

### **Separating the wrong of settlement from the right to exclude: territory and sociocultural stability**

**Abstract.** There is a significant wing of the rapidly growing philosophical literature on immigration that calls for the opening of national borders. Such a denial of the right to exclude might seem troublingly to make it more difficult to explain the distinctive wrong of the kind of colonialism to which settlement is central. Indeed, Margaret Moore, in a recent paper, has argued that this wrong of settler colonialism is the violation of exclusionary territorial rights held by indigenous peoples. In this paper, I argue that we can explain the wrong of settler colonialism without any need for *exclusionary* rights over territories. I develop an account of *sociocultural stability rights* that suffices on its own to explain this wrong, but that does not entail a right to control entry to a territory.

An important part of the history of modern colonialism has been a history of *settlement*. One major form that colonial subjugation has taken has been that of settler colonialism, in which a group of settlers move and together establish a home in a new, already-inhabited, geographical location, aiming in some sense to replace its existing inhabitants and to create an outpost of the society from which they came.<sup>1</sup> (The settlers aimed to *replace* existing inhabitants often in a literal sense, through extermination or enforced displacement, though not always; sometimes the project of replacement was rather one of shaping the territory according to the *settlers'* practices, goals, and ideals.) The colonisation of the Americas and the south Pacific are core instances, but other histories of imperialism have exhibited the traits of settler colonialism to varying degrees. Needless to say, the settler colonial record is morally hideous. It involved widespread murder, rape, exploitation, enslavement, forced displacement, political subjugation and cultural imposition and domination. But at the core of *settler* colonialism is the act of settlement, permanent relocation to a new geographical home, which might on its face seem a morally innocuous one. We might wonder, then, whether what marks settler colonialism out as a distinct form of imperial relationship (namely, settlement) is, from a *moral* point of view, merely an incidental feature of a project that was wrong for other reasons. Or is its distinguishing element a morally significant one: wrongful settlement?

Settler colonialism is a complex historical phenomenon that emerged at a particular time and place (or places). Its various manifestations are characterised by a bundle of motivations, ideas and practices, grouped, most plausibly, by a family resemblance. Various elements of this bundle are straightforwardly wrongful, often egregiously so: from racist devaluation or dehumanisation of indigenous people and concerted campaigns of extermination to forced assimilation and cultural imposition. The historical phenomenon is distinguished by the particular way in which these elements came together. But the question that concerns me here is whether

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<sup>1</sup> Note that the term 'colonialism' is sometimes used to refer *exclusively* to a phenomenon of this sort, centrally involving settlement, distinguished from 'imperialism', the exercise of power of some sort by one state, nation or people over another (see Kohn and Reddy (2017) and Moore (2016) 447-8). On settler colonialism, see for instance Bell (2016) ch. 2 and Veracini (2011).

settler colonialism is a distinctive *normative* phenomenon, as well as a historical one. Not all of the distinguishing historical features are normative ones, and many of the wrongs involved do not, on their own, distinguish settler colonialism from other forms of imperialism. The natural place to look for one that does is the act of settlement itself. My question, then, is whether *settlement* (of a certain kind) can itself be wrongful. There is some intuitive temptation to think so. As Margaret Moore has recently argued, it is natural to resist fully assimilating the moral story we tell about settler colonialism to a wider group of colonial or imperial projects.<sup>2</sup> Additionally, as she points out, members of groups subjected to settler colonialism often describe the wrongs perpetrated against them or their ancestors as bound up with *territory* or *land*, and complaints against settlement do seem capable of persisting even when political subjection and straightforward violence are not so prominent.<sup>3</sup> Consider, for instance, Haunani-Kay Trask's claim that 'in less than a hundred years after Cook's arrival [in Hawai'i in 1778], my people had been dispossessed of our religion, our moral order, our form of chiefly government, many of our cultural practices, and our lands and waters'.<sup>4</sup> This describes a century that saw significant influxes of visitors (traders, missionaries, and so on) and settlers (who by 1890 made up 55% of the population), but no formal political subjection (which followed in 1898) and relatively little direct violence.<sup>5</sup> Of course, the Hawaiian case, like all historical cases, is complex and messy; it does not pinpoint the question exactly, and independent wrongs were certainly committed. But at the core of what happened during the period described by Trask with a sense of moral outrage were settlement, trade and evangelism.

Yet if we are attracted by the sort of cosmopolitan view that rejects the idea of exclusionary rights over territories, we might seem to be led straightforwardly to deny the possibility of settlement that is itself morally wrongful.<sup>6</sup> If 'settlement' is just another term for immigration (perhaps in a context of imperial domination of some kind), then it might seem natural to conclude that we cannot both see settler colonialism as distinguished by a *wrong* and deny the existence of rights to exclude from territory. If that is correct, we can either reject this sort of cosmopolitan position, or deny the distinctive wrongfulness of settler colonialism.<sup>7</sup> The intuitive cost to the latter option leads Moore to take the first horn of the apparent dilemma, and to posit exclusionary territorial rights. It is my aim in this paper, however, to dismantle the dilemma. We can accept that settlement can be wrong, and so settler colonialism is not distinguished merely by the morally incidental

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<sup>2</sup> Moore (2019) 88 and (2016) 448, 455.

<sup>3</sup> Moore (2019) 88.

<sup>4</sup> Trask (1999) 10.

<sup>5</sup> Kauanui (2018) 87.

<sup>6</sup> Advocacy of open borders is gaining wider currency; see, for instance, Carens, 1987, 2013; Cole, 2000; Oberman, 2016; Huemer, 2010.

<sup>7</sup> The phrase 'distinctive wrongfulness of settler colonialism' could be read in two ways: here, I do not mean it to imply that there is a unique wrong associated with settler colonialism, but rather that the distinguishing feature of settler colonialism (the *settlement*) is a wrong.

form that imperial subjugation happened to take, but without granting exclusionary rights over territory to anybody. Or so I will argue.

We should be clear, though, that it is an option very much open to the cosmopolitan denier of exclusionary territorial rights simply to deny that there *is* anything distinctively wrong with settler colonialism. This would not force any obviously wrong judgments about historical cases: their wrongfulness can easily be located elsewhere. There is some disagreement in recent philosophical discussion about what, if any, is the essential or distinctive wrong of *colonialism* more generally (understood broadly to encompass settler colonialism as well as a variety of other imperial relations).<sup>8</sup> While some take the essential wrong of colonialism to be the violation of exclusive property-like territorial rights, others take it to be, or involve, political subjugation or domination of a certain kind.<sup>9</sup> It could be, then, that what was wrong with historical instances of settler colonialism was (most centrally) just what it shared with other forms of colonialism, and if we take the view that this was some form of political domination, no territorial rights are needed. Others hold that there is *no* essential wrong of colonialism, and what made historical instances of it grievously wrong was just the litany of other wrongs with which it was contingently connected.<sup>10</sup> Settler colonialism has been accompanied by a diverse bundle of such wrongs including the deceit, force and violence through which it was achieved, and murder, rape, exploitation and enslavement that went alongside. So, we will have no difficulty finding wrongful actions in the history of settler colonialism, without turning to the act of settlement. But, as I have suggested, such a story will not satisfy everybody, and might seem to miss something out. It is at least worth considering, then, whether complaints against *settlement* can be taken seriously.

