

Uwe Steinhoff

Two Failed Accounts of Citizen Responsibility for State Action: On Stilz and Pasternak

Abstract:

Anna Stilz claims that citizens of democratic states bear “task responsibility” to repair unjust harms done by their states. I will argue that the only situation in which Stilz’s argument for such “task responsibility” is not redundant, given her own premises, is a situation where the state leaves it up to the citizens whether to indemnify others for the harms done by the state. I will also show that Stilz’s “authorization view” rests on an unwarranted and implausible assumption (which I call “the authorization principle”) about authorization and political obligation, and that this problem cannot be remedied by limiting the account to democratic states. I will then briefly turn to Pasternak’s account of citizen responsibility for state action and argue that it suffers from two deficiencies: first, she equates group membership with collective action, and second, she does not provide any explanation as to *why* citizens should incur liability for the acts of their state under the four conditions she highlights. I conclude that neither Stilz nor Pasternak succeed in showing that at least citizens of democratic states are liable (barring very special circumstances) for the acts of their states.

Key words:

citizens; collective action; collective responsibility; liability; participation; Pasternak, Avia; states; Stilz, Anna

I. Stilz

1. Background

Anna Stilz, like a number of authors currently writing on collective responsibility, is eager to cast the net of responsibility quite wide. In particular, she wants to hold citizens at least of democratic legal states accountable for the actions of their states (barring certain exceptions), even if they did not actually personally support those actions (197, 200¹). A problem here, however, is that “the state is an *involuntary incorporated group*” (196) and one might be strongly inclined to doubt that people who are *involuntarily* part of a group can be held accountable for its actions. That would, after all, appear to be unfair.

Yet, Stilz does not accept this objection. She states:

From the perspective of the victims of state harms, though, we ought to be extremely dissatisfied with these conclusions. Squeamishness about implicating individuals who have not chosen to “join” the state seems rarefied when we turn our attention to the uncompensated wrongs perpetrated by states in their citizens’ names. There is also a danger of generating perverse incentives if we end up unable to distribute state responsibility to its members. For once they have brought into being a massive institutional power with the danger for abuse, citizens could simply

¹ Anna Stilz, “Collective Responsibility and the State,” *Journal of Political Philosophy* 19(2) (2011), pp. 190-208. All page numbers in brackets refer, until further notice, to this text.

dissociate themselves from any liability for what their state does. States would be “responsibility-laundering machines” that commit grave harms for which no one is liable. Surely we ought to try to do better. (196-197)

It should be noted that this kind of rejoinder is very one-sided. After all, one might well reply, for example, that sweeping accounts of citizen liability and a gung ho attitude about “implicating” individuals in the acts of states they have not chosen to join and who allegedly and without having asked permission commit those acts “in their names” (whatever that means: I am not aware of my state ever having acted, literally, in my name) might turn states into “scapegoating machines” who unjustly hold people responsible for things they are *not* responsible for: surely we ought to do better.²

2. Stilz’s argument

Stilz’s point of departure is to “propose that we connect the conditions for distributing state responsibility to the conditions for political obligation” (198), that is, to the conditions for the citizen’s moral duty to obey the state’s laws or directives. She then invokes Hobbes, who, on her interpretation, “argues that an individual has moral reason to comply with the state because she has *authored* its acts” (199), and that “citizens are authors of the state’s acts because those acts are *an exercise of their rights*” (199). This she connects to the question of citizens’ responsibility as follows:

Because they “own” the rights their state interprets and enforces, citizens must also take responsibility for what their state does. As long as the state exercises their rights, we might say, citizens ought to accept a share of responsibility for the state’s acts. (199)

Stilz then considers the objection that this account “does not get us very far when thinking about citizen responsibility for an unjust or aggressive war. For it would seem that if a war is unjust, citizens themselves do not have the right to wage it, and so when the state undertakes such a war, it is acting *ultra vires* or outside its mandate” (199). However, she thinks that “this objection fails”:

Both Hobbes and Kant claim that persons have one basic right that must be interpreted and enforced by the state. The reason why the state must exercise this right *for us* is that our own attempts to interpret and enforce it are self-defeating. ... On this view, if a state that *credibly interprets* my basic right exists, then I *necessarily authorize* it—whether I agree to join it or not—since I require its system of law to secure me against others’ interference.³ (200, the emphasis on “credibly interprets” is mine.)

