

## What's Wrong with Colonialism

I

There is no question mark at the end of my title. I ask you to grant that *something* is wrong with colonialism. That in itself is no meagre concession; the history of liberalism is replete with apologies for colonialism as well as condemnations of it. If you think that colonialism is justified, you are unlikely to find my arguments attractive. But if you agree that something must be wrong with colonialism, you might want to know more about what exactly the nature of the wrong is.

It is tempting to answer the question by following one of two prominent strategies for showing the wrong of colonialism: an argument from nationalism and an argument from territorial rights. This article defends an alternative account. It argues that the wrong of colonialism consists in the creation and upholding of a political association that denies its members equal and reciprocal terms of cooperation. To see the nature of that wrong, no commitment to either nationalism or territorial rights is needed.

Let me nevertheless begin with a few words on each. Nationalism is familiar to most people. The idea that cultural groups have a *prima facie* claim to self-determination and that the wrong of colonialism is

This article was written with the support of the Australian Research Council DP110100175, for which I am grateful. Earlier versions were presented at Bristol, Princeton, San Diego, Uppsala, Dublin, Sheffield, LSE, ANU, Darmstadt, Copenhagen, Melbourne, and Queen's University at Kingston. I am grateful to participants at these events and especially to Chris Armstrong, Anne Barron, Chris Bertram, Garrett Brown, Dan Butt, Amandine Catala, Paige Digeser, Chris Essert, Graham Finlay, Katrin Flikschuh, Bob Goodin, Leigh Jenco, Catherine Lu, David Miller, Margaret Moore, Avia Pasternak, Nic Southwood, Tim Waligore, and Jonathan White for very helpful conversations and comments. I am particularly indebted to Annie Stilz for reading several drafts and to the editor and reviewers of *Philosophy & Public Affairs* for helping me prepare the final version.

explained by the violation of such claims has a long-standing tradition both in political theory and in political discourse. “The power,” Gandhi declared in his famous “Quit India” speech of 1942, “will belong to the people of India, and it will be for them to decide to whom it placed in the entrusted.”<sup>1</sup> “Whether we like it or not, this growth of national consciousness is a political fact” and “we must all accept it as a fact,” British Prime Minister Harold Macmillan emphasized in his equally famous “Wind of Change” address to the South African parliament.<sup>2</sup> Although few normative theorists would take Macmillan’s words at face value, the aim of this article is not to discuss potential objections to the view. Many readers will continue to find nationalism attractive. But even more may be interested in a critique of colonialism that does not require commitment to some version of it, whether declared or disguised, whether of an ethnic or of a civic kind.

The argument from territorial rights has received a great deal of attention in the recent literature.<sup>3</sup> The claims of indigenous groups are often considered related to territory in some normatively important way, as claims to particular land, particular resources, and the use of geographical space belonging to a particular group of people.<sup>4</sup> To take one example, the United Nations’ “Declaration on the Granting of Independence to Colonial Countries and Peoples” of 1960 states that “all peoples have an inalienable right to complete freedom, the exercise of their

1. Mahatma Gandhi, “Quit India,” in *The Broadview Anthology of British Literature: The Twentieth Century and Beyond*, ed. Joseph Laurence Black (Peterborough: Broadview Press, 2008), pp. 784–86.

2. See Harold Macmillan, “Winds of Change,” in *I Have a Dream: The Speeches That Changed the World*, ed. Ferdie Addis (London: Michael O’Mara, 2011), p. 122.

3. My definition of territorial rights follows the recent literature in distinguishing between three different elements: (a) a right to jurisdiction; (b) a right to control and use the resources that are available in the territory; and (c) a right to control the movement of goods and people across the borders of the territory. For a review and critique of the main positions, see Lea Ypi, “Territorial Rights and Exclusion,” *Philosophy Compass* 8 (2013): 241–53.

4. For discussions of territorial rights that relate to the critique of colonialism, see Lea Brilmayer, “Secession and Self-Determination: A Territorial Interpretation,” *Yale Journal of International Law* 16 (1991): 177–202; Allen Buchanan, “Boundaries: What Liberalism Has to Say,” in *States, Nations, and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003), pp. 231–61; Margaret Moore, “The Territorial Dimension of Self-Determination,” in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998), pp. 134–57; and A. J. Simmons, “Historical Rights and Fair Shares,” *Law and Philosophy* 14 (1995): 149–84.

sovereignty and the integrity of their national territory.”<sup>5</sup> To take another example, the principle of “permanent sovereignty over natural resources” asserted in the United Nations General Assembly Resolution 1803 (XVII) of 1962 emerged partly in response to the question of whether decolonized states could be considered free to reject contracts and concessions signed by their colonial masters and to ignore the torts of a predecessor state.<sup>6</sup> Finally, the defense of territorial rights might also appear crucial for our understanding of restitution claims. Indigenous peoples’ arguments concerning the use of land and resources seem to gain their strength from an appeal to the territorial entitlements of their ancestors. Even in cases where we might be prepared to concede that changes in circumstances imply the supersession of past colonial wrongs, the claims of descendants of colonized groups to the territory belonging to their ancestors are rarely challenged.<sup>7</sup>

The article proceeds as follows. Section II introduces some definitions and clarifications. Sections III and IV disentangle the critique of colonialism from the defense of territorial rights. Sections V, VI, and VII develop a different analysis of colonialism, one that sees it not as a violation of territorial claims but as the embodiment of an objectionable form of political relation. Sections VIII and IX examine a number of objections. Section X lays out some implications of the argument. Section XI concludes.

## II. PRELIMINARY REMARKS

In its first, Latin use, the verb “to colonize” derived from “colon,” which meant “farmer, tiller, or planter.” It referred to the Roman practice of settling in a hostile or newly conquered country by citizens who retained their rights of original citizenship, while working on land bestowed to them by the occupying authorities.<sup>8</sup> This understanding of colonialism, linked to the settlement claims of particular groups and their use of specific geographical areas, remained central in sixteenth- and

5. Resolution 1514 (XV): see <<http://www.un.org/en/decolonization/history.shtml>>, accessed February 29, 2012.

6. See, on this issue, Matthew Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford: Oxford University Press, 2007), pp. 85–86.

7. See, e.g., Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103 (1992): 4–28, at p. 4.

8. See *Oxford English Dictionary*, <<http://www.oed.com/view/Entry/36547>>.

seventeenth-century accounts of the occupation of the New World. Here the term “colonies” was deployed to refer to the territory used by settlers who created new communities for themselves and their descendants while remaining dependent on the mother country in political and economic matters.<sup>9</sup>

But settler colonialism is only one historical manifestation of colonial relations. In some cases, indigenous populations were exterminated rather than subjugated to a common political authority: the European conquests of Tasmania, of some of the Caribbean islands, and of vast areas in America, Australia, and Canada are all relevant cases. In other cases, very little settlement took place. Colonized territories served mainly as a provider of vital natural resources: the kinds of commercial colonialism practiced by the Dutch, English, and Portuguese in places like China, Japan, and the East Indies are the most familiar examples of this kind. During the late nineteenth century and early twentieth century, the purpose of colonial rule was declared to be the “civilizing mission” of the West to educate barbarian peoples: French policies in Algeria, French West Africa, and Indochina and Portuguese rule in Angola, Guinea, Mozambique, and Timor were designed to reflect precisely this principle. My critique of territorial rights and the analysis of the wrong of colonialism as a practice grounded in the denial of equal and reciprocal terms of political association applies to all these phenomena (settler colonialism, commercial colonialism, and civilizing colonialism).

Before proceeding with the argument, a few clarifications are in order. This article examines what is wrong with colonialism. It is not about whether some colonial masters are better than others. It is not about what we should make of cases where domestically oppressed groups could have ended their oppression through benign colonial rule. And it is not about the legitimacy of humanitarian intervention. All these are important questions. But here I am not interested in the degree of wrongdoing that colonialism exhibits compared to other oppressive relations, domestic or otherwise. Nor am I interested in the question of how to end such oppressive relations. I am interested in what makes colonialism, even benign colonialism, wrong as such. And I am interested in defeating one powerful argument that claims to identify that wrong: the argument from territorial rights.