My aim in this paper, then, is to offer an alternative account of a possible wrong of settlement that does *not* require us to posit any exclusionary rights over territory. The wrong I describe is certainly not the whole story about historical (and current) cases of settler colonialism. A recurring feature of these is the prevalence of various forms of disrespectful treatment of colonised people: the devaluation of their practices, beliefs, and identities, social marginalization, discrimination and so on. These wrongs (as well as the others mentioned above) will form an important part of the moral story about the history of settler colonialism. Nevertheless, I do think the account I will provide below gives another crucial *part* of that story.

The account I will put forward posits an interest in sociocultural stability, in constancy of the background social conditions on the basis of which we orient ourselves in the world, and which shape and frame the options available to us. Our well-being and agency, I will suggest, depend on some degree of sociocultural

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<sup>8</sup> These are two different questions, though the existing literature does not seem always to notice this. It may be that certain essential or necessary features of colonialism are wrong, though not distinctively so: the wrong-making features might not be *sufficient* for something to count as colonialism, and so be shared with other phenomena.

<sup>9</sup> On the former see Ferguson and Veneziani (2020), on the latter Ypi (2013) and Stilz (2015). On the debate generally, see Moore (2016).

<sup>10</sup> Valentini (2015). (Cf. van Wietmarschen (2018).)

stability of this kind. In some cases, these background cultural practices can involve patterns of land use in particular geographical areas that would be disrupted by certain patterns of settlement by new inhabitants. The interest I describe will only ground a weak, *pro tanto* right, but it is of sufficient importance, I think, that in particular circumstances it would be wrong to settle in an area in which others already have interests of this kind (if you have no correspondingly strong interest in using that particular area of land). Importantly, the sociocultural stability rights I posit are grounded in an interest in what I will call ‘orientation’, not in the sort of interests in making and pursuing plans that Moore (and Anna Stilz) appeal to, and for this reason they are rights to *stability*, not *control*. Thus, they allow us to account for a possible wrong of settlement, but not because the existing inhabitants have any sort of *exclusionary rights* over the territory. The wrong I will describe is not an essential or necessary feature of settlement, nor is it a wrong that can only be committed through settlement, but I will claim that the act of settlement itself *can* (and sometimes does) constitute a wrong of this kind (and so settler colonialism can be understood in moralised terms, as distinguished by *wrongful* settlement).<sup>11</sup>

The paper thus has two main aims: first, to defend scepticism about exclusionary territorial rights from the concern that it prevents us from accounting for a distinctive wrong involved in the historical phenomenon of settler colonialism (as there is some intuitive temptation to do), and second, to identify a significant feature of the moral universe, relevant not only to evaluation of the past, but also potentially to action and policy here and now. I begin by describing the plan-based accounts of occupancy rights given by Moore and Anna Stilz, and distinguishing their function from that of the account I will give. I then set out my account of the interest in sociocultural stability and the rights grounded in it. Next, I describe how these rights can be violated, most obviously by physical displacement, but also by settlement. Finally, I argue that they do not support exclusionary rights, or property-like territorial rights of any kind.

## **Background**

It is reasonably straightforward to account for a distinctive wrong involved in colonial settlement if we attribute exclusionary, property-like, rights over territory to groups of inhabitants. Uninvited settlement of the territory then becomes a simple violation of its inhabitants’ collective right to a certain range of control over the territory, or to determine for themselves the conditions of access to it (an asymmetrical right that outsiders lack). Both Margaret Moore and Anna Stilz, two leading theorists of territorial rights who have offered explanations of the wrong involved in settlement, pursue this route.<sup>12</sup> The accounts they offer differ substantially, and they differ notably in the extent of the justification for exclusion that they are willing to

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<sup>11</sup> Since the wrong I identify is not essential to settlement, the normative category of wrongful settlement I identify may not map perfectly onto the historical category of settler colonialism.

<sup>12</sup> Moore (2019) and Stilz (2017). (Also Moore (2015) and Stilz (2019).)

grant to territorial right-holders. Nevertheless, both arrive at territorial rights that are exclusionary in the sense important for my purposes. These are rights to a substantial degree of *control* over the territory in question, rights such that it would make sense to say of their object that it, in some restricted sense, *belongs* to the right holder; they have a certain kind of asymmetrical *authority* over it, it is in a sense *theirs*.

In neither case are the control rights envisaged absolute or unlimited; they are rights to control the territory in certain respects only and within certain limits. Both also acknowledge that in some cases exercising control to prevent access to a territory would be unjust even where the controlling agent possesses genuine legitimate authority over the matter. Moore countenances a fairly extensive justification for discretionary exclusion from legitimately held territories.<sup>13</sup> Stilz is much more restrictive, arguing that relatively stringent conditions have to be met for exclusion to be justified.<sup>14</sup> Still, though, like Moore, the territorial rights that Stilz defends *are* exclusionary and involve a *right to exclude* in the sense I have in mind. To explain this, let me distinguish two kinds of question in political philosophy. First, we may ask what justice requires, or what a justifiable policy would look like. This is the sort of question we ask when deciding, for instance, what policy to vote for. But second, we may also ask what procedures, or which people, have the legitimate authority to make a particular decision, and to impose it on others. Stilz carefully distinguishes these two questions. The account she gives of the justifiability of exclusion (and the limits to discretion she imposes) is an answer to the first question; it is an account of the substance of a just immigration policy, not its legitimacy.<sup>15</sup> Although an immigration policy that excluded harmless immigrants would be unjust, Stilz thinks that a self-determining people (with the kind of occupancy rights and jurisdictional rights she defends) has the *right*, or *legitimate authority*, to set its own immigration policy. If such a people were to make the wrong decision, outsiders would still be obliged to respect it (at least, up to a certain point). For the purposes of this paper, I want to reserve the terms ‘right to exclude’ and ‘exclusionary territorial rights’ for an answer to the *legitimacy* question: for a state or people to have the right to exclude in this sense is for it to have legitimate authority over the matter of exclusion from a particular territory. If a state is, or would be, *justified* in excluding, I will say that it possesses an ‘exclusion justification’. Thus, in these terms, Stilz holds that legitimate states *do* have the right to exclude, though they have only quite a limited (and certainly not a *discretionary*) exclusion justification.

What, then, is the basis for the kind of exclusionary control right that writers like Moore and Stilz posit? Moral considerations called ‘occupancy rights’ play an essential role in both Moore’s and Stilz’s accounts. These are quite limited, ‘primitive’ rights (in Stilz’s phrase<sup>16</sup>) over space or land that do not depend on the existence of an entity capable of governing a territory, but serve as steppingstones in justifying the full-blown

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<sup>13</sup> Moore (2015) ch. 9.

<sup>14</sup> Stilz (2019) ch. 7 and (2017) 363.

<sup>15</sup> Stilz (2019) 188.

<sup>16</sup> Stilz (2018) and (2019) ch. 3.

‘territorial rights’ that both defend. The occupancy rights that the two writers defend are quite different (notably, for Stilz they are held by individuals, while for Moore they are group rights, though she also posits partially derivative individual ‘residency rights’), but for both these are property-like rights (in the sense that they are rights to a certain extent of *control* over a space or object, only in this case the extent of control is somewhat less than that involved in a full liberal property right).<sup>17</sup> In both cases, these rights are also preinstitutional in that they do not depend on any established institution (or artificial human convention) that grants occupancy rights in a particular place to particular individuals or groups. It is natural facts about people’s (individual or collective) connections to places that give rise to these rights and their correlative obligations.

