Back to Basics: The Conditions of Just Refugee Returns

Megan Bradley

This article argues that the questions of justice surrounding repatriation processes merit greater scholarly and political attention, and sketches a minimum account of the conditions of 'just return'. This account is developed on the basis of an analysis of international legal principles, as well as moral arguments on rights, dignity and state responsibility. While there is no standard mould for just return, broadly speaking the goal of a just return process must be to put returnees back on equal footing with their non-displaced co-nationals by restoring a normal relationship of rights and duties between the state and its returning citizens. The conditions of just return match the core duties a legitimate state must provide for its citizens: equal, effective protection for their security and basic human rights, including accountability for any violations of these rights. This discussion underlines the importance of upholding the principle of refugee choice, and points to the central role of reparations in the just return process.

Introduction

In his 2005 Tanner Lectures on Human Values, Israeli philosopher Avishai Margalit (2005) points out that 'we tend to talk of peace and justice as we do of fish and chips—as two complementary things'. Linking peace and justice is de rigueur in the international political arena, and to argue against a just (Palmer 2005). Given the widely accepted link between the resolution of refugee crises and successful peace processes, and the increasing importance of repatriation as a durable solution to displacement, scholars and policymakers have good reason to be concerned with the extent to which return processes meet basic conditions of justice.[2] Yet the notion of just return has attracted little attention in international politics. Indeed, in hastily planned, under-resourced repatriation operations where 'the lucky ones' get a bag of seeds and a plastic tarpaulin, talk of justice may seem overly ambitious or utterly irrelevant.

In this article, I will argue that the question of just return merits greater scholarly and political attention, and will sketch a minimum account of the conditions of just return. I will develop this account by drawing on international legal principles, as well as moral arguments on rights, dignity and state responsibility. There is no standard mould for just return. However, I will contend that broadly speaking, the goal of a just return process must be to put returnees back on an equal footing with their non-displaced co-nationals by restoring a normal relationship of rights and duties between the state and its returning citizens. The conditions of just return match the core duties a legitimate state must provide for its citizens: equal, effective protection for their security and basic human rights, including accountability for any violations of these rights. Establishing these conditions is a critical expression of the state of origin's remedial responsibility for forced migration.[3] These conditions are also implicit in the international refugee regime's norms on repatriation.

The norms developed by UNHCR and the UN Member States on voluntary repatriation and return in 'safety and dignity' provide the legal and political framework within which just return

is pursued. However, the notions of voluntary, safe and dignified return have typically been discussed in principally legal and operational terms; their moral dimensions have been neglected or interpreted inconsistently. In response to this analytical gap, I explore the moral and political origins and implications of these interconnected norms, focusing in particular on the under-examined notion of *dignified* return. This discussion underlines the importance of upholding the principle of refugee choice, and points to the central role of redress in just return processes. My analysis will begin with an examination of why just return merits greater practical and scholarly consideration, focusing on the status of return as a morally and legally defensible right.

Before embarking on this analysis, however, it must be stressed that the model of just return that I develop in this paper is an ideal (albeit minimum) account that naturally cannot apply neatly to practice in every circumstance. I suggest that creating just conditions for return is an essential demonstration of the state of origin's responsibility for forced migration, and that just return is best understood as the restoration of a normal relationship of rights and duties between returnees and the state, such that returnees and their non-displaced co-nationals are rendered equal as citizens. What relevance does this model have for situations such as the conflict in the Balkans, where refugees returned to states that did not necessarily exist prior to their displacement? What insight does this account hold for cases such as the Palestinian refugees, in which the vast majority of the displaced are not citizens of the state that is (arguably) principally responsible for their displacement? What does just return mean for displaced persons who are legally stateless? My account of just return focuses on the paradigmatic case of refugees who are citizens of the state responsible for their displacement, and the challenges posed by statelessness and disruptions in state continuity are largely outside the scope of the present analysis. However, this model can be used as a starting point to elucidate the responsibilities states may hold towards non-citizens whom they have displaced.[4]

Why Worry about Just Return?

Internationally-supported repatriation movements are complex logistical feats, and the justice issues at stake in these processes can get lost amidst the provisions of operational handbooks and heavy bureaucratic structures. In this chaotic environment, why is it important to focus attention on the seemingly ambiguous, ambitious idea of just return, rather than the more modest goal of a decent or sustainable return? Why argue for a minimum account of just return, rather than an expansive list of ideal conditions?

