

Laura Santi Amantini

**Territorial Rights  
and Reparative Justice  
for Indigenous Displaced  
People**

*Abstract*

Forced displacement disproportionately impacts members of indigenous minorities. Yet, the implications remain largely unexplored in the normative literature on justice in migration and displacement. In this paper, I defend the claim that the forced displacement of indigenous people raises specific reparative justice claims. Firstly, I argue that all forcibly displaced people are owed reparations for the harms and wrongs involved in forced displacement. Secondly, I assess the implications of attributing individual occupancy rights and collective territorial rights to indigenous people. I argue that, while all forcibly displaced people are wronged when their occupancy rights are violated, this violation is especially harmful to indigenous people, given the specific relevance of their ancestral land for their life plans. Moreover, when indigenous displaced people are dispossessed of land, all members of the indigenous group have their territorial rights over that land violated. Finally, I explore what form reparations should take to redress such harms and wrongs and who bears reparative responsibility. This last section offers a preliminary account of what is owed to indigenous displaced people qua simultaneously displaced individuals and members of indigenous minorities. Hence, it contributes to bridging the debates on justice for forcibly displaced people and justice for indigenous minorities.

*Keywords:* forced displacement, indigenous people, occupancy rights, territorial rights, reparative justice

## *Introduction*

Forced displacement disproportionately impacts members of indigenous minorities (IDMC 2021). The lands they inhabit and the natural resources that such lands contain are often contended in armed conflicts. Moreover, the ecosystems indigenous people live in are particularly vulnerable to natural disasters and environmental degradation amplified by anthropogenic climate change. In addition, a significant proportion of those displaced by development projects are indigenous people. Yet, the implications of the disproportionate rate of forced displacement among indigenous minorities remain largely unexplored in the debate on justice in forced displacement. My main claim is that a normative theorisation of justice for indigenous displaced people should recognise them *qua* displaced people who may have additional claims due to their membership in indigenous minorities. More precisely, I argue that the forced displacement of indigenous people raises specific reparative justice claims. This paper does not aspire to offer a full-fledged theory of reparative justice. It aims to offer a preliminary exploration of the implications of occupancy rights and territorial rights theories in assessing the harms and wrongs that forced displacement entails for indigenous people, and in determining what they are owed, *qua* displaced individuals but also *qua* members of indigenous minorities. Hence, it contributes to bridging the debates on justice in forced displacement and justice for indigenous minorities.

Forced displacement is harmful. When it entails rights violations, it is also wrongful. Political theorists have defended the individual right not to be displaced on several grounds. For instance, Ottonelli (2020) defined it as a control right over one's body and personal space, while Stilz (2013) had previously framed it as an occupancy right based on the fundamental interest to pursue located life plans. The violation of the right not to be displaced grounds reparative justice claims. Another ground for reparations may rest on the analogy between the harms of forced displacement and human rights violations. As I argued elsewhere (reference omitted), forced displacement involves a combination of multiple harms: a loss of control, the loss of the individual's 'home environment' (including one's place of residence and properties, as well as the reliable surrounding geographical, social, and cultural environment), a

loss of social status, and damage to mental health. To the extent that such harms undermine the very conditions for a dignified human life, they are akin to human rights violations. As a result, displaced people have moral claims to redress when the harms can be debited to human agents or human-made structures and processes.

The paper is structured in three sections. In the first section, I briefly sketch my account of the harms of forced displacement and argue that, if such harms of displacement constitute human rights violations or undermine fundamental human interests, all displaced people have individual claim-rights to have such harms repaired and the subsequent needs addressed.<sup>1</sup> Then, I move on to the central question of the paper, i.e., what reparative justice requires when it comes to displaced people who belong to indigenous groups, for whom displacement and land dispossession can be particularly harmful.

Section 2 assesses normative theories arguing that members of indigenous groups have, at least, individual occupancy rights (Stilz 2013) or even collective territorial rights including jurisdiction over their ancestral lands (Coburn and Moore 2022; Moore 2015; Miller 2012). I conclude that individual occupancy rights provide a ground to claim that forced displacement is wrongful, but the violation of such rights is not specific to the members of indigenous groups: it affects all forcibly displaced individuals. Yet, the violation of occupancy rights, I argue, can be more harmful for indigenous individuals, to the extent that ancestral land has a specific relevance for their life plans. Based on collective territorial rights, by contrast, we can identify a specific wrong in cases where the forced displacement of indigenous people is coupled with land dispossession. Dispossession deprives the whole group of a portion of their territory. Thus, it entails the violation of territorial rights. This wrong affects all members of the indigenous group, rather than the displaced members only. Yet, this is relevant when assessing what is owed to indigenous displaced people *qua indigenous*.

