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Autonomy, Residence, and Return*

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This article argues that those unjustly displaced from a particular territory T cannot involuntarily lose their rights to reside there, or, as a consequence, their rights of return to it, even if they develop territorially grounded conceptions of the good where they now reside. The contrary position fails to accord the unjustly displaced the respect due to them in virtue of their personal autonomy. Facts commonly alleged to justify the supersession of rights of return to T only provide evidence that the unjustly displaced have abandoned their rights to reside there, or would do so if given a just opportunity to return. The rights of those now residing in T, which author argues may include those responsible for the unjust displacement, may limit the right of return but are unlikely to preclude it altogether.

Keywords: Corrective justice; migration, occupancy; right of return; Stilz, supersession; territorial rights; territory; Waldron.

Introduction

Contemporary debates over the right to reside in or occupy a particular territory largely revolve around the answers theorists give to three questions. First, who enjoys the right in question, individuals or groups, and if the latter, what sort of groups? Second, how do agents acquire a right to reside in a particular territory? In virtue of what relationship to a particular place does an individual or group come to enjoy a right to reside there, and how exactly does that relationship give rise to a right? Third, if agents suffer a violation of their right to reside in a particular territory, i.e. if they are unjustly displaced from it, for how long and under what conditions do they enjoy a right of return to it? In this paper I focus almost

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exclusively on the last of these three questions, offering a novel account of an individual's right of return to the particular territory from which he or she was unjustly displaced. If successful, however, my argument lends some credence to the answers to the first two questions I largely assume in this paper, namely that the right of residence is an individual right grounded in a person's exercise of his or her capacity to form and pursue a territorially grounded conception of the good.

I begin in section I by drawing on the work of Anna Stilz and Jeremy Waldron to characterize the connection between personal autonomy and a particular territory. I then argue contra Stilz and Waldron that those individuals unjustly displaced from a particular territory (and, perhaps, their descendants) cannot involuntarily lose their rights to reside there, and so their right to return to it. To maintain otherwise gives the unjust displacers unwarranted control over the displaced individual's formation and pursuit of their life plans, and so fails to accord them the respect they are due in virtue of their autonomy.

Though individuals cannot involuntarily lose their rights to return to a territory from which they were unjustly expelled, they may voluntarily abandon or renounce those rights, or other considerations of justice may preclude their exercise. I develop each of these possibilities in turn. In section II I contend that those unjustly displaced from territory T retain a right to reside there if and only if return to it continues to figure among their ends, which requires in turn that they adopt some means to realizing it. I then argue that many facts commonly associated with the loss of rights to reside in T do not themselves entail that loss; rather, they typically provide evidence that the unjustly displaced individuals have abandoned

their rights to reside in T, or that they would do so if given a just opportunity to return. In section III I examine whether the claims of those now living in T might limit or even rule out altogether the return of the unjustly displaced. I consider two types of claims: those grounded in the ability of the current residents to meet their basic needs, and those grounded in their right to reside in that particular territory. Among those with the latter claim, I argue, may be some of those who perpetrated or knowingly took advantage of the unjust displacement of T's original rightful residents. I conclude that while neither type of claim is likely to preclude altogether the return of those wrongfully driven from T, their recognition may lead the unjustly displaced to abandon their claims to return to it.

I

Writing separately, Anna Stilz (2011) and Jeremy Waldron (1992, 2002, 2004) argue that respect for individuals' personal autonomy --(the exercise of) their ability to form and pursue conceptions of the good-- involves recognizing their rights to reside in a particular territory. Stilz (2011), for example, maintains that:

Occupancy of territory is connected to autonomy because it plays an important role in almost all of our plans. We build our lives on the assumption that our goals, relationships, and pursuits will not be unexpectedly destroyed through forced displacement. If I structure my goals and choices against the background of continuing legal residence in a particular territory, and I am there through no fault of my own, then respect for my autonomy tells in favor of allowing me to

remain there since it would be impossible to move me without damage to nearly all my life plans (pp. 583-584).¹

Waldron (1992; 2004) tells a similar story regarding the acquisition (and continued possession) of property rights over particular objects, and he seems to suggest an extension of the argument to rights of residence in a particular territory. He writes:

an individual, P, who takes possession of an object or a piece of land and who works on it, alters it, and uses it, makes it in effect a part of her life, a pivotal point in her thinking, planning, and action. She shapes it in a certain way... so as to allow it to perform a certain role in her life and activity not only now but in the future. If someone else, Q, comes along and seizes the land, taking it from P without her consent, then the whole structure of action is disrupted (18; 261).

Speaking of a person presently in rightful possession of an object, Waldron (1992) states: 'it seems plausible to suggest that continued possession of the object might be indispensable to the possessor's autonomy and that an attack on possession is an attack on autonomy' (p. 19).

