

# On Rights to Land, Expulsions, and Corrective Justice

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This article examines the nature of the wrongs that are inflicted on individuals and groups who have been expelled from the land that they previously occupied, and asks what they might consequently be owed as a matter of corrective justice. Such cases—in which individuals and groups are expelled, their property is expropriated, and their land is subsequently settled by other people—are not unusual. They include the expulsion of Germans from the Sudeten area of Czechoslovakia between 1945 and 1947; the expulsion of (mainly) Greek Cypriots from the north of Cyprus following the Turkish invasion there in 1974; and the expulsion of Muslim Bosniaks from what is now called the Republic of Srpska, in Bosnia-Herzegovina, between 1991 and 1995. Historically, there are numerous other cases of “ethnic cleansing” and border redrawing. The injustice with which this article is concerned is also foundational to the current dominant societies in the Americas and Australasia.

I argue that there are three sorts of potential wrongs involved in such expulsions: being deprived of the moral right of occupancy; being denied collective self-determination; and having one’s property rights violated. Although analytically distinct, all of these wrongs are likely to be perpetrated when people are expelled from their homelands. Although there is substantial literature on corrective justice dealing with such cases, most of that literature focuses on the expropriation of property only, and is therefore unlikely to grasp the full implications of the wrong done or to reveal the full extent of what might be owed to people as a matter of corrective justice.<sup>1</sup>

Most theorists writing in the corrective justice tradition distinguish among three different mechanisms for correcting historical injustice: *restitution*, or giving back whatever it is that has been unjustly taken; *compensation*, or giving something of a certain value but not the unjustly taken thing itself because restitution

is impossible, or in addition to restitution to make good the loss the victim has suffered meanwhile; and *apology*, again either because restitution is not possible or because there is an independent reason to acknowledge the wrong. Typically, these mechanisms are discussed in terms of the violation of property rights. I do not deny that property rights may be relevant in the analysis of such cases, but I suggest that a fuller analysis of the appropriate remedy requires us to identify which particular rights are violated and to analyze the interaction between that particular right and the interest it is designed to protect, on one hand, and between the particular right and the appropriate corrective justice mechanism, on the other.

Before continuing, it is important to distinguish between land, territory, and property. “Land” refers to some portion of Earth’s surface not covered by water; “territory” is a political concept referring to the geographical domain of jurisdictional authority; and “property” refers to a complex collection of rights, moral powers, immunities, and duties that generally gives the right-holder the moral and legal rights to access and control objects and to exclude others from them. By the term “right,” I am referring to a complex package of deontic conceptions—claims, liberties, powers, and immunities—that protect or defend an important interest of the person.<sup>2</sup> Land is a universal good in the sense that everyone has an interest in it, and this general interest is important to grounding rights to it. The interest that people have in land is also highly particularized: people have an interest in particular territories, geographical locations, and property; and the particularized aspect of the good makes rights to land particularly problematic (in this way, the rights described here are unlike human rights based on general and substitutable interests, such as a right to food or a right to shelter).<sup>3</sup>

I argue that people have an important interest in the property that they hold and in access to: (a) land that supports the way of life that is fundamental to their projects and identities, (b) the place where they live and have relationships, and (c) the geographical domain of their self-determination. I further argue that these interests are sufficiently important to justify holding others under an obligation to respect them. An interest-based theory of rights, such as the kind on which I rely, normally also sketches the limits of a right by reference to two criteria: that the rights are feasible and that the rights as a set are compatible. While I do not show on a case-by-case basis that every rights-claim connected to land meets these criteria, I proceed by assuming that it is possible to articulate a

right that protects the interests in question and is structured in such a way that it meets the feasibility and compatibility desiderata.

There are three types of place-related rights, and these rights correspond to the main distinctions between “land,” “territory,” and “property.” First, there is an individual *moral right of occupancy*, which is violated in cases of expulsion from the place one lives in, interpreted expansively to refer not only to one’s home but also the geographical area relevant to one’s projects and relationships (one’s community). Second, there is a collective *right to self-determination*. There is an instrumental relationship between expulsion from a particular territory and the good of collective self-determination, namely, that expulsion often prevents the realization of robust forms of collective self-determination, which itself is a good for the group in question. In addition, as I will argue, it may be important that self-determination is exercised in a particular place, and that among the things that the self-determining group wants to control is the bit of land that they live on, are attached to, and which is connected to their way of life. Finally, in many cases, taking land violates legal and moral *rights of property*. Since most discussions of corrective justice in this kind of case focus on property rights, I do not discuss property rights extensively here. When I do discuss property rights, I do so within the specific context of this article, focusing on real estate or immovable property (for example, farms, houses, apartment buildings, or land that is owned), rather than on what are called “chattels,” for example, furnishings, jewelry, art, or clothing.

My focus on the violation of rights to land, territory, and property, and the link between these and corrective justice remedies, is a significant departure from most of the extant literature on corrective justice. One vibrant debate in the corrective justice literature is on whether and how historic injustice should matter at all, with a rough division between those who think that correcting historic injustice matters for its own sake, as the righting of a wrong,<sup>4</sup> and those who think it matters as a precondition for justice or social harmony in the present.<sup>5</sup> This article does not discuss the relationship between injustice in the past and current injustice, but focuses instead on the types of rights violations that often accompany the taking of land, and the justificatory grounding for the right. It also goes beyond most of the current literature, which assumes only a property relationship between individuals, groups, and land, whereas I argue that we can identify additional place-related moral rights.