Section 3 examines whether current international human rights law on the rights of displaced people and indigenous people captures the

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<sup>1</sup> Note that this applies to all displaced people, including those internally displaced, who remain within the borders of the state of origin.

specific condition of indigenous displaced people qua simultaneously displaced people and members of indigenous minorities. I show that the specific harms and wrongs affecting indigenous displaced people are not captured by current legal frameworks, which focus on either indigenous people or displaced people. Then, I argue that occupancy rights and territorial rights theories can be useful to draw on when theorising reparative justice for the forced displacement of indigenous people. This section offers a preliminary exploration of the implications of individual occupancy rights and collective territorial rights in assessing what is owed to displaced individuals and to the whole indigenous group in cases of land dispossession. Section 4 concludes.

### *1. What should be repaired? The harmful consequences of forced displacement*

As I argued elsewhere (reference omitted), being forcibly displaced from one's place of habitual residence typically entails four kinds of harm. Firstly, displaced people suffer a loss of control, which can take multiple forms. The most acute is probably the loss of control over their body (which includes the body's physical movement). This is particularly evident in cases of deportation, where displaced people are coerced into moving and typically ignore where they are moving to. However, we can identify a loss of control over one's bodily movement whenever moving is the only possible or acceptable option, and when the option of heading back is impossible or unacceptable once the move has started, although the movement is not physically coerced. Someone who moves because they have been threatened with death if they do not leave their home suffers a loss of control over their bodily movement. Forced displacement entails a second important loss of control, which concerns one's private space. Displaced people leave behind their place of habitual residence and the personal belongings it contains. They are no longer in control of what happens to their home. Moreover, once displaced they often end up in precarious shelters, which can be demolished or evacuated anytime. This perpetuates the sense of insecurity and uncertainty that losing control over their habitual place of residence provoked in the first place. Thirdly, forced displacement undermines a person's control over time. Unlike voluntary migrants for whom migrating is part of their

life plan, displaced people lose control over their future. In many cases, displacement is abrupt and unexpected (Gürer 2019, 58). It suddenly disrupts the person's usual routine, and it makes life plans collapse at once. This sudden disruption is evident when forced displacement is triggered by extreme natural disasters. However, even for those who flee generalised violence, individual persecution, or environmental degradation the decision to leave home may be sudden. The displaced person may have endured an unsafe and uncertain existential condition for a while, but over time their permanence may have become unbearable. Mass violence may have worsened, threats of individual persecution may have intensified, and subsistence may have become harder. Moreover, even when not sudden, forced displacement is not planned by the displaced person. Evictions for land acquisition and development projects, for instance, can be even communicated in advance, but the displaced people did not themselves plan to leave.

Forced displacement, thus, is harmful in that it is a forced, non-voluntary movement. Furthermore, displaced people have to leave a specific place. Besides their home, forcibly displaced people leave behind their environment, which I will call the 'home environment'. Losing the 'home environment', for the displaced individual, means being abruptly deprived of a web of familiar geographical, social, and cultural landmarks on which they could rely to carry out their daily routines and make plans.

Furthermore, the loss of one's house and 'home environment' results in a loss of social status. This loss of status depends in part on the loss of what displaced people owned and relied on to live. Displaced people not only lose material belongings but also their livelihood. Moreover, their capacity to restore it may be severely undermined outside their place of residence. For instance, the skills required for indigenous traditional fishing may be useless in a city. The loss of their job profoundly affects displaced people's social status, not only because it causes impoverishment and economic dependence, but also because it deprives them of a crucial component of their personal identity. Being displaced also means moving somewhere else, to another area of the state or abroad. To the residents of the area where they have moved, displaced people may appear as anonymous, needy strangers who came uninvited. Therefore, besides the immediate impoverishment due to the loss of their house and belongings, the severely reduced capacity to sustain them-

selves because of the loss of their livelihood, and the loss of relevance of the social relations and skills they used to have, displaced people also typically suffer an additional loss of status due to social exclusion in their host society.

In addition, displaced people experience a fourth kind of harm. This harm consists in damage to mental health, which derives from the cumulative effects of losing control, losing one's 'home environment', losing social and economic status and experiencing one or more forms of violence. Generalised violence may affect non-displaced people too. However, sometimes violence is intentionally used to force people to abandon their place of residence: displacement itself can be the aim of violence. Besides cases of ethnic cleansing (Stefansson 2006), in cases of 'land grabbing' too insurgents or paramilitary forces use threats and engage in murder to induce residents to leave their homes and lands (Steele 2017; Molano 2013; NRC/IDMC 2007). Though not equally traumatic, all forms of forced displacement may undermine the mental health of displaced people. Psychiatric research shows that many develop symptoms of post-traumatic stress disorder, major depression and generalised anxiety disorder, and these disorders often overlap (Fazel *et al.* 2005). Furthermore, compared to other people exposed to traumatic experiences, such as non-displaced war-affected civilians, displaced people face additional and specific displacement-related stressors, which undermine their ability to cope with traumatic memories (Djelantik *et al.* 2020).