Historically, the durable solutions system has not functioned with justice considerations first in mind. In his 1954 Nobel Peace Prize lecture, the first UN High Commissioner for Refugees, van Heuven Goedhart, commented that resettlement took place according to 'reversed Darwinistic principles' that privileged the 'exodus of the fittest'. In the same speech the High Commissioner opined that 'voluntary repatriation is no longer of great importance' (van Heuven Goedhard 1955). Time has disproved this assessment, but the international refugee regime has retained many of the Darwinian qualities Goedhard identified. For example, it is widely recognized that well-resourced, educated refugees are more likely than their illiterate, impoverished counterparts to find permanent asylum or resettlement opportunities in affluent democratic countries. The upshot of this trend is presumably that the majority of returnees are likely to come from economically disadvantaged or socially marginalized backgrounds, which can hamper their ability to organize themselves politically, to demand that the conditions of their return are just.[5] This renders it all the more

important for refugee advocates and scholars to give the issue of just return due consideration, in order to ensure that they are able to effectively amplify returnees' claims and concerns.

Contemporary international political rhetoric posits strong, mutually reinforcing links between peace and justice on the one hand, and between peace and repatriation on the other. If these links are as firm as the rhetoric suggests, then there are compelling practical reasons to take the question of just return seriously, in order to avoid future conflict. Yet history suggests that the connection between peace and justice cannot be taken for granted. For example, sustainable peace was achieved in post-apartheid South Africa without a comprehensive justice process. Indeed, many commentators suggest that South Africa's apartheid leaders would have prolonged their hold on power if trials rather than amnesties had been on the political horizon. In recent years, western powers adamantly underlined the link between peace and justice in the former Yugoslavia, where they invested heavily in justice apparatuses such as the International Criminal Tribunal for the Former Yugoslavia (ICTY). However, it is far from certain that the ICTY and related justice processes have translated into a sustainable peace in the Balkans. Sceptics and supporters of the court alike acknowledge that the Tribunal was above all a face-saving mechanism launched, in the view of one UN official,

> as a result of public opinion pressures . . . more as a substitute for an effective
> political or military intervention by the Security Council than as a [display of]
> genuine belief in the virtues of international justice (Beigbeder 2002: 50).

Margalit's theoretical work also challenges the view that 'peace and justice are, if not indivisible, at least close associates' (Shawcross 2000: 187). In an exposition on the morality of political compromise, Margalit argues that

> peace is justified if it is not based on a rotten compromise [which establishes or
> maintains a political order based on systematic cruelty and humiliation] . . .
> Peace can trump the pursuit of justice if the pursuit of justice endangers
> peace (2005: 194).

Margalit does not dispute that conflicts *should* be resolved in a just manner. Indeed, this 'is so clear and so boringly right that there is nothing useful to add to it' (2005: 222). However, Margalit recognizes that the winning party in a war is rarely swayed by claims about what is right, and argues that in certain circumstances it is morally permissible, and even morally required, for negotiators from the weaker side to seize the opportunity to make a decent peace, even if it means compromising on principles of justice. Margalit's proposal challenges contemporary 'received wisdom' on the inseparability of peace and justice, while advancing an alternative approach to thinking about peace in terms of decency and honour. What are the implications of this argument for the pursuit of just return? To what extent are the conditions of return (and return itself) subject to compromise? Can return be understood as an issue of decency, rather than as a question of justice?

Return must be discussed as an issue of justice because first and foremost, return is a right; respecting rights is not simply a question of decency, but a matter of justice. The right to return is implicit in the widely accepted view that the state's legitimacy derives from its role as the protector of its citizens (Deng 1995; International Commission on Intervention and State Sovereignty 2001). If the state is to maintain its legitimacy, it cannot dole out protection on a selective basis; its exiled

citizens must have the right to return to the state and benefit from its protection. The right of return is also set out in numerous UN resolutions and international conventions. Perhaps most famously, Article 13(2) of the Universal Declaration of Human Rights provides that 'Everyone has the right to leave any country, including his own, and to return to his country.' Admittedly, many refugees are loath to repatriate, but are compelled to exercise their right of return as access to other durable solutions is increasingly scarce. At the same time, many refugees thirst for the chance to return to their homelands, and perceive their continued exile as a humiliation or act of systematic cruelty.[6] This suggests that attempts to limit or compromise on refugees' right to return should be treated with caution because, in Margalit's terms, this is the kind of trade-off that smacks of rotten compromise. This is not to say that the process of return is exempt from negotiation simply because it is a right. Indeed, each return operation presents unique challenges and conflicts of interest which must be negotiated if the right of return is to be realized. However, these discussions must be based on the recognition that return is an issue of justice, given its status as a right.