As autonomous agents individuals form and pursue life plans —structures of goals, projects, and relationship— that in practically all cases have a territorial dimension.² The way of life people lead rests on their settled expectations regarding residence in, and movement throughout (and perhaps in and out of), some geographically bounded space. Clearly this is true of those who reside in modern states, but it seems true as well of those who do not; many people living in so-called failed states, for instance, appear to form and pursue territorially grounded

conceptions of the good, as do individuals who seek to remove themselves from existing societies as much as they can. All else equal, then, respect for people as autonomous agents requires at a minimum that one refrain from deliberately displacing them from (some portion of) the territory to which the way of life they lead is essentially tied. In other words, individuals enjoy a *prima facie* right to residence in a particular territory; one that includes at least a claim against forcible displacement from it, in virtue of their ability to set ends and adopt means to them, and the fact that they have adopted ends that either directly involve or presume continued residence in that territory.³

The case in which, intuitively, it seems clearest that a person enjoys a right to reside in a particular territory T is one in which she resides there now, has done so for quite some time, perhaps even her whole life, and in which the way of life she leads is fundamentally tied to residence in T. Alas the forcible displacement of people who meet these conditions is an all too common feature of human history. Few dispute that in the immediate aftermath of such an unjust act the displaced individuals enjoy a *prima facie* right of return. But Waldron and Stilz, and others as well, also maintain that the right to reside in T, which provides the basis for a right of return to it, can “fade” over time.⁴ This conclusion might be defended on epistemic grounds; for example, the challenge of defending specific claims regarding the migration patterns that would have occurred absent the perpetration of various past injustices, which might be relevant to determining whether any present claim to a remedy can be justified, and what form it ought to take. Likewise the claim that the descendants of those forcibly displaced from T have a right to reside there,

though they neither suffered the injustice of the initial expulsion nor have ever lived in T, stands in need of defense (Waldron, 1992, p. 19). If one cannot be provided, then claims to return might fade with the passing of the generation that actually suffered the wrong of forcible displacement.⁵ My concern here, however, is with another reason Stilz and Waldron both give for an agent's loss of a right to reside in the territory from which she was unjustly displaced, namely their claim that individuals have a right to reside in a particular territory only if the conception of the good they currently pursue presumes residence there.

To the extent that people unjustly displaced from T form and pursue plans premised on residence elsewhere, it is in that territory – call it T2 – *and only that territory* that Waldron and Stilz maintain they have a right to reside. For instance, Waldron (1992) writes:

if something was taken from me decades ago, the claim that it now forms the center of my life and that it is still indispensable to the exercise of my autonomy is much less credible. For I must have developed some structure of subsistence. And that will be where my efforts have gone and where my planning and my practical thinking have been focused. I may of course yearn for the lost resource and spend a lot of time wishing I had it back. I may even organize my life around the campaign for its restoration. But that is not the same thing as the basis of the original claim. The original entitlement is based on the idea that I have organized my life around the use of this object, not

that I have organized my life around the specific project of hanging on to it or getting it back (p. 19; see also 2004, p. 261).

Similarly, Stilz (2011) maintains:

...each person has a claim to stable legal residence in any state whose territory he resides (for the long term) though no fault of his own, and he ought to be treated by that state as an equal citizen and provided the basic rights and opportunities necessary to framing and revising his life plans. Where this claim is met, the wrong of displacement is superseded. Where it is not met, the right of return on the part of the displaced population continues in force (p. 586).⁶

As these quotations clearly illustrate, Stilz and Waldron take the use an agent *presently makes*, or at least recently made, of the place where she resides in the formation and pursuit of her conception of the good as the basis for her right to reside there. The more she puts down roots in one place, the less the various actual relationships, goals, and projects that together constitute her life plan are tied to residence elsewhere. At some point, we might say, her life is here, not where she once lived.

Though they make a promising start, Stilz and Waldron both fail to give due consideration to the fact that unjust displacement frequently involves not only the initial injustice of involuntary expulsion from a given territory, but also the persistent injustice of refusing to allow the victims of the initial injustice to return to that territory. This leads them to offer a truncated account of the connection between respect for personal autonomy and individuals' rights to reside in a

particular territory. Specifically, Waldron and Stilz treat residence in a territory as a mere means to the realization of various ends (e.g., to the pursuit of specific goals or projects). For many people, however, particular territories are not merely means to the pursuit of a good life, but integral to the very way of life they pursue. Respect for a person's autonomy requires not only respect for his or her ability to use objects or physical spaces as means to their ends, but also respect for his or her ability to set ends. Here the relevant end is the pursuit of a territorially grounded conception of the good; that is, the pursuit of a way of life located in a particular place. The fundamental claim involved in a right of return is to the living of a way of life – a matter of the ends a person sets – that she has been unjustly denied. The fact that a person does not need to reside in the particular territory T from which she (or, possibly, her forebears) was unjustly expelled in order to pursue most of her current plans is beside the point. What she asserts is the right to formulate and pursue life plans premised on current and future residence in T, a right she enjoys because she (or, possibly, her forbearers) once rightfully resided in T and she has not voluntarily abandoned the claim to do so again.