As a result of the harms of forced displacement, displaced people have specific needs, in addition to basic survival needs. Besides shelter, basic food, and sanitation, they need housing that allows them to regain control over their body, personal space, and near future. Moreover, they need to rapidly recreate a sufficiently stable 'home environment' they can navigate to carry out their daily routines and make plans. To regain social status, they not only need a source of economic income but also the social recognition of both their individual identity and their existential condition as displaced persons. Furthermore, they may need specific mental health support to overcome the psychological impact of having been forced to move, to leave their 'home environment', to lose their livelihoods and social roles constitutive of their personal identity and, often, experiencing violence as a trigger or a consequence of forced displacement.

If we value general human rights, we should also recognise the analogous moral relevance of displaced people's specific needs. Both the fulfilment of general human rights and the fulfilment of displaced people's distinctive needs, indeed, share the same goal, which is to provide the conditions of a dignified, minimally flourishing life. I do not have enough space to develop this argument, here. Thus, I will merely assume that if the harms of displacement undermine the same fundamental human interests protected by human rights, displaced people have individual claim-rights to have such harms repaired and their specific needs addressed. In addition, if we consider the individual right not to be displaced as a human right, either understood as a control right as in Ottonelli's account, or as an occupancy right, as in Stilz's account, the violation of this right grounds displaced people's claim to have that wrong repaired and their displacement-related needs met.

So far, I have illustrated the harms of forced displacement and defended the existence of reparative claim-rights which all displaced people bear qua displaced people. However, displaced people may belong to minority groups, such as indigenous groups. Indeed, in several areas of the world, indigenous people have a higher probability of being forcibly displaced and are more vulnerable to the adverse impact of forced displacement and land dispossession (IDMC 2021). In the following sections, I focus on this intersectional subgroup of displaced people. In the next section, I consider whether being an indigenous displaced person entails additional specific harms and wrongs, before moving to the implications concerning reparative claims.

## *2. The forced displacement of indigenous people: how do occupancy and territorial rights matter?*

Who counts as 'indigenous' is disputed. The UN Declaration on the Rights of Indigenous Peoples does not provide a definition of an 'indigenous people'. Indeed, the Declaration was the outcome of a working group open to all those groups who self-identified as 'indigenous peoples', including white Afrikaners from South Africa (Coates 2004, 9). Scholars have proposed definitions based on different sets of conditions (see Coates 2004, ch. 1). In this paper, I consider 'indigenous' the members

of minorities who live in separate communities within the territory of internationally recognised states and differ from the majority of citizens because they share a specific language, religion, or other cultural traits, including a morally relevant relationship with a particular geographical area. Note that, while an indigenous minority may count as a national minority, not all national minorities plausibly count as indigenous. Consider the case of three groups who were collectively displaced from different contexts: the Navajo tribes removed from Arizona in the XIX century, the Sudeten Germans expelled from Czechoslovakia after World War II and the Armenians who have recently fled Nagorno-Karabakh.<sup>2</sup> Armenians who lived in the Nagorno-Karabakh region within Azerbaijan appear as a national community separate from the Azeri majority. However, we intuitively consider the Navajos as a typical example of an indigenous group, while it is unlikely that we would consider the Sudeten Germans or the Armenians from Azerbaijan as indigenous people, despite their ancestors may have long inhabited the territory they have been displaced from.

In the case of the Navajos, there seems to be something distinctive in the relationship with the land they occupied. Surely, one might claim that a particular place may have a symbolic value for a national community too. For instance, Miller (2012, 261-262) defends the idea of national homelands: namely, portions of territory that bear a symbolic value for a national group because of the events that occurred on it, such as battles that mark the history of a nation. However, scholars often claim that indigenous people have a particularly strong, and normatively relevant, attachment to their ancestral land (see Moore 2015). Indeed, for indigenous people, mountains, rivers or forests may be sacred and even personified. Access to these sacred sites is thus necessary for the pursuit of their religious aims. What is more, living in a particular place may be essential for their communal ways of life and traditional forms of subsistence (see Coats 2004, 47-51, Coburn and Moore 2022, 7-8). Indeed, indigenous groups typically live out of subsistence livelihoods, they are (or have long been) significantly isolated from the global market economy and kept traditional forms of social organisation and political

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<sup>2</sup> I am grateful to an anonymous reviewer for providing the last two examples.



authority that differ from the modern state. Indigenous groups' traditional livelihoods and social organisation, in sum, are strictly dependent on the geographic niche they inhabit. For our purposes, it does not matter whether indigenous people belong to hunter-gatherer tribes, are nomadic pastoralists or aresedentary farmers.<sup>3</sup> What counts is their relationship with the land, which is constitutive of their traditional subsistence livelihoods and cultural practices. Outside that land, they may no longer be able to identify as a group, even in the case they were not dispersed once displaced and were able to relocate with other group members (Moore 2015, 41 and 43). The displacement of members of a national minority may entail collective harms and require specific reparations. Yet, the case of indigenous groups should be singled out, and we need to take into account the distinctive relationship that indigenous groups entertain with the land they traditionally occupy.

