

The Taking of Territory and the Wrongs of Colonialism.

Margaret Moore.

Email: margaret.moore@queensu.ca

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This paper tries to show that the wrong of colonialism cannot be captured without considering the wrong of settlement. There are different kinds of imperial-colonial relationships, and not all of these involve settlement, but when they do, as with the settler colonialism of the Americas and Australasia, it is an important, not incidental, aspect of the project.¹ Some critics of colonialism have sought to explain the wrong of colonialism without considering its territorial element, i.e., the wrongful taking of other people's lands.² In this paper, I do not deny that the relationship between colonized and colonizer was seriously unjust in the sense that it was structured in deeply unequal, unfair and nonreciprocal terms, and that it was also supported by hierarchical assumptions of cultural and racial superiority and inferiority.³ However, I do not think that the wrong is wholly captured by this account. I argue in this paper that there are two separate wrongs associated with colonialism⁴ – one is connected to political domination, and the second is connected to the taking of territory-- and, while they were connected historically and to some extent, conceptually, they cannot be reduced to one another. I also try to identify why settlement of territory that is already occupied involves a distinctive kind of wrong that is not reducible to the unequal and nonreciprocal relations that also characterized colonial projects.

To make this argument, the paper is divided into three parts. First, against the international law and recent domination accounts of the wrong of colonialism, I will argue that a more accurate understanding of the practice of colonialism involves distinguishing between settlement and political sovereignty. This follows a long-standing tradition that distinguishes between *imperium* and *dominium*, sovereignty and property, which is central to the writings of both Grotius and Pufendorf,⁵ and stretches back to Roman law.⁶ In that context, I draw on Locke's

account as the standard justification that was offered for settlement of land in the New World. In section two, I examine a sanitized version of a Lockean-type argument, rooted in the idea that land is a universal good, which in some sense should be shared, in order to explore the kind of wrong that the taking of land might involve, once it is stripped of objectionable, nonreciprocal and hierarchical relations. I offer three arguments based on (1) legitimate expectations, (2) fairness interpreted in a non-egalitarian way and (3) cultural incompatibility to suggest why settlement of land is wrong, and why the arguments in favour of settlement do not work. In the third section, I examine whether the non-domination account of the wrong of colonialism has the conceptual resources to accommodate the claim that the taking of territory represents an important injustice of colonialism.

1. Settlements and the taking of Territory.

In broad terms, one could argue that the denial of political sovereignty, and the exercise of political rule over another group, is rooted in the idea, found in the Greeks, and dominant in the Western philosophical tradition, between civilized and uncivilized people; a dichotomy also found in Chinese, Japanese and Arab writings.⁷ In the Western tradition, with which this paper is concerned, the racialized and civilizational hierarchy on which colonialism was erected was in some tension with other fundamental Western beliefs, and especially the idea that human beings possess souls and are therefore equal in the eyes of God, and ideas connected to that, such as natural law and natural rights.⁸ This tension generated interesting debates about the justifiability of colonialism as a project and the extent to which different policies and practices associated with it could be justified.

In the sixteenth and seventeenth centuries, there were two main types of arguments to justify the colonizing power in exercising political sovereignty over indigenous people. In the areas conquered by the Spanish -- Central and South America -- indigenous societies were clearly political societies in the classical (Aristotelian) sense: they had agriculture, trade, infrastructure, were regulated by settled practices and rules, and their political form was more familiar to Europeans. It was not plausible to claim that there was no political authority there. The

argument for political sovereignty therefore focused almost entirely on the authority of the Papal Bulls of Donation of 1493 in which Pope Alexander VI granted to the Spanish monarchs, Ferdinand and Isabella, sovereignty over all the lands that they might discover that were not previously occupied by a Christian prince,⁹ combined with arguments about the cultural inferiority of indigenous communities, understood in terms of the *practices* of the indigenous people. Indigenous people, it was claimed, participated in such practices as cannibalism, sodomy and human sacrifice, which not only indicated the dire need for instruction in the ways of Christianity but were sufficiently serious as to entail a forfeiture of rights of self-rule (and so justify colonialism).¹⁰ For the British and Dutch imperial powers, the argument proceeded somewhat differently. They appealed to a Christian argument to emphasize that the native population of the Americas were in ignorance of the true religion and therefore rule over them was equivalent to bringing a civil and Christian order and propagation of the true faith. On its face, this argument seems to justify a duty of proselytism, but does not justify political sovereignty over indigenous people. The duty to evangelize the native population could not justify, according to natural law, the conquest of their political orders. To overcome this problem, the colonizers argued that the native people did not exercise political sovereignty amongst themselves; and that therefore the natural law prohibition on conquest (except when conquest was justified by aggression) did not apply, as the indigenous population did not have governments that the Europeans recognized as such. They were conquered as individuals or as tribes, so it was up to Europeans to bring civil order, to ensure that they could enjoy a 'settled and quiet government'. In this way, the religious argument was almost seamlessly intertwined with the second argument, which claimed that indigenous peoples were culturally inferior and their institutions such that they did not require the respect accorded to Christian principalities, and the native chiefs were not therefore equivalent to Christian princes.¹¹

The arguments above were deployed to justify political sovereignty over indigenous peoples. But what could justify the deliberate policy to settle European colonists on land that had previously been occupied by indigenous people? It does

not seem to be *entailed* by arguments justifying political sovereignty, especially if we view sovereignty as limited by moral requirements (natural law, natural rights).

This is an important question, which is relevant not only to the justification of settler colonialism, but the related argument about the wrong of colonialism. Recent work on colonialism identifies the wrong solely in terms of relations of domination and subordination. Catherine Lu identifies colonialism with structural injustice, although in her argument it is unclear whether what counts as an injustice is grounded in a more fundamental appeal to relations of domination and subordination, or whether it presupposes (but does not explain) what counts as an injustice. In a list of things that count as the injustice associated with the historical practice of colonialism, she lists: “military conquest and political subjugation, enslavement and exploitation of subjugated populations, the annexation of territories, expropriation of property, and resource extraction.”¹² This leaves a little unclear whether the taking of land and resources in a context free of relations of domination and subordination counts as an injustice itself, or whether it did so only in the historical context, where it was framed in a discourse of superiority/inferiority and occurred in the context of pervasive relations of domination and subordination. Lea Ypi’s account is clearer in arguing that the taking of land and settlement on the land in itself does not count as an injustice: her account “is neutral on the status of territorial rights, whether they can be justified, and how, if at all”¹³, claiming instead that the wrong of colonialism “consists in the embodiment of an objectionable form of political relation” and that it [the wrong of colonialism] is “situated within a larger family of wrongs, the wrong exhibited by associations that deny their members equality and reciprocity in decision-making”.¹⁴ On this view, if the Europeans had come to the Americas or Australasia and offered the inhabitants fair terms of inclusion, by which she means equal political status in a government that institutionalized reciprocity, colonialism would not have been wrong; indeed, there would have been no colonialism. There is, in other words, no further wrong associated with the taking of territory, presumably either because land would have only been settled or resources taken in the context of these fairer institutions; and/or because she associates land and resources as in

some sense shared by all peoples in earth, which raises the question of what counts as fair terms of cooperation in the extraction of resources or the settlement and use of land. In her view, as long as the political order is characterized by norms of equality and reciprocity, it is a rightful and legitimate political order, and there is no further wrong associated with settlement, as long as it takes place within a political order that instantiates these norms of equality and reciprocity.