The position Stilz and Waldron defend denies those unjustly displaced from T the full exercise of autonomy or of authorship over their lives. Instead, it gives those who unjustly displaced them and who persist in the unjust denial to the displaced of their rights to reside in T an unwarranted control over the displaced persons' formation and pursuit of their life plans. Of course, the choices, actions, or life plans of other agents regularly constrain my choices, actions, and the life plans I form and pursue. As long as others act within their rights, however, the limitations

on my exercise of autonomy that follow are not unjust. As Alon Harel (2004, p. 337) notes, the right to return to T is not the same thing as a right to settle in T. The latter would treat the fact that one wishes to pursue a conception of the good territorially grounded in T as sufficient to generate a right to residence in T. Yet on any of a range of views involving rights of residence in combination with property rights and/or rights to political self-determination that justify closed borders, others' exercise of their rights may preclude my acquiring a right to reside in T even if I wish to pursue a conception of the good that is territorially grounded there. That is not true in the case under consideration here, however, since by hypothesis the unjust displacers do not have a right to displace and to deny return to those who rightfully resided in T.

Properly construed, the autonomy-based account of the right of residence does not entail that a person displaced from T loses her right to reside there if her present plans are not premised on residence in T. Nevertheless, two different scenarios can play out while those unjustly displaced from T are denied their right to return to it, both of which have implications for their right to reside there. First, some or all of those individuals unjustly expelled from T may abandon their right to residence in it; that is, they may forswear any right of return to T. Second, the very possibility of return to T may be increasingly constrained by other considerations of justice; in particular, the ability of those now living in T to meet their basic needs, and their right to reside in that particular territory. Both considerations hold, I will argue, even for those who unjustly displaced those rightfully residing in T, or who unjustly denied them return to it. I explore each of these scenarios in turn.

II

Personal autonomy consists in (the exercise of) an ability to set ends as well as (the exercise of) the capacity to select means to them. Echoing Kant, albeit with an addendum, I suggest that to have an end necessitates that one adopt some means to it unless wrongful treatment from others prevents you from doing so. It follows that people's actions frequently serve as both conditions for and evidence of their ends. For example, if those individuals forcibly displaced from T clearly make it a central part of the life plans they form and pursue in T2 to assert their rights to reside in T and to work toward return to it, then we have good evidence that residence in T comprises one of their ends. If, on the other hand, those forcibly displaced from T assert no right of return to it, nor make any effort to realize such a state of affairs, then we have good reason to conclude that residence in T is no longer among their ends. In this case, we ought to conclude that they have abandoned their right to residence in T.

The case of German nationals displaced from what is now western Poland provides a plausible example of people unjustly displaced from a territory abandoning their right of residence in it. Stiliz (2011, pp. 585-586) asserts that the descendants of Germans who were forced out of Western Poland in 1945 have no claim to occupy lands that their unjustly displaced ancestors once occupied because they are now incorporated as citizens in some other legitimate state, with an expectation of continuing to reside there.⁷ For reasons that should be clear, I think these conditions are insufficient to undermine the displaced Germans' right of return. However, I submit that we have good reason to conclude that the vast

majority of those displaced Germans who settled in West Germany (and their descendants) likely abandoned any claim to reside in Western Poland within two or three decades of their forcible expulsion. Though they initially formed a pressure group that advocated for their right of return to the territories from which they had been unjustly displaced, and though the assertion of a right of return was an official part of West German foreign policy under Adenauer, the ‘so-called “economic miracle” in West Germany gave them, in little more than a decade, a much better material life than they had ever enjoyed before’ (Evans, 2012). Though no doubt still resentful of the treatment they had suffered, I suggest that few of these displaced German nationals would have taken the opportunity to return to their former homes even had it been offered to them.⁸

As the above addendum to Kant’s dictum regarding ends and means indicates, we must be careful when drawing the conclusion that people displaced from T no longer have residence in T as an end. Those unjustly displaced from a territory in which they rightfully reside may be too consumed with meeting their basic needs to assert their right to reside in T and to work for its realization (though in fact even the most desperate often do). Alternatively, those unjustly displaced from T may think the odds against the recognition of their rights to reside there so unfavorable that they judge the opportunity cost of efforts at return to be too high to warrant undertaking them. This state of affairs, too, seems to me to be relatively rare; at most, very long odds at gaining return may lead those displaced from T to reduce their efforts at realizing it relative to the other ends they pursue. For instance, their efforts may be limited to annual days of remembrance

commemorating the unjust expulsion and denial of return. How compelling we find such practices as evidence that those who once had a right to reside in T continue to have living there among their ends will depend on the extent to which we think them justified in expending no more effort than they do to affect their return.