## INDIVIDUAL MORAL RIGHT OF OCCUPANCY

In this section, I discuss why we might think that individuals who live on a particular area of land have a moral entitlement to live there. This idea is so basic that many theorists take it as the starting point for a justification of state control over territory,<sup>6</sup> and then build derivative rights from it—such as the right to exclude others, to control natural resources, and so on.<sup>7</sup> Here, though, I am interested only in the basic right to live in a place, free from the threat of expulsion. Some of these arguments seem to apply simply to the right to occupy somewhere, but I argue for a stronger version of a moral occupancy right, that is, the right to occupy the place you are currently in, if you have not come to live there unjustly. At this point in the argument, the qualifier “not unjustly” applies if no other group was forcibly expelled in order to “make room” for the current inhabitants.<sup>8</sup>

Why might we think that people have moral rights of occupancy? The principal appeal, I think, is to the idea that people have a right to a place: as Hobbes and Walzer suggest, we are physical beings—we occupy space—and within that place we develop projects and relationships and pursue a general way of life to which we are typically attached.<sup>9</sup> Some of these attachments are to the physical place,<sup>10</sup> but some are to our projects and to the people who share the space with us—our family and friends and the community that forms the background context in which we live our lives. This means that in addition to the unjust coercion that typically accompanies expulsion, there is a fundamental injustice in disrupting the background conditions in which we live our lives, pursue our projects and relationships, and exercise choices.

The particular place that we live in is important for at least two reasons. First, people form relations and attachments to others in a particular place, and expulsion from that place is disruptive to these relationships. Second, people make choices and develop aims and activities on the assumption that they will live in a given place for as long as they wish; therefore, that place is often integral to their choices and projects. The first reason suggests that the relationships developed in the place are primary, but this has the counterintuitive implication that the wholesale expulsion of a community is less damaging than individual expulsion.<sup>11</sup> The second reason suggests that we can possess an important physical connection to a given place, and not simply because of the relationships to people formed in that place. In many cases, as I argue below with respect to the example of the Labrador Inuit, the projects and aims that give meaning to one’s life can

only be pursued in a particular location, with a particular institutional structure, geography, and so on. Both arguments, of course, support the idea of a moral right to remain in a place, and not to be expelled or barred from one's community (at least not without very good reasons, such as that of one's safety or some compelling public interest).

The moral right to occupancy does not rest on a right to property. People can have a right to occupancy even when they do not own real estate or immoveable property in the community. People who rent an apartment and are not property owners but who are forcibly expelled for no compelling moral or legal reason have had their moral rights of occupancy violated. Moreover, the moral right of occupancy is violated not only by eviction from one's home: it refers to the disruption and dislocation involved in exile from the place one lives in, which, defined in an expansive way, includes the institutional and physical context in which one lives, for some people may not easily feel "at home" in another community or location.

How expansively should we interpret the location of one's plans, projects, and relations? What counts as the relevant location in which people have moral occupancy rights depends on the cultural and institutional context in which they live. For people living in more remote communities, the community in question might not correspond to the political and institutional demarcations that we commonly think of as relevant in modern, industrialized societies. There is extensive empirical evidence of this, particularly in the case of isolated indigenous communities that have been relocated—sometimes for such benign reasons as to enhance their access to various services and opportunities. Although many of the affected people were still located together and could retain relationships, they were nonetheless deprived of a particular way of life that was only possible in a particular place. This relocation resulted in dislocation and social problems, as the people found it difficult to adjust to their new environment. For example, the Inuit people, who were relocated from Labrador to the southern shores of Newfoundland (mainly in 1968 and 1969), struggled to get food in this new context, away from their traditional hunting grounds, and so fell into (or deepened) a culture of dependency, dislocation, and social ills.<sup>12</sup> Unfortunately, insensitive white governments, eager to centralize services, have all too often meted out similar treatment to other indigenous groups.<sup>13</sup>

One might object at this point that most people do not have a close, normatively significant relationship to land, but I think this objection relies on a very narrow interpretation of this relationship. Bedouin, for example, who, as nomads,

might be thought not to have specific locational rights, are in fact nomadic *over a particular area*: they are familiar with the specific features of the landscape, the position of the stars, and the location of water holes, and that link to the land allows them to live a particular way of life. Similarly, the pattern of flooding followed by a dry season is integral to a rice farmer's way of life. Occupancy rights, in other words, are bound up in the projects, aims, and ways of life to which people are committed. Even urban people in liberal democratic societies, who would not seem to have an intimate relationship to a particular landscape, do rely for their way of life on a particular cultural, economic, and institutional setting—one that cannot be transferred to another place without loss or disruption. A right of occupancy, therefore, ensures that people are not subject to the threat of removal, and affords them a secure space in which to live their life and realize the aims and projects that are integral to it.

### CORRECTIVE JUSTICE IMPLICATIONS OF THE INDIVIDUAL MORAL RIGHT OF OCCUPANCY

When a group of people (usually a disfavored minority) have been displaced from their homes and communities, we can say that they have had their moral rights of occupancy violated. How can this be corrected? The most obvious remedy for the violation of a moral right of occupancy is the right of return, and possibly compensation and apology for the original violation. Can, however, the right of occupancy be superseded over time? Is the right of return impervious to changes in circumstances following the initial injustice?