How did defenders of colonialism try to justify the taking of land?

The Spanish colonial powers, confronting fairly populous settled communities, had difficulty justifying the taking of land and resources. The Papal Bull certainly conferred political sovereignty (*imperium*) at least in the eyes of those who accepted papal authority, but it was not clear, even to Spanish Catholics, that it conferred *dominium*. As their arguments were often directed at enforcing the Spanish claim vis-à-vis other European powers, this did not matter; but when they turned to examining the scope or extent of authority implicit in their central argument for political sovereignty, it was not clear how the Spanish could possibly claim that their central justification – the Papal Bull -- had conferred a permission to settle the lands, and use its resources.¹⁵ It was, after all, hard to avoid the evidence that, prior to the arrival of the Spanish, the native people were in peaceable possession of various things essential to life, and that, according to natural law, taking things from people constituted theft. One prominent line of argument to justify the extraction of gold from the New World, which was of course, initially the prime interest of the Spanish conquerors, was to claim that gold was abused by the natives. God gave such things to use; the natives, like the ancient Egyptians, had used their gold and silver for idolatrous purposes; and that this sacrilegious use meant that they had forfeited their right to it. In a somewhat contradictory argument, though arriving at the same conclusion, the Spaniards also claimed that the Indians did not have a monetary economy and had traded gold which is basically useless to them (except for the worship of false gods) for metals, like iron, and other useful things, such as horses, donkeys, goats, pigs and sheep; so that even though the Spanish had removed the gold, this had been done in a way that respected the basic principles of natural law.

If the removal of gold could be justified, in part because it was abused by the natives, and anyway exchanged for more useful items, what about the settlement of land by Europeans? Land itself was clearly of value to native peoples, as a place to live, as soil to cultivate, and traverse and so on. The difficulty here is that, even if the Spanish could be entitled to rule over the native population, that rule was supposed to be in accordance with natural law. Even if the native peoples could be described as under Spanish sovereignty, they did not thereby forfeit their natural rights, and so should still have had some rights to their liberty and their goods. In the end, of course, the niceties of natural law were not determinative; and, over time, with the destruction of their political authorities, the rapid decline of the native population, combined with assorted claims of natural inferiority, cannibalism and injustice, it was possible by the late seventeenth century to depict the native population controlled by the Spanish as “not having entered a civil society” prior to Contact; and to then argue that only fully civil beings can exercise rights; and that the land itself was regarded as empty (something which was harder to claim at the time of the Conquest). This latter claim, perhaps analogizing from the English colonial project in North America, was made by the Scottish historian of Spanish colonialism, William Robertson; and involved an imaginative (false) reconstruction of indigenous communities. It was not advanced earlier, presumably because it was deeply implausible. “Not having entered into civil society,” Robertson claimed, “nor having any other bonds other than those of the natural law, the Indians did not form a common state, ... [and] lacking communication between these states meant that there were “empty spaces for diverse foreign settlements which became [the property] of the first person to inhabit them.”¹⁶

In North America and Australia, arguments justifying settlement and describing the native inhabitants as not in political communities were deployed quite early, presumably because the native population had different ties to the land (many groups were hunter-gatherers) and their tribal forms of governance could more easily be described as ‘non-political’, because different from the kind of political rule with which Europeans were familiar. The most familiar argument of this type is found in Locke’s *Second Treatise*, which begins by recognizing the

humanity of the indigenous people, their possession of natural rights, and their governance by natural law, but ends by justifying European settlement of the land.

Locke's argument begins from premises congenial to a post-colonial age. Locke argues that all men (in principle, all humans) had equal rights to freedom; no one was naturally subject to another; and that only an act, like consent, or inheritance of property, which presupposed a civil condition, could make a person subject to the authority of another (subject to government). The powers of government are entirely the creation of powers transferred to them by individuals, and they are transferred to them in order to avoid the problems and disagreements that arise in a state without government, once people have developed more sophisticated forms of property relations. In primitive societies –which Locke identified with the indigenous societies of North America – land was plentiful; held in common; there were few occasions for conflict; and no need for a state, no need for political society. Tribal leaders were likened to temporary generals, who mobilized when there was a conflict with another group, but did not constitute true political communities. Indigenous people, Locke thought, did have natural property rights: he defended the right of the native inhabitants of the New World to the fruits of the earth, the deer that they killed, the fish that they caught, and they could do so without the consent of other men as long as they left “enough and as good left in common for others”.¹⁷ But then he goes on to argue that the crux of the issue with respect to property is not the products of the soil, which he thought were plentiful, but entitlement to settle and appropriate land itself.¹⁸ “The chief matter of Property,” Locke wrote, is “not the fruits of the earth, and the beasts that subsist on it, but the earth itself”¹⁹ and then went on to argue that this too can be appropriated without the consent of others, notwithstanding the earlier formulation of the proviso (enough and as good left in common for others)²⁰, because certain kinds of landholding systems such as European enclosure do “not lessen, but increase, the common stock of mankind”.²¹ Locke, in other words, was one of the first theorists to recognize the dynamic character of our institutions and the way that they are organized, and specifically, that one way of organizing economic and social life could be more productive than others. Thus, he argues that it was possible to satisfy the

proviso – to leave enough for other people – even if the particular plot of land was taken from common use and so no longer available to everyone. It was necessary, though, that this new way of organizing that resource was more productive than leaving the land or resource in common use.”²²

Many critics of colonialism have pointed out the problematic aspects of this justification of the taking of land and settlement on it: the lack of recognition of native land use patterns, the belief that western models of private property and enclosure were the only recognizable forms of land tenure, or so efficient that they were the only method that would satisfy the proviso on exclusive appropriation.²³). However, there are other features of this account which have some resonance today: namely the idea that the world is, at least initially, held in common, for the use and enjoyment of all; the limits on individual appropriation set in some way by standards of fairness (which we might define differently than Locke did) but which does suggest that a small group might not be entitled to a large area, especially when there is greater population density elsewhere.

2. What's Wrong with Settlement

I argued above that, in addition to the relations of domination and subordination implicit in colonial projects, settler colonialism involved settling on land that in some sense belonged to the existing indigenous inhabitants, and that this too was a wrong. At this point, I need to describe what kind of wrong it is, especially once we get rid of the most problematic and patronizing assumptions of Locke's argument.