It is not just the symbolic meaning and the passing of time that makes the land traditionally occupied by an indigenous group an "ancestral" land. For instance, cloud forests on the Colombian Andes count as ancestral land for the U'wa people not only because they have long inhabited that area and consider the glacier-capped mountains of the Sierra Nevada del Cocuy to be sacred.<sup>4</sup> Members of this indigenous minority are also considered the descendants of those who inhabited that territory before the Spanish colonisation. There is a wide consensus about counting as 'indigenous' the descendants of those societies who lived on a given territory before the European colonisation and the foundation of a modern state. Though the insistence on European colonisation has been criticised as Eurocentric (see Coats 2004, ch. 1), the historical injustices involved in colonisation and their enduring effects

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<sup>3</sup> Note, incidentally, that even nomadic indigenous people suffer the same harms of forced displacement as sedentary people. Although they periodically move, they lose control over their bodily movement when such movement is forced. Moreover, they lose their 'home environment' when they are forced to move outside their usual mobility routes and settle among sedentary people. Their social status is also harmed when they are deprived of their livelihoods, social roles, and social structures, and when they are marginalised by sedentary host communities. See Moore (2015, 42) and, for an empirical case study, Larsen (2003).

<sup>4</sup> See Taylor 2023.

do matter in the paradigmatic cases of indigenous minorities most considered in normative political theory, such as the case of Native Americans in the US. Particularly salient, here, are historical injustices of land dispossession, forced displacement and relocation, and forced cultural assimilation that many indigenous people experienced as a result of settler colonisation. Therefore, I use 'indigenous people' to refer to the members of minorities who live in separate communities and differ from the majority of citizens because of traditional social and cultural practices strictly dependent upon members' permanence on a particular land their ancestors occupied before settler colonisation. It is true that some members of indigenous minorities may now live dispersed amongst the non-indigenous population. However, I focus here on those who occupy portions of territory that are either recognised by the state or claimed by the indigenous themselves as 'indigenous territory'.<sup>5</sup>

Stilz (2013) opens her discussion of occupancy rights with the case of the Navajo Indians' removal from their homeland in Arizona in 1864. Stilz defends an interest-based individual right to occupancy which applies to all human beings. Indeed, the fundamental human interest at stake is the pursuit of one's located life plans. This, Stilz argues, grounds a pre-institutional moral right, which explains why colonial settlers committed a wrong against indigenous peoples, like the Navajos, when removing them from the territory they used to occupy. However, the occupancy right Stilz has in mind remains fundamentally a universal human right, rather than a right held by members of an indigenous group. Stilz concedes that from this individual right one can derive group rights, but several kinds of groups, such as immigrant minorities or religious minorities, may hold such group rights to occupancy (Stilz 2013, 350-351). Thus, if we adopt Stilz's account, we can surely conclude that indigenous displaced people have been wronged because their occupancy rights were violated, but this would be true for other displaced people too. The fact that Stilz chooses the Navajos case as the main illustrative case throughout her arguments seems to underline the importance

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<sup>5</sup> I do not consider, here, whether the current extension of recognised indigenous territories is just, or whether the treaties that granted indigenous people specific rights on such territories were fair. These are important issues for justice towards indigenous minorities but will not be addressed in this paper.

of territorial occupancy for indigenous people, but her argument does not suggest that members of indigenous groups suffer specific harms or wrongs, compared to other displaced people taken qua individuals or qua members of social groups.