For both writers, these occupancy rights play a necessary and central role in justifying the kind of control rights they think territorial-right-holders have, and, as a result of this, in explaining the wrong of settler colonialism.<sup>18</sup> For both they seem to be, in Stilz’s terminology, the ‘foundational title’ on which territorial rights are built (and which attaches states or peoples to particular spaces and provides the necessary link between the valuable functions served by territorial control and rights over a particular space). (Although, unlike Stilz, Moore does not seem to take occupancy rights to be sufficient on their own to account for the wrong of settlement, the territorial rights that allow her to do so depend necessarily on the former for their justification.)

Interests in some sort of collective self-determination play an equally important role in both accounts of exclusionary territorial right. But group self-determination rights, as both writers seem to acknowledge, are not, and do not on their own include, rights to control any particular physical objects or spaces in the external world (and it is for this reason that occupancy rights are needed). To see this basic point, it is sufficient to notice that there are groups that seem plausibly to have a right to be collectively self-determining to a substantial degree, but where the right to self-determination has no territorial (or external-object-involving) dimension at all. Consider a voluntary association like a book club, for instance, or a religious community. We might plausibly think it matters that some such groups be free to determine to a reasonable extent their own internal affairs according to their shared goals, preferences or ideals. Yet achieving this clearly does not require book clubs, rugby teams, churches or mosques to have control over an area of land. Such an association may, of course, own property, and perhaps their right to self-determination entitles them to make their own collective decisions about how to use property they legitimately own under an existing legitimate property regime, but it does not seem necessary in order for a book club, say, to be self-determining in the relevant respects that it own property. A right to self-determination (individual or collective) cannot be a right

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<sup>17</sup> Stilz (2019) 33ff.; Moore (2015) 43-5.

<sup>18</sup> Stilz (2017), (2019) 26-7; Moore (2015) 36-7, (2019).

to do whatever one chooses, and so there is no reason to *assume* that what a self-determining group must be free to do includes the exercise of control over land.

Now, of course, the kind of groups that are held to have territorial rights are importantly different from groups like religious associations and voluntary shared-interest associations. One might, then, combine the self-determination idea with the thought that groups of a particular kind (most likely, groups with some sort of shared *political* project, as well as the capacity to deliver the goods that such a project can provide) require control over an area of land in order to achieve the valuable function that self-determination for such a group can fulfil. Moore and Stilz do not take this route (though there are certainly elements of such a story in their accounts). To summarise very briefly, the problem is that this kind of story cannot explain what binds others to respect the unilateral claims over *particular* areas of land that a group happens to make (in the absence of any overarching institutions or conventions that could legitimate such claims).<sup>19</sup> It does not explain what would be wrong with an outsider group B turning up and using land T in which group A is currently exercising political self-determination if there are other, equally good, places where A could perform the same valuable functions instead, or if B could equally well perform the same functions in T. (The *mere* fact of first arrival does not seem to be a morally significant one; at least, we need some explanation of what is morally significant about first arrival. I will return to this point below.)

For these reasons, Moore and Stilz need the ‘occupancy rights’ they defend to connect the interest in collective self-determination with control over particular geographical areas.<sup>20</sup> The move is from limited ‘primitive’ control rights over an area to more substantial territorial rights, supported by the ways in which these more substantial rights enable groups already holding basic control rights in a place to serve their interest in being collectively self-determining. In defending the foundational ‘occupancy rights’ they need, both writers appeal in turn to interests in the ability to plan and bring plans to fruition or to pursue stable projects and commitments over time.<sup>21</sup> It is this appeal that permits the move to *control* that, as we have seen,

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<sup>19</sup> Moore (2015, ch. 5) and Stilz (2019, ch. 4) make similar arguments.

<sup>20</sup> See Stilz (2019, 26-7).

<sup>21</sup> For Stilz, this is quite straightforwardly explicit (2019, pp. 11, 40ff.). For Moore, occupancy rights are group rights, making things more complicated, but these group rights seem nevertheless to be grounded in interests in developing *shared* plans and projects over time. The importance of collective *identities* (and the relationship of these to particular places) plays an important part in her justification of occupancy rights (2015, 40), but the structure of the argument seems to be that because of the importance of collective identities to group members, shared projects of groups that possess such an identity matter analogously to the way individual projects matter. (On this picture, I think, group projects matter in a way not reducible to the importance of their individual sub-projects to individual group members, but the importance of the group projects is nevertheless derived from individual interests.) The argument, then, is analogous to Stilz’s individualist one, only here the focus is on *collective* plans and projects as well as individual ones: it is still an interest in developing plans and projects over time that does the work. (Moore sometimes talks about the disruption of *identities* themselves by geographical displacement, but I do not think this should be taken literally. Displacement does not really disrupt an *identity*: a place can figure in a group identity without the group’s being physically there. One may identify, for instance, as a member of a group displaced from territory T. What might be disrupted by displacement are plans, projects or relationships whose importance is explained by their significance for a shared

both writers want to make. It will not be possible, or so the thought goes, to make and pursue a stable plan over time, without some *control* over the necessary background conditions on which the plan relies. The interest we have in developing and pursuing plans over time can only adequately be served by making use of external objects in the world, and, in particular, physical space. The successful pursuit of plans depends on the ability to rely on continued access to (and ability to use in planned ways) elements or parts of the world involved in the plans you have made. Because of the importance of this human interest, the involvement of an object or space in a person's (or group's) plans can give rise to obligations in others to refrain from using it in ways that conflict with those plans. This entails an extent of moral *control* over the object or space on the part of the initial planner.

I think it is plausible that we have these planning interests and that they are morally significant. I think this may be part of the explanation of why it is a good thing to have a system of reliable property rules that allocate rights to access, use and exercise control over external objects. I am sceptical, though, that these interests are sufficient to ground obligations to respect others' unilateral appropriations (whether as individuals or groups) independent of any legitimate human institutions allocating asymmetrical rights over particular things to individuals or groups, in other words, that they ground *natural* rights over things or places. There is not space here to give any sort of full argument against that idea. It is enough, though, for now, to point out that there are good reasons to be doubtful.<sup>22</sup> The fact of an object's involvement in a person's plans is certainly a morally significant one, but, on its own, will not resolve any conflicts: a single object or space may often be involved in the plans of multiple people, and these plans may conflict. The defender of natural plan-based property-like rights must distinguish *mere* involvement of an object in plans from actual incorporation in use. It is not very clear, though, how exactly this distinction is to be made, or what its moral significance is. Perhaps it can be made on the basis of some sort of physical contact? It is hard, though, to see what is so morally significant about physical contact (and why, say, someone who has had cursory physical contact with a plot of land has a stronger moral claim to it than someone who has made extensive plans concerning it at a distance). Is it simply first arrival that does the trick? Again, though, it is hard to see what is morally significant about first arrival. A plan that does not start out involving a particular object can later come to essentially depend on it. Why should the fact that I got to this object first and involved it in *a* plan of mine before you did have overriding moral significance, especially considering that it might have later come to be much more centrally involved in higher-level life projects of yours to which you are deeply committed? It is not clear, further, that there are any universally acceptable criteria for comparing depth of commitment

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identity.) One other reading of Moore's argument here would see it as much closer to the argument I will make below (suggested by her talk of 'attachment' and 'feeling at home in the world' (2015, 43-4)). I will argue, though, that the interests I appeal to support rights to a certain kind of stability, but *not* rights to control. Nothing Moore says (*other* than the plan-based argument) justifies the move from interests in things like 'attachment' or 'feeling at home in the world' to *control* rights.