² Stilz (personal communication, all personal communications quoted with permission) points out that by invoking the perspective of the victims of state harm she does not mean to thereby provide an argument for citizen responsibility, rather, she is “simply providing a reason why we might want to look to see if there are indeed good grounds for holding citizens responsible, namely, that otherwise victims would suffer uncompensated harms.” In reply, first, I have not claimed that Stilz’s invocation of the perspective of the victim was meant by her as an argument for citizen responsibility for state action. Second, in order for harm not to go uncompensated it is sufficient to hold *someone* responsible; it need not be the citizens of the state that caused the harm. Third, one should at least entertain the possibility that some harm need not be compensated at all. Fourth, my point stands that Stilz’s remarks in the quote are biased. As I point out, there is *also* a reason, not mentioned by Stilz, why we might want to look to see if there are *no* good grounds for holding citizens responsible: if they indeed *aren’t* responsible but are *held* responsible anyhow, they would thereby be victimized themselves.

³ The “one basic right” Stilz herself subscribes to is, following Kant, an “equal right to freedom” (199).

Consequently:

The authorization view stipulates that if a state qualifies as authorized, citizens will have reason to act on *its* judgments—not their own—as to the exercise of their rights. If the state is authorized, then, when it makes a [reasonable⁴] judgment that it faces ... an evil regime [that, for example, threatens the citizens of the state with weapons of mass destruction] and goes to war, its citizenry is liable for the war even if the authority’s judgment about their situation was gravely wrong. (201)

The “key to applying this principle [of necessary authorization] is figuring out when the state’s acts can reasonably be interpreted as an exercise of our rights” (202). Stilz discusses a number of conditions a state has to meet in this respect and concludes that a *democratic legal state*—one that guarantees citizens’ personal inviolability, basic subsistence, freedom of belief and expression, and legislates a system of private rights that treats them equally and in which they have a democratic voice and vote—is capable of conferring responsibility on citizens simply in virtue of their membership. (204)

What kind of responsibility is this? She explains:

... it is useful to distinguish between task-responsibility and blame-responsibility. Blame-responsibility involves crediting or debiting an agent with producing an outcome in a way that exhibits a moral fault or virtue. ... Task-responsibility involves assigning duties to people to repair a particular situation, even when they did not cause the outcome and cannot be blamed for it. (195)⁵

However, while the citizen might not be morally blameworthy for the state’s harmful act, he can still be morally blamed *for not living up to his task-responsibility*. Thus, the duty to help repair the harm caused by the state is *a moral duty*?⁶

4. Political obligation and (moral) duties to repair the harms one’s state has done

As noted, Stilz’s point of departure is to “propose that we connect the conditions for distributing state responsibility to the conditions for political obligation” (198). In other words, her account only applies to states whose citizens are subject to political obligation, that is, to a moral duty to obey the law (or the state). In that case, however, all her talk about citizens’ being implicated in the harms done by their state seems to be entirely redundant for the “assignment” of task-responsibility in two situations: (a) when the democratic legal state makes laws that requires citizens to help others, and (b), when the democratic legal state makes laws that requires citizens to abstain from helping certain others. (This is at least true for laws that are not “*clearly and obviously*” unjust.)⁷

⁴ Stilz expressly denies that citizens necessarily authorize state acts that “*couldn’t possibly qualify as an interpretation of their rights*” (201, her emphasis). For the italicized “reasonable” see also the bottom of p. 201. However, from her text it is not entirely clear whether Stilz might not have rather strange views on what counts as “reasonable.” I will come back to this below.

⁵ Stilz’s talk about “assigning duties” could be confusing, since it might evoke Miller’s distinction between “identifying responsibility and assigning it.” See his *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 84. This, however, is not what Stilz has in mind.

⁶ Stilz (personal communication).