Stilz (2013, 327) clarifies that the right to occupancy consists of “the right to reside permanently in that place, to participate in the social, cultural, and economic practices that are ongoing there, and to be immune from expropriation or removal”, which does not amount to territorial jurisdiction. However, other political theorists argued that, based on occupancy rights, indigenous people possess collective territorial rights over their lands. Coburn and Moore, for instance, have recently defended this claim using the case of the Algonquin indigenous minority in Canada. Contrary to Stilz, they attribute occupancy rights to groups, understood as collective agents whose members share a collective identity and perceive a given area as a source of such a collective identity (Coburn and Moore 2022, 7; Moore 2015, 39-40).<sup>6</sup> Coburn and Moore (2022, 10) assume that the territorial rights of states are based on collective occupancy rights. Then, they adopt a cantilever strategy to argue that, if the territorial rights of states are based on collective occupancy rights, the same ground applies equally or better to indigenous groups. Indigenous groups, such as the Algonquin, bear at least two key territorial rights in Coburn and Moore’s account: the right to resources and the right to jurisdiction. Jurisdictional power, Coburn and Moore note, is probably the most fundamental territorial right. Indigenous groups, they claim, cannot control the natural resources on which their community relies for material and spiritual aims if they do not have the power to exercise “robust forms of self-determination” over such resources. Though jurisdiction over indigenous ancestral lands may not be exclusive and may be shared with the state (e.g., the Canadian state), this does not mean that the indigenous group does not have such a jurisdictional right in the first place.

Indigenous territorial rights have also been defended based on a nationalistic account of territorial rights. Miller (2012) argues that ter-

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<sup>6</sup> In this account, individuals have residency rights, but the domain of individual residency rights cannot be articulated “without reference to the collective context in which people live” (Coburn and Moore 2022, 9; see also Moore 2015, 36-45).

territorial rights are borne by transhistorical collective agents sharing a distinctive culture, namely nations. In his account, such rights are not justified “by the mere fact of occupancy” (Miller 2012, 265). Territorial rights, Miller argues, require both prolonged occupation and territorial transformation. Miller (2012, 258-262) proposes three arguments to defend the territorial rights of nations, including indigenous peoples. Firstly, he proposes a quasi-Lockean backwards-looking argument in which territorial rights depend on the creation of material value in shaping the territory. Secondly, he argues that, since the territory has been shaped to fit the needs of nation members, territorial rights are needed to sustain their way of life. Thirdly, he points to the symbolic value of territory as essential for the group identity.

My aim is not to determine whether occupancy-based arguments or nationalistic arguments succeed in grounding territorial rights, nor to determine the most persuasive. My point is to stress that, in both cases, if such arguments justify states’ territorial rights, they also justify the territorial rights of indigenous groups. Besides, such rights are also included in the international human rights law. The United Nations Declaration on the Rights of Indigenous Peoples grants indigenous peoples, as a group, rights which are more demanding than the individual occupancy rights as presented by Stilz and seem better conceptualised as territorial rights (see UN General Assembly 2007). Indeed, art. 3 states that “indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This does not imply that indigenous people should form separate states but, as art. 4 clarifies, “in exercising their right to self-determination, [they] have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” Concerning the content of their rights over land and resources, art. 26 contains the right to “*own, use, develop and control* the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired” (emphasis added). This seems to go beyond rights to access the resources and to amount to collective rights to resources as conceived in the territorial rights literature (i.e., including the power to manage, withdraw and make profit out of resources).

Let us assume, then, that indigenous minorities have territorial rights.<sup>7</sup> What do such indigenous territorial rights imply when it comes to forced displacement? When the entire indigenous group is displaced and no longer able to exercise their territorial rights, the loss involved might seem comparable to the loss that citizens of sinking island states (e.g., Kiribati and Tuvalu) face: the loss of their territory and, thus, the loss of the ability to exercise their collective self-determination. In the case of sinking island states, it has been proposed that, as a reparation for the total, irreversible, loss of territory, other states should cede portions of their territory. Those displaced, as a group, would then receive a surrogate land over which they could exercise their jurisdiction (see Buxton 2019; Dietrich and Wündisch 2015). An alternative would be the creation of artificial surrogate islands (Buxton 2019). However, if the collective self-understanding of the indigenous minority as a group depends on cultural practices that are inseparable from that specific land (e.g., traditional forms of subsistence, or religious practices), the loss suffered by indigenous groups seems even more difficult to compensate by ceding or even creating a substitute land over which they could exercise their jurisdiction. What seems relevant in the case of the displacement of an entire indigenous group is the irreproducibility of the group's social structure and collective self-understanding outside the lost land. Indeed, symbolically laden sites, such as sacred land, are not akin to fungible natural resources that could be replaced by materially equivalent ones (see Nine 2016, 328). On the contrary, they may count as constitutive of the indigenous group's self-identification. Thus, if an entire indigenous group is removed from their land and deported (as in the Navajo case), even when their members are not dispersed, there is surely a violation of their territorial rights, but also an additional wrong, a form of cultural cleansing.