Jeremy Waldron's supersession-of-injustice thesis states that with the passage of time, injustices can be rendered irrelevant or no longer require a remedy.<sup>14</sup> In many respects this idea has intuitive plausibility. To see the plausibility of supersession of injustice in the case of land, consider its opposite. If a right of occupancy were to continue undiminished through time, this would be the same as a "first occupancy" principle, whereby the first occupant of the territory acquired occupancy rights to it (and the accompanying territorial rights that are built upon legitimate occupancy). It would also follow that no later occupant could acquire such rights. This is a counterintuitive principle. The people who are descended from first occupants but whose ancestors left the land do not have the right kind of relation to the land to justify the moral right of occupancy. Moreover, the justificatory argument for the right of occupancy applies to those who are

descended from people who perpetrated the original injustice and are living on the territory. This suggests that context is relevant because it affects the relationship between the content of the right (what the right is for) and the relevant right-holder.

We should, however, be reluctant to accept the view that those who have expelled people from land, and have forcibly settled it, and so are beneficiaries of this injustice, should then immediately begin to acquire occupancy rights to it. The original justificatory argument assumed that the people who acquired occupancy rights were at liberty to settle there, which is clearly not the case when settlers have forcibly evicted the original inhabitants. The corrective justice mechanism should be sensitive to the moral asymmetry between the victim and the aggressor.

Focusing on the substantive normative connection between the right-holder and the end or normative point of the right and the conditions under which this relation can change yields a more variegated picture of the moral right of occupancy.<sup>15</sup> Consider two broad types of “settlers” in the Turkish Army-occupied Turkish Republic of Northern Cyprus (TRNC). First, there are the Cyprus-born, Turkish-speaking refugees from the south of Cyprus who were displaced from their homes and communities after the 1974 division of the island and who settled in places previously occupied by Greek Cypriots. In the case of settlement of this kind, the settlers had their initial occupancy rights violated, and their reinstatement in new geographical communities can be viewed as an attempt to give them a context in which they can try to rebuild their lives and forge new plans and relationships. To then displace them from these areas in the interests of the original Greek occupants would be a double injustice to these people. Second, there are the settlers from mainland Turkey (Anatolia) who have been state-sponsored and state-encouraged to settle in northern Cyprus. Settlers of this kind occupy land in clear violation of international law, and this makes their case for occupancy rights weaker in two respects. First, that their settlement violates international law, and that they were neither at liberty nor forced to settle there, means that their actions do not generate legal entitlements to the land thus taken. These people are beneficiaries of a serious injustice.<sup>16</sup> Moreover, in terms of the appropriate relationship between the people and the land, it would be difficult to argue that the occupation of these lands forms a temporally secure backdrop to the exercise of the Turkish settlers’

autonomy or that they have secure expectations of remaining there, since they know it was taken unjustly and in violation of international law.

Four hundred years ago, when Europeans first interacted with indigenous peoples in the Americas, there was no accompanying clear international law on conquest or settlement, so the occupying people did have an expectation of continued residence and settlement on land previously occupied. The same cannot be said of more contemporary cases, such as Cyprus since 1974, or Israel since the 1967 Arab-Israel War, which culminated in the Israeli occupation of the West Bank and Gaza. In both cases, military occupation of these territories is in clear violation of the basic norms of the international system and in contravention of repeated United Nations resolutions. Indeed, the Fourth Geneva Convention, which spells out the obligations of an occupying power with respect to its original inhabitants, makes explicit that settlements of the occupying power on this territory are illegal. Under these conditions (unlike at the creation of Israel in 1948, for example, which was legitimated by the UN partition plan) settlers would likely be wary of viewing their occupations as secure, and their continued use or control of this land would not quickly form a stable background from which to make plans and exercise autonomy. Between these two cases there are those of East Timor and the Baltic states of Estonia, Latvia, and Lithuania, where settlement of Indonesians in the former and Russians in the latter occurred in the context of a shared political unit. In such cases, it might be unreasonable to assume that the individual settler has the burden of responsibility to analyze correctly the historical trajectory, and conclude that his or her settlement is illegitimate, in part because there are countervailing messages from the leaders of the state that she/he trusts.

The moral asymmetry between perpetrator and victim, however, disappears over time, especially in cases of multigenerational injustice.<sup>17</sup> This is because the children of individuals who perpetrated the original injustice are not themselves guilty of it; and the children of the people who were expelled were not themselves victims of a violation of a right of occupancy. Moreover, the grounding argument for a moral right of occupancy will apply, over time, and typically in one generation, to children of the settlers. They, too, have rights as individuals to live in a place, to have a secure context in which to develop projects and relationships, and this context typically means the particular place they inhabit. Likewise, the children of the evicted group, and perhaps even the victims themselves, given a sufficiently long period of time, often adjust to their new state of affairs and pursue choices, projects, and relationships within a new context.