⁷ Stilz (personal communication) takes issue with this picture and states: “Whether or not the state legislates a reparations scheme is neither here nor there. If it does, citizens have a moral duty to comply with it. If it does not, then citizens will have a moral duty to advocate politically for the establishment of such a scheme, or perhaps to pay compensation on their own initiative if a reparations scheme fails to be established.” However, *why* should the citizens – on an account that emphasizes political obligation – have

After all, according to Stilz's account, citizens of a democratic legal state have the political obligation to obey the state's laws: thus, if the state makes a law requiring citizens to pay people from other countries money, it does not matter whether the state has done any injustice to those other countries. In fact, the state might never have done *any* harm (just or unjust) to those other countries. As long as the state requires its citizens to pay or to otherwise help, the citizens are under a moral duty to do so. The state's having imposed harms on others, and the citizen's allegedly being "implicated" in those harms, has nothing to do with it. Likewise, if the state forbids citizens to pay money to a country the state has previously invaded and harmed unjustly, then citizens are not under any "task-responsibility" to repair the harms produced, but under a responsibility *not to*. (The legislature of the state in question might think that paying money to that other country will give rise to dangers better to be avoided in the interest of the rights of its own citizens, for example.)

The only situation in which Stilz's "task responsibility" is not redundant is a situation where the state leaves it up to the citizens whether to indemnify others for the harms done by the state.⁸

5. Hobbes and the state's alleged exercise of its citizens' rights

Stilz claims, as we saw, that "citizens are authors of the state's acts because those acts are *an exercise of their rights*." She adds: "Because they 'own' the rights their state interprets and enforces, citizens must also take responsibility for what their state does." (199) This is a version of the well-known idea that, through the social contract, persons in the state of nature "transfer" their rights to society or the state.⁹

This idea and metaphor of a rights transfer might appear to be harmless enough, but one should note nevertheless that it is rather unrealistic. Rights are not like kidneys. If you give your spouse one of your kidneys, then she has your kidney, and you do not have it anymore. If, however, you give your lawyer the right to sign certain kinds of documents on your behalf, then it is not that he gets *your* right to sign documents while you lose it; rather, you keep this right, and he gets the right to *also* sign certain documents on your behalf.

Of course, one might ask: what if you give someone the right to sign documents on your behalf and you yourself waive it (because, perhaps, you might think that your mental capacities are momentarily not what they should be)? This seems, for all intents and purposes, to amount to a transfer of your right. And if you do transfer your right in this way, do you not indeed become liable for the acts of your lawyer? Indeed, are you not even liable for his acts (as long as they are not *ultra vires*) in the first case, where you

the latter duty if the state *prohibits* the citizens from paying reparations? Stilz does not address this question.

⁸ Of course, even then this duty of the citizens might be overridden by stronger duties towards others, for example in cases where the citizens could do significantly more good if they spent the money not on helping people their state has harmed, but on helping some other, perhaps much larger group of people. This remark, by the way, is not intended as a criticism of Stilz's account, for agreeing with it is, as far as I can see, completely compatible with her account.

⁹ I will not address here Stilz's reply, mentioned above, to the objection that her account cannot confer liability upon citizens for the unjust war their state is waging since the citizens did not have any right to wage an unjust war in the first place. For a criticism of Stilz on this count, see Endre Begby, "Collective Responsibility for Unjust Wars," *Politics* 32(2) (2012), pp. 100-108.

retain a right to also sign papers on your behalf?

The answer might appear to be “yes,” but it is important to note here just how different the relation is between state and citizen on the one hand and client and lawyer on the other. The most obvious difference is: the client gave the lawyer the right *voluntarily*. Stilz is well aware of this difference, which is why she appeals to “hypothetical consent” (202) instead of actual consent, and claims (to complete a quote adduced above):

On this view, if a state that credibly interprets my basic right exists, then I *necessarily authorize* it—whether I agree to join it or not—since I require its system of law to secure me against others’ interference. So the ground of our obligation to the state is our one fundamental right: when reflecting rationally, we understand that we better secure this right by allowing someone else to judge and enforce it. This is why the state is an *authorized state*: it is not simply forcibly imposed on us, but an institution we can understand and endorse, in a moment of calm reflection. (200)

Thus, the argument is rational self-interest here. More precisely, the principle Stilz appeals to seems to be something along the following lines:

Authorization Principle AP:

If calm reflection would show that I better secure my basic right to freedom by allowing X to judge and enforce it, then I have *necessarily authorized* X and am liable for at least those of X’s actions that can be considered as having flowed from reasonable interpretations of my basic right.