It is, surprisingly, something of a challenge to be clear about what would be wrong with migration to and settlement of land, if we adopted a counter-factual history of reciprocal relations, and introduce fairness considerations, by which I mean uneven land use patterns, with some areas densely populated and resource-stretched, and other, resource-rich areas, relatively under-populated.

Suppose, for example, that a group of white settlers from England came to settle on land in the New World and establish a small community there, ploughing the soil, tending crops, and generally living by farming, supplemented by some fishing and hunting. Suppose also that the population density of indigenous

inhabitants in the New World was less than the land could support, and less than in Europe, where the migrants originated.²⁴ As with most migrations, let us suppose that it was motivated by a combination of push and pull factors, but I am not claiming that these settlers were driven by necessity. They did not end up there, blown on the crest of a hurricane, starving and in need. On my story, they came as part of a deliberate policy or aim to settle the land; and they could have survived where they were. Suppose, as in the spirit of Locke's account, the local indigenous people engaged in a somewhat nomadic pattern of land use, such that they were sometimes in one place and sometimes in another place, and these new settlers occupied a place that they – the indigenous group – had previously wandered about in, hunting and gathering and fishing. However, the indigenous community was still able to utilize a large enough area that its way of life as a partially nomadic hunter-gatherer society was possible.

One possible response is to claim that the interests of the indigenous inhabitants would be harmed by settlement on land that they previously wandered about in, because, whatever else was true, they were deprived of a liberty that they previously enjoyed. However, if the proviso is interpreted to exclude *anything* that an agent was previously at liberty to do, it is too strong and too restrictive to be plausible. It suggests that the indigenous group should have full discretionary rights over the area, so that any restriction on their activities by the activities of other groups constitutes an unacceptable harm to them. This would exclude many types of land use patterns, and particularly cases where land is to some extent shared by different groups or used to support different groups. Suppose for example that there wasn't just one indigenous community roaming around in this area. There were a number of different indigenous groups, living, hunting and fishing in different places at different times, so that it could be said not only that each group occupied more than one place (in the course of a year), but that each place may be occupied by more than one group. If we adopt the strong version of the proviso such that any restriction on the liberty of a group counts as a violation of the 'not worsening' proviso, then that type of use of land would quickly fall foul of it. However, I think that we may want to preserve the possibility that land can be used

by more than one group. This means that we cannot count as a violation of the proviso cases where the harm consists purely in the fact that the group -- group A -- doesn't have full liberty at all times over the land.

This raises a second, related question: What makes the English settlers, who settles in a small parcel of land on which the As resided, different from neighbouring groups of indigenous people (the Bs, the Cs and the Ds), who moved around from place to place, and who might at one time live in a neighbouring area, but then come to sometimes occupy or wander about or draw resources from an area occupied by the As (the first indigenous group)? Why not conceive of the white settlers as analogous to other groups, except possibly with a lighter skin colour and from further away?

I want to resist the conclusion suggested by the almost rhetorical formulation of that question and suggest that part of the wrong of colonialism involved settling on land that had previously been occupied by the other group, and that this wrong is not reducible to the relations of domination and subordination. What kind of wrong is it, then?

There are at least three possible arguments, which I will discuss next: a legitimate expectations argument; a cultural incompatibility argument, which I will explore in two different dimensions; and a collective self-determination argument.

2.1. Legitimate Expectations.

First, there's a legitimate expectations argument. This is connected to whether we conceive of the baseline (for measuring harm) as historical, rather than some other baseline (eg. fairness). We measure whether the position of the indigenous group has worsened (unacceptably worsened) from a temporal position: we examine what people have or expect to have available to them (as part of their set of options) at Time T1 (prior to settlement), and regard changes to these expectations as requiring justification. Using this baseline, the partially nomadic indigenous group could object to the English settlers, but not other rival indigenous groups that also roamed the land, on the grounds that they were used to groups B,C, and D occupying the same land. The English settlers are not just like the other nomadic groups, except whiter and from further away: they are new, and their possession of some

land in this area unsettles the indigenous group A's expectations of how much and which land will be available to them, and when it will be. The idea here is that expectations, after a while, give rise to claims of justice or entitlements.

This does not resolve the issue, however, but gives rise to two related questions: What are legitimate expectations and *how* can they give rise to claims of justice, or entitlements? One of the most famous exponents of this kind of argument, was David Hume, but it was discussed in the context of the taking of land by Jeremy Waldron who wrote:

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For better or worse, people build up structures of expectation around the resources that are actually under their control. If a person controls a resource over a long enough period, then she and others may organize their lives and their economic activity around the premise that that resource is "hers", without much regard to the distant provenance of her entitlement. Upsetting these expectations in the name of restitutive justice is bound to be costly and disruptive.²⁵

Although Waldron's argument focuses on expectations, it's clear that not just any expectation that a person might have would give rise to justice claims, but only *legitimate* expectations, which of course raises the question of what counts as a legitimate expectation.²⁶ There is some ambiguity in the idea of 'legitimate expectations.' We might adopt a moralized sense of the term, where what one can legitimately expect is what is permitted by relevant norms; or a more practically oriented sense, where the term 'legitimately expect' means something like 'what it is reasonable to expect to happen'. Both senses apply in this case: let us suppose that members of indigenous group A were occupying the land legitimately by which I mean that their presence on the land was traditional: it was not achieved by coercion or any other act of injustice. There were also expectations of the second kind: they could reasonably expect that access to this land, and to the set of options related to their physical presence there, would continue in the future and it would be reasonable to make future-oriented plans with this context in mind.

With regard to the underlying argument for thinking that expectations can serve as a fount of justice, there are at least two different mechanisms that might be

at work. One is project-related, as is implied in the quote by Waldron above: this is the idea that people live their lives, and make choices and decisions against a background context; and that this context is assumed as part of the fabric of people's lives. When people are deprived of a liberty that they had previously assumed (a liberty to traverse the area now occupied by houses and farms of the white settlers), they experience this as disruptive: they have to change their patterns of movement; re-orient their expectations, plans and patterns. Of course, many people experience change of many different kinds, but the point here is that these expectations and the role that it serves in their lives gives them an entitlement over the land that is lacking by the newly-arrived English.²⁷

There is another aspect of the legitimate expectations argument that is not emphasized by Waldron, but is consistent with it. Waldron's account emphasizes the role of context in people's lives and the importance of this in people's projects. However, it may also be the case that people's relationship to land is not merely that of a background context: it may be affective; they may feel an emotional attachment or connection to the place, which itself has normative significance. This is not surprising. We can imagine that members of indigenous community A have a lot of knowledge of the land that they live on: they are familiar with its contours, where to find fresh water springs; they know good places to fish and hunt, how to grow food, good trails in the woods or passes through the mountains. With this familiarity comes an emotionally-charged connection or attachment to place, to favourite rivers or streams, to places where significant things happened or where one's family are buried. This, too, gives the indigenous people a link with the land that is not experienced by newly-arrived settlers, and supports the claim that the present pattern of connections and relationships to land gives rise to entitlements, which people who are not so connected lack (which I am here terming a broad or capacious 'legitimate expectations' argument). Depriving them of access to these things that matter to them, that gives meaning to their lives, and is the background or assumed context in which they live their lives constitutes an objectionable form of disrespect.²⁸ The entitlement that is suggested by this argument is an entitlement to continue living there, and not to be dispossessed of the land, either by expulsion

from it, or by lack of control over the fundamental background conditions in which they live, such as by large-scale transformative migration to the area.