We might then wonder what displacement implies for members of indigenous groups when they are individually displaced, or they are dis-

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<sup>7</sup> We might conceive of such rights as collective rights held by the indigenous groups understood as 'nations' (Miller 2012) or as 'peoples' sharing a 'thinner' political identity (Moore 2015). Alternatively, we might conceive of indigenous people's territorial rights as group-differentiated individual rights that the members of the indigenous minorities have qua members of that group, following Kymlicka's account of national minorities' rights (Kymlicka 1995).

placed with some fellow group members, but most of the group members stay, and the group does not cease to exist. For the indigenous displaced individuals themselves, the harms involved in being displaced include the four kinds of harm of displacement I presented in section 1. The loss of the 'home environment' seems to be particularly relevant in the case of indigenous displaced people. Indeed, being unable to live in the ancestral land may mean being unable to access sites of worship which cannot be recreated elsewhere, or to practice traditional livelihoods. The loss of relevance of irreproducible social roles also impacts the degree of the loss of status suffered by the indigenous displaced people *qua* displaced. When they are dispossessed of land, they may suffer a loss of property if that land was private property and, even if there was no formal property title, a loss of control over their place of residence. These specific harms of displacement are not qualitatively different when the displaced individual belongs to an indigenous minority but can be deeper, due to the significance of particular geographical sites for the group and thus for the displaced individual's identity as a member of the group.

To account for the individual loss of the ability to access lands and natural resources that were essential components in the pre-displacement life of indigenous displaced people (and presumably part of their future life plans and conceptions of the good), we might also refer to the violation of occupancy rights. As we have seen, Stilz conceives occupancy rights as individual rights grounded in the fundamental human interest in the stability of located life plans. This interest is presumably stronger in the case of indigenous people, given the irreplaceable symbolic and practical value that geographical sites often have for the indigenous minority. To the extent that the human interest in the stability of located life plans lies behind the concept of occupancy rights, the violation of such a right in the case of indigenous people is not a distinct kind of wrong but might be a deeper wrong. In addition, one might consider that the ancestors of contemporary indigenous people typically suffered displacement and land dispossession as a result of settler colonisation. This historic injustice background exacerbates the wrong of occupancy rights violation when it affects a person belonging to an indigenous minority.

Occupancy rights theory seems to sufficiently make sense of the wrong at stake in forced displacement at the individual level: there seem to be

no need to claim that the indigenous displaced person individually suffered a violation of territorial rights. However, territorial rights matter if we consider the wrong of land dispossession, which often comes with forced displacement and may even motivate displacement itself.<sup>8</sup> If displaced individuals and families are dispossessed of lands, which are seized by other state or non-state actors, this harms the whole group: those who stay, indeed, can no longer exercise their territorial rights over the dispossessed lands. This is a kind of loss which affects the indigenous group, rather than the forcibly displaced only. This wrong is separate from the violation of property rights. As far as the violation of territorial rights is concerned, it does not matter if the dispossessed land was private property belonging to the displaced people, collective property, or common land. When the displaced are dispossessed of collectively owned or common lands, such lands are subtracted from the jurisdiction of the indigenous group, hence there is again a violation of territorial rights affecting all members of the group, either displaced or not.

To sum up, occupancy rights theories offer a ground to express what is wrong with displacement for indigenous displaced people, but the wrong implicated in the violation of occupancy rights is not specific to indigenous displaced people as members of an indigenous group: it affects all displaced people, to the extent they have an interest in the stability of located life plans. In the case of indigenous displaced people, there seems to be a difference in the degree of such wrong, rather than a qualitative difference: given the irreproducibility of social structures and religious and other cultural practices detached from particular geographical sites, we

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<sup>8</sup> I do not consider, here, cases of voluntary land sale or relinquishing. Representatives of an indigenous community may voluntarily sell or relinquish portions of common or collectively owned land. When this is the case, there seems to be no violation of the territorial rights over the ceded land. Alternatively, individual members of an indigenous community may sell or relinquish portions of land over which they have individual property rights. If this happens with the consensus of the community, again there seems to be no violation of the territorial rights over the ceded land. Of course, normative standards should be met for land sale or relinquishment to count as a voluntary transaction rather than a forced dispossession. I cannot provide a set of normative standards here. A relevant contribution has been offered by Penz *et al.* (2011) concerning development-induced displacement.

might presume that members of indigenous minorities have a stronger interest in being able to continue residing within their ancestral lands, to use those specific natural resources and access those specific symbolically laden sites. Of course, we should not deny indigenous people the autonomy to develop plans outside their ancestral lands, but this does not exclude that they may have a particularly strong interest in being able to pursue plans within such lands. Thus, the significance of the specific land they were displaced from is relevant when it comes to redressing indigenous displaced people. In addition, if we consider members of indigenous groups as descendants of the victims of historic injustices of settler colonisation, which included displacement and dispossession, the wrong of occupancy rights violation becomes even worse.

