

# **What should the right to the city entail?**

## **Occupancy rights and freedom from relational wrongs**

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Research Master Thesis (30EC)

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Word count: 21707

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# 1. Introduction

Consider the case of city Y. Inhabitants of city Y have special interests in residing there since their projects, relations and social activities are embedded in Y. For instance, they live there, go to school there and participate in volunteering activities in the city. These are what I will define as their *located* life-plans. Now imagine that a neighbourhood in the city, where some inhabitants have located life-plans, is gentrified: wealthy newcomers arrive in the neighbourhood, the market-rate rent goes up and landlords demand higher rents to current residents. Current residents cannot afford the rent, and due to the increase in price they cannot find a new place to stay in the neighbourhood: they must relocate somewhere else. Would this amount to a violation of current residents' rights? How could we assess this situation? Intuitively we could imagine that current residents have a right to the city they inhabit. Thus, what should their right to the city entail?

Philosophers have so far not provided sufficient answers to these questions. Recent engagements with the topic of urban rights focus on aesthetics, the intrinsic value of urban spaces like parks, the value of public art in the city, participatory budgeting (Meagher, Noll & Biehl, 2020), the right to housing (Waldron, 1993), immigration, gentrification, ghost cities, social exclusion, and diversity (Young, 1990). Despite the richness in contributions to the literature from political theorists, urban geographers and architects, philosophers have so far not attempted to analytically engage with the topic. They have so far not formulated what the right to the city entails nor what type of right it is. Nonetheless, recently, some analytical philosophers have successfully applied concepts borrowed from *theories of territorial rights* to the urban context to talk about the rights of urban dwellers vis-à-vis urban phenomena (Hofmann, 2020; Huber and Wolkenstein, 2018; Kohn, 2016, 2013).

Territorial rights theories aim at justifying state's jurisdictional authority over a *precise* piece of land. To establish why states have authority over a piece of land and not any other, they use the concept of *occupancy rights*. Occupancy rights are pre-institutional rights that agents have over a specific territory due to their embeddedness in it. Those who apply the concepts of territorial rights theories use the notion of *embeddedness-based occupancy rights* to justify the rights of urban dwellers.

This thesis aims at contributing to this gap in the literature. In particular, I am at suggesting a promising way to develop a notion of the right to the city. The research question that I address in my thesis is the following: *would it be promising to formulate an occupancy-based notion of the right to the city?* I will contend that it is a promising strategy, but that the occupancy-based notion should be amended to incorporate the analytical tools necessary to account for process-centred wrongs in urban phenomena. For instance, consider again the case of citizens of the gentrifying neighbourhood in Y. If we were to analyse their situation from an outcome-based perspective, we would not be able to assess whether if *the way in which* relocation comes about is problematic in itself. For

instance, we would not be able to individuate instances of relational injustice between landlords and tenants (e.g., whether if landlords dominate tenants).

In order to answer to my research question, I will:

1. Explain what occupancy rights are,
2. Explain how occupancy rights would apply in the context of the city,
3. Evaluate the application of an occupancy-based right to the city.
4. Suggest that an occupancy-based notion of the right to the city would not be enough and that we should include the analysis of procedural wrongs.

Consequently, I will contend that the right to the city should entail (i) the respect of embeddedness-based occupancy rights and (ii) the freedom from process-based wrongs in urban dynamics.

The relevance of my project is that so far there has been no consistent engagement with the notion of a right to the city by analytical philosophers. Thus, by evaluating a possible strategy to formulate it, I contribute to a rather unexplored field and possibly lay out relevant insights for those who want to attempt to define what the right to the city is. The decision to start from the notion of occupancy rights is not arbitrary. Let me elaborate on this.

Since theories of territorial rights mainly apply to the context of the state and aim at justifying strong claims of political control it might seem counter intuitive to use them in the much smaller context of the city. One reason for applying them at the urban level nonetheless is that the concepts used in theories of territorial rights intuitively bear significance at the urban level too. For instance, theories of territorial rights appeal to a sense of embeddedness in the territory and the development of personal life plans as the justificatory grounds for claiming rights over a territory.<sup>1</sup> This justificatory basis seems to be applicable also to the city since urban dwellers are embedded in the territory of the city, and their life plans depend on their rights over the territory itself. Indeed, citizens who oppose forced eviction of tenants, relocation of inmates from one facility to another or gentrification of neighbourhoods seem to appeal to a broad interest in their embeddedness in their territory, whose violation grounds their complaints (Hofmann, 2020; Huber and Wolkenstein, 2018: 379). Thus, starting from the notions of territorial rights theories seems to be palatable for two reasons. First, it provides a normative justification for claiming rights over a territory (located life plans) that seems to hold at the city level. Second, it allows those who want to analyse urban phenomena to be truthful to the complaints of those affected by them.<sup>2</sup> All in all, it seems worth starting from an analysis of what the right to the city might entail from this recently explored, and intuitively promising application.

Nonetheless, even if we were able to apply notions of territorial rights theories to the city and show that they are a promising way to conceive of the rights of urban dwellers, I will contend that a further step needs to be taken.

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<sup>1</sup> See Chapter 2.

<sup>2</sup> See Chapter 3 for a more exhaustive defence of the application of territorial rights in the urban context.

Indeed, so far, the application of territorial rights to the city has been focusing on the putatively unjust consequences of urban dynamics (e.g., the wrong of displacement as a consequence of gentrification). This approach does not take into account the *procedural and relational injustice* of violations of territorial claims (i.e. the wrongness of the mechanisms behind gentrification: the position of agents vis-à-vis this process). In the existing literature a promising way for addressing the injustice of the procedures that violate urban occupancy rights is to focus on theories of non-domination (Putnam, 2020). Theories of non-domination focus on the relations between agents rather than on the outcome of such relations and might individuate a further, currently unexplored, type of injustice in urban phenomena. Thus, it would be possible to add a further level of analysis, in addition to the territorial rights one, on what the right to the city should entail.

Consequently, in this thesis I will start from the application of territorial-rights theories to the urban context and propose to add a second layer of analysis to detect the process-based wrongs inherent to urban dynamics.

## **1.1 Structure of the thesis**

The structure of the thesis is as follows:

Chapter 2 will serve as an introduction for the application of territorial rights theories in the context of the city. Indeed, I will focus on the two core concepts of territorial rights theories used in such applications: occupancy rights and located life plans. In particular, I will draw on Stilz's (2019) theory of territorial rights to answer to two questions: what are occupancy rights? How are they justified?. In section 2.1 I will answer to the former question, while in section 2.2 to the latter. Let me elaborate on the content of each section further. In section 2.1.1 I will explain in detail how Stilz defines occupancy rights. In section 2.1.2 I will defend her notion of occupancy rights against three criticisms by Moore (2020b). In section 2.2.1. I will explain how Stilz justifies occupancy rights: she appeals to our interests in located life plans. In section 2.2.2, I will specify the conditions under which an agent has occupancy rights over a territory and how the duties of other agents vis-à-vis her occupancy rights are regulated. Section 2.3 concludes.

In chapter 3 I will focus on the application of the notion of occupancy rights to the city. I will contend that it is possible to formulate a notion of an occupancy-based right to the city and that such notion stands against relevant criticisms. In section 3.1 will explain how occupancy rights based on located life-plans apply to the city. In section 3.2 I will consider five criticisms on the notion of an occupancy-based right to the city raised by Hofmann (2020). I will contend that Stilz's notion stands against the first four criticisms but cannot answer to the fifth. Section 3.3 concludes.

Finally, in chapter 4 I will elaborate on the reason why an occupancy-based right to the city cannot answer to Hofmann's fifth criticism. I will contend that if we were to elaborate an occupancy-based right to the city we would not be

able to consider process-based wrongs intrinsic to urban dynamics. Thus, I will suggest introducing a further level of analysis to track for process-centred wrongs. In section 4.1 I will look at how Huber and Wolkenstein (2018) apply the notion of occupancy rights at the urban level to analyse gentrification. I will argue that they are not able to account for the wrongs intrinsic to the mechanisms behind gentrification. In section 4.2 I will show that Putnam's (2020) domination-based analysis of gentrification can account for those process-based wrongs. The aim of this section will not be to defend Putnam's contention. Rather I will only *suggest* that a domination-based approach would be able to detect possible process-centred wrongs that the occupancy-based approach neglects. In section 4.3 I will offer three reasons why it would be relevant for a possible formulation of the right to the city to consider process-centred wrongs in urban phenomena. Section 4.4 concludes.

In chapter 5 I will conclude this thesis. I will summarise what I have achieved and suggest what future research should entail.

## 2. Insights from the territorial rights debate

Recently some philosophers and political scientists have used theories of territorial rights (TRT) to analyse the rights of urban dwellers. So far, the applications of territorial rights to the urban context are limited in two ways. First, they squarely focus on only one aspect of theories of territory: occupancy rights. Second, those who apply TRT at the urban level do not offer a comprehensive view on what a territorial right to the city should be. Rather they target specific phenomena *within* the city such as homelessness and gentrification (Hofmann, 2020; Huber and Wolkenstein, 2018; Kohn, 2016, 2013).

Despite the two limitations mentioned above, I contend that recent applications of TRT are a good starting point to formulate what a territorial right to the city might be because:

1. They ground the claim-rights that urban dwellers have against specific phenomena via a notion of embeddedness in a territory. In turn, using embeddedness as a normative ground opens up the possibility to consider the claim-rights that agents have in a territory more in general, not solely against specific wrongs (e.g., gentrification).
2. As mentioned in the introduction, applications of TRT at the city-level allow those who want to analyse urban phenomena to be truthful to the complaints of those affected by them. Indeed, the concepts used in TRT (e.g., embeddedness) are the ones that urban dwellers use when they speak about their rights in the city.

All in all, it seems promising to start by an analysis of the applications of TRT to the city level.

The aim of this chapter is to introduce the core concepts of territorial rights theories that are used in the discussion of rights at the urban level: occupancy rights and embeddedness. In a nutshell, TRT aim at justifying the exercise of jurisdictional authority over a geographically limited land (territory) via a specific agent (a state or a people). In doing so, they:

- (i) normatively ground who has territorial rights,
- (ii) determine the content of territorial rights and,
- (iii) justify *why* the bearers of such rights have them over a *specific* territory (particularity question) (Moore, 2020a).

In this Chapter I will not offer a comprehensive analysis of what theories of territory do, rather I will limit my discussion to two instances.

First, I will only consider one type of land-related rights developed in TRT: occupancy rights. Occupancy rights are the minimal land-related rights that agents (individuals or groups) have over a territory and do not necessarily entail political-jurisdictional claims. Rather, occupancy rights are a *prior* condition to the establishment of territorial rights (which entail jurisdictional and strong control rights) by a specific agent in a specific territory (Stilz, 2011:

579; Stilz, 2019: 33; Moore, 2014: 127).<sup>3</sup> A fruitful way to understand the limited scope of occupancy rights, and consequently of this chapter, is to consider Moore's (2015: 34) classification of land-related rights. She contends that there are "three place-related rights: moral rights of residency, ...; moral rights of occupancy, ...; and rights to territory, which attach to people through their political institutions" (ibid: 34). This division highlights that there are land-related rights that do not per se entail political institutions, they are preinstitutional rights that attach agents to a specific land: residency and occupancy rights.<sup>4</sup> While institutional rights to land are a crucial part of TRT, in this chapter I will only consider the preinstitutional, more limited, land-related rights of occupancy.<sup>5</sup>

Second, within the scope of occupancy rights, I will only address two of the above-mentioned questions that territorial rights theories need to answer. I will focus on (i) and (iii): the question of who should be the bearer of occupancy rights, and on what grounds that right might be justified (embeddedness).<sup>6</sup>

The structure of this chapter is as follows. In section 2.1, I will offer a definition of what an occupancy right is following Stilz's characterization. The reason behind this choice is that in the literature applying TRT to the urban context, Stilz and Moore are the relevant sources used to define occupancy and as will become clear by the end of section 2.1, Stilz's view is better than Moore's. In section 2.2 I will discuss the notion of located life-plans that grounds occupancy rights over a territory.<sup>7</sup> In these two sections I will use insights from Moore (2015, 2014), Ypi (2014) and Stilz (2013, 2019). Section 2.3 concludes.

## 2.1 The notion of occupancy rights

In this section I will explain what type of rights occupancy rights are. The most relevant notions of occupancy rights in the territorial rights literature are due to Stilz (2019, 2013, 2011) and Moore (2015, 2014).<sup>8</sup> Their contentions share some core similarities. For instance, according to both, occupancy rights are preinstitutional rights with property-like characteristics (Stilz, 2019; Moore, 2015).<sup>9</sup> Nonetheless, they differ on the identification of who the right holder is

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<sup>3</sup> See section 2.1.

<sup>4</sup> I will explain Moore's differentiation between residency and occupancy rights in section 2.1.2.

<sup>5</sup> Stilz (2019: 1) highlights that there are four main institutional territorial rights: rights to territorial jurisdiction, non-intervention, control of borders and of natural resources. As will become clear in this chapter, occupancy rights take a much more limited scope compared to institutional territorial rights.

<sup>6</sup> In turn, in chapter 3 I will focus on the application of occupancy rights in the urban context.

<sup>7</sup> I will use the terms located life-plans and embeddedness interchangeably.

<sup>8</sup> Note that Stilz (2019) offers a more detailed analysis of what *type* of rights occupancy rights are compared to Moore (2014, 2015).