2.2 Fairness, Resource-Egalitarianism and Cultural Incompatibility

The argument from legitimate expectations, outlined above, is not a knock-down argument, since we could imagine cases where the English claim could trump the indigenous claim over the land (eg. a claim of necessity). The original colonizers did not make the necessity claim but they did appeal to a version of a fairness argument, to suggest that the indigenous populations were thinly spread on fertile and resource-rich lands, and that there was something unfair about this.

In fact, they made two different sorts of claims, which need to be distinguished. One was the claim that the land was empty: this was repeated by many writers about large parts of the New World, and also in Australia, where it was suggested by the doctrine of *terra nullius*, and in the early Zionist period in Israel when Lord Shaftesbury's description of Palestine as a country without a people, and the Jews as a people without a country was widely repeated.²⁹ Of course, if a country was really empty – devoid of people – there is no problem with settling there. It is hard to object to human migration if the migrants are settling a place that is, literally, devoid of human habitation. Surely they have a permissive right to do so, since they are not coercing, displacing or adversely affecting anyone else. But it was rarely the case that the land was in fact empty – Bermuda is a rare example of an unoccupied (but fertile) island. In most cases, the charge that the land was 'empty' was mainly metaphorical; a claim that the people who are living on the land are not using it in ways that the colonizing group recognized as use and that therefore large tracts could be used by others. Thus, John Winthrop, the first Governor of the Massachusetts Bay Colony, writing in 1603, and largely anticipating some of Locke's later arguments, claimed:

As for the Natives in New England, they inclose noe Land, neither have any settled habitation, nor any tame Cattell to improve the Lande by, and soe have noe other but a Naturall Right to those Countries, soe if we leave them

sufficient for their use, we may lawfully take the rest, there being more than enough for them and us.³⁰

And, again, in Palestine/Israel, there is an explicit recognition that the claim that the land was 'empty' was not literally true: indeed, the demographic reality that early Zionists confronted was unavoidable and of great concern to early Zionists. What was meant by the 'empty claim' was that the occupying people did not 'occupy' it in the relevant sense. Thus, Zangwell, a leading Zionist, argued:

If Lord Shaftesbury was literally inexact in describing Palestine as a country without people, he was essentially correct, for there is no Arab people living in intimate fusion with the country, utilizing its resources and stamping it with characteristic impress: there is at best an Arab encampment.³¹

It is easy to see that this justification is deeply problematic, because not neutral between different land use conceptions, different ideas of resource use. Perhaps however, the argument can be reformulated as an appeal to fairness considerations. This would then be a kind of resource egalitarian claim that all people have equal rights in some sense to the earth, and it is deeply unfair if one group possesses great swathes of land (which they then under-use) and other people are more densely packed on other land.

I think concerns about fairness are relevant, but what I think ought to be denied is that fairness should be interpreted as requiring resource-egalitarianism or land-egalitarianism. At this point, I am addressing head-on the question of why the baseline for examining claims ought to be an historical one (which is of course implicit in the legitimate expectations form of argument) rather than subjunctive baseline, as with an equal rights to land baseline. The answer is that the subjunctive baseline – that is, land egalitarianism -- is unfair if we view people as possessing equal rights with respect to a particular piece of land when in fact they are already very differently situated with respect to it. In other words, egalitarianism with respect to land – viewed as a resource that all ought to share in equally -- would in fact be unfair, because not recognizing that place is a morally significant background condition for people's relationships, plans and ways of living, and are often the object of people's attachments. ³²

Moreover, the egalitarian baseline would, I think, lead us to restrict people's claims in light of some kind of criterion of efficient use, which in some sense has merit, given that land is a scarce resource, but will inevitably end up privileging dense land use ways of life, involving high levels of urbanization, mono-farming, and other efficient, industrial-type techniques of food production, while failing to recognize that other, legitimate world views value open space, natural lands, and so on.³³ For this reason, it makes sense to interpret the fairness concern as some kind of sufficiency constraint: people are entitled to the land that forms the background context of their projects, plans and attachments, on which they live their lives,³⁴ but that this is limited by claims of necessity, perhaps defined in terms of the conditions for a minimally decent life.

2.3 Cultural Incompatibility.

In the section above, I appealed to the idea of legitimate expectations, formed through living in a place, to reject an egalitarian interpretation of land rights. I also emphasized the problem of cultural incompatibility for the resource egalitarian, settling instead on a sufficiency criterion (necessity), to define the rights of outsiders, and thus to reject the colonizer's appeal to fair land use as a justification for taking land. In this section, I emphasize that the problem of cultural incompatibility in a different way – to argue that that is relevant in distinguishing the English use of land from the use of land of other, rival indigenous groups.

In the original example, I depicted the settlers' interaction with indigenous people in terms of a relatively minor inconvenience: the indigenous group now had to go around the newly arrived settlers' area, which involved disrupting a previously-enjoyed liberty. I now want to claim that there is the additional problem of cultural incompatibility, which is relevant in the colonial context, and is partly connected to incompatible land use patterns.

What do I mean by this? Different land use patterns may be partially or completely incompatible with one another: settled farming in enclosed fields is disruptive of nomadic hunting and gathering or slash-and-burn agriculture. Cutting down trees to create cultivated fields reduces the habitat of many of the animals

that the indigenous people depend on. In the original example, where there was only one small group of settlers, the effect of that group was insignificant. But it is a fallacy of composition to infer that something is true of the whole from the fact that that thing is true of some part of the whole, or even every part of the whole. We know this from zero-sum games, like athletic races, where the fact that someone would win if she ran faster does not mean that everyone would win if everyone ran faster. In the case of settlers, it may be true that one settler or a few settlers will not disrupt the indigenous way of life or culture, but many settlers, with traditions of land use involving individual private property rights, enclosed land, and tilled fields, are threatening to a largely nomadic hunter-gatherer society that assumes not only rights of movement but hunting animals and taking food as they come across them. This makes the presence of the English settlers dis-analogous with other groups who are indigenous to the land, who, we may suppose, may compete for the same animals and fish and other resources, but whose way of life does not involve altering the very framework in which people live.