People wrongly driven from the territory in which they rightfully resided may subsequently and without prompting explicitly renounce any right to return to it. Failing that, however, the only conclusive test of whether a person unjustly displaced from a particular territory has abandoned her right to reside there is to present her with a just opportunity to do so. To be just, the opportunity must involve at least the absence of coercion by the state in which she currently resides, adequate time to assess the costs and benefits of return in comparison to continued residence where she now lives (assuming *arguendo* that she has a right to do so), and perhaps just compensation for harms she suffered as a result of her displacement. A person with a right to reside in T who does not take advantage of her just opportunity to once again reside in it thereby abandons her right to residence in T. Or, hedging just a bit, there is compelling evidence in such a case that the person in question no longer has residence in T among her ends, and having given her sufficient opportunity to challenge this conclusion, those who reside in T are not at fault for acting on the assumption that she has abandoned her right to reside in it.

In light of the foregoing discussion, consider once again Waldron's (1992) claim that:

I may of course yearn for the lost resource and spend a lot of time wishing that I had it back. I may even organize my life around the campaign for its restoration. But that is not the same thing as the basis of the original claim (p. 19; see also 2004, p. 261).

I concede the last claim; the basis of an agent's original claim to reside in T is grounded in her formation and pursuit, while living in T, of a conception of the good territorially grounded there. Contra Waldron, however, it does not follow that a person retains the right to reside in T only if she currently or recently pursued that conception of the good in T. It depends on whether her failure to do so is the result of ongoing unjust treatment by those who control access to T. If so, then whether she organizes her life around a campaign for the restoration of her right to reside in T does make a difference to whether she retains that right. Such a campaign demonstrates that she has not abandoned as one of her ends the pursuit of a conception of the good territorially grounded in T. The import of yearning or wishing for return to T requires more detail than Waldron provides, since in some circumstances competing demands of justice or the struggle to secure one's own and one's family survival may leave no time or effort to do more than yearn for return to T. To deny that such a person retains a right to reside in T would be to add new injury to old.

Neither the passage of a lengthy period of time nor stable legal residence elsewhere entails the loss of a right to reside in T. Rather, generally speaking what both do is make it more likely that those with a right to reside in T will abandon their claim to do so. The more those unjustly displaced and their descendants fully

integrate into the society present in the territory on which they now live, and the more they lead what they view as materially and spiritually flourishing lives there, the less appealing return will be. Conversely, the less they integrate, and the less materially and spiritually fulfilling their lives, the more likely they are to hold on to the end of residing in T. Ultimately, however, retention of a right of return rests on the will of those who enjoy it – that is, whether they include return to T among their ends – and not on whether it is in their interest to exercise it.

III

All else equal, those unjustly displaced from a particular territory T in which they rightfully reside enjoy a right of return to it unless and until they voluntarily abandon their right to residence there. In this section I examine two ways in which all else may not be equal, each of which has implications for the precise remedy to which those unjustly denied residence in T are entitled as a result of the wrong done to them. First, those who now reside in T enjoy certain basic rights respect for which takes priority over respect for unjustly displaced individuals' rights to return to T.⁹ This is true even for current residents of T morally at fault for the initial unjust displacement and/or the persistent injustice of refusing return to those entitled to reside in T. Second, and more controversially, I contend that even such agents can acquire rights to reside in T if they form and pursue a conception of the good that is territorially grounded there. These rights of residence may limit claims to return on the part of those unjustly displaced from T (or perhaps their descendants) even when other basic rights do not.

The following example offers some support for the claim that respect for certain basic rights take priority over the correction of past injustice.¹⁰ At time t1, a number of group's – the E's, the F's, and the G's – enjoy legitimate possession of their waterholes – He, Hf, and Hg. At time t2, 'motivated purely by greed, members of group F descend on the waterhole Hg, which is used and possessed by group G, and (using violence) insist on sharing Hg with G.' In doing so, they commit an injustice; though they draw water from Hg, they have no right to do so. Members of group F also continue to draw water from Hf. Subsequently, however, the region suffers an ecological disaster, and Hf dries up. When this happens – call it time t3 – I maintain that members of group F acquire a right to draw water from Hg. Whereas prior to the ecological disaster group G would have been justified in denying members of group F access to their waterhole if they were able to do so, once that waterhole becomes the only place where members of group F can satisfy their need for water, group G no longer has a right to deny them access to it.