<sup>22</sup> [Reference removed for anonymisation.]

or centrality of a plan, and it is not obvious that you will be morally bound to respect my deeper or more central plans in the absence of such criteria. If there is an established *convention* in place that grants rights according to a ‘first-come-first-served’ rule (or some other rule), then, of course, things are different. But the fact that we would be better off with such a stable framework is a reason to establish property conventions of some sort, not a reason to respect the unilateral claims of others in the absence of these conventions.

None of this is conclusive, but it is worth adding an appeal to authority: the view that there *are* natural property-like rights is, I think, a minority one.<sup>23</sup> Occupancy rights, of course, are rights to a more limited range of control than typically argued for by defenders of natural property rights, but the reasons for doubt seem similar. It seems worth exploring, then, how far we can get *without* positing pre-institutional control rights over land or territory, on the part of either individuals or groups. What I will argue below is that we do not need such control rights in order to account for the distinctive wrong of settler colonialism. If we did, that would be one reason to posit their existence. But, if what I say below is correct, it is possible to hold onto both scepticism about exclusionary territorial rights and the conviction that there is a distinctive wrong associated with settler colonialism, one that has to do with the settlement itself. The right I will defend (violated, in some cases, by settlement) will not support the right to exclude, in the sense of the legitimate authority to make immigration policy, that Moore’s and Stilz’s occupancy rights are supposed to support.

### **An interest in sociocultural stability**

The experience of disorientation and dislocation that tends to go along with sudden transplantation to a new and different environment, and, especially, sociocultural environment, is probably familiar to many. When we lose the ability to understand what is going on around us, how things in our environment behave and interact, and how they will respond to our choices and actions, it can be debilitating and distressing. Simply finding oneself in a new topographical situation is perhaps the most banal source of disorientation: if you do not know the lay of the land, it is likely to be difficult to get anywhere useful. When we relocate to an unfamiliar *cultural* environment, in particular, it can become challenging to navigate the *social* world. We may become lost, both metaphorically and quite literally. We may struggle with things as mundane as getting around the physical urban environment, or finding things to eat, as we familiarise ourselves with the local practices for doing these things. We may find it difficult to understand the social significance of our actions and how we are perceived by others; we may miss subtle social cues or fail to grasp the options open to us and the expectations held of us. We might, for instance, unintentionally offend, or take offense from a well-meant gesture. We may find it more difficult to make social connections or develop relationships of trust, as we

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<sup>23</sup> See Simmons (1992, 271ff.), Stilz (2018, 247-9), Sanders (2002) and van der Vossen (2015, 77-8) for defences of this minority viewpoint. Moore herself argues against the idea of natural property rights (2015, 19-20). It seems to me, though, that her own view depends on an analogous anti-conventionalism about group *territorial* rights that faces similar problems.

attempt to relearn the norms governing these. A shift of this kind may of course be exciting, for the possibilities it opens up, for the opportunity to learn new modes of social cooperation and new ways of understanding the world. But even where excitement predominates, it tends to go along with disorientation and confusion, which at their worst can be debilitating.

What I think is suggested by these observations is that there is a basic morally-significant interest we can have in a certain kind of moderate environmental stability, with importance for our individual agency and well-being. This interest in moderate stability, I will suggest, is derived from a basic interest in what I will call 'orientation'. To be 'oriented', in my sense, is to be able, literally and metaphorically, to find your way around your environment. Orientation is a form of understanding. To understand is, in some sense, to grasp something about the relations between elements of the world.<sup>24</sup> It is a cognitive relation: achieving understanding requires an *accurate* grasp of relevant features of the world. To achieve orientation is to grasp successfully, i.e. to understand, those relations in the world the understanding of which enables a practical orientation to one's environment: to understand how things behave and how they can be located in a way that enables you to predict how the world will respond to your actions and how it can be used to achieve things. Of course, an individual's orientation in the world is a matter of degree, dependent on the extent and usefulness of their practically-relevant understanding.

We achieve our understanding of the world, and our relation to it, in large part by making use of stable regularities. We navigate our local area with the aid of stable, familiar points of reference. Similarly, we navigate our lives, and the choices we face, using constant patterns that we observe in the world around us. These familiar regularities allow us to make sense of the various elements of the world that we experience, to predict the behaviour of objects and agents we encounter, and to understand the possible ways that we can interact with them. It is clear, then, that a certain kind of stability plays an essential role in establishing this capacity for orientation. It is, quite obviously, not the case that the world needs to be perfectly static for us to be able to make sense of it, or to navigate it. The practically-relevant understanding we are trying to achieve is, in large part, an understanding of how the world *changes*. But we make sense of change by reference to stable constants. We predict the future on the assumption that it will, in certain ways, resemble the past.

Of particular importance are the *social* regularities that structure our orientation in our environment. We are social beings, and for this reason, a large, and especially practically-significant, part of the world we inhabit is socially constituted. Central, then, to the environmental stability that our orientation depends on is a degree of stability across the *social* patterns and regularities that surround us. We are typically surrounded by, participate in, and contribute to, and can be constrained by, a wide variety of established social practices. These are ongoing, mutually reinforcing, patterns of behaviour shaped by shared values, beliefs, structures of

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<sup>24</sup> See Grimm (2021).

meaning, patterns of expectations, conventions, and so on.<sup>25</sup> It is a familiar point (made particularly by defenders of liberal multiculturalism) that the options open to us, the goals, projects and relationships we can pursue, are culture-dependent.<sup>26</sup> These options are both created and given meaning by existing cultural practices. My point is a related, but more basic, one that highlights not only the options, goals and relationships available to us, but more generally the way we orient ourselves in the world.<sup>27</sup> The way we understand the world and our place in it is heavily culturally mediated. Established social practices account for a substantial portion of the regularities and fixed points that allow us to make sense of our environment. First, social practices have the special virtue of making possible social cooperation and coordination, and providing the framework within which it takes place.<sup>28</sup> Mutual intelligibility, and hence social interaction, depends on convergence on conventions, or salient regularities in behaviour that establish stable expectations about the behaviour of others.<sup>29</sup> Understanding these practices is thus essential to our understanding of, and ability to navigate, an especially important element of our world as social animals: our shared life and cooperation with others.

As well as the objects of our understanding being cultural, the social practices that surround us also condition our understanding of the physical world by providing us with the necessary conceptual tools. Existing practices of agriculture, to give one example, provide us both with bases for understanding social cooperation with others, as well as with particular ways of understanding land, its purpose, and our place in it, different to those available in pre-agricultural societies. Similarly, the ability to find one's way around an urban milieu depends on a background of social practices concerning things like roads, their meaning, the way they are used, and so on.

When we lose these practices (or find ourselves surrounded by unfamiliar ones), we risk becoming disoriented. If the complex structure of practices around us forms a major part of the scaffolding we use to find our way around, to understand what we do and the environment in which we do it, when it is removed (or significant parts of it are removed) we are lost. As mentioned above, some degree of disorientation of this kind can be all-things-considered healthy and good. Encountering unfamiliar cultural practices, we may learn new ways of understanding the world, and open up new possibilities. And over time, we generally adapt to new social environments. But where the loss of familiar practices is too extensive and sudden, its effect can be drastic.

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<sup>25</sup> On the nature of social practices, see Haslanger (2018) (see also Kuper (1999)).