This brings us to an additional problem to which the cultural incompatibility points: this is that the settlement of the English in any numbers will prevent the indigenous community from being able to exercise collective agency over their lives. This is the third reason why settlement of land was wrong. If the indigenous people cannot control their physical environment -- the rivers that they fish in, the water that they drink, the area that they traverse, the place where they hunt and farm and build homes in -- they lack robust or significant control over the conditions of their lives. In that kind of context -- where the use of land or space is contested, the cultures are incompatible -- there is no possibility of non-harmful compromise. If the two groups were related to the land in the same way -- two groups both had historic attachments, both had significant relations with each people and with the place -- compromise would be the right solution. But in the colonial context of settlement, the positions are not equal. The indigenous group has a claim to that particular land, rooted in the legitimate expectations argument above, which I understand broadly to encompass both the importance of projects and affective attachments and value. It would be wrong for the non-indigenous group to settle

there without their (informed) consent. Indeed, depriving them of collective agency, disregarding their attachments to the land, and non-consensually unsettling the basic background conditions in which they live, is a form of disrespect.

3. Territory, Governance and Equality and Reciprocity

In the section above, I argued that there is a distinctive territorial wrong implicit in certain kinds of colonial projects: settlement on land previously occupied (in a capacious, not culturally biased sense of that term) is wrong.

In her article, Ypi identifies the basic wrong of colonialism as belonging “within a larger family of wrongs, the wrong exhibited by associations that deny their members equality and reciprocity in decision making.”³⁵ This understanding denies the specific territorial wrong of the colonial project: she argues instead that the wrong consists in an objectionable form of political relation, and puts in its place an “ideal of political association that respected the claims of all those involved.”³⁶ Drawing on Kant, she emphasizes the need for fully inclusive rules, for equal and reciprocal justice, and an equal basis of interaction in establishing the rules.

This addresses one of the main problems with colonialism: that it proceeded from deeply problematic assumptions of cultural superiority and inferiority, and used this to justify objectionable political relations of domination and subordination. But does this view of reciprocal justice address the territorial worries elaborated in the section above? Are the concerns raised above addressed by Ypi’s requirement that all the people in an area live under a political authority structured on terms of full reciprocal equality: that all are fully included in the political project that governs them.

The answer to this is: it depends. It depends on whether the inclusion and reciprocity applies to groups or to individuals.

To see why this matters, let us return to the example of English settlement in the New World, occurring among indigenous groups that were heavily reliant on nomadic hunting and on slash-and-burn agriculture. Suppose, as Ypi’s argument implies, the English landed there to establish a settlement but at the same time sought to establish a political authority that is fully inclusive of all individuals,

indigenous and non-indigenous alike. Suppose also that the people have, in addition to individual identities, some collective identities and attachments: members of indigenous groups identify with their particular indigenous group and the settlers identify with their origin group. More crucially, suppose that some of the cultural practices, especially as regards land tenure and use of land as a resource, of the settler and indigenous groups were mutually incompatible. In this context, which I think is realistic, the creation of an inclusive (of individuals) political authority is deeply problematic. It is problematic because, if the settler group is demographically large enough, or if its numbers are continually supported by successive waves of migrants who are from the same culture, with similar land tenure practices, then, the indigenous group can be outnumbered and outvoted. This is so even if they are included as full members of the political community, because, on the realistic assumptions we are making, the two communities have widely divergent interests, incompatible practices especially in relation to land, and decisions presumably would have to be made by majority vote, since unanimity is not a practical decision-making rule. The problem is not the failure to satisfy indigenous *preferences*, but that forcible inclusion in a political community that is not of the indigenous group's own making is inconsistent with their self-determination, with their ability to control the vital background conditions in which they live. And it is forcible inclusion, because the English, in this example, have just arrived there, motivated by their own needs and interests, and in so doing they have altered the world of the indigenous people. The corrective to this, Ypi supposes, is to further alter it by erecting a political community that includes all.

If this is the remedy for the injustice suffered by indigenous people, it is noteworthy that indigenous people have rejected it whenever they have had an opportunity to do so. Indigenous communities in North America have protested not only their exclusion and marginalization from economic and political power in the political institutions that have been created, but also their forcible inclusion in it. In Canada, the most successful mobilization of all indigenous groups occurred against the 1969 'White Paper' which promised to Canadian indigenous people equal

political status and equal rights, thus denying the legitimacy and authority of the indigenous communities that mattered to them.³⁷

Perhaps, though, Ypi means that the political order that instantiates equality and reciprocity does so along group-based lines (treating groups as equal), which would ensure that the indigenous group (or their legitimate representatives) have real decision-making power, including on the question of where and how settlement takes place. That would respect from the outset the central claim that indigenous people have entitlement over their land, their territory, because the agreement or consent of indigenous people, who have authority over their territory would be recognized from the outset. It would also be consistent with the indigenous community's self-determination, particularly if the creation of the political authority emerges from mutually advantageous and consensual interactions, such as trade, which develop in ways that both parties see the need for the creation of some kind of over-arching or new political authority to regulate that interaction. Indeed, in that case, we might say that the migrants haven't just arrived and set in motion this train of events: they were *invited*.³⁸

Ypi is ambiguous on whether the equality and reciprocity that is fundamental to overcoming colonialism is group-based or individualist. On the one hand, in line with an individualist interpretation, she argues that the need for political institutions applies whenever the two groups are in contact, without any suggestion that the patterns of life of the indigenous people on their land should get any kind of primacy. She writes: "whether it be rules of trade or rules regulating the movement of people (including their right to settle) an equal and reciprocal basis of interaction is one that ensures everybody will have a say that the claims granted to one group are proportionally equal to those recognized by another."³⁹ The terms 'everybody' and 'proportionally equal' both suggest that she is applying an individualist (population) principle: this is clear in the term 'everybody' but proportionality too suggests individualism, because it implies that decision-making should be proportionate to group size. However, elsewhere she describes the deliberation as occurring among groups. She refers to "territorially distinctive collective agents" as engaged in deliberation: when such agents "first make contact with each other, they

have a duty (a) not to treat each other with hostility, (b) to communicate respecting criteria of equality and reciprocity, and (c) to set up a political association that reflect such criteria in the rules it generates".⁴⁰ This is still somewhat ambiguous, since it seems that in some cases, it was not communities making contact with each other, but one community making contact with the other, which may have been unwanted; in which case the political association that automatically emerges is one that is non-consensual in its origin; though it also suggests that there the deliberation occurs not just within groups but between them as well.

Conclusion

In this paper I have presented reasons for thinking that the settlement of people on land that was part of the colonial project was itself a wrong, because it failed to recognize the significant relationship between people and land that was in place. I have argued that already settled people are related to each other and to land in morally significant ways, and that they require control over the land if they are to enjoy robust forms of self-determination.

At the heart of this paper, then, is a distinction between two related terms – being a ‘settler’ and ‘being settled’ on the land, which have very different moral implications. The second term is typically used to describe people who are (1) settled on land, typically for many generations; and the first to refer to (2) members of a settler society, in which groups settle as groups on land or territory, with a view to reproducing their culture on the land. It does not apply to individual migrants who move to a place as individuals and seek to join the society there.

