentralized institutions that can accommodate this right.

SMG: Do you have any procedure in mind to conduct pro-independence claims in case of existing justifiable cases of secession?

AS: I do not propose any particular procedure for secession in the book. But a plebiscite or referendum in the minority's territory seems to me an appropriate way to ascertain the extent of minority support for self-determination. Since secession is an important constitutional change that should not be lightly undertaken, I think it is also necessary to require (a) a very clear institutional proposal, (b) especially high voter turnout, and (c) supermajority or repeated majority support prior to initiating any legal negotiations for secession.

SMG: There are certain moments of the book where you use the concept of 'alien' state coercion. You argue that coercion should not be seen as necessary evil. It is 'alien' coercion the one that worries you, as it may impinge upon autonomy and self-determination. This way to argue seems to me close to republicanism and their concern with freedom as non-domination, especially to Philip Pettit's work. Do you think the republican tradition plays any role in your way to argue for self-determination? I am asking that because there are several papers in this special issue dealing with secession from a republican point of view, and the normative conclusions they reach are quite different. Therefore, I was wondering about your thoughts about what influence republicanism might have when discussing about secession, especially in your own theory.

AS: Yes, my account does share a number of overlapping concerns with the republican account. We are both concerned with a potential threat of domination by the state. Why is the state a legitimate arbiter and decider in people's lives? What makes the state's use of coercion on its constituents

somehow more acceptable than a private individual's use of coercion against another individual?

Where Pettit and I diverge is over what would solve the problem of potential domination by the state. Pettit sees democratic control as sufficient to reconcile state coercion with the freedom of its constituents. But I am sceptical that this is enough. Coercion can be democratically controlled and yet bear no relation to the priorities, values, and beliefs of individuals subjected to it. When I am in the dissenting minority on some serious political question, and I do not affirm my participation in the *demos*, it seems to me that other people impose their alien views on me in a way that constrains my freedom. Permanent minorities illustrate this concern quite clearly.

To reconcile state coercion with freedom, I argue instead that the state must reflect its constituents' shared judgments about how, and by whom, they should be governed. I do not believe people are free to choose to live without government: their duties of justice to others require that they accept some minimally just form of political rule. But which government in particular should have the standing to rule them? In my view: that government which a territorially organized group of political co-operators together endorse, by affirming its procedures and institutions. In this way, the co-operators in a population grant their legitimate state the standing to decide on their behalf, reconciling its coercive power with their autonomy.

SMG: In a different line, when reading your defence of occupancy-rights as a condition to justify territorial sovereignty, I wondered why sovereign states are necessary if the argument is for occupancy rights. Could, say, the European Union or similar political entities give those too? Would you agree with that?

AS: I agree that a variety of political regimes are compatible with occupancy rights. Occupancy rights do not by themselves show that the sovereign state is preferable to other political forms. As I say on p. 10, it is the value of collective self-determination that gives us decisive moral reason to favour a system of states.

Occupancy does however, play an important role in justifying the territoriality of the state and in delineating the proper extent of its domain. Areas where political co-operators have dense, overlapping networks of located life-plans form what I call their "core" territory, and this provides important guidance in delineating territorial boundaries.

SMG: Thank you so much for this very interesting discussion. We really appreciate it.

AS: Many thanks for inviting me to take part in such a stimulating exchange. I look forward to reading your contributors' papers on these important topics.