<sup>26</sup> See, for instance, Dworkin (1985) 228-33, Kymlicka (1989) ch. 8 and (1996) 82-4, Margalit and Raz (1990) 448-9, Raz (1994) 176. See also Patten (2014, ch. 3) for discussion, and compare Lenard (2010).

<sup>27</sup> The constitution of options is *one* way in which social practices form a basis for orientation in the world, but not the only one.

<sup>28</sup> Haslanger (2017) 154-7, (2018) 7-8, (2019); Lewis (1969); Bourdieu (1972) 166-8.

<sup>29</sup> See Lewis (1969) 76.

It is also not the case that all social change is *disorienting*. It is a normal part of the course of social life that shared practices change and evolve constantly.<sup>30</sup> They change for all sorts of reasons: they change as we learn new things, as social knowledge accumulates, and as we adapt to changing external circumstances. They change also as we have new ideas and as we deliberately reshape our practices. And they change as new people become involved in them, and as different practices influence each other and combine. It would be quixotic, and indeed undesirable, to seek to maintain perfect sociocultural stability, and this sort of ordinary change need not impair our ability to understand our environment at all. As mentioned before, precisely what is involved in orientation is the capacity to predict and make sense of *changes*. Our social practices would not do a good job at orienting us in the world if they were overly rigid and inflexible. (There are also important independent reasons that it is better to have cultural practices that are not *too* stable, that are adaptable and not stagnant. It might be thought that through cultural exchange and the meeting of minds we produce *better* cultural practices: we best address the problems we face by constantly being ready to learn from each other.<sup>31</sup> Cultural exchange and flexibility might also be valuable in that it promotes the ability to understand and empathise with others.<sup>32</sup> And finally, we need our practices to be adaptable in order for it to be possible to question and alter unjust and oppressive practices.<sup>33</sup>)

But on the other hand, social practices would not serve an orienting function, and would not really qualify as social practices, if they did not exhibit a certain degree of stability over time. The interest I am describing is thus merely an interest in avoiding *excessive* and *overly rapid* cultural change. The line between those changes we have an interest in avoiding and those that are part of the normal course of cultural evolution is not one I intend to draw in any precise way.<sup>34</sup> *Magnitude* of change, *breadth* of change across the full set of practices that individuals or groups draw on, and *speed* of change are all relevant to fixing this line. The interest will only clearly be set back when there are changes significant on all three dimensions (i.e. large, broad, *and* rapid changes).<sup>35</sup> Further, breadth of change for an individual or group is in turn a function not only of the number of practices that disappear or are replaced, but also of the *importance* of those practices. An individual's set of practices is more broadly affected in this sense when a practice central to their way of life or orientation is lost than when a more peripheral practice is lost.

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<sup>30</sup> See Scheffler (2007).

<sup>31</sup> See Waldron (1992b), Kuper (1999) 243, and Appiah (2018) ch. 6.

<sup>32</sup> Cf. Nussbaum (1997).

<sup>33</sup> None of these considerations need conflict with the interest in stability so long as they can be achieved through an openness to ordinary gradual evolution rather than sudden dramatic change.

<sup>34</sup> It is worth noting that the kind of change an individual has an interest in avoiding is determined objectively by what causes the kind of disorientation I have described, but the degree or kind of change that does this may vary from individual to individual.

<sup>35</sup> Speed is not a fully independent dimension: a set of practices changes rapidly when a broad range of its elements change all at once, or in quick succession.

*Societal or national cultures*

As noted, somewhat similar arguments to the one I have just made (although usually focused more narrowly on the *options* available to us) were put forward by ‘liberal multiculturalists’ as part of a case for granting group rights to minority cultural groups. These writers generally argued that choice (and typically they appealed to the stronger ideal of *autonomy*) depends not only on social practices (*culture*, uncountable) and their maintenance, but also on access to *a* particular culture (the countable concept, a discrete individuable body of cultural practices unified in some way). In particular, they have argued that a ‘societal’ or ‘encompassing’ culture is necessary. A ‘societal culture’, Kymlicka tells us, is ‘a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres’; one feature of an ‘encompassing group’ for Margalit and Raz is that its members share a culture across various aspects of life.<sup>36</sup> But this aspect of the liberal multiculturalist view has been convincingly disputed by a number of writers, who argue, in my view correctly, that the liberal multiculturalist falsely reifies (or essentialises) cultures as discrete, delineable wholes.<sup>37</sup> Raz is right to claim that cultural practices come in interlocking webs: individual practices are intertwined with each other and often depend on each other.<sup>38</sup> But these interlocking webs do not (generally) clump together into separable, unified *cultures* shared by delineable, non-overlapping groups of people.<sup>39</sup> Rather, there is a sea of interlocking practices, and the set of practices in which an individual participates, and which forms the background by which they orient themselves, is likely to differ slightly from the equivalent set for their neighbour. There may be certain groups that have more salience than others in terms of cultural commonalities. But the groups among which social practices are shared are quite heterogeneous: some may exist at a quite local level, others at a supranational, regional or even global, level, while yet others just cross-cut national or geographic boundaries.

Whether or not this is right, nothing in the view I have set out above commits me to the thought that anyone has an interest in the stability of *national* or *societal* cultures, or of *any* sort of bounded, delineable *cultures*, or the *survival* of individuable cultures generally.<sup>40</sup> What we need to orient ourselves in the world is for there to be a relatively stable set of social practices on which we can rely (there needs to be stable *culture*, not *a* stable

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<sup>36</sup> Kymlicka (1995) 76; Margalit and Raz (1990) 80. Raz (1994) also defends this idea. See also Miller (1997) 85-7.

<sup>37</sup> See, for instance, Barry (2001) 11, 258-64, Benhabib (2002), Carens (2000) ch.3, Phillips (2007), Scheffler (2007) and Waldron (1992b). See also Appiah (2018) ch. 6, Clifford (1986) 19, Haslanger (2018) 8 and Wedeen (2002).

<sup>38</sup> Raz (1994) 177.

<sup>39</sup> Cf. Benhabib (2002) 60 and Waldron (1992b) 781-6. Patten (2014, ch. 2) gives the best account of how it might be possible to make sense of such a clumping, but to the extent that he is successful in offering a way to individuate cultures, I think it will have the result that there are *very many* overlapping and cross-cutting cultures. I do not find plausible his claim that some of these cultures will constitute *societal* cultures in Kymlicka’s sense (62-4), or at least not that are of significant size.

<sup>40</sup> On the latter, see also Taylor (1992).

culture). There is no reason to think this requires a unified body of practices shared with a discrete homogeneous group of others.

Perhaps, though, one might still be concerned that the charge of reification could be levelled at my account, even when distinguished from the liberal multiculturalist view. If Benhabib, for instance, is right that *cultures* are essentially contested, and ‘internally riven by conflicting narratives’, maybe the same could be said for the social practices that my account does depend on.<sup>41</sup> If this objection is thought to entail that there *are no* such things as social practices that can be relied on for purposes of orientation and that can be held relatively stable over time, I think it is false. And if not, I do not think it conflicts with the above. Even if it is the case that social practices are constituted through processes of contestation (and so constantly open to challenge and redefinition), that does not entail that there are no practices in existence that could, at least for some time, provide a fixed point for understanding the world. As I have said above, my account does not depend on the assumption that social practices can be insulated against change entirely, nor that they have a fixed essence independent of ongoing processes of creation and contestation. My account also does not depend on any claims about the individuation of practices. It could be that there are no bounded, delineable practices with a single determinate social meaning shared by all and only the participants in the practice. Perhaps there is nothing but a fluid, undifferentiated mass of patterns of behaviour, social meanings, expectations, shared beliefs and values and so on. My claim is merely that we have a significant interest in a reasonable degree of stability across this web of social patterns on which we rely. The elements of the web drawn on are likely to vary from individual to individual, but each, I claim, has an interest in some degree of stability across that part of the web closest to them. One can of course always bring into question what one has previously taken as a fixed point. But one cannot question everything at once, and a loss of too many of one’s fixed points in quick succession can be disorienting in a damaging way.