9. *Ibid.*

Colonialism is wrong for many reasons. As one early observer remarked, “No account, no matter how lengthy, how long it took to write, nor how conscientiously it was compiled, could do justice to the full horror of the atrocities committed at one time or another.”<sup>10</sup> Burning native settlements, torturing innocents, slaughtering children, enslaving entire populations, exploiting the soil and natural resources available to them, and discriminating on grounds of ethnicity and race are only some of the most familiar horrors associated with it. The suggestion that the wrong of colonialism consists in its embodiment of an objectionable form of political relation is far from implying that this can now be forgotten. This article tries to clarify what is wrong with colonialism, over and above these familiar outrages. Although an account focusing on the brutality of this practice would capture most of the wrong of colonialism (especially when examined in historical perspective), it would leave unchallenged more subtle forms of it.

To clarify the wrong of colonialism, let us turn to its definition. Colonialism is typically understood as a practice that involves both the subjugation of one people to another and the political and economic control of a dependent territory (or parts of it).<sup>11</sup> The first of these elements suggests that colonialism is a practice that involves collective political agents, not individuals, family members, interest groups, or civil society associations. This article assumes that we know what makes the collective a political collective, and that indigenous societies or tribal groups do count as political collectives.<sup>12</sup> The second element suggests that colonialism has an important territorial component. But, although territoriality is descriptively crucial for distinguishing colonialism from other wrongs in the same family, it should not matter normatively. Or so I hope to show.

10. Bartolome de las Casas, *A Short Account of the Destruction of the Indies* (London: Penguin, 1992), p. 43, originally written in 1542 and published in 1552.

11. See Margaret Kohn, “Colonialism,” in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2012 ed.; and Daniel Butt, “Colonialism and Postcolonialism,” in *International Encyclopedia of Ethics*, ed. Hugh LaFollette (Oxford: Wiley-Blackwell, 2013).

12. It would be too restrictive to define colonialism as a relation that holds only between states since this leaves out the claims of indigenous groups who might share a political structure and channels for coordinated decision making. For a discussion of the implications of this point, see also Will Kymlicka, “Minority Rights in Political Philosophy and International Law,” in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), pp. 377–96.

Colonialism, then, is a distinctive wrong. But it is a distinctive wrong within a larger family of wrongs, the wrong exhibited by associations that deny their members equality and reciprocity in decision making. Oppressed minorities, seriously unequal alliances, and apartheid societies are some of its close relatives. They are all nonterritorial manifestations of the same generic wrong: morally objectionable political relations. What sets colonialism apart is the manner in which that same generic wrong applies to territorially distinct political agents. But the territorially distinctive nature of such agents, although descriptively important, requires no prior normative defense. What we need instead is an account of the morally acceptable way of establishing and maintaining new political associations when territorially distinct political agents are at stake.

### III. ACQUISITION AND SETTLEMENT

To see why territory is only descriptively and not normatively important for illustrating the wrong of colonialism, it is crucial to reflect on the limitations of views that equate the wrong of colonialism with violations of territorial rights. The following pages try to show how the most plausible defenses of territorial rights are unable to account for the wrong of colonialism, and have in fact been endorsed throughout history (and the history of political thought) to legitimize colonial enterprises.

Consider one prominent example: acquisition theories of territorial rights. In both individualist and collectivist versions, territorial rights are established as a result of agents' freedom to stake a claim on previously unowned resources (including land) and on the way in which the use of these resources promotes the ends of these agents.<sup>13</sup> For some, territorial rights result from agents making efficient use of the land. For others, they result from deserving the fruits of the efforts invested to improve it. For others still, they are established as a result of the incorporation of needed external resources into legitimate purposes and activities.

13. For developments of the individualist version, see Hillel Steiner, "Territorial Justice and Global Redistribution," in *The Political Philosophy of Cosmopolitanism*, ed. Gillian Brock and Harry Brighouse (Cambridge: Cambridge University Press, 2005), pp. 28–38; A. J. Simmons, "On the Territorial Rights of States," *Philosophical Issues* 11 (2001): 300–26; for the collectivist interpretation, see Cara Nine, "A Lockean Theory of Territory," *Political Studies* 56 (2008): 148–65.

Yet, a similar account of the relation between land occupation and settlement was present in many early modern attempts to justify colonial practices. As Grotius had it, “If within a territory of a people there is any deserted and unproductive soil . . . it is a right of foreigners to take possession of such ground for the reason that uncultivated land ought not to be considered occupied.”<sup>14</sup> Locke, for whom the living conditions of indigenous groups in the Americas offered a clear image of how the state of nature would have historically looked,<sup>15</sup> made a similar point but replaced the criterion of use with a much stronger constraint: labor. According to him, external objects had to be appropriated before they could be of any use, and the only means by which land could be appropriated was to cultivate it.

Of course, it is possible to object to these earlier accounts that their justification of territorial rights places too much emphasis on labor, efficient use of resources, and productive cultivation, therefore neglecting culturally specific ways of interacting with land on the side of indigenous populations. But the reason early modern authors denied territorial rights to indigenous people is only to some extent explained by their ignorance of alternative ways of life or by a cultural bias in their application of acquisition theories. The First Set of Fundamental Constitutions for Carolina that Locke helped to draft emphasizes that “the Indians’ idolatry, ignorance or mistakes gives us no right to expel or use them ill.”<sup>16</sup> And, Locke certainly agreed that the labor theory of acquisition applied to native populations of the Americas: “The Law of reason,” he claimed, “makes the Deer, that Indian’s who hath killed it.”<sup>17</sup> The issue was not that the productive activity of American Indians did not generate claims to acquisition. It was rather that indigenous productive activity did not extend to resources (like land), which,

14. Hugo Grotius, *The Rights of War and Peace, Including the Law of Nature and of Nations*, trans. A. C. Campbell (New York: M. Walter Dunne, 1901), II.2.XVII, originally published in 1625.

15. “In the beginning,” Locke writes, “all the world was America.” See John Locke, *Two Treatises on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), II.49, originally published in 1690. For an excellent discussion of Locke’s relationship to English colonialism, see Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford: Clarendon Press, 1996).

16. John Locke, “The Fundamental Constitutions of Carolina,” in *The Works of John Locke in Nine Volumes*, 12th ed. (London: Rivington, 1824), 9:xcvii.

17. Locke, *Two Treatises on Government*, II.30.

according to the authors we are examining, were evidently not used on a territorially continuous basis.<sup>18</sup>

To see the point of their claims, consider the case of indigenous hunter-gatherer populations. If these groups were placed one day here, another day there, a third day somewhere else, it meant that they did not actually *need* to use a *continuous* area of geographical space; land simply did not relate to their culturally specific ends in a way that was relevant to ground property claims. Many defenders of colonialism were aware of this point. Emer de Vattel, for example, granted that the occupants of fertile land might once have been justified in hunting and keeping flocks instead of engaging in agriculture. But now populations with a similar style of life used more land than they needed. They therefore had “no reason to complain if other nations, more industrious and closely confined, come to take possession of part of those lands.”<sup>19</sup> The establishment of colonies in North America was, he argued, “extremely lawful”: “The people of those extensive tracts rather ranged through than inhabited them.”<sup>20</sup> This argument remains plausible even if one accepts that indigenous people are entitled to parts of the land they currently occupy in virtue of its promoting some sufficiently important end of theirs, and even if it is conceded that they relate to it in ways that are culturally different from ours.

These arguments are compatible with another reading of acquisition theories of territorial rights, one emphasizing the relevance of the proviso principle to leave “enough and as good” for other needy newcomers. The proviso, as is well known, places original appropriators under an obligation to “downsize” their holdings should changes in circumstances create new needs for outsiders to access land and resources

18. They may have been wrong about this. Many reports from early European settlers of North America informed that Indians did farm their land and distribute property. The story of how the Indians saved the earliest English colonists at Jamestown and Plymouth from starvation by bringing them corn and teaching them how to plant is also well known. See Stuart Banner, *How the Indians Lost Their Land* (Cambridge, Mass.: Harvard University Press, 2005), p. 20. But the point here is not whether Locke and others could find out about these reports or whether they selected evidence in bad faith. It is rather to draw attention to the account of territory they deployed to justify European settlement, given what they claimed to know.

