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# COLONIALISM, INJUSTICE AND ARBITRARINESS

*Vittorio Bufacchi*

Department of Philosophy
University College Cork, Ireland
v.bufacchi@ucc.ie

Injustice is a recurring theme in history, as is violence. The injustice and the violence that have defined many turning points in global history have habitually made their appearance concurrently, one reinforcing the other, as copiously documented by the periodic global instances of conquest, colonization, slavery, genocide and systematic sexual violence. That these historical events also represent historical wrongs is almost universally accepted, as is the view that such historical wrongs should at least be acknowledged for what they were.[1] And of course there are those who argue for some kind of rectification for past injustices, although there is very little agreement on what form this should take.[2]

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[1] In this paper I will use the terms 'historical injustice' and 'historical wrongs' interchangeably.

[2] Apart from the small pocket of bigots who will always refuse to accept that practices of historical injustice such as colonialism were wrong, there are those who have profound

Questions of rectification for past injustice have been the subject of a great deal of attention in recent years.[3] Many scholars have made major contributions to the way we approach the question of how best to heal the wounds of historical injustice, some of which are still open after many years. However it would appear that the current literature in political theory on historical injustice has tended to neglect what is arguably the most discernible aspect of this injustice, namely, the violence involved in the perpetration and administration of injustice. Perhaps it is precisely because the violence that has accompanied the injustice is so striking, and often so extreme in nature, that many authors writing on questions of historical injustice and its rectification have tended to overlook this aspect of the problem. This general trend to under-theorize the violence in historical injustice is regrettable, and a hindrance to a proper understanding of the phenomenon we are trying to explain, which consequently has made it more difficult to come to terms with a just principle for its rectification.

This article looks at one instance of historical injustice: colonialism. It suggests that the violence inflicted and suffered by the victims of colonialism reveals far more about this historical injustice than generally assumed. I will argue that in a colonial context injustice was perpetrated via the arbitrariness of violence, and that such arbitrariness reinforced the

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knowledge and understanding of such injustice but are concerned that fighting for rectification is not in the interest of the victims or survivors. This is the case of Frantz Fanon (1967), one of the most astute writers on colonialism in Africa, who fears that to be obsessed with demands for rectification for the injustice of the past will only make future generations 'prisoners of history'.

[3] The literature is vast, but a few books stand out for originality and impact, including Butt (2008); McGary (1999); Robinson (2000); Thompson (2002); Torpey (2003).

domination of the colonizer over the colonized. Understanding the nature of the violence involved in colonial relations of domination is crucial in order to understand the full extent of the distinctive injustice of colonialism. Part I will look at some of the recent literature in political theory on colonialism, arguably one of the most discernible cases of historical injustice. This extensive body of literature tends to overlook the question of violence, to the extent that the distinctive wrongness of colonialism is generally disassociated from the violence of colonialism. Parts II and III will attempt to reverse this trend by suggesting that violence is paramount to a comprehensive understanding of the injustice of colonialism. Starting from the assumption that in the literature on historical wrongs acts of violence have been under-theorized, a close analysis of colonialism in the Caribbean during the 16th and 17th centuries reveals one fundamental dimension of social injustice; namely, the problem of arbitrariness. In other words, colonialism is a paradigmatic case of historical injustice in part because of the entrenched arbitrariness at the heart of its system, and this arbitrariness is fully revealed by the nature of violence exercised by those in power within a colonial context. Part IV will explore in more detail the questions whether colonialism is associated with a distinctive procedural wrong; I will argue that colonialism does indeed instantiate a distinctive kind of procedural wrong, but not for the reasons generally associated with this position: what is distinctive about colonialism can be traced back to the arbitrariness in the power relations it engendered.

## I. TAKING COLONIAL VIOLENCE SERIOUSLY.

Contemporary political theory has developed a fascination for colonialism, and in particular why it is wrong. Of the many theorists that have engaged with this issue in recent years three in particular stand out: Margaret Moore (2015), Laura Valentini (2015) and Lea Ypi (2013). While they defend very different conceptions of the injustice of colonialism, each one making a valid and significant contribution to the literature, I will argue that their respective

arguments also share a common weakness, present in their tendency to underestimate the theoretical salience of violence as part of a comprehensive explanation of what makes historical injustice in general, and colonialism in particular, morally and politically wrong.

