

Separating the wrong of settlement from the right to exclude: territory and cultural stability

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 to create in some sense an outpost of the society from which they came.¹ The colonisation of the Americas and the south Pacific are core instances, but other histories of colonisation have exhibited the traits of settler colonialism to varying degrees, notably also in southern and northern Africa. Needless to say, the settler colonial record is morally hideous. It involved widespread murder, rape, exploitation, enslavement, forced displacement, and most ubiquitously of all, 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. (In many instances, it was accomplished through the enforced physical displacement, or extermination, of existing inhabitants, but in other cases it was not, and settlements were established within a territory still also populated by a pre-existing community.) 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?

If we are attracted by the sort of cosmopolitan view that calls for open borders or rejects the idea of exclusive rights over territories, we might seem to be led straightforwardly to deny the moral wrongfulness of settlement itself.² 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 can’t both see settler colonialism as distinguished by a *wrong* and deny the existence of rights to exclude from territory. If that is correct, it could lead us either to reject this sort of cosmopolitan position, or to deny the distinctive wrongfulness of settler colonialism.³ The latter option, I think, does come with a cost. As Margaret Moore has recently argued, there is an intuitive temptation not to fully assimilate the moral story we tell about settler colonialism to a wider group of colonial or imperial projects.⁴ 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

¹ 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).

² Advocacy of open borders is gaining wider currency; see, for instance, Carens, 1987, 2013; Cole, 2000; Oberman, 2016; Huemer, 2010.

³ 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.

⁴ Moore (2019) 88 and (2016) 448, 455.

land, and complaints against settlement do seem capable of persisting even when political subjection and straightforward violence are not so prominent.⁵ This 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 form that colonial 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).⁶ 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.⁷ 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.⁸ Settler colonialism has been accompanied by a diverse bundle of such wrongs: 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.

There is, of course, on the other hand, no problem taking complaints against settlement seriously if you are happy to posit exclusionary rights over territory. Margaret Moore and Anna Stilz have both recently offered

⁵ Moore (2019) 88, or see Haunani-Kay Trask's (1999) 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' (10). 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, Kauanui (2018) 87), but no formal political subjection (which followed in 1898) and relatively little direct violence.

⁶ 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.

⁷ On the former see Ferguson and Veneziani (2020), on the latter Ypi (2013) and Stilz (2015). On the debate generally, see Moore (2016).

⁸ Valentini (2015). (Cf. van Wietmarschen (2018).)

accounts of this kind.⁹ They differ on the kind of justification for exclusion that these rights support, but both think of people as bearing certain limited (in Stilz's case, very limited) property-like relations to the territory they inhabit (and, I will argue below, although it is less apparent on the surface of Stilz's account than Moore's, these relations confer what are, in an important sense, *exclusionary rights*). On both accounts, then, settlement in a territory can amount to a wrong when it violates the limited property-like rights that inhabitants of the territory have over it.

My aim in this paper is to offer an alternative account of a possible wrong of settlement, which 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 cultural 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 authorship over our own lives, I will suggest, depends on some degree of cultural 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 cultural 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 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 did) constitute a wrong of this kind (and so settler colonialism can be understood in moralised terms, as distinguished by *wrongful* settlement).

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

⁹ Moore (2019) and Stilz (2017).

cultural 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

Moore, then, seeks to show that colonised peoples had exclusionary territorial rights that were violated by colonial settlement. These rights derive from the legitimate expectations we can develop of continued use of an area of land, which in turn are grounded in the importance of a stable background context for the ability to make and pursue plans and projects.¹⁰ When patterns of land use become established in a particular area, it becomes reasonable (in a non-moralised sense) to expect them to continue, and so it also becomes reasonable to rely on this expectation in making future plans and developing the kind of projects that give meaning to a life. The strong interest we have in making and pursuing plans and projects, Moore thinks, thus grounds rights to continued access to land in which we develop legitimate expectations of this sort. Removal from a place on which one's life plans and projects depend is one obvious way that one's legitimate expectations can be disrupted, 'but, since acute disruption can also be felt by rapid change in the nature and extent of the land to which one has access and which is a background assumption of many of people's plans and activities, it also justifies *some degree of control over that place*'.¹¹ Patterns of land use brought by settlers may be radically incompatible with those of the pre-existing inhabitants, and so the arrival of a significant number of settlers may change both the land itself and the ways it can be used. Thus, the legitimate expectations appealed to support not only rights to use and remain in a territory, but also rights to make rules governing the use of that territory and to control entry to it. Any settlement against the wishes of a group with territorial rights of this kind is wrong because it violates those rights. My claim below will be that we can account for a kind of right to stability (that can be violated by settlement) *without* appealing to the ability to pursue stable plans in this way, and so without generating *control* rights over territory.