The problem with this principle, however, is that it is entirely unclear why one should accept it. Consider the following example. The Philosopher’s Protection Agency, PPA, for short, has decided to include me in their protection scheme. I do not join voluntarily; in fact, I make it very clear that I do *not* want to join or be protected by them. Yet, they do not care and protect me anyway, and they put me on their members list. They also collect money from me (if I did not pay, they would punish me; but then again: so would the state if I did not pay taxes). Although I really do not like the agency, the fact of the matter is (and I would discover that on calm reflection) that without them I would be dead already since they do a better job of protecting me than my state; and they will continue doing a better job than the state in future too. One day, however, they reasonably but in this case mistakenly assume that my neighbor has bought a gun in order to kill me, and they also reasonably assume that the best way to protect me given their scarce resources (and the lesser competence of my state) is to take away his gun, and they act accordingly. They also reasonably assume that certain philosophers, myself included, would be much safer if they carried guns. So they give a directive that requires the philosophers in question to carry guns.

If Stilz’s “authorization view” (201) also applies to entities like the PPA from this example, then it follows, on her account, that in the example I have an *obligation* to carry a gun and am *liable* to help to compensate my neighbor for the loss of his gun. Both implications, however, seem to be highly counter-intuitive. If, for instance, my neighbor came up to me to ask for compensation, I could refuse this by pointing out that the agency might be acting *in (what it reasonably takes to be) my interest*, but *not on my authorization*. In any common sense meaning of the word, at least, I have most certainly *not* authorized them. If the situation were reversed and I the claimant, my neighbor would in all likelihood say exactly the same to me. As regards the implication that I have to

follow the agency's directives and am accordingly obliged to carry a gun: this implication seems not only to be counter-intuitive, but downright absurd.

Stilz might of course simply embrace these implications and deny that they are counter-intuitive. In that case all I have to say is that I doubt that very many people would share her intuitions. The alternative possibility might be to reply that she is talking about *states* and not about just any entity X. Yet, if that is supposed to be the reply, she would have to explain what is so special about states as opposed to other entities that effectively secure our fundamental right (and perhaps do so better than states), and why that special characteristic is morally relevant in the required way. She does not provide such an explanation, though.

6. Kant and the natural moral duty to comply with a democratic state

Stilz has, however, still another reply. In response to the above criticism she states that she only appeals to Hobbes “for the purpose of unpacking the concept of authorization,” while she herself clearly states, “at p. 199,” that she takes “a Kantian view, which holds that we have a natural moral duty to comply with a democratic legal state, because only under a coordinated scheme of legitimate law can we adequately respect the innate right to freedom of other people.”¹⁰ However, on the page she refers to she actually says: “Kant takes this approach: he argues that each person has an equal right to freedom (conceived as independence from others’ arbitrary wills), which the state interprets and enforces on his behalf,” and it is precisely in the next paragraph where she mentions the problem that “it may seem that the democratic authorization principle, which holds that the state’s authority is derived from the exercise of its members’ rights, does not get us very far when thinking about citizen responsibility for an unjust or aggressive war” (199). Thus, it does not seem that she is suggesting here an authorization principle that is in any way different from the AP above.

But let us suppose, setting aside the actual wording of the quotes from p. 199, that the switch from Hobbes to Kant switches the emphasis from rights to obligations. Maybe this then gives rise to the

Revised Authorization Principle RAP:

If calm reflection would show that I better discharge my basic duty to respect other persons’ right to freedom by allowing X to judge and enforce this duty, then I have *necessarily authorized* X and am liable for at least those of X’s actions that can be considered as having flowed from reasonable interpretations of my basic duty.

It is, however, difficult to see how the waging of an unjust war can count as a reasonable interpretation of one’s basic duty *towards those the war is waged against*. In fact, if a person is living in a liberal democracy with a track record of unjust wars or with a track record of further injustices committed against citizens of other states (in the form of collaborating with dictators, imposing unjust trade regimes, exploiting the natural resources of other countries at the expense of their population, imposing unjust immigration laws, etc.), the whole idea that the membership in a liberal democratic state improves my own record of discharging my duties towards others might seem somewhat

¹⁰ Stilz (personal communication). I do not share this Kantian view, and although in her *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton and Oxford: Princeton University Press), esp. pp. 35-110, Stilz undertakes a heroic attempt to support it, it remains, in my view, ultimately unconvincing. There is no need to go into this here, though.

naïve, given the actual track records of most real liberal democratic states today.