My issue with Moore, Valentini and Ypi is not that they fail to recognize or acknowledge the violence that took place in history where colonialism flourished; no-one writing about colonialism could be indifferent to the brutality of colonialism, since any historical account of colonialism is imbued with descriptions of carnage, bloodshed and human cruelty beyond the limits of imagination. Instead my point is that the significance of violence in a moral assessment of the wrongness of colonialism is not given the theoretical import it deserves. In the works by Moore, Valentini and Ypi the violence symptomatic of colonialism tends not to be theorized, instead it is acknowledged and side-lined, as if this were something that can be taken for granted. As a result, in their otherwise sophisticated analysis of colonialism violence only makes a brief appearance before disappearing from their accounts of why colonialism is wrong.

The received view in the literature on the injustice of colonialism seems to be that any violence that occurred was a contingent factor, not an inherent factor.[4] In other words, while there was a great deal of unwarranted violence by colonial powers, the violence is not the distinctive reason why colonialism is wrong and unjust. It is precisely this point that I will attempt to refute in this article.

Margaret Moore clearly sees violence as a contingent factor within the landscape of colonialism. Moore's (2015) starting position is that the concept of territory is under-

[4] For the distinction between inherent and contingent factors in the context of colonialism, see Moore (2016).

theorized in contemporary political theory.[5] The essence of her argument is captured by the concept of self-determination, which justifies two moral rights: the individual moral right to residency, and the collective moral right to occupancy. This theoretical framework enables Moore to consider cases of historical injustice with respect to land, in particular the unlawful taking of land. This is an important issue of course, and Moore is right to highlight it, but what is disquieting about her approach is that she seems to be concerned exclusively with the fact that land was taken away from a people rather than the way the land was taken. In other words, Moore is untroubled (theoretically speaking) about the acts of violence involved in the appropriating of land, instead she is concerned only about the specific good that is being seized: land and territory. It follows that according to Moore (2015, 100) colonialism is wrong because the process of unlawfully and illegitimately taking of land disrupts our social attachments, and in the process undermines our self-determination:

> "Most people think that the wrong of colonialism isn't captured just by the fact that the imperial authorities failed to include the colonial peoples fully in their political projects, and instead erected forms of political and legal domination over them…. This was part of the problem, to be sure, but we also think that a significant part of the problem was that the imperial powers were involved in the taking of territory…. The problem with colonialism wasn't simply the violation of the equality condition (equal treatment of persons); it was that the imperial power was engaged in taking territorial rights from another people, through extending political authority (rules of justice) over them."

Moore (2015, 160n4) explains why the violation of territorial rights is wrong in the following terms: "I am using the term 'imperialism' to refer to a situation where one group occupies the land of another, thereby violating their territorial rights, and also subjugates

[5] See also the special issue on her book in *Philosophy and Public Issues* (2017).

them, thereby denying them the capacity to be self-determining". In the process of stressing why territorial issues are crucial to an understanding of the evils of colonialism, Moore downplays other important aspects, to the point where those other evils of colonialism are left out of the equation. Moore laments the fact that territory is under-theorized, but in her effort to put territory at the forefront of our analysis she ends up under-theorizing the violence of colonialism.

It is surprising how the violence that accompanied colonialism is hardly mentioned by Moore, in fact the only place where Moore (2015, 140) makes a passing reference to the violence of colonialism is in the following passage:

> "We can identify at least four sorts of potential wrongs involved when land is taken, primarily through expelling people from their homes and communities, in addition to the coercion that usually accompanies such events: (1) being deprived of individual rights of residency; (2) being denied group rights of occupancy; (3) being denied collective self-determination; and (4) having individual or collective property rights violated".

What is interesting about this passage is the way Moore deals with the abhorrent violence of colonialism. Moore merely touches on the 'coercion' that usually accompanies colonialism and imperialism, before leaving this issue aside and never returning to it. She goes on to consider what should be done to remedy territorial rights violation, since according to her that is the main issue to be confronted. The fact that the violence of colonialism plays a minor role in Moore's argument about the wrongful taking of land and territory is not inconsequential.

Someone who is not convinced by the territorial approach is Lea Ypi (2013). In what is arguably the most influential, and original, philosophical accounts of why colonialism is wrong in recent years, Ypi argues that while of course there are many reasons why

colonialism is wrong, there is one fundamental and distinctive reason that defines the intrinsic wrongness of colonialism: the creation and upholding of a political association that denies its members equal and reciprocal terms of cooperation.