What about people who were evicted from the place where they enjoyed a moral right of occupancy, but remain stuck in refugee camps or with no citizenship status or prospect to acquire them in their new place, and who are therefore unable to develop projects and make plans confident of their background context? These people still suffer the effects of the original injustice, and for long-term refugees this limbo can persist into the second generation. For people in this category, the only proper remedy is the right of return. One problem with this remedy is that it may lead to an intra-right conflict. If we assume that, after a sufficiently long period of time, the new occupants—presumably the second generation of those who perpetrated the initial eviction—have developed moral occupancy rights of their own, then the two groups would both be entitled to occupancy rights. This may mean acknowledging an individual right of return for refugees who have not been able to find a secure place in which their right of occupancy can be realized; or the return of some land (though perhaps not all) in the case of groups who, although they were subject to forcible removal a long time ago, have not been able to adjust to their new situation, and who seek the return of their land.

## COLLECTIVE RIGHT TO SELF-DETERMINATION

The moral right of occupancy can be understood as a right that attaches to individuals and has two components: a liberty right to settle in an unoccupied area and a right of non-dispossession, that is, a right to remain at liberty in one's home and community. The moral right to collective self-determination, by contrast, is a collective or group right to create political institutions in which people can be collectively self-governing. Since these political institutions typically operate over the land on which people are settled, the moral right of occupancy is important to justify territorial rights *over a particular place*. Rights to collective self-determination do not build straightforwardly on individual occupancy rights, but the individual members of the group must be in the right relationship to the land (in legitimate occupancy of it) to justify territorial control over the geographical domain.

In this section, I assume—without a full or complete argument—that there is a right to collective self-determination. This assumption, though, is not a stretch: there is a right to “self-determination of peoples” enshrined in the UN Charter (Article 1, paragraph 2, and Article 55); and there is a moral right to collective

self-determination that follows from the idea that political communities are valuable in part because they are spaces in which members co-create their own political project and together implement their own conception of justice.<sup>18</sup> Institutions of political self-determination give expression to the values of communities; they express people's identities; and they are important forums in which collective autonomy can be expressed, and through which people can shape the context in which they live and realize their political aspirations, free of external domination.<sup>19</sup>

Appealing to the idea of political self-determination raises the question of the appropriate territorial right-holder, the "self" who should be politically self-determining. Nationalists argue that the proper right-holder is the nation, defined to some extent in cultural terms.<sup>20</sup> Plebiscitary theorists of political self-determination assume that members of territorially concentrated groups that seek to exercise self-determination should be able to secede/self-determine as a matter of freedom of association.<sup>21</sup> And statist typically view the state as the appropriate holder of territorial rights, which lends a certain status quo dimension to their arguments (they do not address retrospectively which contending groups should be allowed to form a state, except to require that the group can form a state—and for that to occur territorial concentration is necessary).<sup>22</sup> My argument is neutral among these various conceptions; I simply assume that a wrong has been perpetrated in that the groups that have been expelled cannot exercise self-government because of their expulsion (even if on other theories there may be other reasons why they could not). I set aside complex questions of the appropriate territorial right-holder to assume that the peoples who aspire to political (territorial) self-determination but cannot realize it because their territory has been taken from them have been wronged.

Political self-determination can take many forms, but some forms of self-determination are limited by the group's capacity, size, and geographical concentration. Robust territorial forms of self-determination are typically exercised over a geographical area, and territorial concentration is an important precondition. Of course, in the absence of territorial concentration over a particular geographical area, a group like the Roma could exercise nonterritorial forms of self-government. In the modern world, however, most significant forms of self-government require control over a geographical domain, and this is true not only of states but of significant forms of political autonomy at the sub-state level (for example, provincial or cantonal) and the supra-state level (for example, the European Union).

When a group is deprived of its territory, it is also deprived of the main institutional conditions or means to exercise robust forms of territorial self-government. In many cases, the expulsion of people from a place is motivated precisely by the desire to prevent the victims from exercising the right of collective self-determination, and to facilitate the exercise of that right by the group that has seized territory. In the Soviet Union, many groups—Crimean Tatars, Chechens, Kalmyks, Volga Germans, the Karachai, and the Ingush, among others—were forcibly expelled from their homeland during the Stalinist period and scattered to Siberia, where they found it difficult to mobilize collectively or exercise forms of collective self-government.<sup>23</sup>

I have assumed, consistent with the compatibility requirement of rights, that a group can exercise territorial jurisdiction where the members legitimately occupy the territory. Clearly, a group is not in “legitimate” occupation of the territory if it has forcibly removed another group. However, I have also argued that, over time, people can acquire moral occupancy rights, so groups that are comprised of individuals who enjoy moral occupancy rights can come to have a right to political self-determination over that territory.<sup>24</sup> Most forced expulsions involve a violation of the group right to collective self-determination. In the cases of the Crimean Tartars or the Volga Germans, the entire population was displaced from its homeland and scattered among the larger group precisely so that they would assimilate and abandon a viable associational life. However, this is not true in all cases. For example, the Greek Cypriots who were forcibly expelled from what is now the TRNC clearly had their occupancy rights violated, as their individual autonomy was severely compromised. But their displacement was not completely damaging to their collective autonomy: they could still participate in meaningful collective autonomy as Greek Cypriots, which was their primary collective identity.<sup>25</sup> The idea of self-government does not straightforwardly tell us where the territorial boundaries should be drawn, and this is especially so when the new or altered self-determination project matches to some extent the identity and aims and aspirations of the members of the group, as was true of Greek Cypriots who remained within the Republic of Cyprus, which was expressive of a Greek Cypriot identity. There was no doubt that Greek Cypriots experienced the loss of territory as a loss<sup>26</sup> (and individual Greek Cypriots experienced the loss of their property as a loss); but the real tragedy in this redrawing was not the loss of collective autonomy per se, but the violation of the moral rights of occupancy that was involved in this territorial “readjustment”—the forcible transfer of people from their communities.