Implicit in my argument is that the first type of people enjoy some entitlements to the land, especially control over it, because they are connected in morally relevant ways to the place in question: it is a background context of their projects and plans, they are often affectively attached to it, and it’s integral to their collective self-determination. This is not the case with settlers of the second kind. On my argument, part of the wrong of colonialism was to forcibly settle the land, and to thereby disable the previous group from being able to exercise their entitlements. This should be no surprise: that this needed a separate kind of

justification from that deployed to justify political sovereignty was recognized by the original colonizers who tried to advance distinct arguments to justify this aspect of the colonial (imperial) project.

What follows from this insight? Different remedies are suggested by the different analyses of the wrong of colonialism.⁴¹ On the domination account of the wrong of colonialism, the appropriate remedy for colonialism is the end of forms of domination. This is because domination is experiential: it is addressed once it is ended. To address the wrong of colonialism, on Ypi's and Lu's domination/structural injustice account, it is necessary to remove the institutions and practices of unequal, unjust and nonreciprocal political institutions. To some extent, this was what happened in the de-colonization period of the 1950s and the 1960s especially, which was characterized by the rapid demise of the European empires, the dismantling of the colonizer's forms of political authority and conferral on the population the liberty to create forms of political authority for themselves. It is true that many of the political institutions that were thereby created have not been fully equal and reciprocal, and problems of domination persist in different forms; but these are different species of the general problem that many relations – political, economic and social – are unequal and nonreciprocal, rather than a problem of colonialism *per se*. The remedy for the wrong of settler colonialism according to the domination analysis preferred by Ypi is the creation of equal, inclusive and non-dominating forms of political authority inclusive of indigenous and non-indigenous peoples alike. I have already raised the objection that in many cases this is not the preferred solution of indigenous people, who resist forcible inclusion, even on equal terms.

The most obvious remedy for the wrong of taking land is restitution: to restore the land to its original inhabitants. In colonies where the agents of imperial authority – members of the governmental and bureaucratic apparatus of the imperial state – were present in limited numbers, sufficient to effect control, restitution could be realized simply through de-colonization. Once control was relinquished, the members of the imperial centre could go, and often wanted to go, home.

In cases where colonialism is relatively recent, and the perpetrators are still living on the land, the land should be returned. The colonizers were not at liberty to settle there in the first place, and they should return the land to the original occupants.

In many cases, however, colonialism persisted over many generations, and the descendants of the original colonizers have grown up on the land, have developed relationships in that place, and are attached to the place, and it forms the background context of their lives. Restitution of the territory is not possible, at least not without committing further injustice. This follows from the idea of legitimate expectations, which is not a first occupancy principle, but focuses on the development of morally significant relationships and commitments over time. These may eventually apply to the children of the perpetrators of serious injustice.

This does not mean that injustice has been superseded, in Waldron's unfortunate turn of phrase.⁴² If a wrong occurred, it should be righted. The problem is simply that in cases of multi-generational land settlement, there is no clearly just remedy for that wrong. There are, however, ways to address the fact that a territorial wrong occurred, even if full restitution is unavailable or undesirable for other reasons. In the corrective justice literature, the typical mechanisms for addressing wrong when restitution is impossible or undesirable are: compensation, giving something of a certain value but not the thing itself, and apology; both of which should of course be pursued.⁴³ It may also be possible to offer some limited forms of restitution of indigenous rights on public lands, and/or in conjunction with the recognition of the use-rights of other claimants in cases of indigenous fishing rights and/or hunting rights.

There are, then, important implications of my account of the wrong of colonialism, especially with respect to settler colonialism, which are quite different from the account offered by Ypi and other domination theorists. I do not dispute that at the heart of both forms of colonialism were deeply unequal and nonreciprocal relations between colonizers and colonized, which were undergirded by assumptions of superiority/inferiority. It was, however, not confined to this. The taking of territory was a further wrong, which, in a multi-generational context, can

only be partially remedied. Whatever we might think about the relative weight of these two wrongs, it seems that the second – the taking of land and settlement on it – is not easy to remedy properly or fully, and so this wrong is likely to have irreversible effects.

¹ Elsewhere, REDACTED, I have distinguished between three different kinds of colonial arrangements. Sometimes people use the term ‘colonialism’ to refer to empire-colony relations, where the imperial authority exercises political rule over the colony, and the relationship between the two can be characterized as one of domination and subordination. The paradigm case is the relationship between Britain and India, in the period between 1858-1947. In many cases, Colonialism Type 1 emerged from a different kind of imperial-colonial relationship, which I will call Colonialism Type 2. In these early stages, the relationship between empire and colony was characterized primarily, though not exclusively, by unequal and exploitative mercantilist economic relationships and indirect and informal forms of control. We often nowadays use the term ‘colonialism’ to refer to indirect and informal forms of power and control, in which case the term ‘empire’ or ‘imperial power’ refers to an entity that exercises overwhelming power within a system characterized by unequal relations, and ‘colony’ refers to the subordinate party in this relationship. Finally, the term ‘colonialism’ can also refer to a quite different kind of relationship, in which the imperial order does not simply rule over people, whether directly or indirectly, but establishes colonies or settlements of members of the dominant (imperial) group, who move permanently to land in distant places, not as individuals but as groups aiming to largely reproduce their culture, language and political values in the new place. The paradigm case of this kind of colony is the United States prior to 1776, Argentina prior to 1816, and Canada, Australia and New Zealand in the nineteenth and even the early part of the twentieth century. This paper is interested in this latter kind of ‘colonialism’, often called settler colonialism. My claim is not that the wrong of colonialism identified here – the taking of land – is shared by all three accounts, but that where this occurred it is at the heart of the project, not incidental to it (whereas other injustices – like violence -- happened often, but were incidental). It therefore needs to be theorized as an important inherent injustice of settler variants of colonialism.

² According to Lea Ypi, the central wrong of colonialism is the unfair relationship between colonized and colonizer: colonialism is an “objectionable form of political relation”. Her account – like mine – does not deny that there were other wrongs often associated with colonialism – violence, denial of human rights and so on – but the central wrong, she contends, is the “creation and upholding of a political association that denies its members equal and reciprocal terms of cooperation.” Lea Ypi, “What’s wrong with colonialism”, *Philosophy & Public Affairs*, vol. 41, no. 2 (2013), 158-191 at 158. Catherine Lu has a similar argument that identifies

colonialism as a system of structural injustice. This is at the core of her central example: the treatment of Korean women by the Japanese Imperial Army in the Second World War. Catherine Lu, "Colonialism as structural Injustice: Historical Responsibility and Contemporary Redress", *Journal of Political Philosophy*, vol. 19, no. 3, 2011, 261-281. This view is also supported by some international *legal* documents, which focus on the unequal and nonreciprocal relations of political domination and denial of political self-rule. <http://daccess-dds-ny.un.org/doc/RESOLUTION?GEN/nro/152/88/IMG/NR075288.pdf>

An alternative account is provided by Kok-Chor Tan and Daniel Butt, both of whom separately list (a) the denial of political sovereignty (b) exploitation and (c) cultural imposition as definitive of colonialism and as their wrongful components. Kok-Chor Tan, "Colonialism, Reparations and Global Justice" in Jon Miller and Rahul Kumar, eds., *Reparations: Interdisciplinary Inquiries* Oxford: Oxford University Press, 2007, 280-306. ; Daniel Butt, "Repairing Historical Wrongs and the End of Empire", *Social and Legal Studies*, vol. 21, no. 2, 2012, 227-42; Daniel Butt, "Colonialism and Postcolonialism", *The International Encyclopedia of Ethics*, Edited by Hugh LaFollette, Blackwell Publishing, 2013, 892-898. My argument could also be directed at theirs since neither considers as a direct wrong or injustice the taking of territory.