19. Emer de Vattel, *The Law of Nations, Or Principles of the Law of Nature Applied to the Conduct of Nations and Sovereigns*, ed. Bela Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), p. 68.

20. *Ibid.*



previously available to native inhabitants.<sup>21</sup> Of course, as a matter of historical fact, settlement was far from being strictly guided by the proviso principle: colonialists appropriated much more good than they left for others. Yet, the principle, although abused, played an important role in the endorsement of colonial conquest. Vattel, as we have seen, did not dispute the fact that occupiers of territories in the New World might have initially been entitled to use the land they inhabited. The point was that their claim to occupy these lands should not be coupled with a right to permanently exclude others in need. Many of Vattel's predecessors (including Vitoria and Pufendorf) also conceded that indigenous people might be attached to the lands they inhabited. Yet they denied that this implied a permanent right to exclude needy settlers. Since the earth had initially been available for use by everyone, indigenous people had a duty to receive colonialists, to treat them hospitably, to give away part of their holdings, and to enter into commercial and political relations with them.<sup>22</sup> The Spaniards, Vitoria argued, "may import the commodities which they lack, and export the gold, silver and other things which they have in abundance."<sup>23</sup> Local princes, he continued, "are obliged by natural law to love the Spaniards, and therefore cannot prohibit them without due cause from furthering their own interests."<sup>24</sup>

One could of course resist these claims by arguing that the way tribal populations engaged with land implied a particular connection to their territory, one that was essential to these populations' sense of identity and that required exclusive and permanent access to its resources. But such an argument would take us closer to the idea of self-determination

21. Many of the observations A. J. Simmons makes in his discussion on "downsizing" are compatible with these remarks: see Simmons, "Historical Rights and Fair Shares," p. 165.

22. For discussions on the right to treat foreigners hospitably, see Georg Cavallar, *The Rights of Strangers: Theories of International Hospitality, the Global Community and Political Justice since Vitoria* (Aldershot: Ashgate, 2002); Anthony Pagden, "Stoicism, Cosmopolitanism, and the Legacy of European Imperialism," *Constellations* 7 (2000): 3–22.

23. See Francisco de Vitoria, "On the American Indians," in *Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), pp. 231–92, at p. 279.

24. *Ibid.* For a discussion of this argument in the context of the Spanish conquest, see Anthony Pagden, "Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), pp. 79–98.

of cultural groups, and would not be available to a critic of colonialism who was at the same time trying to avoid a commitment to nationalism. If we put nationalism to one side, few plausible reasons are left to insist that the proviso principle should not apply to indigenous populations, even if we assume they were initially entitled to vast tracts of territory. From an acquisition perspective, no identity-based conception of territory can limit the rights of others to a fair share of the earth's natural resources.<sup>25</sup> As one author puts it, "Native American beliefs that they should not yield to newcomers exclusive control over portions of their territories would be viewed as a kind of nonculpable moral ignorance, an ignorance that perhaps excuses their acts of resistance to settlement of their territories, but that in no way limits the rights of fair access (and self-defense) of newcomers."<sup>26</sup>

If the wrong of colonialism is reduced to a violation of territorial rights, settlement practices appear very difficult to criticize. This is not to say that we cannot condemn such practices for what they have historically produced: mass murder, ethnic cleansing, racial discrimination, the exploitation of labor and resources, and the enslavement of huge parts of the earth's population. We might also emphasize that it is wrong to invoke fair access and self-defense on the side of colonists when these rights were systematically denied to native populations. But this critique would take us closer to the idea that the wrong of colonialism consists in its embodying an objectionable form of political relation, not in the occupation of others' land. Colonialism is therefore not condemned on the basis of territorial entitlement. It is criticized, rather, because it grants certain prerogatives to colonists but denies them to natives, therefore departing from an ideal of equal and reciprocal terms of political association. The emphasis in this case is not on entitlement to land but on the kind of institution required to adjudicate between conflicting claims. The question then becomes who should place constraints on acquisition and who should decide about their extent, limits, and enforcement: it turns into a question about legitimate institutions. This point helps introduce a different justification for rights to territory and a different critique of the wrong of colonialism, to which I shall now turn.

25. For an excellent discussion of this, see Steiner, "Territorial Justice and Global Redistribution," pp. 28–38.

26. Simmons, "Historical Rights and Fair Shares," p. 181.

IV. LEGITIMATE STATES, CIVILIZING MISSIONS,  
AND COMMERCIAL COLONIALISM

In shifting emphasis from acquisition-based claims to land to the political institutions necessary to settle disputes concerning such claims, we arrive at a functional justification of territorial rights. On this account, an agent is entitled to particular territorial rights insofar as that agent is capable of performing certain crucial political functions within a defined geographical area, such as securing justice.<sup>27</sup> On the legitimate-state theory, the claim to territorial rights is conditional upon the satisfaction of a number of internal and external conditions: the ability to guarantee the rule of law, to protect basic human rights, and to provide sufficient opportunities for citizens' democratic participation, to mention but some.<sup>28</sup> The puzzle for the critic of colonialism is that if this is how territorial rights are justified, one particular kind of colonialism, colonialism with a civilizing mission, could not always be ruled out.

Historically, the emancipation of allegedly backward groups with the support of more progressive ones has been one of the main arguments offered in support of colonial practices. Barbarians, Vitoria claimed when reporting a popular argument concerning American Indians, "though not totally mad," could be considered "so close to being mad, that they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms." Therefore, "the princes of Spain might take over their administration, and set up new officers and governors on their behalf, or even give them new masters, so long as this could be proved to be in their interest."<sup>29</sup>

Vitoria presented these arguments in 1538, a mere forty-six years after Columbus had first set sail to America. But neither the passing of time nor increased awareness of the consequences of European colonial rule made much difference to the argument. If anything, Vitoria's claims appear more qualified than those of the otherwise progressive John

27. See Christopher Heath Wellman, "Political Legitimacy and Territorial Rights," unpublished manuscript.

28. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004); Thomas Christiano, "A Democratic Theory of Territory and Some Puzzles about Global Democracy," *Journal of Social Philosophy* 37 (2006): 81–107; Anna Stilz, "Nations, States, and Territory," *Ethics* 121 (2011): 572–601.

29. Vitoria, "On the American Indians," p. 290.

Stuart Mill more than three centuries later. While Vitoria was willing to admit the thesis of the “mental incapacity of the barbarians” merely “for the sake of argument,” Mill had no doubt that “barbarians” could not be relied upon to observe any rules. “Their minds,” he wrote, “are not capable of so great an effort nor is their will sufficiently under the influence of distant motives.”<sup>30</sup> Therefore, Mill concluded, “nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners.”<sup>31</sup>

If territorial rights are contingent upon a particular way of delivering justice (that of the legitimate state), and if the wrong of colonialism is reduced to violations of territorial claims, agents who fail in that task could arguably be colonized. Contemporary proponents of legitimacy-based accounts are of course aware of these challenges. This is why their defense of the requisite capacities an agent must display to legitimately exercise territorial authority is coupled with a “nonusurpation” condition stating that if an agent is to be granted territorial rights, that agent must have not come to existence through the violent or otherwise unlawful overthrow of another legitimate entity.<sup>32</sup> But this condition is rather puzzling. Usurpation does not count as usurpation unless an independent criterion has been offered to explain why those who currently occupy a territory are also entitled to do so. Either this independent criterion is grounded itself in the requirements of a legitimate state or it is not. If it is, we are back to the defense of colonialism with a civilizing mission. If it is not, we can only support the nonusurpation condition with arguments external to the legitimacy-based account.<sup>33</sup>

One might want to endorse the nonusurpation condition in a way that admits the incorporation of prepolitical criteria but avoids committing to nationalist claims. The most plausible strategy is based on occupancy rights, the claims of those who inhabit a particular geographical area

30. John Stuart Mill, “A Few Words on Non-Intervention,” in *Collected Works of John Stuart Mill: Essays on Equality, Law, and Education*, ed. John M. Robson (Toronto: University of Toronto Press, 1984), p. 118, originally published in 1859.

31. *Ibid.*

32. See, e.g., Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 275–78; Stilz, “Nations, States, and Territory,” pp. 590–601.