Ypi is probably right that the wrong of colonialism should be disentangled from considerations of nationalism and territorial rights, and that we need to pay more attention to the fact that colonialism denies equal and reciprocal terms of cooperation, even though the bulk of her article tends to be a critique of the territorial rights perspective rather than giving a detailed account and justification of what equality and reciprocity in political relations actually entails. What is surprising about Ypi's analysis, and what needs closer inspection, is Ypi's comments on the violence that colonialism inevitably unleashed. Ypi (2013, 162) has this to say on the question:

> "Burning native settlements, torturing innocents, slaughtering children, enslaving entire populations, exploiting the soil and natural resources available to them, and discriminating on grounds of ethnicity and race are only some of the most familiar horrors associated with it. The suggestion that the wrong of colonialism consists in its embodiment of an objectionable form of political relation is far from implying that this can now be forgotten. This article tries to clarify what is wrong with colonialism, over and above these familiar outrages. Although an account focusing on the brutality of this practice would capture most of the wrong of colonialism (especially when examined in historical perspective), it would leave unchallenged more subtle forms of it".

The way Ypi theorizes the relationship between the violence of colonialism and its injustice is slightly perplexing. Of course Ypi is well aware that the history of colonialism is full of horrors and atrocities, in fact she states that the 'brutality' of colonialism captures

'most of the wrong' with this practice, but one gets the impression that according to Ypi the brutalities and 'the most familiar horrors' are so evident that superficially they attract all the attention to the detriment of more fundamental issues that regularly get overlooked. In other words, it would appear that for Ypi the horrors associated with colonialism appear to be either merely instrumental or accidental to the injustice: 'instrumental' in the sense that the violence is nothing more than a means to the injustice, and 'accidental' in the sense that the violence is a bi-product of the injustice. Instead Ypi believes that the distinctive injustice of colonialism is to be found elsewhere, in an aspect of the colonialism that is less obvious, or to use her own words, 'more subtle'.

In the only other passage where Ypi (2013, 167) touches on the horrific violence and brutality of colonialism, she explains why we should not look at territorial entitlement to understand why colonialism is wrong:

> "If the wrong of colonialism is reduced to a violation of territorial rights, settlement practices appear very difficult to criticize. This is not to say that we cannot condemn such practices for what they have historically produced: mass murder, ethnic cleansing, racial discrimination, the exploitation of labor and resources, and the enslavement of huge parts of the earth's population…..But this critique would take us closer to the idea that the wrong of colonialism consists in its embodying an objectionable form of political relation, not in the occupation of others' land".

From this passage it appears that Ypi identifies the abhorrent violence that was a regular feature of colonialism, and even recognizes that this violence is part of what makes colonialism wrong, but according to Ypi there is something that makes colonialism specifically wrong, which has nothing to do with the violence: acts of colonial violence are already considered wrongs in their own right (whether or not as part of colonial practices),

therefore the *distinctive* wrong of colonialism must be something other than these wrongs, and can be characterized as an objectionable form of political relation. In other words Ypi seems to suggest that what is distinctively wrong with colonialism can be divorced from the violence of colonialism.

Of course there is more to the injustice of colonialism than its abhorrent violence, and in her analysis of colonialism Ypi has pinpointed a crucial aspect of this injustice, yet one could argue that Ypi fails to appreciate the extent to which colonial violence is integral to the injustice of colonialism. Perhaps it is because of the disturbingly obvious nature of the atrocities being committed in the name of colonialism that a tendency to under-theorize the violence associated with colonialism has become the received view, with the result that violence is consigned to a supporting role in terms of understanding the injustice of this practice. In Parts III and IV below I will argue that the violence and horrors of colonialism cannot be disassociated from other aspects of the injustice of colonialism, in fact even Ypi's argument that colonialism is wrong because it denies its members equal and reciprocal terms of cooperation finds support and elucidation in the nature of colonial violence.

Perhaps this tendency amongst political theorists not to appreciate the full significance of violence, being unaware that it can reveal something unique about the wrongness of colonialism, is nowhere more marked that in Laura Valentini's work. This is the opening line of Valentini's (2015, 312) article on colonialism: "Colonialism is associated with many all-too-familiar wrongs: oppression, exploitation, murder, racism, and dehumanization, among others." This is also the only time that a meaningful reference to violence appears throughout

her essay.[6] Given that Valentini's central thesis is that there is nothing distinctively unique about the wrongness of colonialism, instead "the wrong of colonialism is exhausted by the 'sum' of these familiar wrongs – wrongs that are not necessarily tied to colonialism" (ibid), her decision not to engage with colonialism's most repugnant trait and legacy is not altogether surprising. One aim of this article is to suggest that Valentini, like Moore and Ypi before her, is missing something important by dismissing the violence of colonialism as a contingent phenomenon theoretically not very interesting or revealing about the distinctive wrongness of this historical phenomenon.