³ This is well known feature of nineteenth century 'High Imperialism', but even in the early period, there were such assumptions, as I argue in section one.

⁴ The term 'colonialism' is sometimes used interchangeably with that of imperialism, perhaps because people increasingly see imperialism as operating across a field characterized by power and control, and so the focus should not be solely on either the empire or the colony, but on the interrelationship between the two.

⁵ Hugo Grotius, *The Rights of War and Peace*, eds., Jean Barbeyrac and Richard Tuck Indianapolis: Liberty Fund, 2005 [1625]. In the context of jurisdiction over the sea, Grotius distinguished territory from property, arguing that both rights were associated with possession, but that territorial rights involved the effective exercise of political power. B, 2, ch. 3, s. 13, para 2 for the use of that distinction in relation to law of the sea.

⁶ In his chapter on the 'Legacy of Rome', Anthony Pagden distinguishes three different meanings of the term 'imperium', all stretching back to Roman times and connected to the meaning of the term in the context of the Roman Empire. He notes that the root sense of the word is to order or command, but it was also used to convey the following meanings: 1. A limited and independent or 'perfect' rule, 2, a territory embracing more than one political community, and (3) the absolute sovereignty of a single individual. Anthony Pagden, *Lords of All the world, Ideologies of Empire in Spain, Britain and France, c. 1500-c.1800* (New Haven & London: Yale University Press, 1995),pp. 14-17.

⁷ Duncan Bell, “Ideologies of Empire”, in Michael Freeden, Lyman Tower Sargent and Marc Stears, eds., *The Oxford Handbook of Political Ideologies*. Oxford: Oxford University Press, 2013, 536-561 at 539-40.

⁸ Some might argue that the idea of a racial and cultural hierarchy applies in particular to colonialism in the 19th Century, which particularly emphasized the civilizing mission, but the central justifications for the denial of political sovereignty presupposed religious and cultural superiority of Europeans vis-à-vis native populations.

⁹ Anthony Pagden, *Spanish Imperialism and the Political Imagination* (New Haven and London: Yale University Press, 1990), 14-16.

¹⁰ There was a significant strand of internal dissent, mainly from theologians, about the scope of authority conferred on the colonial power. Against the argument that indigenous peoples were so inferior to Western or Christian populations that they were analogous to children, or, alternatively, were so deficient in reason that they were unable to exercise jurisdiction over themselves, Cano replied that, if Indians were like children, and in need of education and especially education in the true faith, then, this constituted a precept of charity. However, no precept of charity can involve coercion. Second, it was claimed that conquest could not be justified on Christian grounds: this could only be justified if the Indians had ‘injured’ the Spanish; but, if the barbarians had given no reason for a just war, nor wish to accept voluntarily Christian princes, the expeditions must cease” See Pagden, *Spanish Imperialism and the Political Imagination*, p 31. Finally, concern was expressed that the Spanish exercise of rule over the indigenous people was inconsistent with the Christian idea that true political communities ought to be organized in accordance with principles of cooperation for mutual benefit. The brutality of the Spanish activity in the New World was such that it was difficult to ignore, and was ultimately the basis of Montesquieu’s devastating critique of the imperial order: that Spain in its colonies did “what despotism itself does not do: it destroyed its inhabitants”. Montesquieu, *The Spirit of the Laws*, trans. and edited by Anne M. Cohler, Baia Carolyn Miller and Harold Samuel Stone Cambridge: Cambridge University Press, 1989 [1748], 125.

¹¹ On this view, indigenous tribal authority was not civil authority properly understood; indigenous forms of governance did not constitute true political communities; and their chiefs, therefore, were not entitled to the restrictions accorded by natural law to Christian princes. For example, the aim or purpose of the Virginia Company, as stated in the 1609 Charter, was to “propogate[e].. [the] Christian religion to such people, as yet live in darkness and miserable ignorance of the true knowledge and worship of God, and may in time bring the infidels and savages living in these parts to humane civility and to a settled and quiet government.” Pagden, *Lords of all the World*, quoted on p. 35. And the first French colonies were justified to bring “edification and instruction of the poor barbarians”

and “establish the Faith among the Barbarians”. Charles de Rochefort *Histoire naturelle et morale des îles Antilles de l’Amérique* [1655] and , and Pierre Charlefoix [1774], both quoted in Pagden, *Lords of All the World*, p. 35.

¹² Lu, “Colonialism as Structural Injustice”, p. 262.

¹³ Ypi, “What’s Wrong with Colonialism”, p. 172.

¹⁴ Ypi, “What’s Wrong with Colonialism”, p. 162.

¹⁵ Pagden, *Spanish Imperialism and the Political Imagination*, p. 14.

¹⁶ William Robertson, *The History of America* (1777), quoted in R. B. Sher, *Church and Society in the Scottish Enlightenment: the Moderate Literati of Edinburgh* (Princeton, NJ: Princeton University Press, 1985); and Pagden, *Spanish Imperialism and the Political Imagination*, p. 35.

¹⁷ John Locke, “The Second Treatise of Government” in *Political Writings of John Locke*, edited, with an introduction by, David Wootton. London: Penguin Books, 1993 [1681], p. 274.

¹⁸ For a focused discussion of this, see Barbara Arneil, *John Locke and America; The Defence of English Colonialism* (Oxford: Clarendon, 1996).

¹⁹ Locke, “Second Treatise” p. 276.

²⁰ There are many different interpretations of the Lockean proviso, which I will sidestep here, as this is not centrally an exegesis in Locke’s thought. See, however, Eric Mack, *John Locke* (London and New York: Continuum Publishing, 2009), 51-74; and Gopal Sreenivasan, *The Limits of Locke’s Rights to Property* (New York: Oxford University Press, 1995), 47-50.

²¹ Locke, “Second Treatise”, p. 279.

²² The main point of Locke’s argument, however, was to justify government with limited powers. To this end, Locke asks us to imagine persons, either individuals, or loosely associated persons (e.g., families), many of which have property in land, combining together to create political authority. He thought that people who were engaged in settled agriculture, amongst whom disputes of ownership, bequest and transfer were likely, needed to create some kind of adjudicating mechanism, and that such people would create a civil authority to decide disputes between them. John Simmons, “On the Territorial Rights of States”, in Ernest Sosa and Enrique Villanueva, eds. *Social, Political and Legal Philosophy: Philosophical Issues*, vol. 11, Oxford: Blackwell, 2003, 300-326.