This is not intended to suggest that all groups can adjust to a different self-determination project as long as it is formally inclusive. In fact, this is probably quite rare. Consider the quite different case of indigenous peoples who were stripped of their land and whose self-governing regimes were destroyed by colonization. It is not surprising that they found it difficult to view the new self-determination project (Canada, Australia, the United States, as the case may be) as one that was consonant with their culture and identity, since it was built on the destruction of their previous self-determining communities. It is unsurprising, too, that the subsequent attempts to assimilate them also failed, since it is psychologically very difficult to adopt the identity and broad culture of the group that has engaged in widespread theft and destruction of your foremothers and forefathers. This is also a not untypical story, which I recount here only to indicate that a historically sensitive and contextually nuanced approach is important to determining how a group may be best able to realize its right to collective self-determination, and that we cannot assume that it will be possible in every formally inclusive political project.

What corrective justice remedies follow from the argument just advanced? Following directly from the analysis of the relationship between moral occupancy rights and territorial rights, changes in circumstances (which happen over time) will affect occupancy rights because they change the relationship between the right-holder and the territory. As individual members of a group may come to lose their moral rights of occupancy, so the group of which they are part will lose their claim to territorial jurisdiction over that area. A group can be collectively self-determining only over an area that they legitimately occupy, which means two things: first, that they cannot exercise jurisdiction over other people simply because other people live in areas that they once had occupancy rights over; and, second, that they can exercise robust territorial forms of self-determination only if they enjoy legitimate occupancy over the territory. Of course, this does not affect whether they have a right to self-determination in the first place, only the form (territorial) that the exercise of the right can take.

This account represents a significant departure from the typical liberal-nationalist view of the relationship between self-determination and territory. On David Miller's view, for example, there is a much closer relationship between self-determination and the territory in which the group is self-determining.<sup>27</sup> This is because the group becomes attached to territory as it transforms it over time and endows it with symbolic meaning. On his view, the right to self-determination

includes the idea of continuing that specific (territorial) project. Tamar Meisels, who endorses many elements of the view associated with Miller, likewise emphasizes the relationship of culture, land, and group identity.<sup>28</sup> The central idea invoked by both theorists is that the land is shaped by the culture, and this process leads people to become attached to the land in such a way that it becomes a crucial feature of their group identity. The difficulty with their account—and the independent value conferred on territory as the particular place to which people are attached, and in which they seek to be self-determining—is that it is not specific on whether occupancy or identification with the territorial project itself is primary. In many cases they coincide, because people develop attachments and projects in relation to specific pieces of land that they occupy justly. When they do not, this account is counterintuitive, suggesting that people are entitled to jurisdictional authority over *territory*, even though this includes authority over people who do not wish to be so included in that project, and who, presumably, are also entitled to be self-determining. This is especially apparent in Meisels' account, for she is explicit that her focus is on the primacy of the land in the history, culture, or religion of a particular people. Citing the Jewish case with respect to the land of Israel and the Serbian case with respect to Kosovo, Meisels emphasizes that people have an identity-related and/or cultural interest in ensuring jurisdictional control over land.<sup>29</sup> Miller does not consider these cases, but like Meisels he does suggest two criteria for a nation to be entitled to territory—occupancy and subjective attachment. It is unclear, however, how to identify the appropriate territorial claimant if the two criteria pull in opposite directions. Moreover, it is unclear why subjective attachment to a particular geographical area should be able to generate jurisdictional authority over the whole area and over other peoples who do not share that identity. These difficulties are avoided in my account, where the claim to territory is dependent on possessing a prior moral right of occupancy.

## THE RIGHT TO PROPERTY: CORRECTIVE JUSTICE IMPLICATIONS

Most discussions of corrective justice characterize the forcible removal of people from land as wrong because of the coercion involved, and because it typically involves a violation of their legal and moral rights to property. The usual mechanisms for corrective justice in cases of this kind involve restitution, compensation, and apology. In many cases, of course, restitution, even of property, is not feasible, often because others have established occupancy rights in the place

in question. In these cases, we often think that the appropriate remedy would then be compensation. I agree with this, but it is important to consider whether there is an additional moral loss that accompanies the loss of private property per se, which cannot be corrected through compensation. Obviously, in the case of a large landholder or an owner of a multi-unit apartment building, property holdings are investments, and the relationship between the property and the proprietor is purely instrumental, so the owner is fully compensated if he or she receives market value for the lost property.

What about owner-occupiers? In many cases where people are subject to expropriation of their property in the common interest, a distinction is drawn between investors and occupiers. The idea is that people dispossessed of property that they live in are entitled to a greater level of compensation.<sup>30</sup> There are two possible reasons for this idea. One is that this additional sum reflects the dislocation and disruption involved in expulsion, so that it is not sufficient simply to get market value for one's property—some additional compensation is necessary to account for the disruption that is typically felt by people who are forced to leave their homes. Another reason is that this additional imputed value reflects a common empirical finding that people value their property at higher rates than comparable goods that they do not own.<sup>31</sup> None of this challenges compensation as a remedy, though this more nuanced account suggests that there is a substantial chunk of value that people attach to their homes over and above strict market value. This endowment effect could be confirmed by asking people if they would be willing to swap their homes for something comparable nearby.