I will return to Moore, Valentini and Ypi's accounts of why colonialism is wrong in Parts III and IV below, but first the assumption that there are benefits of thinking about the historical injustice of colonialism in terms of historical violence needs to be vindicated.

## II. SWEET AND BRUTAL: COLONIALISM IN THE CARIBBEAN.

No one would, or should, doubt that colonialism represents a quintessential case of historical injustice, and those who insist in denying it are merely being intellectually dishonest and can therefore be ignored without compromising the integrity of this analysis. Colonialism is a complex issue, with many diverse historical representations and therefore conceptually difficult to capture. In what follows the focus will switch to one specific historical case-study, which is exemplary of the experience of colonialism in many corners of the world over many centuries: the colonization by the English of the Caribbean in the 17$^{th}$ century. The development of sugar plantations in the Caribbean between 1605 (date of the first English attempt to settle in the Caribbean at St.Lucia, which failed due to the hostility of native

[6] The only other time that violence appears in her article is on page 313, where Valentini mentions Ypi's passing reference to the brutality and violence of colonialism merely to reinforce the point that the violence is not what makes colonialism distinctively wrong.

Caribs) and 1807 (the year of the abolition of the slave trade act) is an important case-study for economic historians, given that for centuries sugar was as lucrative for plantation owners as oil is for us today. But the history of the Caribbean is also conceptually important for political theorists to the extent that it exposes colonialism in its crudest and most brutal form. There is nothing exceptional about the history of the Caribbean, except that in this historical context the logic of colonialism was allowed to unfold almost unhindered until it reached its most extreme manifestation, and therefore its purest form. The extreme nature of this case-study clearly shows why colonialism, as a more general ideal-type, is morally wrong, and essentially unjust. Furthermore the zealous violence in the historical context of colonialism in the Caribbean is not merely a contingent factor, but reveals a distinctive feature of the wrongness of colonialism.

Before we turn to the history of colonialism in the Caribbean, a word about the term 'violence'. A detailed analysis of the concept of violence is beyond the scope of this article, but the following working definition of violence as a violation of integrity will be used: *An act of violence occurs when the integrity or unity of a subject (person or animal) or object (property) is being intentionally or unintentionally violated, as a result of an action or an omission. The violation may occur at the physical or psychological level, through physical or psychological means. A Violation of integrity will usually result in the subject being harmed or injured, or the object being destroyed or damaged*.[7]

'Integrity' here simply refers to something that has not been broken, or that has not lost its original form. This is integrity as wholeness or completeness, or as MacCallum (2009) explains, the quality or state of being complete or undivided. Bodily integrity is also one of Martha Nussbaum's (1999) ten central human capabilities, a necessary condition for self-

[7] I argue for this definition of violence in Bufacchi (2007), see also Bufacchi (2009).

determination. Violence can be defined as a violation of integrity to the extent that violence damages or destroys a pre-existing unity. Susan Brison (2002) argues that when a person survives an act of sexual violence, it is their integrity as a person that is being infringed, since in the process of being violated they are reduced to a lesser being, in both somatic and psychological terms.

As a single act of violence against a person, such as the rape of an indigenous woman by one or more colonizers, the violation of integrity in question is experienced by the survivors of sexual violence who, to use Susan Brison's terminology, are 'being undone by violence', in the sense that after such ordeal the self is 'demolished', 'shattered', 'undermined', and 'the connection between the self and the rest of humanity is severed'. There is a lot more to violence than the physical pain it inflicts; violence is the enactment of domination, the performance of supremacy. The integrity which is destroyed by an act of violence is not limited to individual or personal cases, but also applies at the group level. The violence intrinsic to much historical injustice not only shatters individual lives, but also the cultural (and perhaps national) integrity of groups, which are forced to give up their customs, beliefs and traditions in accordance with the diktats of the agents of injustice.