²³ James Tully, *A Discourse on Property: John Locke and his adversaries* (Cambridge: Cambridge University Press, 1982; Arneil, *John Locke and America*,

²⁴ I am assuming this for the sake of the argument. The actual population of the New World was deeply contested, with native peoples making higher estimates, and the settler populations, lower estimates. Whatever the truth, it's clear that these places weren't literally empty or unpopulated.

²⁵ Jeremy Waldron, "Superseding Historic Injustice", *Ethics*, 1992, vol. 99, no. 3, 503-519 at 516.

²⁶ Many expectations don't give rise to claims of justice: there are many choices that are made against a background of relatively stable rules and hence expectations, but when these change, we don't necessarily think that people have a claim of justice to the *status quo ante*, or to compensation. This is true for example of people investing in skills in the labour market.

²⁷ One implication of this line of argument – which is the topic of the paper by Waldron op.cit., is that there is a temporal dimension to expectations: it is not equivalent to a first occupancy argument, because over time, descendants of the colonizing population will develop their own expectations, their own settled aims and attachments and claims, and that the descendants of the people unjustly removed will develop a different set. This allows Waldron to claim that injustice can be 'superseded'. I think this is an implication of the legitimate expectations argument, but I do not think injustice is superseded: an injustice was done, so something ought to be done about it, but the range of remedies is much reduced: restitution after a while ceases to be an option, but some forms of compensation or apology to existing members may be feasible.

²⁸ Lea Ypi has challenged this line of argument in her (unpublished) paper, "Structural Injustice and the irrelevance of attachment". She asks an important question: why do we think the Sa'ami should have special rights over reindeer (herding and associated lands) and not the English aristocrats who claimed, on the very same ground (of attachment to a way of life), that they should be permitted to hunt foxes over farmers' fields? The answer (that she doesn't consider fully enough) is that the Sami could not continue their lives in anything like its recognizable form if there were no reindeer, or if they were prohibited from herding them, but the class-based lifestyle enjoyed by the English fox-hunting upper class could continue without the ability to hunt foxes. It is not integral to that way of life. One might also develop an argument that that class-based culture is arrogant and objectionable, but I do not rely on that assessment to argue that they are dis-analogous.

²⁹ This phrase was used by Anthony Ashley Cooper, 7th Earl of Shaftesbury in a lecture in July 1853, and was often repeated in the early Zionist period. However, it is not clear that it meant that the land was empty of people – since the phrase ' a

country without A people' suggests, not that there are no people living there, but that the people lack the unifying features for collective agency, or collective self-determination.

³⁰ John Winthrop, "Reasons to Be Considered, and Objections with Answers", reprinted in Edmund S. Morgan, ed., *The founding of Massachusetts: Historians and the Sources* (Indianapolis: Bobbs-Merrill, 1964). Quoted in D. E. Stannard, *American Holocaust* (New York: Oxford University Press, 1993), 325-6.

³¹ Quoted in N. Masalha, *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought 1882-1948* (Washington: Institute for Palestine Studies, 1992), 6.

³² Moreover, the very idea of a resource is culturally laden. As I've argued elsewhere (REDACTED), what counts as a resource is not culturally neutral: natural resources are claimant-relative in the sense that something can be a resource for one person, because instrumental to the satisfaction of his or her wants and needs, and not a resource for someone else, because the person does not view the object instrumentally. This is a significant problem in the history of relations between indigenous and non-indigenous communities. The Lakota Sioux for example view the Black Hills as sacred, but the non-indigenous (largely white) population view it instrumentally, as a resource, or source of wealth. Moreover, it is not clear that we have a culturally neutral method to individuate resources: in Kolers' example, in cases where one group wants the wood, another the whole (living) tree, and another the bark, how do we individuate resources in a fair and culturally neutral way? Avery Kolers, "Justice, Territory and Natural Resources", *Political Studies*, vol. 60, no. 2, Jun 2012, 269-286. This is a problem grappled with (but not solved satisfactorily) by Dworkin in his resource equality theory. Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), 66-9.

³³ To see this, consider some thing like a Dworkinian auction to allocate land, which is thought to be sensitive to the strength of people's preferences. The problem with this, as Kolers has pointed out, is that, the person who wants to use the land for highly efficient mono-farming, or for extracting oil, can pay a much higher price for the land than the nomadic indigenous group who wants to use the land for hunting and fishing. See Avery Kolers, *Land, Conflict, and Justice. A Political Theory of Territory*. (Cambridge: Cambridge University Press, 2009), 52-55; REDACTED.

³⁴ Of course, the claims that people make to land have to be subject to empirical examination: we would need to be confident that people are indeed interacting in normatively significant ways with land, and have developed legitimate expectations with respect to them. We should not rely on a simple assertion that people care about land x, y, z, without some empirical examination of the centrality of that place to their lives. I have argued at more length elsewhere that a group occupancy principle can yield heartlands but not precise boundaries. See REDACTED.

³⁵ Lea Ypi, “What’s wrong with colonialism”, p. 163.

³⁶ Ypi, “What’s wrong with colonialism”, p. 175.

³⁷ Anthony J. Hall, *Earth Into Property: Colonization, Decolonization, and Capitalism* (Montreal and Kingston: McGill-Queen’s University Press, 2010), 508-11; Keith D. Smith, *Strange Visitors: Documents in Indigenous-Settler Relations in Canada from 1876* (Toronto: University of Toronto Press, 2014), chapter 10.

³⁸ This is not an argument just for some kind of representation rights, of the kind we might imagine could be justified in a multicultural polity. The case I am thinking of is that of two self-governing societies -- indigenous and non-indigenous people -- establishing mutually advantageous trading relations with each other, and then, to address problems that arise in terms of their joint economic activities, establish a jurisdictional authority to regulate that trade. I think such an institution could be legitimate if legitimate representatives of both groups, both societies, as equals, determined the rules under which that authority would operate. Such trading arrangements were often a precursor to colonialism (for the Portuguese in Brazil, certainly in the period of the First Portuguese Empire from 1418-1580, and the British in India in the early period of the Raj, and certainly prior to 1773. Trading relations did not need to transform into relations of domination and subordination (colonialism) but could have been regulated by fair intergovernmental institutions, set up by both sides.

³⁹ Ypi, “What’s wrong with colonialism”, p. 175.

⁴⁰ Ypi, “What’s wrong with colonialism”, p 175.

⁴¹ Of course, other wrongs associated with colonialism – like violence, and human rights violations that accompanied it, might require different and separate remedies).

⁴² Jeremy Waldron, “Superseding Historic Injustice”, *Ethics*, 1992, vol. 99, no. 3 , 503-519.

⁴³ I have discussed all three in the context of expulsions in REDACTED.