33. One such argument is based on the idea of self-determination of cultural and historic communities that nationalists endorse.

through no fault of their own to continue doing so.<sup>34</sup> Permanent occupation of a particular place, so the argument goes, is central to individuals' structuring of their expectations and to the reliable pursuit of their life projects. To remove them from such places would be to disrupt their ability to continue investing in the activities that matter to them, and to prevent their continuous functioning as autonomous moral agents.<sup>35</sup>

The occupancy criterion seeks to clarify what it means for legitimate states to respect the nonusurpation condition. But notice that such a justification of claims to occupancy is use-oriented and self-referential. It refers to the freedom of those who live in a particular place to continue doing so, for as long as the place continues to be important for their life projects, and if no other reasons speak against that claim. This proves too much in one respect and too little in another. One set of arguments grounds rights to occupancy, and another set of arguments grounds rights to jurisdiction. But it is possible to recognize rights to occupancy without acknowledging rights to jurisdiction; and vice versa, it is possible to acknowledge rights to jurisdiction without acknowledging rights to occupancy. The legitimate-state argument explains the right to jurisdiction with reference to how a political association should deliver justice for its members. It explains the right to occupancy with reference to how residence in a particular place structures individuals' life projects. What remains unclear is why the agent that collectively exercises occupancy rights and the one that delivers justice in a political association should be considered the same. Why shouldn't we allocate occupancy rights to one agent and jurisdictional rights to another? And why shouldn't the same territory be subject to two or more jurisdictions?

The distinction between occupancy and jurisdiction has been historically crucial to the endorsement of colonial enterprises. Grotius, one of the earliest defenders of occupancy rights, insisted that since such rights are only weak claims, typically associated with the *use* of particular resources, they should be understood as "*permissions*" and not as "*commands* that were to be *perpetually* enforced."<sup>36</sup> Indeed, no one could possibly agree to the exclusive appropriation of territorial

34. The most sophisticated argument in favor of this criterion is given by Stilz, "Nations, States, and Territory," pp. 582–87.

35. See Anna Stilz, "Occupancy Rights and the Wrong of Removal," unpublished manuscript.

36. Grotius, *The Rights of War and Peace*, II.3.III.

resources by rights of occupancy if accessing them undermined their availability to other people. Given these conditions, perpetual enforcement of occupancy rights could not be unilaterally imposed. The claims to permanent occupation, Grotius argued, do not have “the force of a general compact binding upon different independent nations.” Instead, they could be considered “as one branch of the civil law of many nations, which any state has a right to continue, or repeal according to its own pleasure or discretion.”<sup>37</sup>

This distinction between occupancy and jurisdiction implied that it was plausible to concede that tribal populations had rights to jurisdiction (regardless of how they treated their members), and that such rights to jurisdiction should be respected.<sup>38</sup> However, when it came to occupancy titles, their recognition depended on their use, and their use was determined by needs. And visitors, it was claimed, needed territory as much as original inhabitants.<sup>39</sup> Moreover, some territorial resources (conspicuous among them water) were by definition impossible to exclusively and permanently occupy without harming the rest of humanity. A river, Grotius argued, is as such “the property of that people, or of the sovereign of that people, through whose territories it flows. He may form quays, and buttresses upon that river, and to him all the produce of it belongs. But the same river, as a running water, still remains common to all to draw or drink it.”<sup>40</sup> It followed from this that “a free passage through countries, rivers, or over any part of the sea, which belongs to some particular people, ought to be allowed to those, who require it for the necessary occasions of life.” It followed also that “a free passage should be guaranteed not only to persons but also to merchandise.” And it followed further that “those going with merchandise or only passing through a country, ought to be allowed to reside there for a time, if the recovery of health, or any other just cause should render such residence necessary.” And even “permanent residence” ought not to be refused to “foreigners, who, driven from their own country, seek a place to refuge.”<sup>41</sup>

37. Ibid.

38. See the discussion on this in Richard Tuck, *The Rights of War and Peace* (Oxford: Oxford University Press, 2001), p. 233.

39. The claim was not implausible: as some authors have argued, it was the growth of colonies that allowed England to eliminate the famine of 1623, the last famine the country was ever to experience. For a discussion of this point, see *ibid.*

40. Grotius, *The Rights of War and Peace*, II.2.XIII.

41. Ibid.

Historically, these claims played a crucial role in the justification of commercial colonialism in the early stages of European expansion to the New World. The establishment of chartered commercial companies could not have occurred without the advocacy of the right to passage and trade, both of which were defended on the basis of a universal claim to use resources (like water and air) considered to be commonly available. To take one influential example, the British East India Company, through which the British Crown exercised indirect control over India until the mid-nineteenth century, was at first only an association of just over one hundred British merchants, created after petitioning for permission to sail the Indian Ocean, allegedly open to all.<sup>42</sup> Far from threatening to remove local jurisdictional powers, it operated for over two hundred years in concert with Indian authorities, taking advantage of their agreement to the establishment of trading posts, commercial privileges, and trade monopolies in order to undermine their Dutch and Spanish competitors. The same argument applies to the Dutch East India Company, in support of which Grotius's claims are often said to have been made.<sup>43</sup> Regardless of some important differences in the way these companies operated and enjoyed political support from home authorities, whether the territorial claims of native populations were justified or not, and whether they were justified on grounds of property or mere occupation, seems to have made very little difference to the defense of colonial expansion.

This, as I have suggested, is not a problem that can be easily resolved by formulating a more careful defense of territorial claims, at least not if the defense continues to invoke self-referential criteria (of attachment to the territory, productive interaction with it, or mere occupation) to justify the right to permanently exclude outsiders and to limit their access to natural resources. To understand the wrong of colonialism we can be neutral on the status of territorial rights, whether they can be justified, and how, if at all. Where we need to focus our attention instead is on the kind of political relation colonial practices exemplify. That is the issue to which I now turn.

42. See Kenneth R. Andrews, *Trade, Plunder and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630* (Cambridge: Cambridge University Press, 1984), p. 256.

43. Tuck, *The Rights of War and Peace*, pp. 78–108.

## V. A COSMOPOLITAN CRITIQUE

We can begin our reflections on the wrong of colonialism as an objectionable form of political relation by revisiting Kant's critique of the commercial practices of European states and the occupancy accounts legitimizing them. Like most of his predecessors, including Grotius, Kant endorsed the idea that everyone on the face of the earth might be entitled to use natural resources commonly available. He also endorsed the suggestion, familiar since the writings of Vitoria, that this included a right to visit other areas of the world and to establish political relations with the population of these areas. It is well known that Kant defined this right to visit and communicate with others as a "cosmopolitan" right, insisting that when such attempts at communication were made, it was reasonable to expect those on the receiving end to behave hospitably toward their visitors and to refrain from treating them with hostility. There were, in other words, certain norms of equal treatment and reciprocity that ought to have governed any attempt to seek political association with others. In the light of such norms, Kant criticized the instances of piracy and enslavement of stranded visitors that were typical of the inhabitants of the Barbary Coast, and condemned the attacks on nomadic tribes practiced by inhabitants of the deserts, for example, the Bedouins. But even more interesting is that when he compared these forms of inhospitable behavior with "the *inhospitable* behavior of civilized, especially commercial, states in our part of the world," he observed that "the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to *conquering* them) goes to horrifying lengths."<sup>44</sup> When the so-called civilized states visited remote areas of the earth, when America, Africa, and Asia were discovered, the merchant companies through which they operated treated the inhabitants of these areas "as nothing." In the East Indies, Kant observed, "they brought in foreign soldiers under the pretext of merely proposing to set up trading posts," but ended up with "oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race."<sup>45</sup> In the Sugar Islands,

44. Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), pp. 311–52, at p. 329, originally published in 1795.