But perhaps Stilz means that obeying the laws of my own liberal democratic state might help me to better discharge my basic duty *towards my fellow citizens*. If so, however, we are entitled to an *argument* as to why a state act that can reasonably be interpreted as discharging my duty towards insiders but harms outsiders should be considered as an act “authorized” by me.

Such an argument will be difficult to come by, since, in any case, the problems of the RAP mirror the problems of the AP. Consider another agency, the Foreigner’s Protection Agency,¹¹ FPA, for short, which has decided to include me in their duty enforcement scheme. I do not join voluntarily; in fact, I make it very clear that I do *not* want to join them or have my duties enforced by them. Yet, they do not care and protect foreigners from me anyway, that is, they see to it that I abide by my duties towards foreigners (and, of course, there are always more foreigners than citizens, so if respecting the basic right of others is so important, then the FPA should, on Stilz’s account, have priority over my state as far as my “political obligation” is concerned). Although I really do not like the agency, the fact of the matter is (and I would discover that on calm reflection) that without them I would already have committed grave violations of my duties against foreigners. (An example is: my liberal democratic state was about to wage an unjust war and tried to force me to significantly contribute to this war or even to draft me, so that I then would have killed innocent foreigners. Thankfully, the FPA forced me to disobey my state, and thus forced me to fulfill my duties towards the foreigners). However, one day, namely Tuesday, the FPA reasonably but in this case mistakenly assumes that I will soon try to kill a foreign tourist visiting my village and that the best way of keeping me from doing this is to steal my neighbor’s gun so that I cannot steal it myself to kill the tourist. On Thursday, in contrast, they reasonably but mistakenly assume that I should actually carry a gun from now on because this way I can better fulfill my duty to protect foreigners from the racists in the village at little cost to myself.

Again, if this revised “authorization view” applies to entities like the FPA, then it follows that in the example I have an *obligation* to carry a gun on Thursday and am *liable* to help to compensate my neighbor for his previous loss of his own gun. And again both implications seem to be highly counter-intuitive. If, for instance, my neighbor came up to me to ask for compensation, I could refuse this by pointing out that although the agency might be acting in a way that (it reasonably assumes) *makes me abide by my duties*, it nevertheless does *not act on my authorization*. As regards the implication that I have to follow the agency’s directives and am accordingly obliged to carry a gun: this implication seems, again, to be downright absurd.

7. Democracy

But could not perhaps, one might object, Stilz’s insistence on democracy mark the necessary difference between states (of the right sort) and agencies like the PPA or the FPA, so that we can escape the counter-intuitive implication of the authorization view that we are subject to the authority of the PPA and FPA and have to obey such authorities? The answer is, first, that Stilz’s insistence on democracy seems to be rather *ad hoc* and like an almost unrelated afterthought anyway given her Hobbesian (or even

¹¹ The counter-intuitive implications remain even if we convert it to a Citizen’s Protection Agency and make the corresponding changes in the example.

Kantian) starting point. If what authorizes the state's acts is that it acts on a reasonable interpretation of our rights (or obligations, for that matter), then it has to be pointed out that the reasonability of such an interpretation is hardly dependent on the state's being democratic. If someone defends my life against an unjust aggressor (or defends someone from *my* unjust aggression), then the necessary and proportionate defense of the unjustly threatened life, it would seem, can count as the practical enactment of a reasonable interpretation of my rights (or obligations) even if I have not somehow "democratically elected" the defender.

The converse is also true: democracy does not guarantee reasonability. As we saw, Stilz names four conditions that need to be met so that "the state's acts can reasonably be interpreted as an exercise of our rights" (202), namely that it "guarantees citizens' personal inviolability, basic subsistence, freedom of belief and expression, and legislates a system of private rights that treats them equally and in which they have a democratic voice and vote." If it does, then it is "capable of conferring responsibility on citizens simply in virtue of their membership" (204). Yet, if this is to be taken literally, it is entirely unwarranted: the fact that a state guarantees *its citizens* a number of goods things, like certain rights and liberties, does not imply that therefore whatever bad thing the state does to *other* people (for example, waging war against them) can count as a reasonable interpretation of the rights (or duties) of the citizens.

Moreover, these four characteristics that Stilz attributes to the "democratic legal state" (204) could *also* be features of the agencies of our two examples and hence *not* only of states. Nothing, after all, hinders the agencies from having their leadership democratically elected by the people they protect or "supervise."