<sup>9</sup> The similarities I refer to are limited to the notion of occupancy rights. Nonetheless, Moore (2020b) highlights that their theories are similar also in other aspects like their focus on self-determination.

(Moore, 2020b). Moore contends that the right holder of occupancy rights is a collective agent, while Stilz contends that occupancy rights are individual rights.

In section 2.1.1, I will focus on Stilz's (2019) characterization of occupancy rights. I will explain four core components of her definition: the property-like nature of occupancy rights, their relation to a geographical space, the fact that occupancy rights are preinstitutional and the contention that the bearers of such rights are individuals. In section 2.1.2 I will address three main criticisms to Stilz's notion of occupancy rights: (i) the misrepresentation criticism, (ii) the under-evaluation criticism and (iii) the scope criticism (Moore, 2020b). In this last section I will contend that, for the scope of this thesis, Stilz's definition is to be preferred to Moore's. Section 2.1.3 concludes.

Note that in this section my focus is limited to the analysis of the *notion* of occupancy rights. Thus, I will not explain how occupancy rights are normatively grounded.<sup>10</sup>

### 2.1.1 Stilz on occupancy rights

What are occupancy rights? Stilz defines occupancy rights as (i) place related, (ii) property-like, (iii) preinstitutional, (iv) individual moral rights (2019). In this section I will analyse each term of her definition.

Generally, occupancy rights are (i) place-related rights: rights that individuals or groups have over a territory. They have an important role in theories of territorial rights since they offer an answer to a core question within the literature: the particularity question (Moore, 2020b).<sup>11</sup> The particularity question aims at attaching the territorial rights of agents to a *particular territory*, and not any territory.<sup>12</sup> Thus, instead of talking about having a general right to having territorial rights somewhere, occupancy rights enable us to link specific agents' territorial-rights to a specific territory (Moore, 2014: 121; Stilz, 2019: 33).

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<sup>10</sup> I will look at the normative justification of occupancy rights in section 2.2.

<sup>11</sup> See section 2.2 for a more extensive explanation of the particularity question. Note that Stilz (2019: 33) uses the term "foundational title" question instead. While both terms are used to look at why agents have claims over a specific territory, the term particularity question denotes a more limited focus. Stilz's term suggests that occupancy rights are at the foundation of the legitimate titles that states have over a territory. Indeed, Stilz's (Stilz, 2011: 578) legitimate-state theory considers occupancy rights as one of the necessary, but not sufficient, normative grounds for a state to have legitimate territorial rights over a territory. Since in my thesis I will not look at the legitimacy of states' territorial rights, I prefer to use the term particularity question instead.

<sup>12</sup> Nomadic people generally have occupancy rights over a vast territory where they can move freely. Stating that the area over which they have occupancy rights is vast and stating that they do not have an interest in occupying a *specific* area, but any area is different. Usually, nomadic people move within a restricted range of land. For instance, Bedouins in the Middle East tend to move within Arabia where they can maintain their economic and social practices (Stilz, 2019: 167; Moore, 2015: 42). Thus, nomadic people have interests in occupying some territory in which they are embedded and not any territory: the particularity question seems to be relevant in the case of nomadic people too.

Stating that occupancy rights are place-related rights though is too broad. Indeed, agents might have several place-related rights over a territory. Stilz identifies three such rights: property rights, jurisdictional rights, and occupancy rights (2019: 35). They all share (ii) property-like characteristics: they are bundles of rights that give agents some claims over a specific object (territory) and generate duties on others. Nonetheless, they differ in terms of the strength of control that they grant and the geographical scope of the right.

To understand the difference among these property-like rights consider the following example. Erica is a farmer. She owns her farm and uses it for her economic activities. She has a right to use her farm as she wishes, for instance she might decide to sell it, tear it down, or use it as a rental place; and to exclude people from entering her territory or use it as they see fit. Thus, Erica has land-related property rights over her farm. Furthermore, her farm is within a territory over which a state has jurisdictional rights. Whilst the state cannot extensively determine how Erica disposes of her property, it formulates the laws that grant her such property rights and sets, for instance, the environmental requirements that her business must respect in order to be a legitimate economic activity in the state-territory (i.e., regulations on pesticides, wrongful treatment of animals, and taxes on property). Thus, Erica has *property-rights* over the farm, while the state has *jurisdictional rights* over the territory in which her farm is. Both the property rights and the jurisdictional rights are land-related: they apply over a territory.

In addition, there is a third type of land-related rights that differ from these two forms of rights over territory: *occupancy rights*. They do not entail full property rights nor jurisdictional rights over a territory. Instead, they are a weaker form of land-related rights (Stilz, 2019: 34). In general, they deal with the access to and use of land, the right to reside in a specific place without being expelled and denied access when returning, and to take part in the socio-economic practices there (Stilz, 2013: 327).

Thus, in Stilz's definition, occupancy rights are rather limited *use* rights compared to full property rights and jurisdictional rights which grant control over a territory. Nonetheless, they are "more geographically capacious" (Stilz, 2019: 35). For instance, imagine that Erica decides to rent part of her farm and a living space attached to it to Chiara. Chiara does not have property rights over that territory thus, for instance, she cannot re-build her apartment as she wishes. Nonetheless, she has land-related use rights over it. For instance, she has a right to access the land, not be expelled from it, participate in the activities of the village where her rental apartment is and to go back to her apartment when she finishes travelling out of state. These are Chiara's occupancy rights. More precisely, according to Stilz, occupancy rights have two main components:

1. They grant occupancy-rights holders a *liberty* to dwell in a place and use that area to perform social, economic, and cultural practices.
2. They secure occupancy-rights holders "a *claim-right* 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" (Stilz, 2019: 35 [my italics]).

So far, I have only focused on the first two terms of Stilz's definition. I have explained in what sense occupancy rights are limited *land-related property-like rights* (i, ii) over a territory: they are a bundle of rights that impose duties on others to respect an agent's claims over an object (a specific piece of land). I will now address the third term of her definition.

What does it mean that occupancy rights are (iii) *pre-institutional rights*? Since according to Stilz (2019) occupancy rights are property-like, she looks at proprietary theories to further define them. Within proprietary theories she distinguishes between institutional, preinstitutional and hybrid theories (ibid: 36). Institutional theories maintain that property rights are "conferred by social practices or systems of law" (ibid: 36). Consequently, there can be no property rights before the creation of institutions (social or legal) that determine what property is and how it can be regulated. Preinstitutional theories state that property is "a moral right that binds independently of law and convention" (ibid:36). Consequently, property-rights exist, and create reciprocal binding claims and duties, even before, and independently of, the existence of institutions. Finally, hybrid institutionalist theories are preinstitutional theories that recognize that property is ultimately shaped by legal and social conventions. They contend that limited property-like rights exist *before* the creation of the institutions that define them and that these preinstitutional rights are morally binding. Nonetheless, like institutional theories, they also recognize that preinstitutional rights remain limited and "underdetermined" since social conventions and institutions are what finally determine the content and implementation of property rights (ibid: 37). Even though limited property-like rights exist independently of institutions, they *necessitate* the creation of institutions that specify them and regulate their application.

According to Stilz (2019: 38), the hybrid view is the most suitable one to make sense of occupancy rights.<sup>13</sup> Indeed, a pure institutional framework would not be able to account for occupancy rights of agents who do not relate within legal/social institutions. Since occupancy rights are property-like rights, within the institutional framework they would not hold if they were not institutionally defined. This creates intuitively wrong implications for a theory of territorial rights. For instance, an institutionalist view would not recognize occupancy rights to tribes like the Navajos who do not have a system of positive law (Stilz, 2013).<sup>14</sup> Since intuitively it seems wrong to make the recognition of occupancy

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<sup>13</sup> The hybrid view complements the preinstitutional view with elements of the institutional one: it contends that property rights must ultimately be defined and enforced by institutions. I assume that the hybrid view further specifies the preinstitutional one leaving its core intact: it still affirms that there are preinstitutional, morally binding property rights. In addition, I assume that the extension that the hybrid view makes to the preinstitutional view is improving it: the hybrid view is superior to the preinstitutional view. Thus, I only consider objections to using a pure institutional view compared to the hybrid one. See Stilz (2019: 36-39).

<sup>14</sup> Note that in this example I consider a strong form of institutionalism: property rights must be enforced in a positive law system to hold. Nonetheless, even a weaker notion of institutionalism would fail to recognize the wrong committed when displacing tribal

rights dependent on their establishment by institutions, Stilz suggests using a hybrid view instead. According to her hybrid view, place-related rights do not *necessarily* need to be institutionally established to hold. There is at least one place-related *pre-institutional* right: the right to occupancy (Stilz, 2019: 39). Not only is the occupancy right not dependent on institutions, but also the institutions created in the land where occupancy rights apply must respect them: occupancy rights create obligations on institutions (Huber, 2020: 774). For instance, legitimate state institutions in the land where the Navajos dwell, would have a duty to respect Navajos' occupancy rights. All in all, occupancy rights are *pre-institutional* rights in the sense that they are morally binding, independently of the existence of institutions that define them.

Finally, we must consider who the holder of territorial rights is. As stated at the beginning of this section, Stilz defines occupancy rights as (iv) *individual* rights. According to Stilz (2013: 350), occupancy rights should be attributed directly "to the individual residents of a place" and not to groups of people. Nonetheless, as will become clearer by the end of this Chapter, Stilz can account for a derivative group right of occupancy *if* it is based on individuals' rights (2020: 36). I will leave the discussion concerning the individual and collective notion of occupancy rights for sections 2.1.2.

To sum up, in this section I explained what each term of Stilz's definition of occupancy rights entails. Occupancy rights are place related, property-like, preinstitutional, individual moral rights that establish a liberty to permanently reside in a place and impose duties on others to respect it (Stilz, 2019). In the following section I will present three criticisms that Moore (2020b) makes against Stilz's notion of occupancy rights: the misrepresentation criticism, the under-evaluation criticism, and the scope criticism.

### **2.1.2 Moore's criticisms on Stilz**

In this section I will consider three criticisms that Moore raises against Stilz's definition (Moore, 2020b). Her criticisms stem from the fact that Stilz focuses on individuals, rather than groups, as holders of occupancy rights (Moore, 2020b). The analysis of these criticisms will open the discussion on the normative grounds for occupancy rights that I will develop in section 2.2.

Contrary to Stilz, Moore contends that occupancy rights should be conceived of as group rights and not individual rights (Moore, 2014; 2020b).<sup>15</sup> Stilz contends that occupancy rights are individual rights and that we can talk

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communities. A weaker notion of institutionalism would grant that Navajos have property rights that they recognize among themselves via social conventions (Stilz, 2019: 38). However, this notion cannot explain why outsiders would be normatively bound to respect their property rights, since outsiders do not partake in the tribe's social conventions. For a more detailed analysis of the problems related with the institutional view see Stilz (2019: 36-39; 2013).

<sup>15</sup>Note that Moore's and Stilz's theories share core similarities in terms of how they define occupancy right and other instances (Moore: 2020b: 757-758). Nonetheless, they differ on the identification of who the bearer of occupancy rights is.

about the occupancy rights of groups as a proxy for the occupancy rights of the individual members of the group (Stilz, 2020: 36; Moore, 2020b: 760). On the other side, Moore (2020b: 760) contends that “some incidents of occupancy rights could be held by individuals and some could be held by groups”. Thus, she differentiates between an individual moral right of residency and a group-right of occupancy (Moore, 2015: 35). The individual moral right of residency entails that individuals have a right to live in a specific place free from threat of expulsion and denial of return. Note that, even if the moral right to residency is individual, it is nonetheless connected to a community. Indeed, by residing in a territory, we develop projects and relationships and pursue a general way of life to which we are typically attached. Some of these connections are *to* the place, but some are to our projects and to the people who share the space with us, to our family and friends and the community which forms the background context in which we live our lives (Moore, 2015: 37).

Thus, in addition to an individual right to residency Moore (2015) introduces the concept of a collective right to occupancy. Collective rights to occupancy “which attach to groups, give the group the same rights that attach to individuals... In addition, occupancy rights serve the function of helping to define the location of these individual rights, and they also confer a (defeasible) right to control the land on which the group lives” (ibid: 40). According to Moore, when communities are wrongfully displaced (their group occupancy rights are violated), we cannot explain the phenomenon by referring only to the wrongs done to individuals. Rather there is a second dimension of wrong which refers to the disruption of collective identities and practices that are bound to a place.

Moore presents three criticisms against Stilz’s individual approach: (i) the misrepresentation criticism, (ii) the under-evaluation criticism and (iii) the scope criticism. I will analyse them subsequently.<sup>16</sup>

For what concerns the misrepresentation criticism, Moore contends that the individual view does not capture the collective dimension of the violation of occupancy rights. According to her, if we were to use only an individual notion of a residency right, or an individual occupancy right as in Stilz’s case, we would not be able to capture the “loss experienced when whole groups are expelled from a particular location” (Moore, 2015: 43). For instance, according to Moore, the displacement of the Navajo community would not be properly depicted if we were to explain it as a violation of the collection of the individual rights of each Navajo. There is a collective element to the wrong that would go missing. As a response to the misrepresentation criticism, I argue that Stilz’s notion of occupancy rights can account for how the violation of occupancy rights of individuals undermines collective aspects of their lives, including their attachment to a group of people and the practices they perform within it. Indeed, even though Stilz uses a notion of individual rights of occupancy, the ground for having them refers back also to collective aspects of individuals’ lives (Stilz,

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<sup>16</sup> In this section I draw from Stilz’s own defence against Moore’s criticisms. Nonetheless, I further specify both Moore’s (Moore, 2020b) criticisms and Stilz’s (2020) response to them. For instance, in their exchange they do not differentiate between the misrepresentation issue and the undervaluation issue.