45. *Ibid.*



those trading companies served only the purpose of training sailors for warships and deploying them for selfish, profit-seeking purposes. In China and Japan, “which had given such guests a try,” their claims as visitors were “wisely” restricted to rights of passage rather than entry, preventing those to whom they had extended commercial favors (for example, the Dutch) from community with native populations.<sup>46</sup>

It is important to insist that what made these restrictions justified (and often necessary) was not an appeal to the territorial rights of inhabitants of host countries. Anyone, Kant argued, had the right to offer to enter into political relations with others without this offer resulting in “the other being authorized to behave toward it as an enemy because it has made this attempt.”<sup>47</sup> What corrupted the spirit of these offers was the mode according to which they took place. In other words, what made the colonialism practiced by European states particularly abhorrent was its violation of standards of equality and reciprocity in setting up common political relations, and the consequent departure from a particular ideal of economic, social, and political association, a violation that was all the more despicable when exercised by “powers that make much ado of their piety and, while they drink wrongfulness like water, want to be known as the elect in orthodoxy.”<sup>48</sup>

Notice that this critique of colonialism as a departure from a certain ideal of political association is not limited to the condemnation of violence. It includes peaceful but deceptive offers of exchange, as when, for example, native inhabitants of particular territories were persuaded by fraudulent means to sign contracts with colonizers selling the territory in which they lived. Kant gives as an example attempts to conquer or settle in areas used by shepherding and hunting populations who depended on such areas for their survival. Again, without denying the possibility of settling in these areas, he argues that these attempts “may not take place by force but only by contract.” But it is a specific kind of contract, one that “does not take advantage of the ignorance of those inhabitants with respect to ceding their lands.”<sup>49</sup> Therefore, attempts to interact with the

46. Ibid.

47. Ibid.

48. Ibid.

49. Immanuel Kant, “The Metaphysics of Morals,” in *Practical Philosophy*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), pp. 353–604, at pp. 353, 490, originally published in 1797.

native inhabitants of these territories had to be made compatible with an ideal of political association that respected the claims of all those involved in the exchange, neither just the claims of visitors nor just the claims of residents.<sup>50</sup> Just as in the case of states, citizens had to submit to a common political authority adjudicating in an impartial and consistent manner their reciprocal rights and obligations; so in the case of interactions between citizens of different states, a just framework for political association was needed.

But how should we understand further the conditions under which such a right to associate with others can best be guaranteed? Kant's answer, in cases of both commercial and political association, is that reciprocity in communication can only be provided through the establishment of political institutions that allow people to relate to each other as equals, guaranteeing that their voice will be heard and that their claims will be equally taken into account when decisions affecting both are made. Whether it be rules of trade or rules regulating the movement of people (including their right to settle), an equal and reciprocal basis of interaction is one that ensures everybody will have a say and that the claims granted to one group are proportionally equal to those recognized for another. This ideal of equal consideration of each other's claims and of reciprocity in communication ought to be taken into account every time two previously unconnected political groups try to establish a basis for future political cooperation. To depart from that ideal is to legitimize an objectionable model of political association.

#### VI. EXPLAINING THE DUTY TO ASSOCIATE

Having examined some key features of Kant's cosmopolitan critique of colonialism, let us consider in what way it can be further developed, what distinguishes it from the theories we have examined, and how it provides a distinctive account of the wrong of colonial practices. The cosmopolitan critique shares with acquisition theories the concern with the conflicting claims of others and the importance of downsizing. It shares with legitimacy-based theories the appreciation of the role

50. For an excellent discussion of this point, which also examines its implications for current debates on global justice, see Katrin Flikschuh, "The Idea of Philosophical Fieldwork: Global Justice, Moral Ignorance and Intellectual Attitudes," *Journal of Political Philosophy*, online early, doi: 10.1111/jopp.12006.

of institutions and the demand for equal and reciprocal treatment of those who shape such institutions. But it differs from both in two important dimensions.

First, the theories we have examined tend to begin with particular claims to territory and then emphasize how such claims can be constrained, revealing the need for a more inclusive perspective. In the account proposed here, the duty to associate politically with others takes precedence over the recognition of self-referential claims to territory. It gives rise to an imperative to set up just political relations and makes the recognition of territorial claims conditional upon the development of such relations.<sup>51</sup> But notice that to say that the status of territorial rights remains in question until such a condition is in place is not to say that all other claims (for example, to life or to self-defense) should also be questioned. I shall return to the implications of this point when discussing the conditions of political association.

Second, although the theories we have examined acknowledge constraints on territorial claims, they have little to say on the kind of political institution necessary to identify the exact scope of these constraints, how such constraints should be understood and interpreted, and who should enforce them. The cosmopolitan answer is of a deliberative (or, in Kant's terms, communicative) kind: when territorially distinct collective agents first make contact with each other, they have a duty (a) to not treat each other with hostility, (b) to communicate respecting criteria of equality and reciprocity, and (c) to set up a political association that reflects such criteria in the rules it generates.

Notice that the account does not take a stance on how thick or thin this new political association should be. That depends on the kinds of interaction at stake, the claims that trigger the duty to associate, and the degree to which it is possible to find common ground. The account can also afford to remain neutral on the best mechanism for democratic decision making, and on how to aggregate views so that adequate representation (including representation of minorities) is ensured. That depends on who the parties that come into contact with each other are, how they choose to articulate their interests and preferences, and what kind of representation best reflects their institutional claims. Finally, this

51. I have developed this point in Lea Ypi, "A Permissive Theory of Territorial Rights," *European Journal of Philosophy*, online early, doi: 10.1111/j.1468-0378.2011.00506.x.

critique of colonialism holds independently of the question of what kind of principles the new political association should enforce, how formal or substantive these principles ought to be, and what metric we should deploy in identifying them. A more detailed answer requires more specific analysis of the kind of relation being established, of the nature of new associative structures, and of the circumstances in which the need for distributive justice arises.<sup>52</sup>

The obligation to enter into a political association offering equal and reciprocal terms of interaction is important for procedural reasons: it allows those whose territorial claims come into conflict with each other to join the effort of constructing political institutions able to respect equality and reciprocity in adjudicating the claims of everyone. Once that association is in place, it should continue to reflect the criteria that helped set it up, remain open to potential newcomers, ensure that members retain equal authorship of associative rules and that such rules are established on the basis of reasons accessible to them all, and make certain that reciprocity in communication continues to hold.

I have insisted throughout that the duty to join a political association guaranteeing equal and reciprocal terms of interaction to its members ought to precede the recognition of substantive claims to territory, either in the strong form of acquisition by improvement/labor/desert/inheritance or in the weaker form of occupancy by attachment. This is not to say groups should never make such claims. Existing territorial claims are valuable in informing us about how people think about their environment, how they draw the line between insiders and outsiders, how they interact with the land and resources available to them, what kinds of social and political norms obtain within particular jurisdictions, and so on. All these are important descriptive components that the development of associative offers has to take into account. To say that existing territorial claims are normatively irrelevant is not to say that once appropriate institutions are in place, such claims should be ignored or rejected. The point is that existing territorial claims should be considered analogous to other (individual or collective) interests and

52. I have discussed the issue of distributive justice as it applies to colonial relations in Lea Ypi, Robert E. Goodin, and Christian Barry, "Associative Duties, Global Justice and the Colonies," *Philosophy & Public Affairs* 37 (2009): 103–35; and I have defended an account of global egalitarian justice in Lea Ypi, *Global Justice and Avant-Garde Political Agency* (Oxford: Oxford University Press, 2012).

preferences: we can be neutral on whether they are intrinsically important. Your preference for wearing red clothes may not carry any normative significance, but this does not mean I should be indifferent to it every time I buy you a birthday present. In the same fashion, territorial attachment may not be intrinsically relevant. This is not to say that it should be ignored. Once a just political association is in place, with procedures for adjudicating territorial claims that respect equality and reciprocity in the establishment and enforcement of its rules, we might well want to accommodate some group preferences for land use and resource management. But it is important to insist that we do not arrive at this conclusion because we think such territorial claims are in themselves valid, whatever other reasons we may have. (Consider again the analogy with subjective preferences: we do not buy red clothes for people who like wearing red because we think red is the only color worth wearing.)

#### VII. CONDITIONS OF ASSOCIATION

In the account developed so far, the wrong of colonialism consists in the establishment of a form of association that fails to offer equal and reciprocal terms of interaction to all its members. To put this more precisely, an ideal association is one that reflects equality and reciprocity along two dimensions. The first has to do with the creation of associative norms. It draws attention to the process through which such norms are first established, and to the correct mode of participation in setting them up (condemning, for instance, their unilateral imposition). The second relates to the principles around which that association is structured. It draws attention to the substantive criteria of political cooperation and asks us to ensure that equality and reciprocity are reflected in the design of institutions facilitating that cooperation. Colonialism is wrong because it violates the ideal in the first but often also in the second of these dimensions (and in fact most historical practices of colonial association unambiguously departed from both).