Colonialism is a perfect example of historical injustice as violation of integrity. In his analysis of Gandhi's reflections on the injustice of colonialism, Vivek Dhareshwar (2011, 65) suggests that we see colonialism as an onslaught on the integrity of experience: "Gandhi was convinced that colonialism is destructive of the very integrity of experience….anyone faced with the onslaught of colonialism would understand what that means and would have had to find a way of preserving the integrity of his/her way of life in the face of the onslaught….The question of how to live and how to go about in the world in such a way that the integrity of experience is preserved is, Gandhi discovered, the central preoccupation that shaped the form of life – Indian civilization, to use his term – that was being undermined by colonialism and

its civilization. So, the defence of that form of life meant the defence of the integrity of experience itself, for Gandhi clearly saw colonialism as an attempt to 'argue us out of our experience'". Dhareshwar perfectly captures the essence of Gandhi's sense of the injustice of colonialism, which not only puts violence at the forefront of the meaning of colonialism, but draws attention to the violation of integrity that is symptomatic of the wrongness of violence and the injustice of colonialism.

On the basis of this definition of violence, we can now look at colonialism in the Caribbean in more detail. In *Sugar & Slaves*, Richard Dunn's seminal work on life in the Caribbean between 1624 and 1713, we get a glimpse of the life of the African slaves (and native Caribs) in the sugar plantations. As Gary Nash points out in the foreword to this significant study: "in the main, enslaved Africans lived unspeakably difficult lives, dying prematurely, struggling futilely to resist brutalization, and in the end awaiting deliverance at the hands of their oppressors" (p.xix). This echoes Richard Dunn's (2000, 224) assessment that "the seventeenth-century English sugar planters created one of the harshest systems of servitude in Western history", a system more profoundly oppressive and more socially divisive than Graeco-Roman slavery or medieval serfdom, but while this is perhaps common knowledge (and if it isn't, it should be), something else comes to the surface when we examine the relationship between planters and slaves.

'The Barbados Act for the Better Ordering and Governing of Negroes', passed in 1661 by the Barbados Assembly is a case in point. Perhaps unsurprising the premise of this document is that Negroes are characterizes as "an heathen, brutish and an uncertaine, dangerous kinde of people", but what is remarkable, and revealing, about this document is the way it recognizes that Negroes require the protection from the arbitrary cruelty of their masters. Thus the Barbados Act says that the slaves cannot be left "to the Arbitrary, cruell and outrageous wills of every evill disposed person" (quoted in Dunn 2000, 239).

Commenting on the same Act, Matthew Parker (2012, 148) points out that while on paper the Act aimed to protect the slaves, "masters could punish slaves in any way they liked, even to death, the only penalty being a fine, and this was easily evaded".

The Barbados Act is very clear on one, fundamental point: it is not just the cruel, outrageous and evil punishments suffered by slaves that were being acknowledged as a problem, but the arbitrariness in which punishments were dispensed and performed. The brutality is legendary: slave punishments included being whipped, branded, castrated, having their nose slit, rubbing lash wounds with melted wax, lopping off half of a slave's foot with an axe, having the tongue cut out, a leg chopped off, or impaling the slave's body with stakes and slowly burning him alive. The issue is not so much the level of cruelty, often gratuitous and disproportional to the crime even by 17th century standards. Instead what is significant is that the arbitrariness is so prevalent to have become institutionalized. Dunn (2000, 239) reminds us that "the master could correct his slaves in any way he liked, and if while beating a Negro for a misdemeanour he happened to maim or kill him … he suffered no penalty". This was so common it eventually became a problem, so much so that at least in theory (but seldom in practice) a master could be fined for "wantonly killing his slave".[8] In the Leeward Islands, a law was passed in 1675 which tried to make slave owners pay compensation for the many Negroes they had "frivolously" killed. The terminology used in those legal texts is unambiguous: 'wanton' and 'frivolous' killings suggest a level of arbitrariness that was not only counterproductive (for colonial rulers), but also dangerous.

[8] The Barbados code was introduced in Jamaica in 1664, where previously Negroes were tried and put to death without due process, but merely on the advice of two neighbours of the slave's master. Dunn (2000, 243, emphasis added) comments: "No other English statute of the century stated quite so nakedly the white man's *arbitrary* determination of black crime".

We get a glimpse of the extreme nature of arbitrariness and violence in the context of colonialism in Thomas Thistlewood's personal diaries. Thistlewood settled in Jamaica in 1750, and lived there until his death in 1786, first as an overseer, and then as a small landowner, with his own slaves. Two aspects of his diaries are particularly pertinent: his brutality, and insatiable sexual drive. On both accounts slaves were his victims.