Territorial rights theories, by contrast, allow us to identify an additional wrong that indigenous displaced people suffer *qua* indigenous. When displacement comes with land dispossession, it deprives the whole indigenous group of territorial rights over the dispossessed land. The violation of indigenous territorial rights is not specific to those members of the indigenous group who are displaced, it affects all the members of the indigenous group. Yet, it is specific to indigenous displaced people compared to non-indigenous displaced people. Therefore, it is again relevant when considering what is owed to indigenous displaced people not only *qua* forcibly displaced but also *qua* members of an indigenous minority.

### *3. Towards reparative justice for indigenous displaced people: an exploration*

The UN Declaration on the Rights of Indigenous Peoples does not determine what is owed to indigenous people who are forcibly displaced. Art. 10 states that “indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”. However, the Declaration does not include any specific reparation for the violation of this right or specific reparative provisions for indigenous displaced people (see UN General Assembly 2007).

Legal documents containing the rights of forcibly displaced people do not specify additional provisions for those displaced people who belong



to indigenous minorities either. The Guiding Principles on Internal Displacement only mention indigenous people once, in principle 9: “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands”. However, the Principles do not mention indigenous territorial rights and do not explain how “special dependency” on and “special attachment” to land should be accounted for when redressing indigenous displaced people (see Deng 1999).

A further relevant document might have been the Principles on Housing and Property Restitution for Refugees and Displaced Persons, often known as the Pinheiro Principles (see UN Sub-Commission on the Promotion and Protection of Human Rights 2005). However, such Principles focus on the restitution of private property and only mention that “States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands” (art. 15) and that indigenous people should be “adequately represented and included in restitution decision-making processes” (art. 14).

Normative political theory might then contribute to clarify what is owed to those displaced people who belong to indigenous minorities, and, in this endeavour, it is worth drawing on the literature on occupancy rights and territorial rights. As we have seen, occupancy rights are grounded on the fundamental human interest in the stability of located life plans. Located life plans, in the case of indigenous people, are strictly tied to a specific territory. Thus, when a displaced person belongs to an indigenous group, enabling return, restituting owned or otherwise occupied lands, and restoring access to symbolically relevant sites is a crucial component of reparative justice for forced displacement. Equally, public acknowledgement of the symbolic importance of that territory for indigenous displaced people and expression of apologies are needed if return and restitution are meant to be reparative. Furthermore, material reparations should be provided to ensure that returnees can restore their livelihoods and socio-cultural practices. For instance, if returned land has been made unsuitable for traditional subsistence agriculture or pastoralism, returnees are unable to resume their traditional livelihoods. Being offered alternative jobs would not recognize displaced

indigenous people as members of a distinct indigenous community. If return and restitution are not possible,<sup>9</sup> indigenous displaced people should be able to recreate a 'home environment' which is as similar as possible to their previous one. The importance of territory matters when assessing what a just or at least acceptable compensation could be.<sup>10</sup>

In repairing the harms and wrongs of the displacement of indigenous people, their territorial rights should also be considered. Land restitution to dispossessed displaced people and the restoration of access to symbolically relevant sites should be accompanied by the acknowledgement of the violation of the territorial rights of the group (namely, the violation of their rights to jurisdiction and rights to resources). Along with apologies, material compensation to the whole group may be appropriate. Reparations may also include increasing indigenous people's control over land and resources (i.e., increased jurisdictional autonomy) or increased voice in future negotiations involving the use of those lands and resources over which jurisdiction is shared with the state. These sorts of reparations are owed to all members of the indigenous group since the violation of the territorial rights did not affect the forcibly displaced only. However, returnees seem to have a particularly strong claim to be taken as interlocutors in future policies affecting the territory they had been displaced from.

Concerning who owes reparations to indigenous displaced people, normative theorists can turn to the broader debate on reparations for forced displacement (see Bradley 2013, Souter 2022). Surely, states of origin bear reparative responsibilities for their failure to protect their indigenous citizens from forced displacement. Moreover, when states of origin do not recognise indigenous people's territorial rights nor formalise property rights over the land they occupy, such states can be held responsible for this failure and the subsequent vulnerability to land dispossession. This

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<sup>9</sup> Return and restitution may be practically impossible, for instance, when the natural environment has become uninhabitable or unsuitable for indigenous people's traditional livelihoods (e.g., due to natural disasters or irreparable environmental degradation).

<sup>10</sup> Note that it is not necessary that a displaced member of an indigenous community subjectively feels a certain level of territorial attachment to be owed this sort of group-sensitive compensation.

theorisation of reparative responsibility is consistent with the conception of state legitimacy as stemming from the state's protection of citizens' human rights. As Owen (2020) argued, the legitimacy of the international order of states depends on each state ensuring the protection of their citizens' human rights. When it comes to indigenous people, I argue, the state is responsible to protect their group-specific human rights too, including the right to own, use, develop and control the lands they occupy and the right not to be forcibly displaced, which are contained in the UN Declaration on the Rights of Indigenous Peoples.