2019: 40-44).<sup>17</sup> Stiliz contends that individual occupancy rights are grounded on individuals' comprehensive life-plans. In turn, life-plans are spatially located in a place and usually, even though *not* necessarily, in collective practices (i.e., religion, culture, friendship and recreational activities) (ibid: 41). Thus, even though Stiliz uses an individual notion of occupancy rights, she possesses the analytical tools to represent the wrong done to collective and historically rooted practices when occupancy rights are violated.

The second criticism is the under-evaluation criticism which follows from the misrepresentation one. Indeed, due to the issue of representation, according to Moore (2020b: 763), Stiliz problematically weights the occupancy rights of individuals like the ones of groups of individuals that have “much stronger [group-based] historically-rooted entitlement[s]” to the area where their group is located”. Even if Stiliz can represent the collective level of harm suffered in cases of violations of occupancy rights, Moore might reply that she does so unsatisfactorily: Stiliz does not weigh occupancy rights linked to collective practices more than occupancy rights that affect individuals who are not part of those practices. Stiliz is not troubled by this criticism. Indeed, she is “not persuaded that there is a deep difference” between the two cases (Stiliz, 2020: 797). Both Stiliz and Moore discuss this criticism considering the difference (or lack thereof) between the occupancy rights of the Navajos and those of a trader (individual life-planner) who resides in their land. Why would it be the case that treating the life-plans of the Navajos and of the trader equally is unjust? According to Moore, the life-plans of the Navajos are *intuitively* stronger because historically rooted. Nonetheless, Stiliz highlights that also the trader intuitively has a strong interest in occupying that territory since his life-plans are located there. The fact that the trader has a more individualistic life plan compared to the historically rooted one of the Navajos does not per se provide a compelling reason to weight the former less than the latter. The debate though becomes more interesting, and less prone to rely on intuitions, when considering that a reason to discount the occupancy right of the trader compared to the one of the Navajos might be that the trader is a newcomer in the land.

Stiliz already accounts for the fact that newcomers should not occupy a territory if in doing so they would:

1. jeopardize the located practices in which the current inhabitants are engaged (2019: 187);
2. provided that newcomers do not have an “urging interest in accessing the territory”, for instance to satisfy basic needs to lead a decent life and
3. granted that they enjoy an equal opportunity to form plans and projects somewhere else (fair-use proviso) (2020: 796; 2019: 74)<sup>18</sup>.

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<sup>17</sup> I will further explain how Stiliz grounds occupancy rights in section 2.2.

<sup>18</sup> Stiliz contends that there are distributive concerns for territorial rights on land and develops a distributive proviso to regulate them. In a nutshell, “fair distribution of territory ought not to allow outsiders to undermine locals' territorially based practices, at least in the absence of a compelling justice-based reason why outsiders must access the

Thus, she already weights the interests of those who are currently legitimately occupying a place (like the historically rooted groups Moore refers to) more than those of possible newcomers (like the trader) by imposing limitations on occupancy for the latter (Stilz, 2020: 208). Since current occupants are already given priority compared to newcomers, Stilz affirms that there does not seem to be any compelling reason to further prioritize existent groups over individuals. Rather, the fact that Moore does so is intuitively problematic since it “marginalizes newer inhabitants of a territory, including immigrants and their children” (ibid: 797).<sup>19</sup>

Finally, Moore poses a criticism on the scope of individual occupancy rights. According to her, if we were to define occupancy rights as individual rights it would be difficult to identify the land over which occupancy rights hold. Stilz bites the bullet on this criticism. She contends that before the establishment of territorial institutions, “there would be an overlapping web of individual attachments to land, with dense nodes formed by social practices where many people share located plans together” (Moore, 2020: 798). These nodes represent the core territory over which territorial institutions will be formed. Ultimately, even if the boundaries of territorial institutions are *constrained* by the area individuated by the occupancy rights of individuals, they must be ultimately agreed upon and specified via conventions. According to Stilz, this under-determinacy of the scope of occupancy rights holds for Moore too. Neither Stilz’s individual account nor Moore’s collective account of occupancy rights can delineate precise boundaries of the land over which people have occupancy rights. Nonetheless, they are both able to individuate a core territory (Stilz, 2020) or homeland (Moore, 2015) that sets the scope of occupancy rights.

All in all, I have showed that Stilz can stand against Moore’s criticisms. First, she enables the representation of a collective dimension of occupancy since when she justifies individual occupancy rights, she ties them to collective practices/identities that individuals perform in a specific location. Instead of representing the group dimension in the *type* of right, Stilz accounts for it in the justification for the right. Second, she offers a compelling argument against prioritizing group rights over individual rights like Moore does: Stilz already has a fair use proviso that limits the occupancy rights of newcomers and weighting

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area” (Stilz, 2020: 176). See section 2.2.2 for a more detailed explanation of the fair use proviso.

<sup>19</sup> Note that Stilz does not seem to offer a charitable interpretation of Moore’s notion of residency rights. Indeed, Stilz asserts that individual residency rights grant right-holders less place-related rights compared to occupancy rights (2020). For instance, Stilz affirms that in Moore’s definition, residency rights do not grant rights of return to a place which are only included in occupancy rights (ibid: 797). Nonetheless, according to Moore, “occupancy rights, which attach to groups, give the group the same rights that attach to individuals” including rights to return to a place (2015: 40). Thus, I contend that Stilz’s criticism on Moore should not (and does not need to) assert that her view is problematic because it grants less rights to individuals compared to groups. Rather her criticism should only focus on the fact that Moore implies that groups have “stronger and historically-rooted” claims to land compared to individuals, i.e., group occupancy rights of the Navajos should be given priority to the residency rights of individual settlers (Moore, 2020: 763).

group rights even more would unjustly discriminate against individuals who are not part of those groups. Third, Stilz acknowledges that her individual account of occupancy rights cannot delineate the precise boundaries of territorial institutions since those boundaries must be determined via agreed-upon conventions. Nonetheless, she can individuate a core territory over which occupancy rights apply. Consequently, for the sake of this thesis it seems legitimate to use Stilz's theory of occupancy rights: it does not face compelling criticisms and fares better than Moore's since it does not risk to unjustly prioritize the rights of current occupants compared to newcomers.<sup>20</sup>

Let me recap what I have done so far. In section 2.1.1 I have presented Stilz's notion of occupancy rights. In section 2.1.2 I have defended it against three criticisms presented by Moore (2020). In the following section I will focus on the normative justification for having occupancy rights in the first place (interests in well-being and autonomy) and explain what grounds them (Stilz, 2020).

## **2.2 The normative basis of occupancy rights**

Stilz justifies occupancy rights by appealing to the notion of located life-plans and their value for agents' interests in autonomy and well-being. In this chapter I will explain these concepts in detail. In section 2.2.1 I will explain the normative justification for having occupancy rights (located life-plans) and what its value is (interests in well-being and autonomy). In section 2.2.2 I will look more specifically at the normative grounds that grant an individual X an occupancy right in Y and the duties that that occupancy rights impose on others. In these sections I will use insights from Stilz (2019, 2013), Moore (2015) and Ypi (2014).<sup>21</sup>

### **2.2.1 Why occupancy rights? Interests in located life-plans**

In Stilz's (2019: 40) theory, occupancy rights are justified by an interest in having located life-plans which are valuable for our personal well-being and autonomy. Thus, the normative justification for having occupancy rights is our interest in having located life-plans. In turn, the value of located life-plans (the reason why we have an interest in them) is that they are a precondition for our autonomy and well-being.

The justification for having occupancy rights in a territory can be analysed in two steps. The first one consists in explaining why humans have a right to have a spatially stable place of residence over time. The second concerns the justification for occupying a *particular* territory, and not any available

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<sup>20</sup> As I will show in chapter 3, this is relevant since it helps answering against the status-quo criticism by Hofmann (2020).

<sup>21</sup> Even though I refer to Moore and Ypi too, I will mainly focus on Stilz's justification. All three authors share a common reference to the special relation of individuals to a particular place to ground occupancy rights.

territory: the particularity question.<sup>22</sup> I will analyse these two aspects subsequently.

Why do humans have a right to settle? The answer seems to be straightforward: not being able to secure to ourselves stability over a place in the world undermines our ability to pursue our ends and is thus detrimental to our well-being. “It deprives [us] of the possibility to form reliable life-plans and to access opportunities necessary to promote them” (Ypi, 2014: 295). Ypi suggests that we think about the conditions of people living in refugee camps to understand this concept. The relocation of refugees is oftentimes sudden and there is no guarantee that they will be able to stay in the place where they are relocated. This undermines their ability to make plans for their life, to establish meaningful relationships with others and clearly causes psychological distress (Ypi, 2014: 294-295). Intuitively, having a right to occupy a territory without threat of being expelled or relocated unilaterally is necessary to lead a decent life. The question of why agents have a right to settle in a *specific* territory deserves to be analysed more carefully.<sup>23</sup>

In general terms, territorial-rights theorists justify the contention that people have occupancy rights over a particular territory (particularity question) by appealing to the *spatially located* interests of people, their *embeddedness* in that territory (Moore, 2015: 37-39; Stilz, 2019; Hofmann, 2020).<sup>24</sup> In particular, Stilz (2019) uses the notion of located life-plans to depict the fact that individuals are embedded in a territory. Starting from the notion of located life-plans, she develops an interest-based argument to answer to the particularity question. She contends that:

in order to show that our interest in pursuing life-plans grounds occupancy rights, we must therefore show two things: first, [i] that people have an interest in occupancy of a particular place, [ii] derived from their interests in carrying out their comprehensive life projects, and in controlling and revising their commitments to these projects; [iii] second, that this interest is of sufficient weight to hold others under a duty to respect their occupancy (Stilz, 2019: 41 [my additions])

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<sup>22</sup> In the territorial rights literature this is referred to as the particularity question (Moore, 2020) or as the foundational title question (Stilz, 2019: 33)

<sup>23</sup> Note that here I am not considering the implications of the particularity question in relation to a specific ruling agent. Thus, I am not asking why X has a right, and obligation, to obey the laws of a specific state Y (and not the laws of states K, M, P). Doing so would need to tackle questions on the legitimacy of institutions. Rather, I only focus on a more general question of why X has rights over a territory L, and not over other territories.

<sup>24</sup> Hoffman contends that we could specify the notion of embeddedness in two instances: direct and indirect embeddedness. Direct embeddedness focuses on the fact that we perform our everyday practices in a territory. The second notion, indirect embeddedness, refers to the idea that our embeddedness in the territory is not only given by the spatiality of our practices, but also by the performance of such practices within a community (2020). Stilz too specifies that “a key reason why occupancy of a place is important for us, then, is that it facilitates our access to social practices and the physical spaces in which they unfold” (2020: 42). Nonetheless, according to her, it is not necessary to participate in social collective practices in Y for individuals to have located life-plans, and thus occupancy rights, in Y (ibid).

I will analyse these three argumentative steps subsequently.

- (i) Why do people have an interest in occupying a particular place? Agents have an interest in occupying a specific territory because *that* territory is important for their development, the pursuit of their life-plans and the fulfilment of their economic, social, and cultural practices. Stilz calls these “situated goals, relationships and projects *located life-plans*” (Stilz, 2019: 41).
- (ii) What is the value of located life-plans, i.e. what interest do we have in securing them? According to Stilz, located life-plans are valuable because of two reasons: they are a precondition for our plan-based interest in well-being and our control-based interest in autonomy. I will analyse these two interests subsequently. First, Stilz contends that located life-plans are important for our well-being since in most cases, in order to pursue our goals and establish meaningful relationships we must have expectations about the stability of our place of residence, or our access to it. In turn, these goals and relationships are intuitively relevant preconditions for our well-being (Stilz, 2019: 40,44). Second, according to Stilz (ibid: 41), located life-plans are important for our autonomy intended as our “capacity to reflect upon and endorse or revise one’s own life commitments for what one authentically judges to be good reasons, and to carry out these commitments in action”. Our expectation of having secure occupancy over the land in which our plans are is a precondition for leading our lives autonomously (ibid: 44).<sup>25</sup>
- (iii) Is the value of located life-plans sufficiently weighty to ground occupancy rights? Per points (i) and (ii), located life-plans are important for our interests in well-being and autonomy. The next argumentative step in Stilz’s theory is to show that these interests are strong enough to impose duties on others to respect them. Indeed, we might agree that people generally have an interest in well-being and autonomy and that the stability of people’s located life-plans is a precondition for those interests to be fulfilled. Nonetheless, one could argue that these interests are not strong enough for X to have a duty to respect Z’s located life-plans (i.e., they are not strong enough to ground occupancy rights). For the

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<sup>25</sup> Note that the value of located life-plans does not depend on whether if they lead to well-being maximization. Rather, located life-plans are valuable as a precondition for well-being. Agents have a well-being interest in their located life-plans even though they might be better off somewhere else. Consider the following example. Agnese has located life-plans in Rotterdam where she works and plans on continuing doing so. Nonetheless, she hates the city. She has located life-plans there, and valuable ones, even though she might be better off living in Paris where she would get a better salary, buy a better house, and enjoy strolling around her favourite city. This does not mean that she could not decide to move to Paris and with time gain occupancy rights there. Rather it means that the mere fact that she would be better off there does not entitle her to occupancy rights in Paris (Hofmann, 2020).

sake of this thesis, I will not consider criticisms concerning the strengths of our interests grounding occupancy rights. Rather, I will assume that Stilz's defence against these criticisms holds and thus that our interests in well-being and autonomy ground occupancy rights (Stilz, 2013: 341-345). Note that when answering to possible criticisms Stilz highlights that we must remember that occupancy rights are limited in two ways. First, they are limited in the sense that not all life-plans ground occupancy rights. Second, they are limited in terms of the duties they impose on others. I will consider these limitations in section 2.2.2.