Thistlewood was the designer of a grotesque punishment which involved making one slave defecate in the mouth of another slave, who was then gagged for four to five hours. Known as 'Derby's dose', after the name of the slave who suffered the abuse, this was seen as a fitting punishment for having stolen food, or in the case of Derby, being caught eating young sugar cane stalks. Another punishment he conceived involved flogging a slave in stocks, rubbing molasses on the wounds, and letting insects to swarm over him during the night.

According to Trevor Burnard (2004), the violence and brutality that Thistlewood promulgated with equal measures of pride and callousness were not incidental to Jamaican slavery. On the contrary, they were the essence of colonization.[9] The fact that white landowners were a small minority of the population compared to the vast majority of slaves working in the sugar plantations was not insignificant, and Thistlewood was a firm believer that tyranny and dominance were interconnected.

Dominance was also the motivation behind the perpetual sexual abuses chronicled in Thistlewood's diaries; 138 slave women were the victims of Thistlewood's predatory sexual exploitation. Burnard (2004, 160 emphasis added) explains that Thistlewood used sex for

[9] The brutality in the Congo Free State at the end of the 19th century by the Belgian authorities, especially in the rubber industry, is as severe and disturbing as what occurred in the Caribbean. On Congo, see Jody P. Smith (2014).

realizing the dominance of master over slave, since according to Thistlewood the institutional dominance of white men had to be translated into personal dominance: "Slave owners needed to show that they were strong, violent, virile men who ruled the little kingdoms of white autocracy that were Jamaican plantations *as they pleased*. What better way for white men to show who was in control then for them to *have the pick* of black women whenever they chose".

Once again, the language used by Burnard is unequivocal: arbitrariness was part of the violence, and violence was a type of dominance. The fact that the arbitrary violence was directed to slaves of African origin doesn't mean that this is exclusively an issue of 'slavery' and not of 'colonialism'. First of all, slavery has always been an integral part of the colonial project. Secondly, in colonial contexts the smaller indigenous population suffered the same fate as slaves; Parker (2012, 99) reminds us that the Tainos, sometimes called Arawaks, had been in Jamaica for some 2500 years, but were virtually wiped out by the English and Spanish settlers: "Enslaved by the Spaniards, tens of thousands also died of overwork or wanton cruelty at the hands of their masters. Rather than live as slaves, many killed themselves, and women aborted their children…by the time the English arrived just under 60 years later, they were almost all gone".[10]

## III. DOMINATION, ARBITRARINESS AND INJUSTICE.

[10] Sugar production was extremely labour intensive. By the end of the 17th century the English settlers had brought a quarter of a million Negroes from Africa to Barbados, Jamaica and the Leeward Islands alone. There is every reason to believe that the indigenous population would have had the same cruel and 'arbitrary' treatment had they been numerous enough to do the same hard work required to produce sugar (and rum).

The history of colonization in the Caribbean points to gross injustice characterized by distinctively arbitrary brutal violence. That arbitrariness is symptomatic of injustice is per se not a new idea, although until now political theorists writing on the injustice of colonialism have failed to appreciate the fact that arbitrariness is crucial to a proper understanding of what makes colonialism wrong.

In Anglo-American political theory the injustice of arbitrariness is usually traced back to the work of John Locke. In *The Second Treatise of Government* Locke makes repeated use of the term 'arbitrary', usually in relation to absolute power; clearly according to Locke one of the risks with absolute monarchy is that those in power exercise their authority without impartiality.[11] More recently the idea that arbitrariness is potentially the enemy of justice has come under scrutiny by David Schmidz (2006), Philip Pettit (1997) and Frank Lovett (2010).

Schmidtz reminds us that the term arbitrariness has two meanings: randomness (where no choice is made) and capriciousness (where unprincipled choices are made); according to Schmidtz, and to the indignation of Rawlsian advocates of luck egalitarianism, only the latter type of arbitrariness is problematic from a moral point of view. The idea of arbitrariness also appears in Philip Pettit's influential idea of domination. According to Pettit, three necessary conditions define domination: (1) the capacity to interfere, (2) on an arbitrary basis, (3) in certain choices that the other is in a position to make. Pettit (1997, 52) elaborates on the condition of arbitrariness when he explains that interference is arbitrary "if it is subject just to the *arbitrium,* the decision or judgment, of the agent [who interferes]; the agent was in a position to choose it or not choose it, at their pleasure". Furthermore, the interests or opinions of those affected are irrelevant.