In his discussion of the above example Waldron stipulates that at time t3 the only way for the unjust aggressors to meet their need for water is to draw it from the waterhole they wrongly seized at time t2. Yet this stipulation may frequently fail to accord with reality, whether what is at issue is secure access to water or to residence in a territory where one can meet all one's basic needs and form and pursue some conception of the good. Unlike in the example, there may be no physical barriers that prevent those who unjustly displaced the previous, rightful, residents of T from relocating to some other territory where they can securely meet their basic needs. Of course, as a practical matter, those residing in other territories

may refuse to admit the displacers or their descendants. Speaking of non-aboriginal New Zealanders, Waldron (2004) maintains that they could not reasonably be expected to move *en masse* because '...the government of their ancestral homeland [the U.K.] has long since made it clear that they would not be welcome' (p. 255). From the standpoint of moral theory, however, the first question we ought to ask is not what those residing in other places including, but perhaps not limited to, the ancestral homeland will do when it comes to admitting the unjust displacers and their descendants into their territories. Rather, we should ask what they ought to do.¹¹ Ensuring that those now living in T continue to enjoy secure access to basic nutrition, clean drinking water, etc., even after those unjustly denied residence in T return to it does not necessarily require that they continue to reside there. To the extent that the basic rights of the current inhabitants constrain the remediation of the wrong done to those unjustly displaced from T, the latter may well wonder why they should have to bear such a large portion of the cost involved in correcting the injustice they suffered. Suppose, contrary to Waldron's stipulation, that at time t_3 it were possible to move some of the unjust aggressors residing around Hg to He without denying either those who were moved to He or those already residing there access to an adequate supply of water. In that case, why think the original rightful residents of Hf must bear the full cost imposed by an increase in the number of people with a right to access a given waterhole, rather than sharing it out between themselves and the original rightful residents of He? Likewise in the case of people unjustly displaced from territory T, why not shift more of the cost created by their unjust treatment on to T's current inhabitants, say by requiring some of them to

relocate from T to their ancestral homeland? Indeed, the current inhabitants of the ancestral homeland, or the state that rules it, may have an obligation to rectify the wrong in question. If so, then might that obligation involve allowing the current inhabitants of T to resettle in their territory, thereby increasing the ability of the unjustly displaced to (re)-create the lives they wish to lead there?

What these questions leave out is the possibility that the current inhabitants of T enjoy rights of residence there; a claim against others that they not interfere in certain ways with their pursuit of a conception of the good territorially grounded in T. Unlike their rights to adequate nutrition, clean drinking water, etc., the present inhabitants of T cannot enjoy their right to reside there anywhere else. If the present inhabitants of T do enjoy rights of residence there, then these rights explain why those returning to T must accept constraints on their opportunities to form and pursue conceptions of the good territorially grounded in that place – even if is possible, physically and even practically, for the current inhabitants to enjoy their other rights (to adequate nutrition, etc.) elsewhere.

Who among T's current inhabitants might enjoy a right to reside there? I contend that any individual who has developed a conception of the good sufficiently territorially grounded in T thereby acquires a right to reside in it. This includes those who unjustly displaced the previous rightful occupants of T, or who knowingly took advantage of their displacement to settle in that territory. As I will now argue, neither a violation of others' right to reside in T nor a violation of their right to control entry into and settlement in T, if they have such a right, precludes an individual from acquiring a right to reside there. Furthermore, I offer a preliminary

defense of the claim that just punishment for either of the aforementioned rights violations will not include forcible expulsion from T *if* the wrongdoers have acquired rights to reside there. If successful, these arguments entail that the wrongdoers' rights to reside in T, as well as those of any innocent inhabitants of T who meet the condition for a right to reside there, will constrain exactly where and to what those unjustly displaced from T are entitled to return.

Suppose borders ought to be open. If so, then it is not clear why individuals who enter some territory T, unjustly expel the people living there, and then proceed to form and pursue conceptions of the good territorially grounded in T cannot acquire rights of residence there. They have a duty to repair the wrong they have done to those they unjustly displaced, of course, and discharging that duty may require that they make significant compromises to the pursuit of their territorially grounded conceptions of the good. They may also be liable to punishment for the injustices they committed. Nevertheless, the unjust displacers did nothing wrong merely by entering the territory and forming and pursuing conceptions of the good essentially linked to it. Had they done so without displacing any of those rightfully living in T they would have acquired rights of residence there, at least on the autonomy-based account of such rights under discussion in this paper. Should we not draw the same conclusion even in a case where, as part of their creating a life in T, they forcibly displaced those who previously lived there?¹² Note that these individuals meet the no-fault condition that Stilz (2011, p. 585) places on the acquisition of a right to reside in T. Given open borders, they do no wrong merely by forming and pursuing a conception of the good territorially grounded in T. Stilz

might object that the way in which they do so, namely one that involves forcibly displacing the previous residents, does render them at fault for forming their connection to T, and so blocks their acquisition of a right to reside in it. But to simply assert this is to beg the question; we need to know why the unjust displacement of those who rightly resided in T not only calls for punishment and repair but also undermines the displacers' acquisition of a right to reside there.