### *Land use*

There is one final observation that can be added to this account of the interest in sociocultural stability. The practices across which we may have an interest in maintaining some degree of stability are often intimately bound up with *land use* in a couple of different ways.<sup>42</sup> That is, keeping these practices stable will often require the people involved to remain in a particular geographical location, and for their ability to use a physical area of land in certain ways to be maintained. First of all, *social* practices are created and maintained *communally*. They thus depend for their existence and stability on the existence and stability of the *communities* whose practices they are. This is not to suggest that these communities need ever have a fixed membership, or be protected against compositional change. Nor need it be to suggest that there are unified ‘encompassing’

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<sup>41</sup> Benhabib (2002) ix.

<sup>42</sup> Roughly the same point has been made by Stilz (2019, 41) and Moore (2019, 94).

communities that share practices across the full range of human activities. But a practice will normally disappear when the community engaged in it disappears or disperses. And these communities are often geographically located. Thus, stability in social practices that are like this will derivatively depend on the continued geographical proximity of their participants.

Second, the cultural practices we have an interest in maintaining may themselves *be* practices of land use. A good range of the cultural practices in which an individual is engaged will be practices that in some way make use of land, and so in which an area of land is essentially involved. Such practices may involve transforming the land itself in a productive way or making use of natural resources, or they may be practices that require a certain amount and/or kind of physical space to be carried out. Some practices require only access to *some* land, and *which* area of land they are carried out in is incidental (in some cases only the *amount* of land will matter, while in others land of a certain kind, with certain generic features, will be necessary). Many agricultural practices are like this, as are many practices of modern urban life. Other practices require access to a *specific* area of land, perhaps because of certain unique characteristics that it has (whether natural characteristics or features with which it has been endowed by human activity), or perhaps because of its symbolic or emotional significance to those engaged in the practice. A number of religious practices involve particular places in this way (and religious practices are often especially central to an individual's orientation in the world). Religious practices involving sites in Jerusalem, Mecca, Amritsar, or Rome, for instance, may be of this kind, while much larger areas of land and natural features play central roles in various indigenous American religions.<sup>43</sup> Certain agricultural or hunting practices are also tied to particular places, such as the fishing practiced in collaboration with dolphins in Laguna, Brazil, Sioux buffalo hunting in the American Plains or Sámi reindeer herding in northern Scandinavia and Russia.<sup>44</sup>

### **A pro-tanto right to stability of land-use practices**

This interest in sociocultural stability, then, is derived from the importance of a somewhat stable background of social practices for what I am calling *orientation*. The moral significance of that, in turn, may be twofold. First, I suspect that orientation may make a non-derivative contribution to well-being. For cognitive processors like us, it seems possible that there is a distinctive value to the successful exercise of cognitive capacities for *practical* purposes. I do not have a worked-out theory of what such a value would be, and nothing will turn on whether this is correct, but the idea seems to have some intuitive plausibility. Second, and more importantly, orientation is of derivative importance for individual *agency*. A certain degree of orientation is, I think, a necessary precondition for an individual to achieve agency, where 'agency' is the

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<sup>43</sup> Deloria (1973) 75-81.

<sup>44</sup> On the fishing see Tennenhouse (2019); on the Sámi see Benko (2011); Stilz (2017) discusses the Plains buffalo hunters (360).

status of a being that intentionally *acts* in the world. To see oneself as an agent is to see oneself, and crucially, one's intentional states as, in certain ways, shaping the world, not merely being shaped by it. Action, in the sense we are interested in, involves some sort of interaction between an agent's internal states (or events) and the external world (in the right agent-to-world direction).<sup>45</sup> Agency, in this sense, seems plausibly to be a basic and morally significant feature of those creatures that possess it. This status, in addition, seems to impose moral demands on others. Respect for another with a capacity for agency requires treating their exercise of this capacity with sufficient concern. It seems that achieving this status is not merely a binary matter of successfully acting on some occasion: you can possess agency to a greater or lesser extent as the 'domain' or scope of your action (or possible action) varies. The more extensive the domain in which you act (assuming there is some way to quantify this), the greater the extent of your agency. If the range of things that you can do, and the range of spatio-temporal locations in which you can act is very limited, it makes sense to say that your agency is stunted or restricted (even if, in a minimal binary sense, you still qualify as an agent). Respect for another as an agent, it seems plausible to think, involves refraining from avoidably stunting their agency in this way. It seems there is a vague threshold of agency below which you cannot consider yourself a genuinely active part of the world, and this threshold, though vague, seems to have moral importance.<sup>46</sup>

Intentional action depends (if not always, then at least nearly always) on *some* understanding of the world. Since, in most cases, the possibility of performing any given intentional action depends on some understanding of the elements of the world you intend to involve in your action, the scope of your (possible) agency will tend to expand with your understanding of your surroundings. This is unquestionably true of complex *social* actions. To engage in social interaction requires some understanding of human behaviour, an ability to interpret the movements and utterances of others, and, probably, some limited capacity for 'mind-reading' (inferring mental states from the observable behaviour of others). The understanding we need for these purposes is precisely that which I have been referring to as 'orientation', an understanding of the regularities and fixed patterns and relationships that structure your environment. Insofar as the moral significance of orientation is derivative in this way, not all practically-relevant understanding will be of equal importance. Some elements of environmental understanding are central to our overall orientation, and hence to our ability to act, while others are more peripheral. Stability in those aspects of the environment that play a more crucial role will thus be of more importance than stability in others. Further, while greater practically-relevant understanding will generally expand the scope of agency, what will matter most is that you be sufficiently 'oriented' to meet the vague threshold for genuine agency mentioned above.

The ideal of agency I appeal to here is different from, and more basic than, the kind of ideal of autonomy or planning that is appealed to in defence of pre-institutional territorial, or property, rights (discussed above).

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<sup>45</sup> Cf. Schlosser (2019) §3.

<sup>46</sup> [Reference removed for anonymisation.]

The latter ideal could be cashed out in various ways, but central to it will need to be some sort of capacity for temporally extended planning and some reasonable ability to count on success in bringing projects developed over time to fruition. Agency is a much more basic prerequisite of such an ideal. To have agency in this sense is simply to be a being that acts in the world over a sufficient proportion of its life; it is a further achievement to string this together into coherent projects extended over time. The claim I want to make here is that this weaker ideal is enough to account for a possible wrong of settlement (via the idea of orientation). The much weaker idea that we have some natural obligations to respect others' agency, and, derivatively from that, their need for orientation, is sufficient for this purpose and does not lead to any justification of exclusionary rights over territory.