There is, however, a third category of people: those whose lives are invested in a project that is so significantly bound up with the property that it is irreplaceable, and for whom compensation would be insufficient. Consider, for example, the case of an ancestral home that has been kept in the family name in perpetuity. For the owner, the home is not substitutable in the way that compensation models of redress suggest. Or consider a case where I have built a cabin myself whose market value is \$20,000 and somebody destroys the cabin and offers to pay me \$20,000; that fails as adequate compensation, because even if I can buy another cabin, I no longer have the one that I built myself. The problem here is that rights protect generic interests—for example, in liberty or in having projects and relationships—but they do not confer any special status on the particular projects of individual people. Theories of property rights do not, as Samuel Scheffler notes, adequately deal with the general problem of incorporating project-dependent

reasons in their theory.<sup>32</sup> In such cases, an ideal solution, if it is feasible and does not involve the violation of the rights of others, is restitution. In many cases, however, restitution is not possible; and compensation even above market levels may be inadequate, though it is still a second-best (or third-best) option, compared to uncompensated and absolute loss.

Appeals to project-dependent reasons in the case of violations of property rights are likely to diminish over time because they presuppose a close relationship between the proprietor and the property in question, and this is more attenuated the longer the person is not in possession of the property. This tends to parallel the argument with respect to occupancy rights. For example, consider the argument of one of the appellants in a case before the European Court of Human Rights regarding compensation for the loss of property in northern Cyprus. The appellant stated that she had a right to a “family home” to which she felt a strong attachment (and not merely another house or the monetary equivalent). The court did not reject the form of the argument, but denied her specific claim on the grounds that she did not provide evidence to support it. She had left the home at the age of two and had developed projects and relationships in other places for thirty-five years since the loss of that home.<sup>33</sup>

## CONCLUSION

I have argued that three kinds of rights are violated in cases of expulsion and subsequent settlement of land (in addition to the violations related to the coercive threats and intimidation that usually characterize such events): (1) the right to occupy or live in a place, which I call the individual moral right of occupancy; (2) the right to collective self-determination, in which territory is a second-order moral good, because it is necessary in order to develop and maintain robust forms of self-government, and (3) legal and moral rights to property. Each of these rights relies on a place-related interest. This approach enables us to analyze the different claims related to occupancy, territory, or the property of people who have been forcibly expelled, and so provides a more precise analysis of different kinds of rights-violations and corrective justice remedies associated with them.

The underlying argument behind the specific right suggests also its temporal dimension, which in turn affects the appropriate corrective justice remedy. I have argued that the moral right of occupancy can, under certain conditions, diminish over time. In addition, new rights of occupancy can develop as people

become settled in a place. The collective right of self-determination, which is often violated in cases of group expulsion, is dependent (at least for its territorial exercise) on the group occupying a territory. It requires that the individuals comprising the group have a prior moral right of occupancy. This right may diminish or strengthen over time (as the case may be) when people have been expelled from land that they previously occupied and new people have come to occupy the land. A group's ability to exercise territorial forms of self-determination is therefore affected by changes in occupancy and the rights to which these changes give rise. Finally, I have argued that property rights can be violated during the course of expulsion from land, and these claims typically remain in force, relatively undiminished over time. In many but not all cases, compensation is appropriate if restitution is not possible or would violate the more pressing rights of other people.

It is sometimes assumed that, if an expelled people were simply to have their property rights restored to them, then the only issues remaining would be compensation for the intervening loss of rights and apology for the original injustice. However, this is not quite right for reasons implicit in the analysis above. Moreover, typically, expulsions of people from land often involve more than a violation of property rights. This means that simply reinstating property rights (or compensating for this property) fails to address the situation of those people who did not own immovable property but who nevertheless had their moral occupancy rights and their collective self-determination rights violated.

Finally, since these rights are conceptually distinct, it is possible that the restitution of property rights does not automatically lead to rights of citizenship; and so the remedies for the two rights-violations—restitution and return—have to be considered together, since if the two are not combined, the person may have title but not be able to access and use the property fully. This illustrates that the remedies for these wrongs are interrelated. Indeed, it is even more complex than this. Consider as an example negotiations surrounding territorial “adjustments” in Cyprus, where it is envisioned that the Turkish Army-occupied North would have to return substantial territory to the Republic of Cyprus. This affects the self-determination project, because it alters the territorial domain of each unit. It also affects property return, since, presumably, the Greek Republic of Cyprus could set up institutional mechanisms for the return of Greek Cypriot property in their area, but other mechanisms would have to be considered for those who were expelled and lost their property in the area remaining under Turkish-Cypriot control, and these are likely to be forms of compensation. Thus, all of the remedies are



related but are still helpfully conceptualized in terms of the specific right in question.

The issues addressed in this article are of pressing practical and theoretical relevance. In the ongoing peace negotiations in such places as Israel/Palestine and Cyprus, some of the most contentious issues are precisely those discussed here. By thinking through these various rights, including their justificatory basis and temporal limitations, we will have a greater chance of addressing these issues successfully.