[11] See for example Locke's references to "absolute, arbitrary power" in Ch.4, Sec.23 and Ch.11,

While Pettit can be credited for re-introducing arbitrariness in the lexicon of justice, the most thorough analysis of the notion of arbitrariness within the context of domination can be found in Frank Lovett's (2010) *A General Theory of Domination and Justice*. Lovett starts from the assumption that imbalance of social power is a necessary but not sufficient condition of domination. What makes domination distinctively unjust is what Lovett calls the 'arbitrariness condition'. Lovett (2010, 96) goes on to explain that arbitrariness in this context is not merely randomness, unpredictability, or discretionary powers (although all of the above are legitimate meanings), but something more sinister: "More precisely, let us define social power as *arbitrary* to the extent that its potential exercise is not externally constrained by effective rules, procedures, or goals that are common knowledge of all persons or groups concerned. Arbitrariness, so defined, is not merely an excessive form of discretion".

It is not surprising perhaps that Lovett (2010, 100) uses slavery on more than one occasion as an example of what he calls the arbitrary power conception of domination: "Slavery again provides an easy case: in most slave systems, there was little a slave master was not permitted to do to those slaves in his possession. Moreover, what few limitations were imposed by law were frequently ineffective". The same logic applies to colonialism, which in part explains why historically slavery and colonialism were so closely related, one often being the consequence of the other, as in the case of the Caribbean in the 17$^{th}$ and 18$^{th}$ century.

Arbitrariness is an inherent feature of colonialism, and the injustice of colonialism has a lot to do with the injustice of arbitrariness. In the colonial context the arbitrariness of power takes different forms, but it is most clearly evident in the level and nature of brutal violence which historically has unfailingly accompanied colonial wars and territorial gains. The violence of colonization is morally significant not (merely) because of its brutality, but

because of its arbitrariness. Putting arbitrariness at the forefront of our ethical assessment fundamentally changes the way we view colonization.

Margaret Moore suggests that we should distinguish between features that are contingent to colonialism or those that are inherent to it. At one level one could argue that while a great deal of violence accompanied colonisation, the violence was contingent to the extent that we could imagine a colonial relationship that is structured in relations of domination and subordination, and the taking of territory, but didn't involve violence, therefore violence is not inherent to colonialism. What is inherent to colonialism, and what makes it wrong according to Moore (2016, 456), is the taking of the territory, which robs the indigenous people of control over their collective lives, and disable them from exercising robust forms of self-determination: "lack of control will be disruptive of all aspects of their life. This is indeed a serious injustice, because it disrespects them as people with a particular collective identity and attachment to and relationship with the land on which they live".

There is, however, an alternative explanation. It is important to remember that the issue here is not descriptive but normative. The point is not merely to decipher the meaning of colonization, which by definition is a territorial issue, but to evaluate the ethics of it: what makes colonialism an injustice. The territorial occupation is a necessary condition of colonization, but ethically the injustice is not about the territory; it is about the power relations that are being imposed by an outside group on the indigenous population. There is an element of arbitrariness (as unpredictability) in the decision to invade a certain territory at a certain moment in time, resulting in more arbitrariness (as unconstrained social power) in the relations that ensue between colonizers and colonized. That is why arbitrariness is not a contingent but an inherent feature of colonial domination. And in a colonial context, arbitrary violence was the preferred method of reinforcing and institutionalize domination.

## IV. THE DISTINCTIVE INJUSTICE OF COLONIALISM.

The violence that accompanied colonialism throughout history is not a mere historical footnote; violence is theoretically significant, especially for an inquiry on the injustice of colonialism. The nature of the violence that takes place in the context of colonization is an extreme act of arbitrariness. Violence is used not just to punish, or humiliate, but to enforce the law of arbitrary power. The victims and survivors of colonization are victims of an injustice, to the extent that their existence is dictated by the wanton, frivolous desires of those with power over them. Arbitrary violence is what makes colonialism not just an episode of state or individual wrongful action, but one of structural injustice;[12] colonial violence is the heart of darkness.