Anna Stilz, like Moore, thinks inhabitants of a territory have 'occupancy rights' grounded in their plan-based interests in stable background conditions.¹² Like Moore, she thinks that it is these rights that are violated by settler colonialism. But unlike Moore, she thinks that states (or other groups) are only justified in restricting immigration in quite limited circumstances.¹³ For Stilz, the fact that inhabitants' occupancy rights are grounded in the importance of territory to their 'located life plans' (the goals, relationships and pursuits that

¹⁰ Moore (2019) 91-5. Here she draws on Waldron (1992a).

¹¹ Moore (2019) 94 (my emphasis).

¹² Stilz (2019) 40ff. and (2017) 353-5.

¹³ Stilz (2017) 363 and (2019) ch. 7.

centrally involve a particular geographical place) means that immigration can only justifiably be restricted when it threatens to interfere with these plans.

Although Stilz departs from Moore in denying that the occupancy rights that are violated by settler colonialism give states a broad justification for exclusion, she in fact *does* think they are capable of supporting the 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.¹⁴ Although an immigration policy that excluded harmless immigrants would be unjust, Stilz thinks that a self-determining people (with occupancy rights and jurisdictional rights) 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. For the purposes of this paper, I want to reserve the term ‘right to exclude’ 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, but have only quite a limited (and certainly not a *discretionary*) exclusion justification.

The root of the right to exclude, for Stilz, is to be found in the occupancy rights held by inhabitants of a territory. These rights are preinstitutional property-like rights to be in, use, return to, and exercise some (quite limited) control over an area of land in which one lives.¹⁵ When a group of people have occupancy rights in a territory, there is a sense in which that territory belongs to them, or is *their* territory, albeit a much weaker sense than that involved in a traditional full property right.¹⁶ Despite their limitations, these rights, for Stilz, are control rights, derived from primitive moral duties to respect people’s exclusive control over certain external objects for the sake of their self-preservation and autonomy.¹⁷

I aim to give an account of a right inhabitants of a territory may have that could be violated by settlement, but that is *not* a property-like control right of this sort. In fact, the right I will describe, unlike Stilz’s occupancy rights, is not best conceptualised as a right over the territory at all: it will not on its own warrant the thought that the territory in any, even limited, sense *belongs* to its inhabitants, or is *theirs*. For that reason, it will not

¹⁴ Stilz (2019) 188.

¹⁵ Stilz (2019) ch. 2.

¹⁶ *Ibid.* 34.

¹⁷ *Ibid.* 60-4

support the right to exclude, in the sense of the legitimate authority to make immigration policy, that Stilz's occupancy rights are supposed to support. And for the same reason, insofar as the right I will defend does require outsiders not to immigrate to certain territories and does *justify* inhabitants in demanding outsiders not settle, it will not give any priority to the interests of existing inhabitants, of the kind that flows from Stilz's occupancy rights.

An interest in cultural stability

The experience of disorientation and dislocation that tends to go along with sudden transplantation to a new and different cultural environment is probably familiar to many. Unfamiliar cultural practices make it challenging to navigate the social world. When we relocate to a new cultural environment, 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 attempt to relearn the norms governing these. Such disorientation is exaggerated when we are uprooted to a new *linguistic* environment. Our ability to get around socially, and to understand the possibilities for, and constraints on, social cooperation, can be severely impaired when we lack normal linguistic tools, which structure the ways in which we can interact socially with others. 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 significant interest we can have in a certain kind of cultural stability, with importance for our individual well-being and autonomy. We structure our understanding of the world, and our relation to it, on the basis of stable regularities. These fixed points are what enable us, metaphorically speaking, as well as literally, to find our way around. 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 in the world around us. These familiar regularities allow us to make sense of the various elements of the world that we experience, their relations to each other and significance for us, as well as the meaning of our choices and actions and thus our own relation to other elements of the world.