Might expulsion from territory T constitute a justifiable form of punishment for those who unjustly displaced the individuals rightfully residing in T, even if the displacers subsequently formed and pursued conceptions of the good territorially grounded there?¹³ The answer to this question depends on an account of just punishment. Perhaps such a punishment could be defended on the basis of its deterrent effect; knowing that if they unjustly displace those already residing in T they risk expulsion from the territory in which they have settled and built their own lives, immigrants to T would refrain from doing so. It is also possible, though, that a consequentialist approach would only sanction a lesser form of punishment once it took into account the harm the unjust displacers would suffer as a result of their own expulsion.¹⁴ Alternatively, a classical retributivist account of just punishment, one that takes literally and generalizes from the injunction to exact an eye for an eye, might justify the expulsion from T of those at fault for unjustly displacing those who previously and rightfully resided there. But one reason classical retributivism garners little support from those who think critically about the justifiability of punishment is that it sanctions cruel treatment no person ought to suffer, such as the torturing of torturers. Arguably the forced expulsion of an unjust displacer who

has resided in T for many decades, during which time he has formed and pursued a conception of the good territorially grounded there, would constitute cruel treatment of this type. If so, then just as the torturer's wrongdoing does not deprive him of a right not to be tortured, so too the unjust displacer's wrongful expulsion of those with a right to reside in T does not deprive him of a right to reside there if he has formed and pursued a conception of the good territorially grounded in T.

This last point holds, I suggest, even if those who reside in a given territory, and who govern themselves via the political and legal institutions of a legitimate state, have a right to control entry into and settlement in that territory. As the above stipulation of open borders reveals, it is this right to border control and not the right to residence that is germane to the question of whether those at fault for (wrongly) forming and pursuing a conception of the good territorially grounded in T may nevertheless acquire a right to reside there. Suppose that individuals who organize their lives together via the institutions of a single legitimate state enjoy a *prima facie* right to deny others entry to the state's territory, one grounded in the non-instrumental value of political self-determination. Does it also justify their expelling individuals who have violated that right by entering the territory without permission? The answer depends on the extent to which the individuals in question have developed conceptions of the good territorially grounded there (Carens, 2010).

The structure of territorially grounded relationships, goals, and projects (the integrity of which a right to residence serves to protect) typically develops over time. The right that protects it emerges only once the structure reaches a certain stage of development, just as a heap of sand emerges at some (perhaps

indeterminate) point from the continued addition of grains of sand. As with the heap, there will be cases in which a person has clearly developed a territorially grounded conception of the good sufficient to warrant a right to residence. There will be other cases in which the opposite is true, and a third set of cases in which no principled conclusion may be drawn (either because there is no answer or because we cannot know it). Suppose that the typical recent wrongful immigrant to T fails to develop a conception of the good sufficiently territorially grounded in that territory to generate the emergence of a right to reside there. Though her expulsion by those we are assuming have a right to control who enters and settles in the territory may damage some of her relationships, projects, etc., it will not wrong her per se (though depending on how her expulsion is carried out, she may suffer other wrongs). In contrast, a person who wrongly immigrated to T decades ago will typically have developed a territorially grounded conception of the good that exceeds the threshold at which a right to residence emerges.¹⁵ Once she enjoys a right to reside in T, no appeal to the value of political self-determination can justify denying her that right. Were we to conclude otherwise, the way would be open to justify by appeal to the non-instrumental value of political self-determination a majority's decision to revoke the rights to reside in T of a native born minority.¹⁶ I suggest that the hierarchy or priority of rights runs the other way; that is, the right to residence is one of a set of rights that constrains the permissible exercise of the right to political self-determination. The upshot is that those who wrongly immigrated to a state's territory decades ago are not morally liable to deportation. Rather, they have a right to a path to citizenship, albeit one that may include submission to some kind

of punishment, such as the payment of a fine, for the wrong they did when they entered and first began to settle in that territory.

A critic might challenge the argument set out in the preceding paragraphs by pointing out that a trespasser cannot acquire a property right in land or in a house simply by forming and pursuing a conception of the good that involves or presumes continued residence in, or use of, it. The following considerations strike me as promising starting points for a rebuttal to this challenge, though space does not permit me to develop the arguments in detail. First, the critic's assertion is at odds with the common law doctrine of adverse possession, according to which under certain conditions trespassers can acquire title to another's property. Perhaps a person who wrongfully settles in a given territory can meet those same conditions; it will depend, for example, on what qualifies as open and notorious presence in that territory, which requires in turn a normative account of what counts as due diligence on the part of a state vis-à-vis enforcing its immigration restrictions. The suggestion here is that the same line of reasoning that serves to morally justify the doctrine of adverse possession may also justify a moral principle of "adverse residence."¹⁷ Second, typically the loss of wrongfully acquired goods, including real property, will not be destructive of the entire life a person leads. In contrast, expulsion from the place in which an individual's conception of the good is territorially grounded often severs all of a person's social ties, her geographical familiarity with a place, her sense of being at home in the culture (or at least one of the sub-cultures) of the society in which she lives, and her ability to pursue almost all of the various projects to which she is committed.¹⁸ Even if the resulting set back

to a person's pursuit of the good in these two cases is only a difference in degree and not in kind, it may suffice to explain why a person can acquire a right to reside in a territory he wrongfully enters and lives in, but cannot acquire a property right in goods he wrongfully uses.¹⁹ Finally, theorists such as Stilz may prove too much if they employ this *reductio*, since the intuitions generated by appeal to cases involving trespass and theft may also undermine their claim that those who faultlessly form conceptions of the good territorially grounded in T thereby acquire a right to reside there.²⁰