In this section I have explained why individuals have occupancy rights according to Stilz: they are necessary to have located life-plans, which are valuable because they are a precondition to our plan-based interest in well-being and control-based interest in autonomy. Furthermore, these interests in located life-plans are weighty enough to ground occupancy rights: i.e., they are weighty enough to impose duties on others. Nonetheless, Stilz highlights that there are important limitations on occupancy rights concerning the type of life-plans that ground occupancy rights, and the duties that those rights can impose on others. In order to appreciate these limitations, in the next sub-section I will explain which are the conditions under which an agent X has an occupancy right in Y, what duties that occupancy right imposes on other agents, and the distributive concerns that must apply when granting occupancy rights.

### **2.2.2 Conditions on occupancy rights**

In the previous section I explained why according to Stilz we have occupancy rights in a specific territory: we need them to pursue our located life-plans which in turn are important for our interests in well-being and autonomy, and these interests are weighty enough to impose a pro tanto obligation on others to respect our occupancy rights. Once we know why we have occupancy rights, it is relevant to see how we should ground them. Thus, in this section I will focus on the conditions under which it is possible to state that X has an occupancy right in Y, which imposes duties on agent Z. Stilz (2019) develops these conditions throughout her book "Territorial Sovereignty a Philosophical Exploration", and in the remainder of this chapter I will regroup them together. This section will serve as a tool for the next chapter in which I will apply Stilz's notion of occupancy rights in the context of the city.

I divided the conditions under which agent X has an occupancy right in Y, which imposes duties on agent Z, in two categories: conditions on life-plans and conditions on duties. I will analyse them subsequently.

There are two main conditions on life-plans. First, according to Stilz (2019: 42), "not all located life plans are significant in grounding a claim to territorial occupancy". Indeed, she differentiates between *comprehensive* and *peripheral* life-plans. Only the former ground occupancy rights. Comprehensive life-plans

are “higher-order commitments” that guide our choices, reflect our moral values and “integrate a person’s plans over time in a way that constitutes her distinctive narrative identity” (ibid). Intuitively, comprehensive life-plans are the ones we value the most and are most important for our flourishing and sense of autonomy. In contrast, peripheral life-plans do not structure our life-choices or moral commitments and “do not contribute to our sense of our lives as our own” (ibid). For instance, comprehensive life-plans might be our career aspirations and our commitments to a certain way of conceiving of our family and relationships while a peripheral life-plan might be our choice to go to a specific barber and not another. The reason why Stilz only considers comprehensive life-plans is that they are relevant for our interests in well-being and autonomy. Thus, they are weighty enough to ground occupancy rights.

The second condition on life-plans is that they *can be* highly *individualistic*. Agents do not need to participate in social, collective practices in Y to have occupancy rights there. It is sufficient to have a comprehensive life plan, irrespectively of the fact that it has a strong social connotation or not (Stilz, 2019: 43). Thus, even the alienated PhD student who despises social interactions can have comprehensive life-plans that grant her occupancy rights in Y. Let me now turn to the conditions that Stilz imposes on the duties that agents must uphold to respect others’ occupancy rights.<sup>26</sup>

Note that I have already specified that occupancy rights are minimal use-rights over a territory, and that thus they impose minimal duties on others, in section 2.1.1. Thus, I will only focus on two specifications of such duties that are relevant for the application of occupancy rights in the city. The first condition on Z’s duties specifies the extent to which he must facilitate X’s life plans. The second condition specifies Z’s duties weighting them against his own located interests.

Suppose that X has occupancy rights in Y. How far do the duties that Z has with respect to X’s occupancy rights go? Z does not have a duty to maximize the well-being of X, nor to make sure that X will be able to fulfil her comprehensive life-plans. For instance, Z does not have a duty to subsidize X’s activities or to refrain from pursuing his own comprehensive life-plans in Y, given that he has occupancy rights there (Stilz, 2019: 49). Nonetheless, X’s occupancy right gives her a claim “to be provided sufficient economic options to allow [her] to stay in place, through social welfare benefits, publicly funded investment, or worker retraining schemes” in cases in which her comprehensive life-plans were to be disrupted (ibid: 50). In doing so, she would have some level of security over her

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<sup>26</sup> There are three other conditions on life-plans that I have not discussed here be. They include the fact that:

1. It is not necessary to be aware of one’s embeddedness in a territory to be granted occupancy rights there.
2. “Whether or not agents initially have title to be in a particular territory, the mere fact of their continued presence, during which their plans and pursuits become increasingly located, can gradually entitle them” (Hofmann, 2020: 203)
3. Embeddedness-based occupancy rights do not grant occupancy over an area because agents would be better-off there. Rather, they look at their current embeddedness in a place, independently of the fact that they would be better-off somewhere else (ibid).

commitments in Y and would not *need* to relocate. Let me now turn to the conditions via which we weight Z's duties vis-à-vis his own located interests: the conditions of the fair use proviso (Stilz, 2019: 169-177).

Intuitively, the duties that Z has vis-à-vis X's occupancy right depend on the weight of X's interests in Y (as stated by the conditions on life-plans) but also on the background conditions of both X and Z. Since occupancy rights impose *pro tanto* duties on others, these duties must be weighed against the harm that respecting them would cause to agents.<sup>27</sup> To do so, Stilz introduces the notion of the fair use proviso. The fair use proviso allows for the redistribution of occupancy rights in Y and is especially relevant when considering the case in which Z is a newcomer in Y. It entails that when establishing Z's duties vis-à-vis X, we must consider two background conditions of both X and Z. First, we must look at the satisfaction of basic territorial interests to lead a decent life: the minimalist proviso (Stilz, 2019: 169). Basic interests include biological interests for subsistence like access to clean water, food, and a habitable milieu. In addition, basic interests also include social conditions in which agents have access to minimally just institutions (ibid: 167). Second, we must consider the practice-based interests in pursuing located life-plans in a specific place. Practice-based interests have three characteristics. First, they are not universally sharable like basic territorial interests. Different people have different practice-based interests since not everyone has the same comprehensive life-plans. Second, practice-based interests only apply over a specific area. Third, they usually are "interests in sustaining a specific mode of life, which often involves satisfying basic territorial interests, but is usually not the *only* way of satisfying those interests" (ibid: 168). Thus, to see what duties Z and X have to respect each-others' occupancy rights, we need to consider their basic and plan-based interests. Doing so, amounts to satisfying what Stilz (2019: 173) calls "the full proviso".

Once we establish that we need to consider both basic and plan-based territorial interests, we need to see how to balance these two interests against each-other. Stilz proposes two weighing principles.

First, according to Stilz (2019: 175), the full proviso imposes that "basic territorial interests always trump practice-based interests". Consider the following case. There are two neighbouring Islands in the middle of the ocean: Island A and Island B. Group A has occupancy rights in Island A where they satisfy their basic needs and pursue their located life-plans. Analogously, Group B has occupancy rights in Island B where they satisfy their basic needs and located life-plans. Due to a Tsunami, Island B is completely flooded, and group B does not have the means to satisfy basic subsistence needs. In this case, group B has occupancy rights in Island A even if by moving there they undermine Group A's located life-plans, provided that the arrival of Group B in Island A does not threaten Group A's basic interests. Group A's interests in located life-plans cannot trump Group B's basic territorial interests. Consider another scenario in which both Group A and Group B can satisfy their basic needs in their respective

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<sup>27</sup> Harm is intended as harm to one's located interests.

islands but “members of Group B lack any opportunity to pursue ... practice based territorial interests in their current location” (Stilz, 2019: 175). In this case, Group B has a *pro tanto* claim to have occupancy rights in a territory in which they can pursue their located interests. In addition, Group A has a *pro tanto* duty to either take effective actions so that members of B can satisfy their located interests in Island B or give to members of B occupancy rights in Island A, as long as the *basic* territorial interests of Group A are not threatened.<sup>28</sup> Also in this case, basic interests trump plan-based interests.

Second, according to Stilz (2019: 175), “conflicting practice-based interests in a territory must be *balanced*”. In a nutshell, according to the balancing principle, when basic and plan-based interests are already satisfied, the plan-based interests of current inhabitants of Y should be weighted more than the plan-based interests of newcomers. Consider the following case. Z already has occupancy rights in a place where he can (i) satisfy his basic territorial interests and (ii) satisfy his plan-based interests. In this case, Z cannot claim occupancy rights in Y *if* in doing so he would harm resident X’s located (and basic) interests. In this case, Z’s duty to respect X’s occupancy rights does not entail countervailing harm for his own interests and is thus strong. In this way, the plan-based interests of current occupants are given more weight compared to the plan-based interests of newcomers.<sup>29</sup>

All in all, the redistribution of occupancy rights in a territory might be justified in cases in which some agents’ basic interests to have a territory that provides them the conditions to live a decent life are not satisfied. In cases in which all agents have occupancy rights in a territory where they can satisfy their basic and plan-based needs, they might be still granted occupancy rights in another territory, provided that in doing so the interests of current inhabitants are not undermined.

In this section I have explained the conditions under which agent X has occupancy rights in Y and the duties that agent Z has vis-à-vis X’s right. These specifications will be relevant in the following chapter in which I will apply the notion of occupancy rights to the city.

## 2.3 Conclusion

The aim of this chapter was to serve as an introduction for the application of territorial rights theories in the urban context. Indeed, I have focused on two core concepts of theories of territorial rights that have been applied to the context of the city: occupancy rights and located life-plans. In section 2.1 I have focused on the notion of occupancy rights. In section 2.1.1 I analysed Stilz’s (2019) definition of occupancy according to which they are place related, property-like, preinstitutional, individual moral rights. In section 2.1.2 I have defended Stilz’s

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<sup>28</sup> As Hofmann notes, it might not always be justifiable, feasible or efficient for us to “discharge our obligations of justice to improve others’ quality of life in the location they are in, their occupancy rights may give us reason to do so” (2020: 204).

<sup>29</sup> See section 2.1.2.

notion of occupancy rights against three criticisms presented by Moore (2020b): (i) the misrepresentation criticism, (ii) the under-evaluation criticism and (iii) the scope criticism. I have shown that Stilz's notion holds scrutiny against these criticisms and that it is to be preferred compared to Moore's notion of collective occupancy. In section 2.2 I focused on Stilz's justification of occupancy rights. In section 2.2.1 I have explained that occupancy rights are justified via the notion of located life-plans which are a precondition for individuals' interests in well-being and autonomy. In section 2.2.2 I specified how we can ground the occupancy rights of an agent X in a territory Y and the duties that another agent Z has vis-à-vis X's right. I highlighted that only comprehensive life-plans ground X's occupancy, that X does not need to be involved in collective social practices to have occupancy in Y, and that Z's duties must be balanced against the costs that respecting those duties would entail via the fair-use proviso.

Overall, this chapter served as an introduction to the notion of occupancy rights. In the following chapter I will apply this notion in the context of the city.

### 3. The right to the city as an urban occupancy right

Until recently, the notion of occupancy rights has mainly been applied in the context of territorial right theories to ground state's territorial rights over a specific land. Thus, so far, little attention has been paid to the significance of individuals' occupancy rights *within* the boundaries of a state. In this chapter I will contribute to the existing literature that elaborates on the notion of individuals' occupancy rights at the urban level (Hofmann, 2020; Huber and Wolkenstein, 2018; Kohn, 2016, 2013). In particular, I will use the notions elaborated in chapter 2 and make a step forward looking at how Stilz's notion of occupancy rights might apply in the context of the city. This chapter contributes to the existing literature by developing an extensive, novel defence of the application of a specific notion of embeddedness-based occupancy rights in the context of the city. Indeed, I thoroughly use Stilz's (2019) definition. Contrary to this, Hofmann (2020) does not settle on a specific definition of occupancy rights and Huber and Wolkenstein (2018) do not consider the implications of Stilz's fair-use proviso.

Before elaborating on the notion of occupancy rights at the urban level I will specify a relevant assumption that I am making. As explained in chapter 2, occupancy rights are a necessary, but not sufficient, condition to ground territorial rights over a specific land (Stilz, 2019).<sup>30</sup> Thus, when considering individuals' occupancy rights in the city, which is part of an already existing state, one must explain how they relate to the *territorial* rights of the state. Are occupancy rights in the city a possible basis for a change in the territorial rights of the state, i.e., could they be the at basis for a possible secession? Or are occupancy rights to the city a specification of citizens' occupancy rights in the state? So far, those who have applied the idea of occupancy rights to the city, have not specified how they relate to the territorial rights of states. For the scope of this thesis, I will not look at the implications of these questions, since they are most relevant to analyse cases that I will not consider (e.g., secession). Nonetheless, I highlight that there are two possible strategies to expand on the relation between occupancy rights in the city and territorial rights of states (Hofmann, 2020).