The previous pages also emphasized that the creation of a political association able to guarantee equal and reciprocal terms of cooperation is an obligation. The question is: What kind of obligation? Can associative offers be coercively enforced? If not, should they be consented to? What kind of consent is at stake? Under what conditions can associative offers be refused?

Let us begin with the first issue. An offer with the potential to be coercively imposed is not really an offer at all, even if it promises an association reflecting criteria of equality and reciprocity of decision making after it has been imposed. That offer is more like a threat, and those who resist its forceful implementation do not commit an injustice, even if they may be morally wrong. But it is important to insist that the reason it would not be unjust to resist a coercive enforcer of associative offers is not that those who oppose such offers are entitled to the territory they occupy. As already emphasized, although territorial rights are suspended, other rights (including the right to self-defense in the face of hostility) may not be. Resistance might be justified by considerations pertaining to these other rights, and depends on what we think their content is.

To see this point, consider the following example. Suppose Susan has a duty to form an association with Lina. And suppose that for them to work out what the right terms of association would be, they should deliberate with each other. Suppose Lina refuses to engage in deliberation. It would be wrong for Susan to assault Lina in order to make Lina talk to her. This would corrupt the reciprocity of deliberation, and compromise Lina's equal authorship of the terms of political association. This is not to say Lina is not committing a moral wrong in refusing to associate with Susan. But Lina may appeal to other rights in refusing coercive enforcement of that association, and it is precisely appeal to such rights that prevents Susan from coercing her.<sup>53</sup>

For an associative offer to be considered effectively equal and reciprocal, the consent of those on the receiving end is required. One might wonder whether this commits us to a consent theory of obligation claiming that all political associations (including the state) are illegitimate unless all those subjected to it authorize its creation (in some normatively acceptable form or another). Of course, not all readers will find this

53. Interestingly, Kant believes that it is possible to coerce individuals into a political association with one another but not organized political agents. Kantians who think along similar lines would therefore resist my analogy with individual cases. I suspect the reason for Kant's differentiated stance on domestic and international coercion is that, for Kant, outside a political community, individuals have no substantive rights (including rights to self-defense) and so could not appeal to those other rights in resisting coercively enforced political association. But the same may not apply to groups. Once an organized political system is in place that guarantees certain rights, it may command outside recognition of some claims (for example, self-defense) even if not others (for example, territory).

inference problematic. But those who want to resist the analogy might insist on the asymmetry between those who make the offer and those who receive it in colonial and domestic cases. In the colonial case, colonizers impose their will over the colonized, and the rules of association endorsed by the latter reflect the power of the former. In most cases of domestic subjection to political authority, we think of all citizens as equal in their subjection to the laws, but also equal in their capacity to change the content of such laws. To take a domestic analogy, colonialism is more similar to forced marriage, whereas the relation of citizens within the state is more similar to that of children in a family. The absence of consent in the latter case is less troubling if we grant that children will eventually develop to look after the older generation and take responsibility for the direction of the household. Of course, this metaphor also simplifies matters: many domestic political associations have been wrongfully imposed on some groups of citizens by other more powerful groups. When that is the case, and if the asymmetry in the creation of norms continues to affect the lives of subsequent generations of historically wronged groups, we can condemn that association as wrongful for the same reasons we condemn colonialism as wrongful. If, with the passage of time, the position of the historically wronged group changes such that the subsequent substantive principles of political association genuinely track its will and the effects of path dependence disappear, we can say that injustice has been superseded. And the same point could be made about the supersession of injustice in colonial cases, a point to which we shall return.

I have argued that for an associative offer to be considered effectively equal and reciprocal, the consent of those on the receiving end is required. Consent is of course an imperfect proxy for tracking an agent's will (that is, one can consent to a manipulative offer and the resulting association would still be wrongful), but if we bracket these complications, and in the absence of a better alternative (to which I would be open), consent might give us a first approximation. Yet, to say that consent is required does not mean there would be no wrong involved in withholding it. Residents might be committing a moral wrong in refusing fair and reciprocal offers to associate, and visitors should exercise moral pressure to persuade such societies to join such associations. But it is important to insist that such moral pressure ought to reflect what lawyers call "negotiation in good faith," and although it may appear difficult to be

more specific on what this criterion positively entails, it is easy to see what it rules out. Most historical instances of interaction between colonizers and colonized and most offers of political association culminating in signed treaties and contracts were far from exemplifying negotiations in good faith. In many cases, exchanges took place under conditions of dependence on particular goods that Europeans had introduced for the first time: alcohol was one clear example, guns and other weapons that set up arms races between neighboring tribes another.<sup>54</sup> Yet in other circumstances the terms of exchange were deceptive and manipulated to benefit the colonizers at the expense of the colonized. Consider one example: the treaty of Waitangi, stipulated in 1840 between Queen Victoria's representative Captain William Hobson and Maori leaders, resulting in the annexation of New Zealand to the British Crown Colony of New South Wales. The English and Maori texts differ so radically from each other as to warrant suspicion about the character of the negotiations of her Majesty's representatives with Maori people. Where the English version of the treaty says that the chiefs cede to the Queen "all the rights and powers of Sovereignty," the Maori text has them surrender "the government over their land." Where the English text guarantees to the Chiefs and Tribes "the full exclusive and undisturbed possession of their Lands," in the Maori text the Queen agrees to protect the chiefs, the subtribes, and all the people of New Zealand in the "unqualified exercise of their chieftainship." It is not difficult to see that unqualified exercise of chieftainship is very close to what we might nowadays think of as sovereignty and that it is precisely what Maori people thought they retained and what British authorities claimed to have acquired.<sup>55</sup>

Of course one might argue here that the colonizers' bad faith may not be the sole reason for why such associative offers fail to meet the conditions of equality and reciprocity. The diversity of interpretation of concepts like rights, sovereignty, and property might have an important role to play. It is well known that in the case of land contracts between English settlers and indigenous peoples, one oft-cited reason for the discrepancy in interpretation is the mutually exclusive nature of their conceptions of property. While the English tended to view land as a commodity to be

54. See Banner, *How the Indians Lost Their Land*, pp. 52–53.

55. For more discussion of this case and the moral problems it poses, see Robert E. Goodin, "Waitangi Tales," *Australasian Journal of Philosophy* 78 (2000): 309–33.



bought and sold, and property rights as claims authorizing absolute and exclusive access to them, indigenous conceptions were based on land usufruct and deeds were viewed as provisional agreements that needed to be revisited over time.<sup>56</sup> Yet, as those (admittedly few) cases of successful negotiation remind us, it is important not to overstate such differences. As the case of William Penn's negotiations with the Lenape and Susquehannock tribes between 1680 and 1718 illustrates, settlers possessed a sophisticated understanding of the cultures and protocols of these groups. They were able to interact with them supported by a whole range of administrators, diplomats, and cultural mediators whose role went beyond simply translating speeches and trading goods, and included learning about their cultural practices, interpreting manners and gestures, attending public ceremonies and social events, and more generally developing appropriate terms and styles of interaction that could accommodate the demands of both visitor and resident. The case for cultural conflict, incompatibility of ways of life, and justified fear of the other can therefore be easily overstated.

#### VIII. THE STATUS QUO OBJECTION

We might wonder at this point whether we are not erring too much on the side of accommodation. Why should those who come last, simply because they are last, make such an effort to convince residents about the need to share the land and resources if we deny that they are entitled to such land and resources in the first place? Does such a strategy not simply legitimize the status quo, ignoring pressing needs? Are we not de facto acknowledging the rights of those who occupy particular territories to continue doing so?