Furthermore, such a democratic election would not "authorize" the leadership either. The citizen's relation to her democratic state, and the philosopher's relation to the PPA, is not a relation of authorization, as in the case where a person voluntarily grants a power of attorney to a lawyer of her own choice. If, for instance, an Italian restaurant owner can vote on who is going to be the Godfather of the racketeering organization that extorts protection money from him, he does not thereby *authorize* that Godfather (or the organization) to extort money from him (or from others, for that matter); rather, *he chooses the lesser evil*. The same holds for states. The delusions of "democratic theory" notwithstanding: by voting for (or against) a certain leadership that will arrogantly claim to act on my behalf anyway (whether I vote for it, against it, or not at all) and which will extort protection money (taxes) from me, I do *not* authorize them to do that; rather, again, I choose the lesser evil.¹² Therefore it is not surprising that the claim that I have an *obligation* to obey the PPA and am *liable* for its actions is no less counter-intuitive for a democratic PPA than for an undemocratic one. Again, perhaps Stilz might want to deny that; but again, I think few would share her intuitions, if those are her intuitions (least of all my state, who would not be amused if in the situation in the example I started carrying a gun because the PPA ordered me to do so).

¹² I have criticized the claim that by voting citizens "authorize" the governments or states they are voting for (or that merely get elected because *others* voted accordingly) at greater length elsewhere. See Uwe Steinhoff, "Why 'We' Are Not Harming the Global Poor: A Critique of Pogge's Leap from State to Individual Responsibility," *Public Reason* 4 (2012), pp. 119-138, at 132-135.

II. Pasternak

Avia Pasternak proposes an “alternative justification for the distribution of states’ corporate responsibility,” namely one that “treats this problem as one of collective action, rather than of legitimate authority. Its core arguments are, firstly, that citizens (sometimes) act collectively in states, and secondly, that when they do so, they can be expected to share responsibility” (367).¹³ She claims that people incur “liability for a group’s actions” under the following conditions:

- (1) The individual is a group member as a matter of fact, according to the group’s membership rules.
 - (2) The individual is reflectively aware of the fact she is a group member, and some of her actions are informed and rationalized by that fact.
 - (3) The individual is reflectively aware of—or at least can reasonably be expected to be reflectively aware of—the collective goals and activities of the group of which she is a member, and of ‘the instrumental relation of one’s part to the group act that is its end’. Alternatively (as would be the case in large complex groups like the state) the individual is reflectively aware of—or at least can reasonably be expected to be reflectively aware of—the fact that there are certain group activities of which she is ignorant.
 - Finally, and most pertinent to the discussion that follows, (4) the membership status is not imposed on the individual against her will. By this I mean that, if leaving the group has some cost for the individual, the cost is not unreasonable; and that if the cost of leaving the group is unreasonable, aversion from incurring that cost is not what motivates the individual to stay in the group.
- (369)

While Pasternak quite rightly says that Stilz’s “argument is grounded in a problematic understanding of the notion of authorization” (362), her own, Pasternak’s, account is grounded in a problematic account of collective action: in fact, she seems to confuse collective action with group membership. For example, she repeatedly talks about people who “intentionally participate in their state” (371, see also 372, 373, 374, 375, and 379 for equivalent expressions). But there is a difference between intentionally participating in the state or some other group *and intentionally participating in a specific act* of the state or some other group.¹⁴ For instance, I might be a voluntary member of the 2nd Battalion, but if the 2nd Battalion commits a war crime while I am on leave I am most certainly *not* participating in the war crime. In fact, even if I am not on leave I might not be participating in any war crime. Therefore, the proper description anyway is that a *part* of my battalion participated in the crime. But then, of course, if my state goes to war with the Vatican while I go on vacation in the Amazon, the proper description here is also that not *all* citizens of my state participate in the war against the Vatican, but only some of them.

Of course, Pasternak might see this differently and think that in some states members automatically are also participants in state action as long as they fulfil the four conditions. However, then she would have to explicitly *explain* why that is supposed to be the case and provide an *argument* to close the gap between voluntary participation in a state on the

¹³ Avia Pasternak, “Limiting States’ Corporate Responsibility,” *Journal of Political Philosophy* 21(4) (2013), pp. 361-381. All the following page numbers in brackets refer to this text, not to Stilz’s.