The first strategy is to start from a hypothetical pre-institutional situation. In this case, we would not assume that there is a legitimate state that has territorial rights over the land in which the city is. Following this strategy, it would be possible to state that agents who have occupancy rights in the land of city Y could be granted territorial (i.e., jurisdictional/political control) rights over Y. Thus, their occupancy rights could potentially serve as a basis for the establishment of new territorial institutions. In this case, territorial rights might be narrower in scope. For instance, instead of having a state in which the city is included, we could have a network of city-states. This strategy is appealing for one main reason: it opens the possibility to envision a novel structure of the

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<sup>30</sup> See Stilz (2011: 578) for a detailed explanation of the other conditions to have territorial rights.

distribution of territorial rights.<sup>31</sup> Nonetheless, pursuing this strategy would entail analysing how occupancy rights relate to legitimate state sovereignty which is beyond the scope of this thesis.

Thus, I will opt for a second strategy: I will assume that the city is part of the territory over which a legitimate state exercises its jurisdiction. Thus, agents' occupancy rights in the city create obligations on existing state institutions at the national and city level (i.e., the political apparatus that governs the city) but do not ground a possible re-assessment of territorial sovereignty. Occupancy rights to the city do not amount to "an exclusive, or sovereign, right to control" the city: these functions are taken up by existing state institutions.<sup>32</sup>

The goal of this chapter is to contend that it is possible to formulate a notion of a plan-based occupancy right to the city and that such notion holds analytical scrutiny against some relevant criticisms. The structure of this chapter is as follows:

In section 3.1 I will explain how occupancy rights based on Stilz's notion of located life-plans apply to the context of the city. I will argue that agents have *particularized* occupancy rights in the city when their comprehensive located life-plans are there. By particularized I mean that even if agents will still have broad located interests in having the liberty to reside in the state territory and not be expelled from it, they can have special interests over a narrower area within the state, like the city. In section 3.2 I will look at Hofmann's (2020) criticisms against the application of embeddedness-based occupancy rights in the city. In a nutshell, Hofmann contends that embeddedness-based occupancy rights cannot account for intuitively wrong distributions of occupancy rights to the city. In doing so, he develops five criticisms. He argues that occupancy rights based on located life-plans risk to (i) treat poor and rich newcomers equally, (ii) endorse the status quo, (iii) not consider people's right to have a right to occupancy, (iv) fail to distribute the unique benefits of having occupancy in the city (argument from justice), (v) disregard the fact that those who render the city unique are denied occupancy in it (argument from fair play). I will respond to his criticisms by appealing to the fair-use proviso presented in chapter 2 section 2.2.2. I will contend that using Stilz's notion of occupancy rights endows us with the tools to respond to criticisms (i)-(iv): it accounts for instances of redistribution of occupancy rights like the ones that Hofmann presents. Nonetheless, I will contend that criticism (v) highlights a type of injustice that Stilz's proviso cannot account for. This insight will be relevant in chapter 4 where I contend that an occupancy right to the city must be able to account for procedural wrongs like the one highlighted by Hofmann in criticism (v). Section 3.4 concludes.

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<sup>31</sup> For those sympathetic with Harvey and Lefebvre's writings on the right to the city this might be a promising argumentative route to pursue. Indeed, they challenge the legitimacy of current political and economic institutions (Harvey, 2010; Lefebvre, 1967).

<sup>32</sup> Consequently, I will not look at issues linked to independentist movements within a state.

### 3.1 Applying occupancy rights to the city

In the previous chapter I explained what an occupancy right is, how it is justified, and presented the conditions under which an agent X has an occupancy right in Y imposing duties on agent Z to respect it. In this section, I will apply these notions in the context of the city. First, I will specify how individuals' occupancy rights to the city relate to their occupancy rights in the territory of the state. I will define the occupancy right to the city as a *particularized* occupancy right over an area (the city) which is already included within a legitimate state territory where agents have broader occupancy claims. Second, I will apply the notions elaborated in chapter 2 to urban dwellers and their occupancy right in the city. I will contend that urban dwellers have an occupancy right in the city when their comprehensive located life-plans are situated there. Finally, I will present an example of how occupancy rights are applied to the city in the existing literature (Huber & Wolkenstein, 2018).

Generally, territorial rights theorists use occupancy rights to ground states' territorial rights. Thus, they look at how interconnected occupancy rights grant territorial rights over a relatively broad area. Nonetheless, granting that there is a legitimate state in the territory in which its citizens have occupancy rights, it is possible to look at the interests in located life-plans that agents have over a smaller-scale area within it: their *particularized* occupancy rights. For the sake of this thesis, I will focus on the city as the unit over which agents have particularized occupancy rights.

Let me elaborate on the notion of a *particularized* occupancy right. Consider the following example. Luciano is a citizen of state Y, which has territorial rights over the land where its inhabitants have occupancy rights. While it is true that Luciano has comprehensive life-plans interests to have a liberty to reside in the state's territory and not be expelled from it, it is also possible to imagine that he has more particularized interests over a more restricted area: the city where he lives. Thus, we could think of his occupancy rights to the city as *particularized* occupancy rights, and his occupancy rights to the state as a "broadened claim shaped by legal and conventional institutions" (Stilz, 2019: 57). The particularized occupancy right to the city specifies that some agents have comprehensive life-plans interests over a space (the city) which is already included in the area of their broader occupancy rights. Since Luciano's comprehensive life-plans are situated in the city, his well-being and autonomy interests would be harmed in cases in which he had to relocate somewhere else, even if always within the boundaries of state Y. Intuitively, "if located life plans can ground the territorial rights of states, nations, and other collective agents—protecting them and their members from coercive expulsion—they might similarly explain individuals' claims against displacement from their local communities" (Hofmann, 2020: 205). All in all, it is possible to assume that some agents have particularized occupancy rights to the

city, and broader occupancy rights in the state territory where the city is located.<sup>33</sup>

I will now apply Stilz's notion of plan-based occupancy rights to establish when an agent X has occupancy rights in city Y. Recall from Chapter two that occupancy rights entail:

1. A *liberty* to dwell in a place permanently and use that area to perform social, economic, and cultural practices.
2. A "*claim-right* 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" (Stilz, 2019: 35 [my italics]).

Furthermore, agents have occupancy rights over a specific territory because they are embedded there: they pursue their comprehensive located life-plans there. In turn, comprehensive located life-plans are weighty enough to ground a right of occupancy in a territory because they are preconditions to the satisfaction of our interests in well-being and autonomy.

Thus, an agent X has occupancy rights in city Y when her comprehensive located life-plans are situated there. Recall that comprehensive (as opposed to peripheral) life-plans are the higher-order commitments that are relevant to our flourishing and sense of autonomy. For instance, comprehensive life-plans include our career, family, and relationship values. Thus, the fact that X's favourite movie theatre is in city Y does not grant her particularized occupancy rights there.<sup>34</sup> But, if X lives in Y, and in Y she has the stable conditions to pursue her commitments (her career, her volunteering activities, friendships etc.) then she would have particularized occupancy rights there.

When applying the notion of occupancy to the city there is one main consideration to make: what is the relevant area over which X has particularized occupancy rights? For instance, consider the case in which X has occupancy rights in city Y, and needs to relocate to another neighbourhood in the city due to a rent increase. Does this relocation amount to a violation of X's occupancy rights in Y? To answer to this question, one should possibly consider the spatial range within Y in which X would still be able to pursue her comprehensive life-plans and secure her well-being and autonomy interests. Establishing precise spatial limits to assess this case and similar types of cases is beyond the scope of this thesis. Nonetheless, I specify the principle that should be at the basis of such calculations: X's occupancy rights in Y are violated when she must relocate somewhere (both outside and inside Y) and this relocation would violate her comprehensive located life-plans. This general principle allows me to individuate cases in which, intuitively, X's relocation would not amount to a violation of her particularized occupancy rights: her relocation to the apartment

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<sup>33</sup> Note that citizens have freedom of movement within the state, so all of them have a right to access the city. The occupancy-based right to the city in turn deals with their right to permanently reside there. See chapter 2.

<sup>34</sup> See section 2.2.

next to hers or her relocation to a house in the same block.<sup>35</sup> Indeed, the principle I use suggests that:

Occupancy rights increase with the size of the space or community in question: your claim to remain in your current residence may be more easily outweighed, but your concurrent right to stay in your neighborhood less so. There are very few exceptions to your right to remain within your state's territory and, finally, your right to some space is indefeasible" (Hofmann, 2020: 209).

I will now present an example of the application of occupancy rights in the city: the case against gentrification by Huber and Wolkenstein (2018). They contend that agents have an occupancy right in city Y because their "social, cultural and economic practices are anchored" there (ibid: 379). Their argument develops as follows:

1. Life-plans are spatially located in a specific territory (e.g., a neighbourhood in the city) and dependent on agents' security to permanently reside within that territory and engage with the community within it.
2. In turn, pursuing these *located* life plans is valuable because of our interests in well-being and autonomy.
3. Thus, individuals' interest in pursuing their located life-plans, gives them occupancy rights over the territory where their plans are located (e.g., the neighbourhood where they live).

Consequently, Huber and Wolkenstein (2018: 378) contend that urban phenomena like gentrification are "problematic insofar as [they] involve a violation of city-dwellers' occupancy rights", grounded on their located life-plans in the city.

Let me recap what I have done so far. First, I have explained the relation between occupancy rights at the state-level and *particularized* occupancy rights to the city. Second, I have showed how occupancy rights based on comprehensive life-plans are applied at the city level and given an example of this argumentative strategy from Huber and Wolkenstein (2018). In the following section, I will look at five criticisms on the application of embeddedness-based occupancy rights in the city by Hofmann (2020). In general, Hofmann contends that embeddedness-based occupancy rights cannot account for intuitively wrong distributions of occupancy rights to the city. As a response, I will argue that Stilz's (2019) fair-use proviso can account for the first four problematic cases that Hofmann presents.<sup>36</sup> Nonetheless, the last criticism highlights that an occupancy-based right to the city cannot account for relevant procedural wrongs.

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<sup>35</sup> Note that these relocations might still be a source of injustice. For instance, when X is forcibly coerced to move, when she is not given enough notice time, or when she is asked to relocate due to discrimination (e.g., her neighbours do not like her because she is from China).

<sup>36</sup> See section 2.2.2 for an detailed explanation of what the fair-use proviso entails.

## 3.2 Whose right to the city? Hofmann's criticisms

In the previous section I showed that individuals can have *particularized* occupancy rights in the city. In this section I will engage with Hofmann's criticisms on the application of plan-based occupancy rights to determine who has occupancy rights in the city (Hofmann, 2020). First, I will explain what his criticisms entail and divide them into five steps. Second, I will respond to first three steps of the criticism contending that Stilz's fair use proviso enables us to account for the problems that Hofmann presents. Third, I will look at the last two steps of his criticism. I will argue that the basis of criticism (iv) (the uniqueness of the city) is contentious and that even if we were to accept it, the fair use proviso would be able to account for it. Finally, I will contend that criticism (v) is compelling since it highlights that Stilz's notion of occupancy rights cannot account for instances of process-centred wrongs: instances of relational injustice within the process that leads to a violation of occupancy rights in the city.<sup>37</sup>

Hofmann's critiques can be divided into five instances:

- (i) First, if we were to use an embeddedness-based occupancy right to the city, we would evaluate all newcomers equally independently of whether if they are coming to the city to have a decent life (like refugees, economic migrants and the poor more generally) or are "middle-class and upper-class creatives and professionals streaming into Oakland and Brooklyn" (Hofmann, 2020: 211).
- (ii) Second, Hofmann asserts that embeddedness-based occupancy rights would not consider the fact that everyone has a right to have occupancy rights.
- (iii) Third, he contends that embeddedness-based occupancy rights seem to endorse the status quo since the eligible holders of such rights would mainly be current urban dwellers and those who have recently moved to (or have been expelled from) the city.
- (iv) Fourth, "insofar as city life does carry unique benefits, access to them should be distributed fairly (the argument from justice)" (ibid: 211).
- (v) Fifth, according to Hofmann (ibid: 211), the right to the city should account for the fact that "those who contribute to creating the benefits of urban life have a particular claim to benefit from them (the argument from fair play)".

My response to these criticisms will come in two stages. First, I will consider criticisms (i), (ii) and (iii) and show that Stilz's notion of occupancy rights solves them via the fair-use proviso. Second, I will consider criticisms (iv) and (v).

As explained in chapter 2, Stilz's notion of occupancy rights accounts for distributive concerns via the fair-use proviso. Let me recall what I have explained. According to Stilz, occupancy rights give agents *pro tanto* claims,

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<sup>37</sup> I will develop the notion of process-centred wrongs in chapter 4.

these claims must be weighed against the harms that they would cause to other agents who must respect them. To weigh these claims vis-à-vis the duties of others, Stilz elaborates a fair-use proviso. The fair-use proviso entails that when assessing the distribution of occupancy rights over a territory we must look at:

1. First, the satisfaction of basic territorial interests that allow agents to lead a decent life: biological and material interests for subsistence and access to minimally just institutions.
2. Second, the satisfaction of practice-based interests in pursuing located life-plans in a specific place. Practice-based interests are “interests in sustaining a specific mode of life, which often involves satisfying basic territorial interests, but is usually not the *only* way of satisfying those interests” (Stilz, 2019: 168).