The status quo objection is an important one. If current residents have a duty to associate with visitors on equal and reciprocal terms, and such requests are continuously ignored, we need to think about the conditions under which visitors can pursue their vital ends in a way that does not end up simply endorsing the status quo. We need to strike a balance between the claims of visitors to a fair share of territory and resources and those rights of current residents that can be affirmed independently

56. For a discussion, see Vicki Hsueh, "Under Negotiation: Empowering Treaty Constitutionalism," in *Colonialism and Its Legacies*, ed. Jacob T. Levy and Iris Marion Young (Lanham, Md.: Lexington Books, 2011), pp. 53–78.

of territorial claims (for example, the right to life). In the absence of common institutions, it is difficult to provide nonarbitrary and unbiased criteria on how this might be done. But in cases where visitors are truly abject, deprived of weapons, and in conditions of vulnerability, we might concede that they are permitted to take portions of the territory and resources that do not interfere with these other (nonterritorial) rights of current residents.<sup>57</sup>

One might wonder at this point whether the cost of this concession is to end up legitimizing settler colonialism. But this need not be the case. The claims of visitors to nonessential portions of the territory and resources used by residents are nonexclusive and provisional. They apply in conjunction with an ongoing duty to associate, and they can be radically revisited once appropriate political institutions are in place (just as the claims of residents can be radically revisited). They also remain open to be challenged by the claims of other prospective newcomers. Settler colonialism is neither provisional nor open-ended nor welcoming of newcomers. It is based on the enforcement of unilateral claims to acquisition. Although I have conceded that the unilateral use (but not acquisition) of particular resources can be permitted in some circumstances, this right to use is grounded in necessity but does not legitimize the political institutions built on it.<sup>58</sup> Settler colonialism

57. One can then imagine several possible responses to this unilateral act, with the most optimistic scenario envisaging residents and visitors living side by side in a condition of neither cooperation nor hostility, and the most pessimistic envisaging residents responding with violence to the peaceful appropriation of visitors. Although, as the previous section emphasized, it is important not to overstate the latter case, its moral assessment depends on one's theory of just war and assumptions about defensive harm, and requires more work to be answered properly. My own view is that unless we are very optimistic about the grounds of each party's claims and the possibility of adjudicating them without reference to shared institutions, anything we say in response to such cases will remain normatively problematic.

58. We can understand this claim in analogy with what is often called "the right to necessity." The "right to necessity" has a long pedigree in Western legal tradition and in the history of political thought: it was first developed in medieval canon law and then adopted in civil law and English common law. It was then appropriated by authors such as Grotius, Pufendorf, and Vattel and appeared in one form or another in the writings of Hobbes, Locke, Rousseau, Kant, Fichte, and Hegel. Although such right could not be considered a principle of justice proper, it was invoked to justify exceptional unilateral taking of certain external resources in cases of pressing need. For a recent discussion, see Siegfried Van Duffel and Dennis Yap, "Distributive Justice before the Eighteenth Century: The Right of Necessity," *History of Political Thought* 32 (2011): 449–64.

justifies colonial institutions to consolidate prior rights to unilaterally appropriate surplus land and resources. In my account, all such institutions remain illegitimate. Even if claims to appropriate land and resources can sometimes be permitted, no legitimate institutions can be constructed on their basis.

What about commercial colonialism? If we grant that outsiders can have certain claims to the use of land and resources, and if we deny that institutions can be built on that basis, are we not complicit in a weaker form of colonialism, one that leaves intact the institutional setup of both residents and newcomers but nevertheless legitimizes their unilateral form of political association? Again, this need not be the case. The problem with commercial colonialism arises from not recognizing that even if pressing needs may occasionally justify the unilateral use of particular resources, the claims arising or attachments developed in the course of such interventions cannot be invoked to justify the continuous enjoyment of such resources. Whatever patterns of interaction were established under these conditions need to be revisited, and might radically change, once an association built on appropriate terms of interaction is in place. On the account presented here, both residents' unilateral enjoyment of certain benefits and outsiders' unilateral appropriation of them are wrong. They may be wrong to different degrees, but, as mentioned at the outset, I am not interested in the issue of degree here. It may be that in some circumstances particular actions are permitted but such actions are still not right; they remain dictated by claims of necessity. Just as in the case of settler colonialism, in the case of commercial colonialism, if at any point an appropriate political association is established, its distribution of each party's claim to land and resources need not follow the preinstitutional claims of its members, however they came to be established.<sup>59</sup>

#### IX. THE LEGITIMATE STATE OBJECTION

In Section II, colonialism was defined as a phenomenon that involves politically organized groups. But very little was said about the internal composition and degree of democratic representation in such groups. One might wonder at this point whether endorsing this particular ideal

59. Although, as I emphasized in Section VI, it need not disappoint them either.

of political association implies that if a certain agent (be it a state, a tribe, or any other institution claiming authority on behalf of a minority group) denies equal and reciprocal voice to the claims of its members, it is plausible to incorporate it into another one that respects the reciprocity criteria of political association. If a group is ruled paternalistically, shouldn't another, allegedly less paternalistic group annex the territory in which the group resides and offer its members equal and reciprocal representation? It is hard to see why. If members of a group are denied representation within the group, it is not clear that they should be unilaterally forced into another association, one whose terms are also initially imposed on them. Two wrongs do not make a right. Conquest and annexation are wrong because they are unilateral forms of political association, failing to establish equal and reciprocal terms of political interaction. The unilaterality of these actions remains the same regardless of whether the agent one is trying to associate with is free from internal constraint or governed in a paternalistic way. It also remains the same in cases where a violation of reciprocity and equality in the creation of associative norms brings with it a degree of improvement in the substantive principles structuring that association.

To see this argument, consider a domestic analogy. Suppose your ideal of marriage is one in which you are allowed to choose your life partner, and in which you have an equal say on how you ought to live together. Suppose you find yourself in an unhappy marriage your parents have arranged for you. Your partner drinks, hardly listens to you, and rules the household with an iron fist. Your parents at some point realize they were wrong to force you into this partnership and claim to have found a way out for you, one that requires terminating the present marriage (with some cost involved, however little) and forcing you into another. The second candidate is richer, more handsome, more sophisticated, and on the whole has a better reputation. Is the fact that the second marriage offers seemingly better prospects any less wrong than the first? I believe it is not. The reason is that in both cases you are not allowed a say in whom you ought to marry and the conditions according to which life together should go. This is not to deny of course that the second husband is better than the first. But the question of what is wrong with forced marriage is distinct from the question of which husband is better. It is also distinct from the question of whether it is a good thing to end the first marriage and start another or whether in some

circumstances there may be an obligation to do so. Likewise, as I anticipated in Section II, this article is not asking you to choose between colonialism and domestic oppressive relations. It is also not asking you to rank more or less acceptable instances of colonialism. And it is not asking you to decide about the rightfulness of humanitarian intervention or how to realize the associative ideal we have discussed. The article is trying to provide an argument for why even colonialism of a benign sort (the colonialism of humanitarian interveners, say) should be considered a wrong of a distinctive kind.

To sum up this point: the issue of what constitutes a departure from a particular ideal should be distinguished from the issue of how to act to realize that ideal. Recall that there is no question mark at the end of my title. I asked you to grant that *something* is wrong with colonialism. The wrong of colonialism can be shown in the departure from an associative ideal that fails to respect equality and reciprocity in the creation of its norms and often also in the substantive principles governing that association. If we ask ourselves how to act in order to bring about a particular kind of association, we might concede that a gain in the latter (substantive principles) dimension would offset the wrong involved in the former (norm creation). But the question of what is wrong with colonialism can be distinguished from questions regarding the acceptability of the costs of, say, ending domestic oppression, humanitarian intervention, beneficial deals obtained through elite manipulation, or benign paternalistic regimes. Conversely, even if it is (reluctantly) conceded (for the sake of argument) that some or all of these practices are necessary in order to advance some substantive principles, the resulting relation is no less colonial with regard to how associative norms are created, and therefore no less wrong.