#### NOTES

- <sup>1</sup> Someone might object that one of the most famous articles on this subject—Jeremy Waldron’s “Superseding Historic Injustice,” *Ethics* 103, no. 1 (October 1992), pp. 4–28—constitutes a prominent refutation of this view. This objection is misplaced. Waldron does not distinguish between expulsions from territory and the taking of property. Consider his example (deployed against Nozick’s principle of rectification): “Suppose (counterfactually) that a certain piece of land had not been wrongfully appropriated from some Maori group in New Zealand in 1865. Then we must ask ourselves: What would the tribal owners of that land have done with it if wrongful appropriation had not taken place? To ask this question is to ask how people would have exercised their freedom if they had a real choice. Would they have hung on to the land and passed it on to future generations of the tribe? Or would they have sold it—but this time for a fair price—to the first honest settler who came along? And, if the latter, what would he have done with it?” In this passage, and elsewhere in the essay, Waldron’s argument about the taking of land fails to distinguish between property and territory, individuals and groups. His series of rhetorical questions completely fit individual property owners because individual property ownership typically involves secure title and the power to alienate property freely (sale, gift, bequest), and we can certainly imagine that change of ownership would be likely to happen over time. However, this claim is far less convincing when applied to groups that claim jurisdictional authority over a particular territory. Specifically, Waldron assumes in the above quote that the Maori attitude to the land was an instrumental conception, in which land is viewed as a source of wealth, a stock of resources that people can use to fulfill their own particular conception of the good. There is, however, very good evidence that many indigenous peoples, including the Maori, did not view land in this way. Moreover, the land in question was the geographical domain on which the Maoris exercised traditional forms of self-government, not simply (collective) property. So quite apart from the fact that it is very unlikely that a group that sees itself as a spiritual guardian of the land would have alienated it voluntarily, it fails to consider the idea of the land as a domain of self-government, that is, as territory.
- <sup>2</sup> Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, Walter Wheeler Cook, ed., with a new foreword by Arthur Corbin (Westport, Conn.: Greenwood Press, 1978); Carl Wellman, *A Theory of Rights: Persons under Laws, Institutions and Morals* (Alanheld, N.J.: Rowman and Littlefield, 1985); L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), pp. 35–53.
- <sup>3</sup> One could argue that it is analogous to something like a human right to have intimate personal relations, because this reflects general human interests, but still interests that can only be realized with particular (non-substitutable) people.
- <sup>4</sup> David Lyons, “The New Indian Claims and Original Rights to Land,” *Social Theory and Practice* 4, no. 3 (1977), pp. 249–72; George Sher, “Ancient Wrongs and Modern Rights,” *Philosophy & Public Affairs* 10, no. 1 (1981), pp. 3–17; Waldron, “Superseding Historic Injustice,”; Nahshon Perez, “On Compensation and Return: Can the ‘Continuing Injustice Argument’ for Compensating for Historical Injustices Justify Compensation for Such Injustices or the Return of Property?” *Journal of Applied Philosophy* 28, no. 2 (2011), pp. 151–68.
- <sup>5</sup> Michael Ridge, “Giving the Dead Their Due,” *Ethics* 114, no. 1 (2003), pp. 38–59; Duncan Ivison, “Political Community and Historical Injustice,” *Australasian Journal of Philosophy* 78, no. 3 (2000), pp. 360–73; Robert Sparrow, “History and Collective Responsibility,” *Australasian Journal of Philosophy* 78, no. 3 (2000), pp. 346–59; Janna Thompson, *Taking Responsibility for the Past: Reparations and Historical Injustice* (London: Polity Press, 2002).