Once Stilz establishes that we need to look at basic and plan-based interests, she explains how to weigh them against each-other via two steps: the minimalist proviso and the full proviso. The minimalist proviso entails that considerations on basic territorial interests precede the satisfaction of plan-based interests. Thus, if agent X lives in an area in which his basic territorial interests are not satisfied, he should not be denied occupancy rights in a place where he can pursue his basic interests, provided that by residing there, X would not violate the basic territorial interests of current residents. In addition, in the case in which X’s basic territorial rights were satisfied somewhere but his plan-based rights were not, he would have a pro tanto claim of occupancy in a place where he can pursue his practice-based interests, provided that by residing there he would not harm the basic interests of current occupants. Via this initial step, the fair-use proviso rebuts criticisms (i) and (ii) proposed by Hofmann. An occupancy-based right to the city would not weight the interests of the poor and the wealthy equally. It would prioritize the satisfaction of basic needs, thus granting more weight to the demands of the former compared to the latter. In addition, the fair use proviso makes sure that all agents enjoy a right of occupancy, by looking at the satisfaction of both basic and plan-based interests.

Let me now turn to the full proviso. The full proviso balances the minimalist proviso. It entails that when both basic and plan-based interests are satisfied, the plan-based interests of current inhabitants of Y should be weighted more than the plan-based interests of newcomers. This does not mean that newcomers could not gain occupancy rights in Y, rather, it means that they can get occupancy rights, provided that they do not undermine current inhabitant’s comprehensive life plans. All in all, the full proviso does prioritize current residents over newcomers, but it does so conditionally. It prioritizes the satisfaction of basic and plan-based interests of newcomers over the respect of current inhabitants located life-plans. In addition, even when the basic and plan-based interests of newcomers are respected somewhere, they could still gain occupancy rights in the city. Thus, Hofmann’s third criticism does not seem to hold: it seems implausible to state that an occupancy right to the city would problematically create a status quo condition given that it allows newcomers to

get occupancy rights in the city in a broad set of cases.<sup>38</sup> Nonetheless, *if* we were to consider the full proviso as favouring the status quo (albeit minimally), Hofmann would need to explain why it would be problematic given the strong conditionality that Stilz imposes on exclusion.

So far, I have showed that criticisms (i) and (ii) are solved via Stilz's distributive principle (i.e., the fair-use proviso) and that criticism (iii) does not seem to hold: even if we were to state that the fair-use proviso favours the status quo, we would need to specify that it does so conditionally, and then explain why the conditionality is problematic.

I will now focus on criticism (iv): the argument from justice. The argument from justice entails that if life in the city offers some unique benefits to urban dwellers, it would be a predicament of justice to distribute those benefits to non-urban dwellers too by granting them occupancy rights in the city. According to Hofmann, if we were to use an embeddedness-based occupancy right to the city we would not be able to consider this justice-based argument. There are two main problems with the argument from justice. First, it is not clear why life in the city would be valuable *per se*.<sup>39</sup> Second, if we were to grant that life in the city is *per se* valuable, it seems that Stilz's theory of occupancy rights would be able to account for it. Let me elaborate on this last point.

Stilz's fair use proviso grants occupancy rights somewhere where agents' interests can be satisfied, but not necessarily to the city. In Stilz's theory, we could not grant non-urban dwellers occupancy rights in the city, and not

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<sup>38</sup> Note that Huber and Wolkenstein (2018: 383) also contend that occupancy-based rights to the city do not suffer from a status quo bias.

<sup>39</sup> To begin with, whether if one sees life in the city as better or worse is highly dependent on her personal values, her tastes, and her notion of what a good life is. Second, even if we could somehow determine that living in the city is for some objective reasons better than living outside of it, we would need to specify why granting newcomers occupancy in the city would be the appropriate solution. For instance, assume that the reasons for why living in a city is objectively better than living outside of it refer to better wages and more varied job opportunities. I am considering wages and job opportunities as the most objective, and possibly least uncontroversial, values to contend that living in the city is better than living outside of it. Indeed, if we were to contend that living in the city is better referring to other values (for instance culture, diversity, dynamism, clubs) the claim would be highly contestable since it attaches an objective positive value to activities that people subjectively value differently. Referring to wages and job opportunities, on the other side, seems to be less controversial since while people attach different values to their careers, the fact that good opportunities to secure economic stability are uniquely present in the city undermines non-urban dwellers' satisfaction of their basic needs. Even assuming that the city gives some unique benefits to its dwellers, the solution to the problem would not *per se* entail granting potential urban dwellers a right to the city. Rather it would be to grant people who cannot benefit from those opportunities access to them outside of the city too, without implying that the best solution from their own perspective would be to leave the place they are embedded in and relocate in the city. Hofmann (2020: 212) endorses this line of argument when he contends that justifying urban renewal by stating that gentrified neighbourhood were not worth living in "is patronizing and fails to appreciate the particularity of local attachments". In addition, in the case of urban renewal, Hofmann contends that institutions have "obligations to compensate comparatively worse-off individuals" and they would "better fix the neighborhood they are in rather than urge them to move" (ibid). Thus, it is not clear why he does not apply this argumentative strategy in the case of the city too.

somewhere else, *because* they would be able to lead a better life in the city. Indeed, as stated in section 2.2.2, agents are not granted occupancy rights in a territory simply because of well-being maximization.<sup>40</sup> Nonetheless, if the city were to have some peculiar characteristics necessary to the fulfilment of agents' basic and practice-related interests, Stiliz would be able to justify granting occupancy rights *in the city* to non-urban dwellers. All in all, Hofmann's argument from justice does not seem to be problematic. First, the burden of proof to determine that living in the city gives unique objective benefits to urban dwellers is high. Second, even if we were to assume that the city gives unique benefits to its dwellers, it would not be problematic for the embeddedness-based occupancy right to the city. Indeed, Stiliz's fair-use proviso would account for the distribution of occupancy in the city conditional to the fact that having occupancy in the city, and not somewhere else, would satisfy newcomers' basic and plan-based interests.

Finally, let me consider criticism (v): the argument from fair play. This is the most compelling of the five criticisms proposed by Hofmann because it suggests that an occupancy-based right to the city would not be able to account for process-based wrongs.<sup>41</sup> Indeed, Hofmann suggests adding a further conditionality to Stiliz's fair use proviso. Recall that, Stiliz contends that: A does not have a right to exclude B from occupancy if [X], even if B's inclusion in A's territory might disrupt her practices. The discussion should then be about what [X] is. According to Stiliz [X] entails the satisfaction of basic and plan-based territorial interests. As I have explained in the previous paragraphs, this definition of [X] allows Stiliz to go quite far in allowing for the redistribution of occupancy rights. Nonetheless, Hofmann contends that it neglects an important justification for redistribution: fair play. The notion of fair play refers to the "socioeconomic differences [that] factor in the urban-rural divide" (Hofmann, 2020: 214 [mi modification]). According to Hofmann, "urban amenities and privileges are sustained by the manpower of people themselves denied access to them": non-urban dwellers (ibid: 215). Thus, he proposes to introduce a new conditionality according to which non-urban migrants have occupancy right in the city if current inhabitants are "free-riding on their economic and social contributions" (ibid: 215). Hofmann does not go in the details of the fair play proviso but intuitively his criticism, even if underdeveloped, highlights that when applying Stiliz's notion of occupancy rights to the city we would not be able to take into account a type of wrongs: process-centred wrongs. I will develop this concept in the following Chapter but let me offer a brief example to introduce it. In the case proposed by Hofmann, there is a group of agents (the non-urban dwellers) who create the advantageous socio-economic characteristics of urban life which are then enjoyed by urban dwellers only. According to him, this situation is problematic not, or at least not only, because the advantages of life in

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<sup>40</sup> Note that newcomers could still be granted occupancy rights to the city, independently of its putative unique status, if by residing there they would not undermine current inhabitants located life-plans.

<sup>41</sup> In the next chapter I will explain in further detail what I mean by process-based wrongs and propose to account for them via a notion of non-domination in the city.

the city would remain in the hands of urban dwellers (i.e., there is an unjust outcome). Rather, it is problematic because the agents who produce the advantages of living in the city (non-urban dwellers) cannot benefit from them. In this case, the wrongness of the situation is, at least also, connected with the procedure via which the outcome comes about. It is problematic because it depicts an exploitative relation in which A (the urban dweller) benefits from her interaction with B (the non-urban dweller) while B does not benefit from his interaction with A (Zwolinski & Wertheimer, 2017). Far from being conclusive in setting a case for giving non-urban dwellers occupancy rights in the city, Hofmann's criticism points at a weak spot in the embeddedness-based notion of occupancy rights in the city. Even if the fair use proviso allows for a substantial redistribution of occupancy rights, it does not offer the analytical tools to discuss process-centred wrongs involved in urban phenomena.

All in all, in this section I have addressed five criticisms to the notion of an embeddedness-based occupancy right to the city presented by Hofmann (2020). I showed that the first four criticisms can be solved via a notion already present in Stilz's theory of occupancy rights: the fair use proviso. Indeed, the fair use proviso allows for consistent redistributions of occupancy rights based on the satisfaction of basic and plan-related territorial interests. Nonetheless, Hofmann's last criticism (the fair play argument) highlights that occupancy rights in the city would not be able to account for process-based wrongs.

### **3.3 Conclusion**

In this chapter I have focused on the application of the notion of occupancy rights in the urban context. To begin with, I have specified that for the sake of this thesis I am assuming that the city is part of the territory of a legitimate state. Thus, agents' occupancy rights in the city create obligations on existing state institutions at the national and city level (i.e., the political apparatus that governs the city) and do not ground a possible re-assessment of territorial sovereignty.

In section 3.1 I explained how occupancy rights based on located life-plans apply to the context of the city. In particular, I used Stilz's notions of occupancy rights presented in chapter two. I argued that agents have *particularized* occupancy rights in the city when their comprehensive located life-plans are there. I stressed that occupancy rights in the city are particularized in the sense that agents will still have broad located interests in having the liberty to reside in the state territory and not be expelled from it. Nonetheless, it is also plausible to claim that they can have special interests over a narrower area within the state, like the city.

In section 3.2 I addressed Hofmann's criticisms against the application of occupancy rights in the city (2020). First, I explained five objections he raises. He argues that occupancy rights based on located life-plans risk to (i) treat poor and rich newcomers equally, (ii) endorse the status quo, (iii) not consider people's right to have a right to occupancy, (iv) fail to distribute the unique benefits of

having occupancy in the city (argument from justice), (v) disregard the fact that those who render the city unique are denied occupancy in it (argument from fair play). Second, I responded to his objections by appealing to Stilz's fair-use proviso presented in chapter 2. I showed that using Stilz's notion of occupancy rights endows us with the tools to respond to criticisms (i)-(iv): it accounts for instances of redistribution of occupancy rights like the ones that Hofmann presents.

Finally, I contended that criticism (v), far from making a conclusive claim to give occupancy rights in the city to non-urban dwellers, highlights a type of injustice that Stilz's proviso cannot account for: process-centred wrongs. In the following chapter I will expand on this insight and contend that an occupancy right to the city should be able to account for process-centred wrongs like the one highlighted by Hofmann in criticism (v). Thus, while so far I have showed that Stilz's notion of occupancy rights is a promising venue to formulate an occupancy-based right to the city, in the next chapter I will suggest that it must be amended to consider relevant procedural dimensions of urban phenomena. To do so, I will look at a relevant phenomenon in the city: gentrification.

#### 4. The limit of the occupancy-based right to the city: process-centred wrongs

In the previous chapters I defended the notion of an occupancy-based right to the city. I showed how Stilz's theory of occupancy rights can be applied in the urban context and contended that it stands against compelling criticisms. For instance, in Section 3.2 I showed that the fair use proviso allows us to justify the redistribution of occupancy rights in relevant cases and it enables us to account for intuitively unjust implications (e.g., the status quo criticism). All in all, so far, I have argued that formulating a notion of the right to the city using the concept of occupancy rights seems promising. Nonetheless, in chapter 3 I also highlighted that an occupancy-based right to the city does not take into account a significant form of wrongs underlying urban phenomena: process-based wrongs. I define process-based wrongs as the wrongs intrinsic to the *relations* via which outcomes are produced.<sup>42</sup> The goal of this chapter is to suggest that if we attempted to formulate an occupancy-based right to the city, we should be careful in amending it so that it tracks process-centred wrongs too.

So far, the literature that applies occupancy rights at the urban level has not looked at the relevance of process-centred wrongs: it takes an outcome-centred approach (Huber & Wolkenstein, 2018).<sup>43</sup> It considers the outcomes of a given situation (i.e., urban displacement and homelessness) and uses the notion of occupancy to argue that these outcomes are a form of wrong done to urban dwellers. In this chapter, I will contend that this strategy is unsatisfactory because it does not analyse a relevant aspect of urban dynamics: the wrongness of the relations via which the wrongful outcomes come about. In order to show this, I will consider the case of a pressing urban dynamic: gentrification. I will argue that if we were to analyse it only from an outcome-based perspective in line with the notion of occupancy we would miss a relevant aspect of it: the fact that the outcomes of gentrification are generated via a process that is itself unjust (i.e., it is an instance of domination). Intuitively, gentrification is problematic not only because it violates residents' rights of occupancy. It is problematic also because it violates residents' occupancy rights *in a certain way*. To keep track of this procedural dimension of urban phenomena, I will suggest incorporating notions of non-domination in the analysis of the rights of urban dwellers (Putnam, 2020).

The structure of this chapter is as follows. In section 4.1 I will focus on gentrification. First, I will define what gentrification is. Second, I will present Huber and Wolkenstein's occupancy-based argument against it. Third, I will

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<sup>42</sup> I will explain this concept further in the next section.