As social animals, a good many of the patterns and regularities on the basis of which we navigate the world are socially constituted; they are in some sense human creations. We are typically surrounded by, participate in and contribute to, and can be constrained by, a wide variety of established cultural practices. These are

ongoing, mutually reinforcing, patterns of behaviour shaped by shared values, beliefs, structures of meaning, patterns of expectations, conventions, and so on.¹⁸ It is a familiar point (made particularly by defenders of multiculturalism) that the options open to us, the goals, projects and relationships we can pursue, are culture-dependent.¹⁹ These options are both created and given meaning by existing cultural practices. There is a more basic version of this point that highlights not only the options, goals and relationships available to us, but more generally the way we orient ourselves in the world.²⁰ The way we understand the world and our place in it is heavily culturally mediated. Established cultural practices account for a substantial portion of the regularities and fixed points that allow us to make sense of things, goings on, and our relation to them. First, social practices have the special virtue of making possible social cooperation and coordination, and providing the framework within which it takes place.²¹ They are thus essential to our understanding of, and ability to navigate, an important element of our world as social animals: our shared life and cooperation with others.

Social practices also shape how we understand and find our way around our physical environment. 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 cultural 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 cultural practices around us forms the scaffolding we use to find our way around, to understand what we do, who we are, and what happens to us, and to identify and evaluate the options available to us, 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. They may teach us new ways of understanding the world, and open up new possibilities. And over time, we generally adapt to new cultural environments. But where the loss of familiar cultural practices is too extensive and sudden, its effect can be drastic. There is some vague threshold beyond which disorientation becomes harmful, and so some range of familiar background practices that need to be stable at any one time to avoid crossing this threshold.

¹⁸ On the nature of social practices, see Haslanger (2018).

¹⁹ 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.

²⁰ The constitution of options is *one* way in which cultural practices form a basis for orientation in the world, but not the only one.

²¹ See Haslanger (2018) 7-8.

It is, of course, true that social practices change over time.²² 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 cultural stability. I do not think, then, that we have any interest in *that*. Our cultural practices would not do a good job at orienting us in the world if they were overly rigid and inflexible: they need to be able to adapt and evolve (and a key way in which they do this is through borrowing and cultural exchange). Cultural practices also, by their nature, are created and shaped by the combined activity of their participants, making them open to variation and creativity. Ordinary gradual cultural change of this kind need not be disorienting at all.

But on the other hand, cultural practices would not serve an orientating function, and would not really qualify as cultural 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 cultural 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. *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). 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.

This interest in cultural stability, then, is derived from the importance of a somewhat stable background of cultural practices for what I am calling *orientation*. The moral significance of that, in turn, may be twofold. First, as has been amply argued by multiculturalist theorists, it is of derivative importance for individual autonomy. Our ability to autonomously choose our own goals, projects and relationships depends on a background framework of established practices that allows us to understand the world in which we make those choices and so to understand their meaning, and that in many (or most) cases creates the options we choose from in the first place. In Raz's words, '[t]he core options which give meaning to our lives ... are all dense webs of complex actions and interactions ... They are available only to those who have or can acquire practical knowledge of them, that is, knowledge embodied in social practices and transmitted by habituation'.²³ Note that the significance of orientation (and cultural stability) for autonomy is different from

²² See Scheffler (2007).

²³ Raz (1994) 177.

the significance for autonomy of the ability (appealed to by Moore and Stilz) to rely on the conditions on which one's plans and projects depend. Disorientation matters not because it frustrates our ability to bring our plans to fruition, but because it undermines our ability to make plans in the first place. On this account, our being able to rely on a certain degree of stability in our surroundings is a precondition for our being able to make autonomous choices of any sort, because it is necessary for us to understand the world in which we make those choices and for it to make meaningful options available to us. For the necessary kind of orientation to be possible, what we need is *stability* in our surroundings, not *control* over them. Second, I think orientation may also contribute independently (non-derivatively²⁴) to well-being. I do not have a worked-out theory of how this could be the case, but nothing will turn on whether it is correct. It seems, though, that there is some impulse to make sense of our place in the world and what we do in it in terms of wider patterns and meanings. And it seems plausible that, insofar as we are unable to do so, our lives will go less well.

In a moment, I will outline the kind of *rights* that may be grounded in this interest, but first a clarification. The interest in stability that I appeal to is, I think, independent of both the value we attribute to the practices concerned and our attachment to them, as well as their value tout court. We may come to orient ourselves on the basis of, and thus come to depend on, even a cultural practice that we do not value. And we may become disoriented if we suddenly lose that practice, even though we did not value it *as such* (and even if it had no value tout court). If the practices have *negative* value, that gives us independent reason to aim to be rid of them (and to do our best to reorient ourselves without them). And if the practices have positive value, that gives additional reason to preserve them. But the interest in cultural stability is basically independent of these facts.