- <sup>6</sup> Margaret Moore, *Ethics of Nationalism* (Oxford: Oxford University Press, 2001), pp. 199–201; Anna Stilz, “Nations, States and Territory,” *Ethics* 121, no. 3 (2011), pp. 572–601.
- <sup>7</sup> A. John Simmons, “On the Territorial Rights of States,” *Philosophical Issues* 11, no. 1 (2001), pp. 300–26.
- <sup>8</sup> By “living memory” I mean that no person now existing was expelled, and so no person has a first person memory of living through that expulsion.
- <sup>9</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), p. 43. Walzer cites Hobbes’s theory in support.
- <sup>10</sup> David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 217; Tamar Meisels, “Can Corrective Justice Ground Claims to Territory,” *Journal of Political Philosophy* 11, no. 1 (March 2003), pp. 65–88; Meisels, “Liberal Nationalism and Territorial Rights,” *Journal of Applied Philosophy* 20, no. 1 (2003), pp. 31–43.
- <sup>11</sup> One could argue that the reason why ethnic cleansing is regarded as so wrong is simply because it involves the aggregation of many individual rights violations.
- <sup>12</sup> Carol Brice-Bennett, “Dispossessed: the Eviction of Inuit from Hebron, Labrador,” submitted to the North Program, Royal Commission on Aboriginal Peoples (Happy Valley, Labrador: Institute of Northern Studies, 1994); Paul R. Wilson, *Black Death, White Hands* (Sydney: George Allen & Unwin, 1982).
- <sup>13</sup> If we accept a moral right of occupancy, there are probably other social justice implications. It could plausibly be argued, for example, that governments should be prepared to shoulder some additional costs to provide services to remote communities, but that it is not similarly incumbent on governments to bear extra costs for individuals who move voluntarily to remote areas.
- <sup>14</sup> Waldron, “Superseding Historic Injustice,” pp. 4–28.
- <sup>15</sup> David Rodin, *War and Self-Defence* (Oxford: Clarendon Press, 2004).
- <sup>16</sup> There is extensive literature on the relationship between injustice and benefit, which I sidestep here. I agree that it is important not to confuse contribution (to injustice) with benefit (from injustice), and there is a deep question whether mere benefit can generate obligations, and if so of what sort. On this, I am persuaded by Norbert Anwander, “Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice,” *Ethics & International Affairs* 19, no. 1 (2005), pp. 39–45, at page 40, who points out that most of us have benefited from the serious injustice inflicted on residents of Hiroshima. Anyone who has ever had an X-ray benefits from the data derived from that atomic explosion on the safe dosage of radiation. Although I do not have space to elaborate on the precise relationship between injustice and benefit in such cases, in the central cases with which I am concerned the taking of property/land/territory does not only represent a benefit for those people who then live on the property of the expropriated people, or the group that has annexed territory, but it is inextricably linked to the dispossession project, and in that sense contributes to it. A fuller account would discuss the implications of the relationship of benefit and contribution in such cases for our conception of (individual and collective) responsibility.
- <sup>17</sup> However, there is an important objection to the argument I have just advanced, especially the idea of moral occupancy rights diminishing or strengthening over time. This is that if a group is successful in expelling other people and living on their land for long enough, they can thereby get rights to it (moral occupancy rights and second-order self-determination rights). One way to minimize this problem of moral hazard is to develop robust international norms, rules, and institutional practices that unequivocally condemn practices of expulsion and subsequent settlement when they occur and that continually challenge the settler group in their occupation of the land.
- <sup>18</sup> This principle has potentially far-reaching consequences, and so is qualified by numerous other articles in the UN Charter affirming the sanctity of the principle of the territorial integrity of states and denying the right of the UN or its member states to intervene in the internal affairs of recognized states. See Rupert Emerson, “Self-determination,” *American Journal of International Law* 65, no. 3 (1971), pp. 460–69.
- <sup>19</sup> I do not mean to imply that people have a purely instrumental interest in the land on which they are self-governing. However, it is not necessary to self-determination that the landmass be the *ideal* homeland of the community.
- <sup>20</sup> Miller, *On Nationality* (Oxford: Oxford University Press, 1995), p. 27; Miller, *National Responsibility and Global Justice*, pp. 217–18.
- <sup>21</sup> Christopher Heath Wellman, *A Theory of Secession: The Case for Political Self-determination* (Cambridge: Cambridge University Press, 2005), pp. 7–8.
- <sup>22</sup> Allen Buchanan, “The Making and Unmaking of Boundaries: What Liberalism Has to Say,” in Allen Buchanan and Margaret Moore, eds., *States, Nations and Borders: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003); Lea Ypi, “A Permissive Theory of Territorial

- Rights,” *European Journal of Philosophy*, published online February 9, 2012; Stilz, “Nations, States, Territory,” p. 577.
- <sup>23</sup> Robert Conquest, *The Nation Killers: The Soviet Deportation of Nationalities* (London: Macmillan, 1970).
- <sup>24</sup> Jouni Reinikainen, “The Expiration of the Right to Territorial Restitution” (unpublished manuscript).
- <sup>25</sup> In fact, many Greek Cypriots had initially sought union (*enosis*) with Greece, but this political project so completely backfired with the resulting invasion of Turkey and the partition of the island that the only remaining viable collective autonomy project was that of Cyprus.
- <sup>26</sup> The Greek Cypriot flag includes a map of the whole island, strongly suggesting an identification with the island in its entirety. Obviously, partition of the island does great violence to this sense of a Cypriot homeland.
- <sup>27</sup> Miller, *National Responsibility and Global Justice*, pp. 216–19.
- <sup>28</sup> Meisels, *Territorial Rights* (Dordrecht, Neth.: Springer, 2005), p. 95.
- <sup>29</sup> Meisels, *Territorial Rights*, p. 90.
- <sup>30</sup> For the distinction between investment property and family homes and the differential treatment of them, see the Newfoundland government’s legislation on expropriation from family homes at [www.assembly.nl.ca/legislation/sr/statutes/fo1.htm](http://www.assembly.nl.ca/legislation/sr/statutes/fo1.htm). The government also concedes that compensation of family homes may not reflect the true value to the family.
- <sup>31</sup> In the classic version of this experiment, Richard Thaler presented the class at Cornell University with coffee mugs and allowed them to trade among themselves. Very little trading occurred, which researchers attributed to the endowment effect, that is, that goods that are included in one’s endowment (goods that one owns) are valued more highly than comparable goods not held, so that buyers and sellers could not reach a price. This endowment effect has also been shown to have the effect that losses of possession are more painful to the proprietor than gains are pleasurable. Jochen Reb and Terry Connolly, “Possession, Feelings of Ownership and the Endowment effect,” *Judgement and Decision Making* 2, no. 2 (April 2007), pp. 107–114.
- <sup>32</sup> For an authoritative discussion of project dependent reasons, see Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2001).
- <sup>33</sup> Demopoulos v. Turkey (European Court of Human Rights, March 1, 2010). Full document accessed at [www.asil.org/ilib100318.cfm](http://www.asil.org/ilib100318.cfm).