The state of origin may also be complicit in facilitating or bringing about forced displacement and land dispossession, thereby directly harming and wronging displaced people. The case of the active involvement of states of origin in forced displacement brings us to consider outcome theories of responsibility for forced displacement. On outcome responsibility accounts, responsibility derives from the causal contribution in causing a foreseeable outcome.<sup>11</sup> Based on outcome responsibility accounts, the state of origin is not the only possible bearer of reparative responsibility for forced displacement. As I have argued more extensively in (reference omitted), external states and non-state actors, such as private companies, may be held outcome responsible for directly causing or contributing to cause forced displacement. When this is the case, they bear reparative responsibility. Consider private companies first. Companies may buy lands whose occupants lack formal ownership titles and thus are neither appropriately consulted nor compensated. In some cases, companies may even financially support paramilitary groups to clear lands from their occupants and prevent their return. Moreover, companies may cause environmental degradation leading to forced displacement. Since indigenous people typically occupy sparsely populated and remote areas, they are particularly exposed to land grabbing and environmental degradation. Although companies do not have territorial jurisdiction or institutions, they have both a duty not to harm and a duty to provide compensation and symbolic reparations (such as apologies) when they cause harm. Let us now consider external states. States may directly contribute to causing forced displacement in other states. For

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<sup>11</sup> On the concept of outcome responsibility, see Miller 2007.

instance, states may engage in military interventions that displace civilians, and thus bear reparative responsibility towards the forcibly displaced. Furthermore, states contribute to global processes, such as climate change, that increase vulnerability to forced displacement among the citizens of other states, particularly in the most fragile states.<sup>12</sup> Thus, I argue, states may collectively bear reparative responsibility.

This account of reparative responsibility for forced displacement provides a general frame that does not exclusively apply to indigenous people: non-indigenous displaced people are owed reparations too. What I argue here is that reparative theories of responsibility can account for the specific case of indigenous displaced people. When displaced people belong to an indigenous minority, one might wonder whether this matters in identifying additional grounds for reparative responsibility. Here, the literature on historic or enduring injustice due to settler colonialism might provide relevant insights. Indeed, the state of origin of indigenous displaced people, or specific external states which are outcome responsible for their displacement, may have perpetrated historic injustice against the ancestors of those indigenous people. In particular, when such a historic injustice took the form of expulsion from ancestral land, this may ground special reparative obligations towards indigenous displaced people.

However, one might observe that states (and non-state actors) who are outcome responsible for bringing about forced displacement may fail to comply with their reparative obligations and leave displaced people uncompensated.<sup>13</sup> When this is the case, the international community of states has a duty to step in. As Owen (2020) argued, when a state is unwilling or unable to protect the human rights of their citizens, the international community has a duty to act as a substitute for that state and provide international protection. I argue that this logic extends to the group-specific human rights of the indigenous people. Based on this principle, the international community has a duty to redress indigenous displaced people when their state and outcome responsible external states or companies fail to live up to their reparative obligations.

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<sup>12</sup> On climate displacement, see Draper 2023.

<sup>13</sup> I am grateful to an anonymous referee for raising this issue.

## *Conclusion*

This paper has argued that forced displacement is always harmful but can entail additional harms and wrongs for displaced people who belong to indigenous minorities. I have illustrated four kinds of harms that forcibly displaced people typically suffer and argued that all displaced people are owed the reparation of those harms and the fulfilment of the needs that derive from such harms. Then, I have considered how being a member of an indigenous group matters in case of forced displacement. I have assessed the implications of indigenous people's individual occupancy rights and collective territorial rights. I concluded that the violation of individual occupancy rights is not a specific kind of wrong, but the harm is especially severe in the case of indigenous displaced people. By contrast, the violation of indigenous territorial rights is a specific wrong, that non-indigenous displaced people do not suffer, but it affects all the members of the indigenous group, rather than the displaced only. Finally, I have offered an exploration of how reparative justice for forced displacement should take into account the harms and wrongs that indigenous displaced people suffer in determining what they are owed and who bears reparative responsibility. I have argued that the importance of territory and located life plans presupposed in occupancy rights theory is relevant to what is due to displaced people who belong to indigenous groups. Moreover, not only indigenous displaced people but all members of the displaced group are owed reparations for the violation of territorial rights when forced displacement entails the dispossession of indigenous lands and resources. This preliminary exploration, though not exhaustive, is intended to contribute to a normative theorisation of reparative obligations towards displaced people who belong to indigenous minorities.

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