¹⁴ Perhaps Pasternak thinks that in some states members automatically are also participants in state action as long as they fulfil the four conditions. But that would have to be explicitly *argued* for then; Pasternak does not provide such an argument, however.

one hand and voluntary participation in the state's *acts* on the other. She does not provide such an argument however, nor any explanation as to *why* citizens should incur liability for the acts of their state under the four conditions listed in the indented quote above. To be sure, she claims that on "the intentional citizenship account, when citizens intentionally participate in their state, they gain authorship of their state's activities: these activities become 'their activities' (or the activities of '*their state*')" (374), but this is not an argument for her claim, but only a restatement of it, and her reference to Christopher Kutz's account does not remove this problem, since one would like to know why one should accept Kutz's account in the first place. (The two examples below show that there is no good reason to accept such sweeping accounts of collective responsibility as Kutz's or Pasternak's.) Moreover, the four conditions are satisfied in my two examples from the last paragraph. Yet, it seems rather implausible that the member on leave who does not really participate in the crimes committed by his battalion should compensate the victims of those crimes anyway. This indicates that there is something wrong with those four conditions.

In this context, let me give two last examples. First, suppose there is a jurisdiction where a hung jury by law leads to the defendant's being set free. In one case, a jury has to decide about a murder indictment, and in fact the defendant is a serial killer. Suppose the jury becomes hopelessly deadlocked, with me voting "guilty" and all other members of the jury voting "not guilty." Suppose further that after the serial killer is set free he again kills someone. Now, it seems quite implausible to claim that by intentionally participating in the jury I *also* intentionally participated in the jury's act of letting a serial killer loose. The proper description seems to be that if I voted "guilty" and the other 11 jurors voted "not guilty," then *they* participated in the collective act of letting a serial killer loose (whether they know that he is a serial killer or not). If they say that "we" did it and mean to include me in that "we," then they seem to be simply lying – and that is so even if one would grant that "the jury" in some sense decided to let the killer free. After all, that the jury decided something in no way implies that I did: I am not the jury. Moreover, it is also implausible that I owe the spouse of the latest victim of the serial killer any compensation (although Pasternak's four conditions apply to me). "What," I could ask, "have *I* done?" To simply reply "You were a member of the jury and the four conditions are satisfied" is, I submit, as unconvincing as replying "You are a citizen of your state and the four conditions are satisfied" is in the case of the alleged responsibility of citizens for the actions of their states.

Second, consider a big transnational corporation, which, among other things, also owns a private military company that sometimes unjustly invades and exploits the resources of weak states. As a public relations measure, the corporation decides to allow people all over the world to join them as members and elect its CEO (only the members can do that according to the rules of the company), and it offers five candidates. Two women in Sudan think that this is a good opportunity to have at least some beneficial influence on this nasty corporation, and thus they indeed join it as members and vote for the least disgusting of the five candidates. He gets elected, and soon after has the private military company, "in the name of all those fine people who elected me," invade Liberia to set up a lucrative mining company. Many Liberians get killed in the process. Is this invasion (also) the act of the two Sudanese women? Are they its "inclusive authors"?

Obviously not, despite the fact that the two women clearly satisfy the four conditions.¹⁵ It does not seem that the Liberians have any claim against them. In fact, the two women precisely tried to *help* potential victims by joining the company and voting for the least evil CEO. Thus, if the Liberians have claims against people other than the owners or management of the company, then precisely against those who did *not* try to help them. Of course, Pasternak can simply insist that the two women indeed are co-responsible for the corporation's act. However, again, this would be a mere claim, one for which she has not provided any argument, and one which is, as the examples show, extremely implausible.

I conclude that both Stiliz's and Pasternak's accounts of the responsibility of citizens for the actions of their states fail.¹⁶

¹⁵ This example also shows that the view that by participating in democratic procedures one becomes responsible for the outcome is a myth of democratic theory. My "democratically elected government" does often not even "represent" me when I have indeed voted for it, let alone when I did not. Voting is not like granting power of attorney to a lawyer. On this point see also "Why 'We' Are Not Harming the Global Poor: A Critique of Pogge's Leap from State to Individual Responsibility," *Public Reason* 4 (2012), pp. 119-138, esp. pp. 132-135.

¹⁶ I thank Anna Stiliz and Avia Pasternak for useful comments on a first draft of this paper.