<sup>43</sup> As will become evident in the remaining of this chapter, Putnam is an exception to this (2020). He focuses on gentrification-induced displacement and suggests that interests in non-domination are a relevant aspect of the wrong of displacement. According to him, current residents have "procedural interest in not being displaced *arbitrarily*" (Putnam, 2020: 4).

contend that Huber and Wolkenstein's outcome-based analysis is not able to account for a relevant aspect of gentrification: the fact that it is not a natural phenomenon, it is caused by agents' actions within established institutions. Consequently, Huber and Wolkenstein are not able to account for the possible injustice intrinsic to the relations via which the outcome of gentrification is produced. Thus, I argue that we should add a second layer of analysis that looks at the wrongness of the mechanisms behind gentrification (possible process-based wrongs), and not only at its outcomes. In section 4.2. I will suggest a possible venue to account for the process-based wrongs of gentrification: looking at it from the perspective of domination. To show this I will present Putnam's (2020) analysis of domination at the basis of gentrification. The aim of this section is not to defend Putnam's contentions. Rather I aim at showing that his approach would be able to detect possible process-based injustices that the occupancy-based approach of HW would disregard. In section 4.3 I will answer to the question: why would it be relevant for a possible formulation of an occupancy-based right to the city to consider procedural wrongs as well? First, I will contend that the types of procedural wrongs that we would neglect are relevant, as in the case of instances of domination. Second, I will argue that procedural wrongs are not a unique characteristic of gentrification. Rather, I will suggest that they are relevant in the case of other pressing urban phenomena like homelessness. Third, I will highlight that those affected by urban phenomena do not complain only about their outcomes (e.g., displacement due to gentrification) but also about the way in which those outcomes come about (e.g., they are powerless). Thus, looking at procedural wrongs would allow to those who are interested in urban phenomena to make sense of the complaints of those affected by them. Section 4.5 concludes.

#### **4.1 The outcome-based wrongness of gentrification**

The goal of this section is to show that using an occupancy-based right to the city does not allow us to analyse process-based wrongs. To show this, I will look at how Huber and Wolkenstein (2018) (HW) apply the notion of occupancy rights to analyse the wrongness of gentrification. First, I will briefly explain what gentrification is. Second, I will present HW's occupancy-based argument against it. Third, I will suggest that if we were to follow their line of argument, we would not be able to explain an aspect of gentrification-induced expulsion that makes it different from other types of expulsion: the fact that it "is not something that merely *happens*. It is something that *agents do*" (Putnam, 2020: 5). Thus, there might be process-based wrongs behind gentrification that an occupancy-based approach would not detect: the injustice intrinsic to the relations within which gentrification comes about.

Let me start by the notion of gentrification. Gentrification is generally defined as the phenomenon via which lower-class residents of a neighbourhood are displaced to another part of the city while their neighbourhood is renovated and adapted to more expensive standards of living (Huber & Wolkenstein, 2018).

Indeed, gentrification-induced displacement usually happens when there is “(1) a significant population of low-income, market-rate tenants, (2) for whom market-rate rents are becoming unaffordable, (3) because of an influx of more affluent residents to the neighborhood” (Putnam, 2020: 1). HW, individuate four dimensions of gentrification (2018: 380). The first two (the spatial and the social dimension), highlight that gentrification changes the outlook of the neighbourhood and the type of available housing (spatial) but also the very people who live and work there (social). The other two dimensions (transformation and expulsion) highlight that the effects of gentrification can come in different degrees ranging from changing the neighbourhood (transformation), to causing the displacement of its residents and workers (expulsion). For the sake of this thesis, in this section I will only focus on gentrification-induced *expulsion*.<sup>44</sup>

Now that I have defined what gentrification is, I will look at what is wrong about it according to Huber and Wolkenstein (2018). As explained in section 2.2.2, HW ground claims against gentrification using the notion of embeddedness-based occupancy rights. They contend that since individuals have relevant interests in pursuing their located life-plans, and those life-plans are situated in the neighbourhood where they live, they have occupancy rights there. Consequently, HW contend that gentrification “is problematic insofar as it involves a violation of city-dwellers' occupancy rights”, grounded on their life-plans in the city (ibid: 378).<sup>45</sup> This analysis of the wrongness of gentrification is intuitively appealing. First, it is able to explain why some agents have relevant interests in residing in a particular part of the city and not any other. Second, it is faithful to the complaints of gentrified residents who oppose gentrification in the name of their rights to pursue their located life-plans (ibid: 379). Third, as showed in chapter 3, it would be able to address relevant criticisms concerning the distribution of occupancy rights and the risk of endorsing a status-quo condition.

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<sup>44</sup> I limit my analysis to expulsion for two reasons. First, this section is instrumental to the analysis of the difference between an outcome-based and a procedure-based approach like the one proposed by Putnam (2020). Since Putnam focuses solely on expulsion, I will also limit my focus to it. Second, the criticisms that I will make hold for Huber and Wolkenstein’s (2018) analysis of gentrification-induced transformation too. Indeed, they only look at the outcome of transformation, and not at the wrongness of the procedures via which it comes about. Nonetheless, they suggest that to temper the extent of transformation, it might be desirable to involve local residents in the decision-making processes that transform their city. Even in this case though, Huber and Wolkenstein justify the possible introduction of these policies instrumentally: to temper the *outcome* of gentrification. Thus, in their justification they do not contend that the inclusion of current residents in urban policies would be a way to solve procedural wrongs. This does not rule out the fact that they might be sympathetic to a justification for their proposals of inclusive transformation based on an argument from non-domination. Rather, they might benefit from it.

<sup>45</sup> Note that they specifically refer to the neighbourhood because they focus on gentrification. Nonetheless, their contention can be applied to the city-scale more generally.

Nonetheless, I contend that if we were to follow HW's strategy we would take an outcome-based focus which does not detect the wrongness of the mechanisms behind gentrification: we would lack a process-centred level of analysis. To show this, note that HW's argument against gentrification-induced expulsion does not allow us to differentiate it from another problematic case of expulsion: earthquake-induced expulsion. I will present these two cases subsequently:

*Earthquake-induced expulsion:* an unexpected earthquake disrupts the buildings of neighbourhood X. Its inhabitants need to relocate somewhere else.

*Gentrification-induced expulsion:* Neighbourhood X has become increasingly popular for rich artists and academics. Due to their arrival, landlords charge more money for renting houses. Current inhabitants cannot afford to live there anymore and need to relocate somewhere else.

In both cases, the same outcome is reached: current inhabitants must relocate. Nonetheless, in the former case, expulsion is not caused by agents, while in the latter it is caused by agents' actions (rich people moving to the neighbourhood and landlords asking for more money) within background institutions (property regulations that allow landlords to raise the price of housing). Thus, gentrification-induced expulsion is relevantly different from earthquake-induced expulsion because it has a procedural aspect: the outcome is given by the interaction of current inhabitants vis-à-vis newcomers and landlords. All in all, earthquake-induced expulsion is a source of injustice due to its consequences. Gentrification-induced expulsion is a source of injustice due to its consequences, but also possibly due to the mechanisms behind it.

Why is it relevant to highlight this difference? In the case of earthquake-induced expulsion, agents' claims for the respect of their occupancy rights could only make reference to reparatory instances and to preventive measures against the *effects* of natural disasters. For instance, they could demand for regulations on the safety conditions of the buildings constructed in the city and for state intervention in re-constructing their homes. On the other side, in the case of gentrification-induced expulsion, agents could also make claims against the *way* in which gentrification happens, if those *processes* were unjust.

All in all, if we were to take an outcome-centred analysis of urban phenomena we would not be able to consider the injustice of the relations/mechanisms behind them. Thus, if we were to formulate an occupancy-based notion of the right to the city, it would be relevant to add another layer of analysis concerning these procedural wrongs. In the following section I will present a possible venue to solve this problem: Putnam's domination-based analysis of gentrification.

## **4.2 The process-based wrongness of gentrification**

In the previous section I showed that Huber and Wolkenstein's analysis does not detect a specific feature of gentrification: process-centred wrongs. Indeed, they only look at the outcomes of gentrification and not at the possible injustices

inherent to the mechanisms that lead to those outcomes. In this section I will suggest a possible strategy to look at the procedural wrong of gentrification: analyse it from the perspective of non-domination. First, I will explain Putnam's domination-based account of the wrongness of gentrification differentiating between the first and the second nexus of domination that he presents. Second, I will highlight why introducing the domination-based level of analysis is fruitful in the case of gentrification. Note that, the aim of this section is not to argue that Putnam's contentions hold. Rather, I aim at highlighting that independently of whether if they hold, it would still be worth looking at his analysis of gentrification since it sheds light on possible procedural wrongs behind it.

Putnam contends that "gentrification-induced displacement is pro tanto unjust in virtue of instantiating a distinctive *nexus of domination* between state actors, private landlords, and gentrifying residents" (2020: 1). Recall from the previous section that gentrification-induced displacement happens when there is "(1) a significant population of low-income, market-rate tenants, (2) for whom market-rate rents are becoming unaffordable, (3) because of an influx of more affluent residents to the neighborhood" (Putnam, 2020: 1). Putnam's take on the wrong of gentrification-induced displacement is compatible with an occupancy-based analysis. Indeed, he contends that it wrongs current inhabitants by harming their interests in having a stable residence where they live and their interests in maintaining their "located attachments" (2020: 4). Thus, even though he does not explicitly frame these harms as violations of residents' occupancy rights, he could do so by using Stiliz's notions elaborated in the previous Chapters. So far, Putnam's contention does not add new elements compared to Huber and Wolkenstein's. Let me now turn to the novel part of his insights.

After identifying the harms to current inhabitants, Putnam focuses on the way in which gentrification *leads to* displacement: its procedural wrong. He highlights that "the proximate cause of gentrification-induced displacement is the landlord's demand for more than the tenant can afford. But what translates the landlord's demand into actual displacement is the threat or imposition of state coercion" (2020: 5). In what sense is this practice of displacement an instance of a process-centred wrong? Putnam contends that the relations via which gentrification comes about are problematic because they are relations of domination.<sup>46</sup> Domination occurs when agent X can (i) arbitrarily interfere with agent Y's (ii) "morally weighty interests" (ibid: 6). I will focus on (i) and (ii) subsequently. X has a capacity to (i) interfere *arbitrarily* on Y when:

- Y cannot control X's capacity to interfere.
- X's capacity to interfere "is not, to any substantial extent, regulated by procedures which track the interests of those subject to it".
- X's capacity to interfere is only regulated by X's preferences (Putnam, 2020:6).

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<sup>46</sup> For the sake of this thesis, I will not go in the details of theories of domination. Rather I will limit myself to explaining how Putnam (2020: 6) uses this concept in the case of gentrification-induced displacement.

For what concerns point (ii), Putnam contends that Y's interests are morally weighty when they impose on others a pro tanto moral duty to respect them (ibid).<sup>47</sup> A paradigmatic example of a dominating relationship is the one between the master and the slave in a situation in which slavery is part of the possible property regimes of a state or is not condemned by the state. The master can beat the slave and command him to do Z. On the other side, the slave cannot control what the master does to him or demands from him, nor has powers against him for retaliation: the slave is dominated by the master. Consider the case of the benevolent master. She would never beat her slave, rather she would treat him with respect. Also in this situation, the master-slave relation would be an instance of domination since even if she would not do it, the master could beat the slave "with impunity" (ibid: 6).

Given this definition of domination, could we conceive of gentrification-induced displacement as a dominating relation? According to Putnam we could. In fact, he contends that there are two nexuses of domination in gentrification-induced displacement: the *landlord-state-current resident* nexus and the *landlord-state-gentrifying residents-current residents* nexus. I will explain them subsequently.

According to the first nexus of domination, landlords dominate residents since:

1. Low-income market tenants have morally weighty interests that ground their occupancy rights over their place of residence.<sup>48</sup>
2. When market-rate rents go up in their neighbourhood, they cannot afford to pay their landlord, nor find another apartment there.
3. In turn, when they cannot pay for their rents, landlords can rightfully (by state laws) demand that they leave their place of residence.
4. Thus, landlords have the power to arbitrarily interfere with the morally weighty interests of tenants.

All in all, there is a dominating relation between landlords, the state and tenants since "the arbitrary preferences of one person (the landlord) effectively determine whether other agents (state actors enforcing the property regime) will coercively interfere with the morally weighty interests of a third person (the tenant)" (Putnam, 2020: 8).

On the other side, the second nexus of domination establishes that gentrifying residents (newcomers), whose arrival leads to rent increase, dominate current residents too since:

5. Rent increase in a gentrifying neighbourhood is determined by the arbitrary (per the definition given above) preferences of wealthier newcomers.

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<sup>47</sup> Interests in located life-plans are morally weighty interests of this sort. Indeed, in Chapter 2 I have explained that interests in located life-plans ground agents' occupancy rights which in turn impose on others pro tanto moral duties (e.g., not to relocate others). Thus, interests in located life plans are morally weighty interests of the type mentioned in the definition of domination.

<sup>48</sup> See section 4.1.

6. In turn, the change in arbitrary preferences of wealthier newcomers is what determines the market-rate rent increase that causes 1-4.