In legal circles it is sometimes said that the loss of a remedy amounts to the loss of a right. My goal in this section has been to explore whether the same conclusion can be drawn for the moral right to residence. Specifically, I have examined whether competing considerations of justice might rule out the possibility of return to some territory T on the part of those unjustly displaced from it, which would amount to their loss of a right to reside there. Though the answer to this question is always situation specific, I think it plausible to conclude that some limited right of return will likely be possible, or at least would be if all parties were to act morally. In reaching that conclusion, however, I have also sought to demonstrate that the precise remedy to which those unjustly displaced from T are entitled – to what sort of society, economy, and polity they are entitled to return – may be substantially constrained by various rights enjoyed by those who now inhabit T, including their right to reside there. This is so, moreover, even if the current residents of T include many of those responsible for the initial unjust

displacement and/or the persistent refusal to allow the return of those they displaced (or, perhaps, their descendants).

Were those wrongly denied their right to reside in T to recognize the specific nature of the return to which they are entitled, it is possible that some of them would abandon their right. That is, these individuals may retain return to T among their ends only because they have mistaken beliefs as to the sort of future in T they may justifiably demand. Were those beliefs corrected, they may no longer rank residence in T over living wherever they now reside. If so, then while the competing moral considerations that constrain the right of return will only rarely exhaust its possibility altogether, they may sometimes lead to the same outcome, namely the loss of a right to reside in T, by motivating those who have it to abandon their claim.

* * *

The plausibility of a theory of the right to reside in a particular territory depends both on its account of how individuals acquire such rights and its account of what follows in the event of violations of these rights. I touched briefly on the first of these two elements at the beginning of this paper, where I maintained that individuals who form and pursue a conception of the good territorially grounded in a particular place have a prima facie moral right to reside there. Such individuals enjoy a claim against others that they respect the right-bearers' personal autonomy by, at a minimum, not forcibly displacing them from that territory. My main focus, however, has been on the second of the aforementioned elements of a theory of residence rights, as I have sought to develop a novel account of what follows in the event that individuals suffer violations of their rights to reside in some territory T. I

argued first that those unjustly displaced from T cannot involuntarily lose their rights to reside there. If these individuals are unjustly prevented from returning to T, then as long as they retain return to T among their ends they continue to enjoy a right to do so, even if they also develop a conception of the good many elements of which are grounded in the territory where they now live. I then argued that considerations commonly associated with the loss of rights to reside in T, such as the development of life plans premised on residence elsewhere, do not themselves entail the loss of those rights. Rather, they provide evidence that the unjustly displaced individuals have renounced their rights to reside in T, or would do so if given a just opportunity to return to it. Finally, I considered two types of countervailing moral claims that might limit or even rule out altogether the return of those unjustly displaced from T. The ability of T's current residents to meet their basic needs may do so, I suggested, though in principle ensuring that they are able to meet their basic needs does not require that they continue to reside in T. Respect for the current residents' rights to reside in T, in contrast, gives them a weighty claim to remain there, with significant implications for what exactly those unjustly displaced from T can expect to return to. A crucial question, then, is whether those at fault for wrongfully displacing the rightful residents of T can acquire rights to reside there. I answered that they can, arguing that the acquisition of a right to reside in T depends solely on whether a person develops a conception of the good territorially grounded there. While unjust entry into a territory and unjust displacement of those residing there render a person liable to punishment and, at

least in the latter case, to claims for compensation, neither precludes that person acquiring a right to reside in it.

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¹ Stilz (2011, 583-584) defines a right to occupy a particular territory as a claim "to be physically present and to have one's rights defined and enforced by whatever state has jurisdiction there" (Ibid., 582). A. John Simmons (2012) criticizes Stilz's account of occupancy on the grounds that *legal* residence is not a necessary

condition for an individual's rightful pursuit of a territorially grounded conception of the good. If so, then at least all else equal forcible displacement of such an individual from the territory in which he lives wrongs him. I think Simmons is right on this point, which is why I employ in my argument the notion of a right of residence, which unlike Stilz's right of occupancy allows but does not require that a person's territorially grounded conception of the good be structured by legal norms. However, along with Stilz and Kant, and contra Simmons, I do think individuals have a moral duty to regulate their interactions with others according to a common juridical order (i.e., a domestic or international legal order). Thus I agree with Stilz that individuals have a right to be physically present in the territory where they have built their lives, and that they have a right to their interactions with others in that place being regulated by the legal order of a legitimate state (itself subject to a legitimate international legal order). The two rights are distinct, however, as evidenced by the fact that for both rights it is possible to suffer the violation of one without suffering the violation of the other.