#### X. COLONIALISM IN THE PAST, PRESENT, AND FUTURE

At this point we can afford to illustrate the implications of our framework for understanding the wrong of colonialism independently of territorial claims. Colonialism, we argued, is an objectionable form of political association, objectionable on the grounds of its failure to reflect an ideal of equal treatment and reciprocity that should underpin every attempt to expand the boundaries of political cooperation. Human beings are brought by the contingent conditions of their life to constantly seek

interaction with others, including sharing land and resources with people situated in distant geographical areas. It would be hard to deny the plausibility of their attempts. But it would be wrong to inflict those attempts while refusing to hear the claims of those affected by them. And it would be perverse to interpret those claims in a way that denies equality and reciprocity to those with whom association is sought. Disentangling colonialism from territorial rights implies accepting that there is no pressure to keep the territories of political communities isolated from one another, that there may well be a cosmopolitan pull to existing political institutions. But it also implies that the mode of political association should give voice to the claims of both residents and prospective newcomers, that the way we seek to expand the boundaries of political association should reflect jointly authored norms reflecting equality and reciprocity. If colonized people are forced to join a political association where the rules are established and maintained without their say, they are being wronged. In all such cases, the critique of colonialism can be generated regardless of the defense of territorial claims.

This attempt to disentangle the critique of colonialism from the defense of territorial rights has several implications. One concerns the past. To the extent that descendants of colonized groups make a claim to rectification for past wrongdoing, appropriate rectificatory measures may or may not be related to the return of land and to the use of natural resources available to their ancestors. This is particularly important in the case of conflicts involving indigenous people and descendants of colonizing groups in places like New Zealand, Australia, and North America. If we understand colonial injustice not as the wrongful taking of territory but as the establishment of an objectionable form of political association, we do not need to insist that would-be sacred land or particular resources should, at all costs, be returned to these groups. Of course in many cases there will be all sorts of reasons for respecting the preferences of these groups, and if such preferences are for access to particular land and resources, we might want to accommodate them as much as possible. But it is important to insist that we are not doing it because we grant the force of acquisition, occupancy, or attachment claims. We do it because in some cases the best way to make amends for our past wrongful behavior is to grant people what they want, regardless of why they want it and even if what they want is not something they may have been entitled to in the first place.

Therefore, arguing that no territorial rights have been violated does not imply that injustice has never been committed; even less does it imply that injustice has been superseded.<sup>60</sup> The path dependency of colonial institutions might well imply that descendants of colonized groups continue to be disenfranchised (either formally or substantially) from the countries in which they reside.<sup>61</sup> If that is the case, they remain vulnerable to colonial injustice simply being renewed, regardless of what we think of their territorial claims. Rectificatory measures involving the distribution of land and resources should be taken seriously only if they help these groups overcome that ongoing objectionable form of political association.

Another implication of my account has to do with the effects of decolonization in the present. On the critique of colonialism proposed here, colonial wrongs are not necessarily remedied when territory is returned to members of the former colony. Instead, they are remedied when the terms of political interaction between former colonizers and colonized are closer to the ideal of political association sketched above. A group can be formally independent and enjoy territorial rights but remain factually dependent on the previous colonial master in almost all economic and political matters: *Françafrique* is a case in point.<sup>62</sup> Vice versa, a group may still share the same political association with a former colonial master but its members may now be fully enfranchised, reflecting criteria of equality and reciprocity. Two relevant examples are the French overseas departments of Guadeloupe and Martinique: their residents are French citizens with full legal and political rights and their representatives sit in the National French Assembly and the French

60. Waldron, for example, grants that indigenous people were initially entitled to the territory from which they were dispossessed: see Waldron, "Superseding Historic Injustice," pp. 18–20. He then defends the supersession of historic injustice with regard to Aboriginal lands on the basis of the need to make space for the competing territorial claims of other groups. But if that argument works, it can also be used to deny that indigenous groups were ever entitled to exclude outsiders from access to their land, implying that injustice is superseded not because circumstances change but because it was never there.

61. I have discussed this issue in Ypi, Goodin, and Barry, "Associative Duties, Global Justice and the Colonies," pp. 127–29.

62. "Françafrique" was a term coined by President Félix Houphouët-Boigny of Côte d'Ivoire to refer positively to the relation between France and its former colonies but has since been used negatively to highlight the neocolonial nature of France's relations to a number of French-speaking African countries. For one recent critique, see Samuël Fouyot, *Nicolas Sarkozy ou la Françafrique décomplexée* (Brussels: Tribord, 2009).

Senate. On the critique of colonialism advanced in this article, justice has not been restored in the first case. And no injustice is currently being committed in the second.

A related implication concerns the present. The critique of colonialism presented in this article introduces a new way of thinking about ongoing political relations between states. Even if their current practices of interaction no longer affect groups' territorial claims, when equality and reciprocity in communication and exchange are violated, there may still be grounds for criticizing these practices as practices of a neocolonial nature.<sup>63</sup> Whether these practices characterize the behavior of a single country like the United States or a group of countries acting in concert like the European Union, whether they extend only to commercial relations or also include a social, political, and cultural dimension, we need to assess them as specific models of political association. To the extent these models are based on political relations that deny equality and reciprocity in the process of communication and commercial exchange to all members, to the extent they seek to secure strategic advantages for their companies and markets, the difference from institutions like the British and the Dutch East India companies and from the colonial powers that sponsored them is only of degree rather than kind.

A third implication concerns the future. The critique of colonialism pursued in this article implies that the territorial rights of current states (whether they were formerly colonizers or colonized) could be challenged. That means that states' rights to exclude outsiders and unilaterally control natural resources (to the extent these claims are associated with territorial rights) could also be challenged. That challenge remains in place even if we deny that the claim to territorial jurisdiction relates to the right to control the movement of people and the distribution of resources in a particularly straightforward way. Although exploring the issue in further detail exceeds the scope of this article, its relevance

63. Part of this critique is familiar in the recent literature in international law and international relations. See, e.g., S. James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2000); Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge: Cambridge University Press, 2003); but, with few exceptions, it has been relatively neglected by normative theorists. The exceptions are Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), chap. 8; and Katrin Flikschuh, "On the Cogency of Human Rights," *Jurisprudence* 2 (2011): 17–36.



should be clear when we turn to debates on migration, the legitimacy of border control, and global distributive justice.

Finally, a similar account of colonialism puts pressure on the idea that there is an intrinsic link between colonialism and territorial self-determination, or between past colonial injustice and the right to secession. But it does so while accepting that there is no significant difference between former colonized groups and oppressed domestic minorities.<sup>64</sup> Not every instance of colonial wrongdoing triggers a claim either to territorial self-determination or to secession; nor do remedial principles relate exclusively to the political capacity of colonized people to form their own state. This is not to say that we must necessarily rule them out. Much depends on the possibility of restoring equal and reciprocal terms of political cooperation between colonizers and colonized and on the background conditions underpinning such attempts at reconstruction. Historically, the pervasiveness and brutality of colonial oppression has meant that victims of colonial rule perceived breaking all political relations with their former masters as the only plausible way forward. But in different political circumstances, that choice may not be the only one.

## XI. CONCLUSION

The wrong of colonialism has often been examined in relation to the justification of territorial rights. The main purpose of these pages has been to disentangle these two issues. Colonialism, it was argued, remains a wrong whether or not colonizers are entitled to the particular piece of land they have historically occupied. The wrong of colonialism consists in its embodiment of a morally objectionable form of political relation, not in the allegedly wrongful occupation of others' land. To understand this wrong, we should not focus on the modalities of settlement and occupancy of a particular area of geographical space but on the terms of political interaction established between colonizers and colonized. The morally objectionable nature of this interaction is

64. Many authors have criticized the way in which international law distinguishes between former colonized states and national minorities in the discussion on self-determination, suggesting that whatever reasons one has to grant self-determination to the former also apply to the latter: see Kymlicka, "Minority Rights in Political Philosophy and International Law." I agree with the critique but take the consistency requirement in a different direction, one that does not necessarily tie remedying colonial injustice with self-determination.

immediately revealed even if a conclusive justification of groups' territorial claims cannot be found.

My critique of colonialism was designed to appeal to those who tend to be skeptical of nationalism but remain persuaded of the wrong of colonialism independently of that claim. I had very little to offer by way of a direct assessment of nationalism. But it may be worth concluding simply by mentioning that perhaps not all readers will agree with the critique of colonialism outlined and with the conclusions proposed. If that remains the case, my hope is that these thoughts will still have played a useful heuristic role. Those who continue to disagree might realize that, for them, colonialism is not wrong after all. Or if they still think colonialism is wrong but find it hard to share my reasons for explaining that wrong, it might be because nationalists, after all, have a point.