Putnam defines this instance of dominations as a “*higher order domination*” (2020: 9).<sup>49</sup>

As I specified at the beginning of this section, my aim is not to assess whether if Putnam’s nexuses of domination hold. Rather I want to stress that by adding analytical tools that allow us to look at the mechanisms behind gentrification and the relations of agents vis-à-vis these mechanisms, Putnam can potentially account for a relevant type of injustice of gentrification (the fact that it is enacted via dominating relationships) that would not be detected by Huber and Wolkenstein. Indeed, Huber and Wolkenstein do not assess the position of agents with respect to gentrification. They contend that the outcome of gentrification (gentrification-induced expulsion) is a violation of occupancy rights. Recall that Putnam too reaches this conclusion. Indeed, he links the harm of gentrification-induced expulsion to a violation of located interests. Nonetheless, contrary to Putnam, HW cannot assess whether if the process of gentrification (the way in which rent increase in a neighbourhood leads to displacement) is an instantiation of unjust relations too. Thus, a domination-based approach could enable us to incorporate insights from the occupancy-based approach focusing on the outcome of gentrification, while allowing us to focus on the mechanisms behind gentrification.

All in all, in this section I have showed that by adding a second layer of analysis to the process of gentrification (domination), we would be able to detect possible injustices not only in the outcome of gentrification (displacement), but also in the way that outcome comes about (dominated displacement). This suggests that even though formulating a notion of the right to the city from an occupancy-based perspective, we should add a second layer of analysis to detect procedural wrongs too. In the following section I will highlight why it would be relevant to consider procedural wrongs in a possible occupancy-based right to the city.

### **4.3 Why considering procedural wrongs?**

In this section I aim at clarifying why it would be relevant for an occupancy-based right to the city to consider procedural wrongs. Recall that so far, applications of occupancy rights to the city focus on outcomes. They look at the outcomes of urban phenomena (gentrification-induced displacement) and contend that they violate occupancy rights of city dwellers. In the previous section I showed that if we were to add another layer of analysis and look at the mechanisms via which the outcomes of urban phenomena like gentrification come about and the relations of agents vis-à-vis those processes, we would be able to detect putative instances of injustice (i.e., instances of domination).

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<sup>49</sup> For a detailed explanation of the higher-order domination see Putnam (2020: 8-12).

Why would it be significant for a notion of a right to the city to detect these putative process-based wrongs? I offer three reasons for this.

First, process-centred wrongs are compelling: they are intuitively morally objectionable types of wrongs that state's institutions should oppose. Thus, if we were to only focus on an occupancy-based analysis of outcomes, we would neglect types of wrongs suffered from urban dwellers that we should intuitively be considering. For instance, non-domination intuitively is a relevant value that public institutions should uphold. Thus, it would seem problematic for a notion of a right to the city not to consider instances of domination in urban phenomena, let alone the fact that those instances of domination are enabled by public institutions themselves (Putnam, 2020).<sup>50</sup> Thus, the first reason to focus on procedural wrongs, is that those wrongs are relevant.

Second, process-based wrongs are not exclusively intrinsic to instances of gentrification. Rather, they are a common characteristic for other pressing urban phenomena. For instance, when Young (2010: 43-52) looks at the case of homelessness, she highlights that it is an instance of injustice not only because it places agents at risk of not having basic access to a decent life, but also because the processes that regulate it are structurally unjust. Thus, if we want to formulate a notion of the right to the city that tracks for relevant urban phenomena, like gentrification and homelessness, we should add a further level of analysis that looks at their procedural wrongs, and not only at the wrongness of their outcomes.

Third, as I highlighted at the beginning of this thesis, one of the promising features of formulating an occupancy-based right to the city is that in doing so we would be truthful to the complaints of people who suffer from urban phenomena. Indeed, they tend to refer to their embeddedness in the city, or neighbourhood, when trying to defend their rights against relocation. Further, urban dwellers do not only complain about the effects of urban dynamics (like relocation), but they also point out that what is disturbing about them, is that they have no power against them, no possibility to control them (Putnam, 2020: 14). In turn, this suggests that a process-centred level of analysis would be significant to explain “the real-world experience of arbitrary power and unequal status expressed by many current residents.” (2020: 14).

To sum up, in this section I offered three reasons why it would be relevant to look at process-centred wrongs when developing a notion of the right to the city. First, process-based wrongs are intuitively relevant types of wrong. Second, they are a common feature or relevant urban phenomena. Third, analysing process-based wrong would be able to track the complaints of those who are affected by urban phenomena.

## **4.4 Conclusion**

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<sup>50</sup> Recall that state laws enable expulsion.

In this chapter I contended that an occupancy-based right to the city would not be able to account for process-centred wrongs intrinsic to urban phenomena. I explained that urban dwellers suffer from an instance of process-centred wrongs (as opposed to an outcome-based wrong) when the relations within which urban phenomena happen are unjust. Ultimately, I suggested that if we were to use an occupancy-based notion of the right to the city we should amend it by including a further level of analysis tracking possible process-centred wrongs. To show this, I focused on the application of occupancy-based rights in the analysis of a pressing urban phenomenon: gentrification.

In section 4.1 I presented Huber and Wolkenstein's (HW) occupancy-based argument against gentrification. First, I explained what gentrification is. Second, I showed how HW apply the notions developed in chapters 2 and 3 to analyse it. Third, I contended their line of argument focuses on the putatively unjust consequences of urban dynamics (i.e. the wrong of displacement as a consequence of gentrification). This approach does not take into account a relevant aspect of gentrification-induced expulsion: the fact that it is a *process* done by agents. Consequently, I highlighted that if there were process-based wrongs behind gentrification, the occupancy-based approach would not detect them.

In section 4.2 I suggested that a possible way to detect process-based wrongs of gentrification is to analyse the mechanisms behind it from the point of view of non-domination. Consequently, I explained Putnam's analysis of the nexuses of domination within the process of gentrification (2020). It is important to note that in this section I did not defend Putnam's contentions. Rather I limited myself to suggesting that his approach would be able to detect possible process-based injustices that the occupancy-based approach of HW would disregard.

Finally, in section 4.3 I presented three reasons why I think my suggestion to include a process-centred level of analysis is relevant for those who want to formulate a notion of the right to the city. First, I highlighted that the types of wrongs intrinsic to the mechanisms behind urban phenomena are compelling. Second, I noted that process-based wrongs are not only a specific characteristic of gentrification but that they are relevant in other cases too (i.e., homelessness). Third, I suggested that looking at procedural wrongs would be useful to explain, and account for, the real-life complaints of agents who experience urban phenomena.

In the next chapter I will summarize what I have achieved in my thesis and draw some concluding remarks on possible future venues of research on the right to the city.

## 5. Conclusion

The notion of the right to the city has been largely unexplored by analytical philosophers. Nonetheless, there have been recent attempts to assess and explain urban phenomena using the notions of theories of territorial rights (Hofmann, 2020; Huber and Wolkenstein, 2018; Kohn, 2016, 2013). More specifically, those who apply territorial rights theories at the urban level borrow the notion of embeddedness-based occupancy rights but instead of applying it to identify states' territory, they use it within the boundaries of the state: in the city. This strategy seems intuitively promising. Indeed, it is able to justify why agents have occupancy claims in the city and be truthful to the complaints of those who suffer from urban phenomena since they appeal to a sense of belonging (embeddedness) to the place where they live.

Despite being a promising venue, the application of territorial rights theories at the urban level has not been fully developed, nor evaluated against possible criticisms. In this thesis I aimed at filling this gap in the literature. In particular, my research question was: *would it be promising to formulate an occupancy-based notion of the right to the city?* I argued that this strategy would be promising, but that it should be amended to incorporate the analytical tools necessary to detect process-based wrongs intrinsic to urban dynamics. To reach this conclusion I:

1. Defined occupancy rights using Stilz (2019) and defended her definition against Moore's (2020) criticisms (chapter 2).
2. Explained how occupancy rights would apply at the city level highlighting how they could relate to the state-level territorial and occupancy rights (chapter 3).
3. Evaluated the use of an occupancy-based right to the city highlighting its pros and limitations (chapter 3 and 4).
4. Suggested to amend the notion of an occupancy-based right to the city to account for its limitations via non-domination (chapter 4).

For instance, consider the example I gave in the introduction of this thesis. Thanks to the insights of my thesis, we can reach two conclusions. First, citizens of Y who had to relocate due to gentrification suffered from a violation of their occupancy rights. Second, in addition to the violation of occupancy rights, we were able to conclude that they suffered from a relational wrong in the process that led to their relocation: they were dominated.

Consequently, we are now able to answer the question: what should the right to the city entail? The right to the city should entail (i) the respect of embeddedness-based occupancy rights and (ii) the freedom from process-based wrongs in urban dynamics. I will now summarise what I have achieved in each chapter.

The goal of chapter 2 was to explain the core notions of territorial rights theories used at the urban level: occupancy rights and embeddedness. To do so, I analysed Stilz's notion of occupancy rights. In section 2.1 I explained what an

occupancy right is, while in section 2.2 I looked at the normative justification of occupancy rights. I will now elaborate on the content of each section.

In section 2.1.1 I looked more closely at Stilz's definition and specified that occupancy rights have four characteristics: they are (i) place related, (ii) property-like, (iii) preinstitutional, (iv) individual moral rights (Stilz: 2019). In section 2.1.2 I looked at three criticisms that Moore raises against Stilz's notion of occupancy rights: (i) the misrepresentation criticism, (ii) the under-evaluation criticism and (iii) the scope criticism. (2020b). Moore's critiques revolve around a major difference between the way they conceive of occupancy rights. Indeed, Moore contends that occupancy rights are group rights while Stilz endorses an individualistic view. In this section I rebutted Moore's criticisms and contended that for the sake of this thesis Stilz's notion was to be preferred.

In section 2.2.1 I looked at the normative justification of occupancy rights. I explained that occupancy rights are used to answer to the particularity question: why is it the case that agents have a right to settle in a *specific* territory and not another? To answer to this question, Stilz refers to agents' spatially located interests. I analysed Stilz's argumentative strategy and explained that according to her, occupancy rights are justified by our interests in pursuing our *located* life-plans. In turn, Stilz (2019) specifies that the value of located life-plans (the reason why we have an interest in them) is that they are a precondition for our well-being and autonomy. In section 2.2.2 I explained how we can ground the occupancy rights of an agent X in a territory Y and the duties that another agent Z has vis-à-vis X's right. I highlighted that only comprehensive life-plans ground X's occupancy, that X does not need to be involved in collective social practices to have occupancy in Y, and that Z's duties must be balanced against the harms that respecting those duties would entail via the fair-use proviso.

The goal of chapter 3 was to analyse the application of embeddedness-based occupancy rights to the city, show that such application is possible and that it holds analytical scrutiny against relevant criticisms. In section 3.1 I argued that agents have *particularized* occupancy right in the city, while maintaining their broader occupancy rights in the state territory. In section 3.2 I analysed five criticisms raised by Hofmann (2020). I showed that Stilz's notion of occupancy right can answer to the first four by appealing to the fair-use proviso. Nonetheless, I also argued that it cannot answer to the fifth criticism since it points at a process-based wrong within urban phenomena that an occupancy-based notion of the right to the city cannot detect.

The goal of chapter 4 was to elaborate on the limit of an occupancy-based right to the city individuated in chapter 3. Thus, I focused on the importance of process-based wrongs within urban phenomena. I defined process-based wrongs as the wrongs intrinsic to the *relations* via which outcomes are produced. In section 4.1 I considered an example of the application of occupancy-rights to analyse urban phenomena: Huber and Wolkenstein's (2018) argument against gentrification. I argued that their occupancy-based approach cannot detect a relevant procedural aspect of gentrification. In section 4.2 I suggested a possible venue to amend Huber and Wolkenstein's approach in order for it to track for process-centred wrongs: looking at gentrification from a non-domination lens

(Putnam, 2020). In section 4.3 I argued that it be relevant for a possible formulation of an occupancy-based right to the city to consider procedural wrongs for three reasons. First, procedural wrongs are intuitively relevant types of wrongs that we should be concerned about. Second, procedural wrongs are a common feature of relevant urban phenomena. Third, by introducing insights on procedural wrongs we would be sensitive to the complaints of those affected by urban phenomena.

## 5.1 Implications for future research

In this thesis I suggested a promising strategy for analytical philosophers to formulate a notion of the right to the city. First, I argued that starting from the notion of occupancy rights is fruitful. Second, I contended that nonetheless, an occupancy-based approach should be amended because it does not account for an intuitively relevant aspect of urban phenomena: process-centred wrongs. In addition, I suggested that adding a non-domination layer of analysis might be a solution to the problem I individuate.

Even though my conclusion is only suggestive, it bears significance for future research. Indeed, following my suggestion, analytical philosophers could investigate currently unexplored levels of urban dynamics like the *relation* between economic agents, citizens, and state-regulated institutions. As Zimmer states:

an especially promising avenue for addressing this problem could be to explore the ways that contemporary democratic theory and relational egalitarianism might supply us with a basis for rethinking and replacing the economic and political systems of decision-making that tend to dominate in contemporary capitalist cities. A virtue of these theoretical frameworks is that they focus our attention squarely on questions of power and decision-making authority – rather than factors that are often little more than the mere consequences of power, such as the distribution of income between tenants and landlords. (Zimmer, 2020: 236)

Future research on this topic should develop the notion of process-based wrongs more and assess which theory would fare better in detecting them. A promising theoretical framework for doing so would be to use the notion of structural domination (Gädeke, 2020). Structural domination considers the power structures within which agents interact: “it is based on norms and practices that systemically empower some, while systemically disempowering others” (ibid: 205). If we were to analyse urban phenomena via a structural-domination lens we could be able to look at the way in which economic and socio-political dimensions interfere with agents’ occupancy rights. It would be a promising strategy to see the intersectional layers that urban phenomena comprise.

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