*A pro tanto right*

There is, then, a morally significant interest in orientation. I think that that interest suffices to support a weak, pro tanto *right* to some degree of environmental, and notably sociocultural, stability. Because this right is grounded in interests in orientation and agency, it is a right to *stability*, not *control*. Absent comparably significant countervailing considerations, the suggestion is, it would be *wrong* to do something that severely disrupts the web of social practices on which someone relies against their will. Just as I have said that we have no interest in perfect sociocultural stability, in protecting our practices generally against change and evolution, there is also no right to perfect sociocultural stability. The pro tanto right is merely to a moderate degree of stability across our cultural practices; it is a right against excessive and overly rapid changes to the overall web of practices on which we rely. This right is not a property-like right *over the land*. Rather, it is a right to do certain things, namely, to continue to participate in and rely on a moderately stable range of social practices, including, notably for our purposes, practices of land use. I will elaborate this point further below.

The rights I am describing are individual rights, even if it is not possible to describe them without reference to groups. To accept this picture of a right to sociocultural stability and of a possible wrong of settlement, there is no need to believe in groups or collectives with the kind of ontological standing to be right-holders. In many cases, the practices or patterns of land use to which individuals have a right will be irreducibly collective. But the *right* to stability in these practices (along with the corresponding interest) is held by individuals. It is individuals, on my story, that come to depend on particular background patterns of cultural practices for their orientation in the world. And so, even if these practices are necessarily collective practices, it is individual participants in them that have a right to their maintenance.

*Limitations and objections*

The propensity of change in practices to provoke disorientation does not depend on the practices in question having any sort of value. Even if some practices treat you oppressively or unjustly, you may still be disoriented by their loss. That disorientation, considered in isolation, is a pro tanto bad; it is a respect in

which your interests have been set back. If the injustice is significant, though, that bad will clearly be outweighed. There can be no *right*, though, against disruption of social practices that are morally objectionable. The fact that you may be harmed by the disorientation you would experience at the loss of such a practice does not give rise to a right against such a harm when you are anyway morally bound to be rid of the practice. (It is also worth noting at this point that, although the right is held by all, those with greater social and economic power are much less *likely* to be victims of wrongful cultural disruption. Social and economic power tends to bring with it a) means to control and shape the social practices that surround you, and b) the ability to develop means and strategies for adapting to and orienting oneself in new social and cultural environments.)

It is also worth clarifying that this does not constitute a general defence of social stability, or a general call for the deceleration of cultural change. This is the case in two respects. First, the argument I have given does not offer any reason to think that traditional ways of doing things are good in virtue of being traditional, or that tradition, as such, is normative.<sup>47</sup> I have stressed that the right is a right against *extreme* cultural change, change that is rapid, substantial and *broad*, i.e. that extends across a wide range of the cultural practices in the web that an individual draws on. The picture is *not* one according to which stability, in whatever degree, is a good thing but minor instabilities are outweighed. Rather, there is no complaint at all against changes that do not provoke severe disorientation. Thus, the right to sociocultural stability does not give us reason, for any individual practice in isolation, to preserve it from change. It *only* gives us reason to pay attention to the overall web of practices, and to ensure that it is not too radically or rapidly overhauled. Only when there is risk of this does the right give us reason to protect any individual practice from change.

The second respect in which this is not a general defence of sociocultural stability is that the right to sociocultural stability is only one consideration among many relevant to all-things-considered moral judgments. As I have said, the right is only a weak, pro tanto one (on which more below). There are many independent values that may outweigh the interest in sociocultural stability and demand change even despite severe disorientation that it will bring. The lesson that we *should* draw in cases like this is that the disorientation caused by such rapid change *ought to be taken into account*. And where it is ultimately outweighed, it should not simply be forgotten. It may be incumbent upon us, for instance, to pursue whatever means are available to *limit* or *mitigate* the disorientation caused by otherwise positive change.

### **Settlement and the violation of sociocultural stability rights**

People have weak, pro tanto rights to moderate stability in social practices that are often bound up with land use. These rights can thus be violated when people's ability to be in or use land in particular ways is disrupted.

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<sup>47</sup> On the normativity of tradition, see Scheffler (2010) and Jeffers (2015).

The most obvious way in which this might be done is when individuals or whole groups are physically removed from an area in which the practices to which they have rights are located. If you are suddenly forcibly removed from the area in which you live, you will most likely be separated from the communities with whom the practices familiar to you are shared, and the particular area of land on which some of the relevant practices may depend. But I think it should also be apparent that this is not the only way in which sociocultural stability rights might be violated. In particular, the *settlement* of a large or powerful group of newcomers in an area, bringing with them different, incompatible land-use practices, may do the same.<sup>48</sup> Moore and Stilz have convincingly argued that settlement can disrupt the life plans and projects of existing residents in an area.<sup>49</sup> It is no less plausible, I think, that settlement may, in certain cases, severely disrupt a background web of social practices so as to disorient existing inhabitants in a way that violates the right described above.

Of course, it is not the case that settlement *generally*, as a matter of course, does cause disruption of such significance. Settlement can *only* violate the rights described when it involves the importation of land-involving practices that are incompatible with, and so disrupt, those of existing inhabitants. The account offered here could give *no* complaint against settlers who arrive and join or adopt the practices already prevalent in the area. And this right only makes settlement wrongful where the disruption it brings about is significant, broad and rapid enough to create serious and harmful disorientation. But it does seem that in certain particular kinds of case the settlement of a large group could have such an effect. As Moore has pointed out, different land-use practices may be incompatible with one another, so a settler group's simply settling in an area where an existing group already has certain ways of using the land, and pursuing their own practices of land use, without attempting to remove the indigenous group from the land, may be enough to make it impossible for the indigenous group to maintain their existing practices. For instance, Moore says, 'settled farming in enclosed fields is disruptive of nomadic hunting and gathering or slash-and-burn agriculture'.<sup>50</sup> The movement of white settlers across the American Plains that Stilz describes seems like another example.<sup>51</sup> This settlement drove away the buffalo on which hunting practices core to the Plains tribes' mode of existence depended. The Hawaiian case mentioned in the introduction also seems like it might fit this model. Foreign settlers (and missionaries and traders) in Hawai'i brought with them different systems of using and dividing land, and their influence led to the 'Mahele', the privatisation of land, a radical shift in ways of relating to territory. This seems to have caused significant disorientation among the

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<sup>48</sup> Settler colonialism frequently involved both the *coercive* imposition of new cultural practices and forms of epistemic injustice involving disrespectful treatment of existing cultural practices of indigenous groups. These things plausibly exacerbate the wrong done by settlement, and are wrong independently of the settlement itself; neither are *necessary* for the wrong I describe.

<sup>49</sup> Stilz (2017) 360 and Moore (2019) 94-8.

<sup>50</sup> Moore (2019) 96.

<sup>51</sup> Stilz (2017) 360.

indigenous population, who had lost a familiar framework for understanding their social and territorial world, a fact settlers exploited to shift land into their hands.<sup>52</sup>

The practices disrupted need not be agricultural or economic practices. An interesting example is that of the indigenous people of North America, for many of whom religious belief was closely tied both to particular places and to particular geographical communities (for many, subsistence *also* depended on the use of large areas of land of a particular kind).<sup>53</sup> Settlement that altered these peoples' access to the relevant places (or that altered features of these places with deep religious significance), then, seems likely to have struck at practices at the core of their members' understanding of their place in the world. Rapid settlement by a large group of newcomers could also change the *social* environment without altering the possibilities for land use directly. By changing the cultural practices (linguistic practices, for instance) prevalent in the area, it could make it suddenly difficult for existing inhabitants to find their way around the *social* world in which they live. Where this is excessively rapid and broad, it could be seriously disorienting.