None of this is to say, though, that our interest in stability is of equal significance for all the practices in which we are involved. Some cultural practices are central to our understanding of our place in the world, and their loss would radically impair (at least for some time) our ability to orient ourselves, while others are peripheral and could be lost with no significant effect on orientation. The former are practices that centrally structure a way of life. But significance in this respect is not necessarily tied to value or attachment: our orientation may be tied to a way of life that we despise. Even if we would do better, all things considered, to be rid of such a way of life, we may still experience a harmful kind of disorientation at its loss.

Societal or national cultures

As noted, 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 not only is *culture* (the uncountable mass concept, a continuous background patchwork of cultural practices) a necessary condition for autonomous

²⁴ At least, in a way not derivative from its contribution to autonomy.

choice, so is *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.²⁵ 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.²⁶ 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.²⁷ But these interlocking webs do not (generally) clump together into separable, unified *cultures* shared by delineable, non-overlapping groups of people.²⁸ 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.²⁹ There may be certain groups that have more salience than others in terms of cultural commonalities (and national groups are no doubt like this). But the groups among which cultural 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. What we need to orient ourselves in the world, and for the sake of the background preconditions for autonomy, is for there to be a relatively stable set of cultural practices on which we can rely (there needs to be stable *culture*, not *a* stable 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

²⁵ Kymlicka (1995) 76; Margalit and Raz (1990) 80. Raz (1994) also defends this idea. See also Miller (1997) 85-7.

²⁶ 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).

²⁷ Raz (1994) 177.

²⁸ 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.

²⁹ There will probably be certain discontinuities in this ‘sea’, but I think there are unlikely to be, within a discontinuous cultural ‘region’, large groups of people that share a discrete set of practices ‘across the full range of human activities’.

cultural practices that my account does depend on.³⁰ If this is thought to entail that there *are no* such things as cultural 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 cultural 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 cultural 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 cultural 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 cultural 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.³¹ 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, most practices of the kind I have in mind are *social* practices, 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' communities that share practices across the full range of human activities. But a cultural practice will normally disappear when the community engaged in it disappears or disperses. And these communities are often geographically located. Thus, stability in cultural practices that are like this will derivatively depend on the continued geographical proximity of their participants.

³⁰ Benhabib (2002) ix.

³¹ Roughly the same point has been made by Stilz (2019, 41) and Moore (2019, 94).

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. 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). 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.³²

A right to stability of land-use practices

I think that the interest I have described is significant enough to form the basis for a weak, pro tanto *right* to some degree of cultural stability. Like Moore, I conclude that current inhabitants can have a right to continued use of an area of land grounded in the *legitimate expectations* they develop of that continued use. But these legitimate expectations, on my account, are not grounded in the importance of continued use for our ability to pursue our projects and plans, but rather in its necessity for what I have called *orientation*. These legitimate expectations support a pro tanto *right* to a certain degree of cultural stability, meaning that, absent comparably significant countervailing considerations, it would be *wrong* to do something that severely disrupts the web of cultural practices on which someone relies against their will. Just as I have said that we have no interest in perfect cultural stability, in protecting our practices generally against change and evolution, there is also no right to perfect cultural 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 cultural 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 cultural 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

³² On the fishing see Tennenhouse (2019); on the Sámi see Benko (2011); Stilz (2017) discusses the Plains buffalo hunters (360).

cases, the cultural 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.

Limitations and objections

Although I said above that the *interest* in cultural stability is independent of the value of the cultural practices involved, I do not think that is true of the *right*. People have no right, I presume, to maintain cultural 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. This does not, of course, mean that groups with oppressive or otherwise morally problematic cultural practices have no rights to cultural stability or cannot be wronged by settlement. What it means is that if the *only* cultural practices disrupted were morally objectionable ones, there would be no complaint against the disruption. (It is also worth noting at this point that, although the right is held by all, those with less 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.)

One might still be concerned, though, that the kind of cultural stability to which I am positing rights will conflict with positive and important change of various kinds, whether or not the practices these changes disrupt are *morally objectionable*. Rapid technological change, for instance, might bring substantial welfare benefits at the expense of dramatic shifts in social practices with potentially disorienting effects. The Industrial Revolution, perhaps, was like this: accelerating technological developments brought with them significant improvements in welfare along with quite sudden social and cultural changes that are likely to have been experienced as disorienting by many. It would be unfortunate if we had to say that such welfare-enhancing technological (or other) progress should generally be forgone for the sake of cultural stability.