² The conception of autonomy in play here requires little if any critical reflection on one's ends; for example, it encompasses a person who forms and pursues a specific conception of the good as a result of being educated into the roles of a sister, wife, and mother in a traditional society.

³ Whereas I treat as sufficient for A's enjoyment of a right of residence in T that A has resided there long enough to form and pursue a conception of the good that is territorially grounded in it, Stilz treats these conditions as merely necessary and adds that A must not be at fault for having forged this connection to the territory in

question. I argue in section III that Stilz errs in adding this no-fault condition to those an agent must meet in order to acquire a right to reside in T.

⁴ See, e.g. Miller (2007) and Moore (2015). I focus in the text on Waldron's and Stilz's arguments for this conclusion because I find an account of individuals' rights of residence along the lines they sketch to be the most plausible of the extant accounts.

⁵ Waldron (1992, 19) largely sidesteps this issue by positing single, multi-generational, agents such as Maori tribes as both the victims of past injustices and the bearers of claims to rectification.

⁶ As I read her, when Stilz (2011, 586) asserts that for those who have resided "for the long term" and enjoyed stable legal residence in T2 "the wrong of displacement is superseded," she means that these individuals have no right to reside in, and so no right to return to, the territory T from which they (or their forebearers) were unjustly displaced.

⁷ In fact, Stilz's (2011, 585-586) account of rights of occupancy entails that this conclusion holds even for the "ancestors" (i.e., those who actually suffered the unjust displacement), and not merely their descendants.

⁸ Perhaps they would have taken the opportunity to assume certain kinds of control over places of particular symbolic significance, such as particular cemeteries or churches, and of a right to visit such sites. I believe they have a *prima facie* right to both of these, but such opportunities fall far short of residence.

⁹ Were the return to T of all of the unjustly displaced to overtax the river system that provides the only source of water for people in T and several other territories, the

rights of residents in other territories to use the river to meet their basic need for water might also limit the unjustly displaced people's right of return.

¹⁰ The example is Waldron's (2004, p. 241).

¹¹ To maintain that this is the first question we ought to ask when doing moral theory does not entail that it will be the most important question to ask in all contexts, of course.

¹² Suppose that, in the process of forming and pursuing their conceptions of the good, the new immigrants to territory T unjustly violate the property rights of those already living there but do not displace them from the territory. Here, too, while the wrongdoers clearly ought to repair the wrongs they have done, and it is at least permissible to punish them for the injustices they committed, it is far from obvious that their wrongdoing bars them from acquiring rights of residence in T.

¹³ For simplicity's sake, I assume that all and only the agents responsible for the unjust displacement of T's previous rightful residents subsequently settle in T. Matters may often be more complicated, with some of those responsible for the unjust displacement not taking up residence in T, and with some subsequent residents of T knowingly or negligently taking advantage of the wrongful expulsion of T's previous inhabitants to settle there, though they are not themselves responsible for that expulsion. Though important, I do not believe these complications change the argument set out in the text.

¹⁴ Moreover, a consequentialist might endorse the fairly rapid supersession of rights to residence (and property) on the grounds that stable expectations are crucial to activities that generate increases in welfare.

¹⁵ I employ time spent in territory T to distinguish cases here because it is frequently correlated with the development of a territorially grounded conception of the good, not because it is of any moral significance in its own right. Many other factors are likely relevant as well; for example, whether the wrongful immigrant settles in a community of people with whom he shares religious, ethnic, or national ties, whether he marries or has children, etc. Cases involving individuals who enter and initially reside in a territory legally but who then remain in residence after their visas expire raise further complications.

¹⁶ See Hidalgo (forthcoming) for insightful discussion of this point. It may be tempting to respond that unlike the native born minority the immigrant who wrongly entered and settled in T decades ago is at fault for having formed a conception of the good territorially grounded there. But, again, why think that wrong precludes his acquisition of a right to reside in T, or that the permissible forms of punishment to which he is liable as a result include deportation?

¹⁷ For a comparison of Lockean, utilitarian (economic), and Hegelian personhood rationales for the doctrine of adverse possession, the last of which may serve particularly well as a basis for defending the suggestion in the text, see Radin (1986).

¹⁸ See, for example, “American Children, Now Struggling to Adjust to Life in Mexico,” *New York Times*, June 18, 2012.

¹⁹ The view I defend clearly falls afoul of the maxim that no one ought to be allowed to profit from his or her own wrongdoing. But as Ronald Dworkin famously noted (with reference to the doctrine of adverse possession), in common law jurisdictions

this maxim provides a consideration that ought to inform judges or jurors assessment of the (legal) treatment to which people are entitled, but not one that is always determinative. I offer an analogous moral claim: while in many cases justice permits and perhaps even requires that we deny a wrongdoer whatever gains he realizes as a result of his wrongdoing, that is not so in the case at hand where the denial of those gains would likely destroy the entirety of the life a person leads.

²⁰ See Simmons (2012) for just such an argument against Stilz.