Of all the recent literature on colonialism, Lea Ypi comes closest to capturing the injustice of colonialism in terms of the creation and upholding of a political association that denies its members equal and reciprocal terms of cooperation. Ypi's thesis is fundamentally correct, although it has recently come under severe critical scrutiny. I believe Ypi's thesis can be vindicated if the inadequate political association that characterizes colonialism is seen through the lenses of the arbitrariness of power. Such arbitrariness was made possible, and institutionalized, both legally and culturally, via the most extreme forms of violence. Finding a place for the historical violence of colonialism, and its arbitrariness, in a normative evaluation of why colonialism is wrong, is also important for the sake of initiating a discourse on the ways of rectifying for the injustice of colonialism. Understanding the role of historical violence within the context of historical injustice has the advantage of projecting the relevance of historical injustice from the past into the present and the future, hence historical

[12] See Lu (2011).

injustice is not simply something that we should be concerned with for the sake of history, but because of the way that its violence is still present with us today.[13]

Not everyone agrees with Ypi that colonialism always instantiates a *distinctive* kind of procedural wrong. Valentini (2016) resists this conclusion, arguing that colonialism is procedurally wrong, although there is no distinctive procedural wrong of colonialism. Valentini's argument is meticulous, therefore in what follows I'll focus on only one (major) aspect of her complex analysis. Valentini distinguishes between an 'aggregate' and a 'corporate' account of the potentially distinctive procedural wrong of colonialism, suggesting that neither interpretation is convincing. Regarding the former, Valentini highlights four reasons why, according to Ypi, colonialism is distinctively wrong: lack of voluntary consent; members unequal subjection to colonial laws (and unequal capacity to change it); colonial law's negative impact on future generations of victims of historical injustice; colonial laws' inadequate manner of 'tracking the will' of historically wronged groups. Valentini then proceeds to discard all four reasons; her detailed analysis is both informative and, at least at first appearance, convincing; if she is right, then Ypi's argument that colonialism represents a distinctive procedural wrong is untenable.

There are two ways to rescue Ypi's argument from Valentini's attack. One strategy is to go over each of the four points Valentini rejects, and present counter arguments. I'll leave this to others (Ypi perhaps) to attempt this feat. Instead, I want to pursue another strategy. What Ypi perhaps should have said, but failed to say, is that at the heart of the distinctively

[13] See Mbembe (1992, 3) on the violence which the colonial relationship, *par excellence*, involves: "the postcolony is also made up of a series of corporate institutions and a political machinery which, once they are in place, constitute a distinctive regime of violence". I am grateful to Anne Phillips for alerting me to Mbembe's work.

procedural wrongness of colonialism is the *arbitrariness* of colonial laws. In other words, while colonial powers have no interest in seeking voluntary consent, it is not the lack of voluntary consent that makes colonialism stand out, since this is a feature of many other forms of injustice. Instead it is the arbitrary nature of colonial laws that is a distinctive feature, and what makes colonialism distinctively wrong. In the context of colonialism, arbitrariness is ubiquitous. The extreme and brutal violence that defines experiences of colonialism is per se contingent, since many cases of historical injustice are also accompanied by unnecessary suffering, but the arbitrariness in which violence was orchestrated under colonialism is distinctive. So contra Valentini, perhaps Ypi was right after all to argue that colonialism always instantiates a distinctive kind of procedural wrong, even though Ypi did not fully appreciate the political function of arbitrariness which makes this type of injustice distinctive.

## V. CONCLUSION.

Domination is the chief cause of the injustice of colonialism, but that's not all. This article suggested that it is the arbitrary nature of the power relations of domination between colonizers and the colonized which is at the heart of the injustice of colonization, and violence was the way arbitrariness and domination was cemented.

Violence makes the victims and survivors feel vulnerable, violated, degraded and inferior to the perpetrators of violence, morally and politically. Being the subject of arbitrary violence undermines a person's self-respect, self-esteem, and epistemic status. Violence captures the unequal relationship of power between perpetrators and victims or survivors, exposing the powerlessness of the latter. Alessandro Salice (2014, 161) suggests that there is more to violence than the causing of harm, since violence is first and foremost a social act, characterized by the desire to establish a social relation of violence in which what matters is

that the victim realizes that the aggressor intends to harm them: in performing an act of violence "one is inflicting harm on the victim with the concomitant intention that the victim becomes aware of the damage and of its 'author'".

Understanding violence as a social act is important for many reasons, not least because it puts the lack of equality and reciprocity in political relations lamented by Ypi within a context of violence. Like violence, equality and reciprocity are social phenomena. Acts of arbitrary violence generally reveal unjust relations of domination, oppression and misrecognition. Any debate about the best way to rectify historical injustice must take into account the violence at the heart of the injustice, its arbitrariness, and enduring qualities. Violence is not an exclusive property of colonial states, since violence, and especially state violence, can also be found in democratic states and societies. But in the context of colonialism the violence is fundamentally different from the violence that one finds in a democracy. The difference is the arbitrary nature of colonial violence, and arbitrariness is what makes colonialism not just wrong but distinctively so.

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