I want to clarify, then, that I am not mounting a general defence of social stability, nor calling generally 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.³³ 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. It is *not* the case, on this picture, that stability, in whatever degree, is a good thing and

³³ On the normativity of tradition, see Scheffler (2010) and Jeffers (2015).

minor instabilities are outweighed. Thus, the right to cultural 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.

The second respect in which this is not a general defence of cultural stability is that the right to cultural 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 cultural stability and demand change even despite severe disorientation that it will bring. It is certainly not my claim that, *as a general matter*, it is wrong to pursue disorienting change. Thus, it could have been perfectly justifiable to pursue the technological progress that was made during the Industrial Revolution despite its disorienting effects. 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. The argument, then, is not a general defence of stability, and does not provide any reason to refrain from submitting our practices to critical examination. Rather, it identifies one relevant *consideration* (among many) to take account of when we *do* submit our practices to such scrutiny.

Another potential worry is that if we really do have rights to cultural stability of this kind, they will impose demands not only on outsiders to cultural practices, but also on insiders (those who are already participants). After all, the stability of an individual's set of cultural practices may be disrupted by the other participants in the practices simply changing or abandoning them, or moving away. I think there is certainly not any general duty to continue participating in existing cultural practices against one's inclination. But I do not think it is implausible that an individual's interest in cultural stability may generate *some* (*pro tanto*) duties for those with whom they share cultural practices. If one group of people's suddenly moving away from an area, for instance, will lead to the sudden disappearance of a set of cultural practices on which some other individuals have come to depend, they may have some obligation not to do it, or at least to help mitigate these effects.

Finally, I do not think it is a problem for this view that people regularly do choose to embrace the kind of disorientation that I have discussed, and move from one place to another where cultural practices are radically different. I think it is actually fairly rare for people to subject themselves to *radical* disorientation when not acting under duress, but whether or not that is the case, that people may voluntarily choose to forgo something to which they have a right does not show they have no such right.

Settlement and the violation of cultural stability rights

People have weak, *pro tanto* rights to moderate stability in cultural 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. 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 cultural 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 cultural 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 cultural stability rights might be violated. In particular, the *settlement* of a large group of newcomers in an area, bringing with them different, incompatible land-use practices, may do the same.³⁴ Moore and Stilz have convincingly argued that settlement can disrupt the life plans and projects of existing residents in an area.³⁵ It is no less plausible, I think, that settlement may, in certain cases, severely disrupt a background web of cultural 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. 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'.³⁶ The movement of white settlers across the American Plains that Stilz describes seems like another example.³⁷ This settlement drove away the buffalo on which hunting practices core to the Plains tribes' mode of existence depended.

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).³⁸ Settlement that altered these peoples' access to the relevant places (or that

³⁴ 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.

³⁵ Stilz (2017) 360 and Moore (2019) 94-8.

³⁶ Moore (2019) 96.

³⁷ Stilz (2017) 360.

³⁸ See Deloria (1973) 75-81, 200-1. [Acknowledgment removed for anonymisation.]

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. Thus, I think the right to cultural stability can account for at least a *possible* wrong of settlement, and it seems quite plausible that this accounts for some part of the wrongs involved in some actual historical cases of settler colonialism.

The right to exclude

So, it seems that the description of the right to cultural stability I have given, if plausible, offers one way to account for the thought that there can be something distinctively wrong with *settler* colonialism. But, unlike the stories given by Moore and Stilz, my account does *not* support any sort of exclusionary or property-like 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 cultural practices on which you rely to orient yourself in the world. You do not have to have any special claim to the territory. 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 cultural stability of equivalent weight. These impose duties on others to do what is necessary to allow you to maintain an appropriate degree of cultural stability where possible without setting back interests of comparable significance. Where cultural 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 *over the land* that outsiders lack. (Similarly, it would be wrong for me to attempt to sit in a seat you have sat in when I can get on with my life perfectly well without it, but not because the seat is in any sense *yours*.) If outsiders *also* have a significant interest in using the same area of land that 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 cultural stability, also, 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. The outsiders have violated the existing residents' *pro tanto* right against severe disorientation, and so owe some effort to mitigate this, but they are not obliged to suffer even more disorientation in order to do this.

Of course, if my account does succeed in showing that settlement may sometimes be wrong on its own, it does follow that inhabitants of an area of land may sometimes legitimately demand that others not enter and settle in that land. What, then, about the right to the use of force? 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 of the cultural practices that surround them, derived from the necessity of a degree of such stability for an individual's ability to orient themselves in the world, which may matter both independently and as a precondition for living an

autonomous life. 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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