Thus, I think the right to sociocultural stability can account for at least a *possible* wrong of settlement. In addition, it seems plausible that, although the wrong described is not *conceptually* tied to settlement with colonial ambitions, the kinds of attitudes, ideas and goals associated with historical projects of settler colonialism make it particularly likely that such a wrong will be done. Where settlement goes along with a conceptualisation of in-fact-inhabited land as empty, an idea of existing inhabitants as racially or culturally inferior, and aspirations to recreate the 'civilisation' of the motherland in a supposedly 'uncivilised' territory, there is good reason to expect, at a minimum, callous disregard for the disorientation of prior inhabitants.<sup>54</sup>

Finally, an *individual* settling on their own in an area in which existing inhabitants have weak rights to sociocultural stability is unlikely ever to violate these rights. An individual's settlement on its own will rarely, if ever, cause sufficient disruption. It is only when sizeable groups settle in an area *together* that a wrong might be done. It seems clear that there can be wrongdoing, rights violation, or injustice that only occurs when a group of individuals *all* behave in certain ways, i.e. where no individual's action is wrong in the absence of the actions of a number of other individuals. The wrong of settlement is usually such a case. This might lead us to wonder, though, when exactly (if ever) an *individual* acts wrongly by settling in a new area. This raises tricky

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<sup>52</sup> See Osorio (2002) ch. 2, Silva (2004) 39-43, and Kauanui (2018) ch. 2. The historical evidence here is complicated. These changes were legal changes made by the Hawaiian king. Most of the evidence we have of the impact of these changes on Hawaiians comes from these ruling classes and the settlers themselves, so any claim about disorientation suffered by ordinary Hawaiians is necessarily speculative. But there is some evidence that there were effects of this kind, for instance, from the many petitions made by ordinary Hawaiians to the government expressing concern about foreign ownership of land and the stability of traditional systems of chiefly rule, as well as the success with which the local ruling classes and foreign settlers were able to exploit ordinary Hawaiians' loss of familiar frameworks for understanding their social and territorial world, in order to shift land into their hands.

<sup>53</sup> See Deloria (1973) 75-81, 200-1. [Acknowledgment removed for anonymisation.]

<sup>54</sup> See Bell (2016) 38-9.

questions about the distribution of collective wrongs to individuals.<sup>55</sup> I do not have an answer to these questions, but for what it is worth, it does seem plausible that at least sometimes, an individual's choosing to settle in the context of a large number of others' doing so, and in full knowledge that they are doing so (and that collectively they will cause serious and wrongful disruption to existing inhabitants), will be an individual wrong.

### **The right to exclude**

So, it seems that the description of the right to sociocultural stability I have given, if plausible, offers one way to account for the thought that there can be something distinctively wrong with *settler* colonialism. The right to moderate sociocultural stability I posit is, like the occupancy rights Moore and Stilz posit, a right that people have independent of any institutions or conventions granting these rights to individuals. It is a right that flows more basically from an imperative to respect the agency of others. It is, though, a much weaker and more limited right than the occupancy rights that, for Moore and Stilz, support a right to exclude, legitimate authority over access to a territory. Unlike the stories told by Moore and Stilz, my account does *not* support any sort of property-like *control* rights over territory.

To be wronged by settlement in a territory, all that needs to be the case is that the settlement unnecessarily severely disrupts the scheme of practices on which you rely to orient yourself in the world. You do not have to have any special claim to the territory, or legitimate authority over access to it. It does not in any (even minimal) sense have to be *yours*. And you do not have to have any more claim *to the territory* than do the settlers. As noted before, since it is grounded in an interest in avoiding disorientation, not a plan-based interest, the right is a right to *stability*, not control. That you may be wronged in certain cases by others entering a territory does not mean that you have the right to decide who may and may not enter. (As noted above, *mere* entry will never violate the right: to do so, settlers must bring with them incompatible land-use practices.)

We all have interests in and rights to sociocultural stability of equivalent weight. These impose duties on others to do what is necessary to allow you to maintain an appropriate degree of sociocultural stability where possible without setting back interests of comparable significance. Where sociocultural stability for an individual or group involves stability of land use, outsiders will be under a *pro tanto* duty to refrain from disrupting the relevant practices. Current occupation of a space does tend to generate an additional interest in continued use of it that non-occupiers do not have, insofar as orientation in the world tends to depend on a particular place in which one is resident. But none of this is because existing residents have any claim or authority over the land that outsiders lack. If outsiders *also* have a significant interest in using the same area of

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<sup>55</sup> On this, see for instance Kutz (2000), Smith (2009) and Kagan (2011).

land that (for whatever reason) cannot be met without disrupting the practices of existing users, this may suffice to outweigh the right. Their interests or rights are not to be given any less weight on account of their being outsiders.

The right to sociocultural stability is only *pro tanto*. Thus, it will not *always* be wrong (all things considered) to cause severe disorientation; it is wrong just when the disruption is not required for any comparably weighty interests or rights to be met. Because of the disorientation that results from a significant and sudden disruption to a set of cultural practices, the interests of outsiders in using an area of land in a way that would cause such a disruption can only justify doing so if there is no other feasible and less costly way of meeting the interest. But suppose that a group of outsiders *need* to settle in territory T for some very weighty interest to be met (say, to survive), and if they do not reconstitute some of their existing practices there, *they* will suffer severe disorientation in their new environment. Suppose also that their existing practices will require using the land in T in a way incompatible with the practices of T's existing inhabitants. The group of outsiders cannot meet their weighty interest in survival without causing severe disorientation to *either* themselves or T's existing inhabitants. The fact that the latter were there first is of no moral significance on this account. In such a case, there is no obligation on the outsiders to bear the 'disorientation cost' of their settling in T.<sup>56</sup>

Let us finish with one final question: does it follow from this that those wronged by settlement have the right to exclude in the sense of the right to *enforce* demands about immigration? The answer, I think, is no. It does not *follow* from the fact that A's action would be wrong that it would be permissible for you to force A not to do it. There are a good many moral duties that are not permissibly enforced. It is usually wrong, we tend to think, to break a promise, but we do not usually think that it is permissible to *force* a promisor to keep their promise. So, it does not follow from the conclusion that settlement is sometimes wrong that any inhabitants of a territory have the right to forcibly keep others from *settling* in it. I think it is quite plausible that forcibly resisting wrongful settlement will *sometimes* be justifiable, but this is not an immediate consequence of my account of the wrong. Certainly, it would be justifiable to forcibly resist settlement *accomplished by the use of force* and to resist forcible *removal*. This is, I think, unproblematic. There is, though, no reason to think that the cases in which forcible resistance to settlement is justified will be all those in which settlement would be wrong.

## **Conclusion**

I have presented an account of an interest people can have in moderate stability across the social practices that surround them, derived from the necessity of a degree of such stability for an individual's ability to orient

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<sup>56</sup> This is where my account diverges substantially in its practical consequences from Stilz's, despite her relative scepticism about the extent of the *exclusion justification* held by possessors of territorial rights.

themselves in the world, which may matter both independently and as a precondition for agency. This offers an alternative explanation of how individuals can come to have legitimate expectations of continued use of a territory, and so rights that could be violated by settlement, to the usual plan-based story. This allows us to account for a possible wrong of settlement, and so a wrong in settler colonialism independent of the features it shares with other forms of colonialism and imperialism, without positing any exclusionary territorial rights on the part of those wronged. Not only do we not need to say that inhabitants of a territory are generally *justified* in excluding from that territory, we do not either need to say that they have the *legitimate authority* to do so.

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