Beyond legal and moral arguments surrounding the right of return, there are compelling pragmatic reasons why just return merits greater political and scholarly attention. First, many refugee populations are highly politicized, with clear views on their rights; how their situation compares to other cases of displacement; and how their dilemma should be resolved. For example, as the Commissioner-General of the United Nations Relief and Works Agency (UNRWA) has noted,

> Palestinians—refugees and non-refugees alike—are astute, seasoned observers of the international scene. They are aware that in the standard refugee paradigm, refugee status is not meant to be permanent. They know that in other contexts, refugee situations are resolved when international pressure is applied through international political channels to resolve the root causes of a conflict. And they know that such resolution enables refugees to return voluntarily in safety and dignity to their countries of origin (Koning AbuZayd 2006).

Palestinian refugees are increasingly informed about international standards on justice and repatriation, and are prepared to argue that their situation should not be immune from the application of these standards. Identifying a clear account of the conditions of just return and applying these conditions in an even-handed manner in different displacement situations can gain refugees' support for repatriation plans, and is essential to ensuring that expectations are realistic and return sustainable.

The experiences of South Africa and the former Yugoslavia notwithstanding, it behoves policymakers to be concerned about the justness of return on the grounds that if the conditions of repatriation are widely seen to be unfair, this may spark future conflict. In his influential 1795 pamphlet 'Toward Perpetual Peace', Kant (1991: 93) argued that 'no treaty of peace shall be held valid in which there is tacitly reserved matter for future war.' Margalit (2005: 208–223) shares Kant's concern with irredentism, arguing that a political compromise reached in the name of peace cannot be considered decent or honourable if it is likely to serve as an impetus for future conflict. Most modern peace treaties include articles on the return of refugees and IDPs, with many mirroring the comprehensive provisions on return laid out in the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina. In some recent peace agreements, however, certain key principles are conspicuously absent. For example, neither the 1992 General Peace Agreement for Mozambique nor the Interim Agreement for Kosovo affirm the voluntary nature of

return. The 1999 Lome´ Agreement, which ended the conflict in Sierra Leone, does not explicitly guarantee refugees' right to return to their former homes (Phuong 2005). Other agreements are silent on issues such as property restitution and amnesties for failing to complete military service. If peace agreements do not set the stage for a just return process, returnees' grievances will likely go unanswered and may be exacerbated. In turn, this heightens the prospects of future conflict, on local or larger scales. In cases such as Bosnia, nationalistic actors have tried to impede the return processes, often with the express intention of stirring up conflict. Generally speaking, however, prolonged conflict is decidedly against the interests of the state of origin, its citizens and neighbours, and the international community. Just return is therefore not only a legal and moral enterprise, but is also a question of stark self-interest.

Given that return merits serious moral, political and legal concern, what is the rationale for attempting to articulate a *minimum* account of the conditions of just return? Why not set out an expansive, ideal account of returnees' entitlements? First and foremost, the conditions of just return cannot be a wish list if the concept of just return is to be analytically incisive or practically useful. Large-scale repatriation operations take place in remarkably diverse cultural contexts, typically in countries which are emerging from war and struggling to achieve even basic development standards. A theory of just return must respond to this reality. It must resonate in different cultural contexts, and take into account the fact that the chief actor responsible for just return, the state of origin, most likely lacks the capacity to establish even minimum conditions of just return without support from donors and international agencies. While in exile, many refugees benefit from superior conditions to those endured by IDPs and their non-displaced former neighbours. It is neither realistic nor fair to suggest that conditions in return communities must meet the standards enjoyed in affluent countries of asylum before refugees can reasonably be expected to return, or before return can be said to be just. Rather, basic conditions of security and respect for human rights must be in place, with decent prospects for the economic development that is necessary to sustain these conditions. Walzer's concept of 'thick' and 'thin' morality is particularly instructive when considering the salience of a minimum account of the conditions of just return. In contrast to scholars who argue in support of an expansive set of purportedly universal human rights, Walzer (1994: 2) emphasizes that '[m]oral terms have minimal and maximal meanings; we can standardly give thin and thick accounts of them, and the two accounts are appropriate to different contexts, serve different purposes.' While elements of thin, universal morality exist within thick, particular moral systems, thick morality is robust because it is embedded in a political community's history and culture (Walzer 1994: xi). When moral debates occur *within* a particular community, the discussion takes place in terms of the thick morality that arises from shared experience and nuanced understanding of cultural and political values. Owing to the depth of thick moral values, Walzer (1994: 6) argues, these commitments go hand in hand with more 'qualification, compromise, complexity and disagreement'. Thin morality only comes into play when moral arguments are being made that reach across different cultures or local contexts. An argument about the general conditions of just return that seeks to be relevant in dramatically different repatriation scenarios must therefore be based on principles of thin morality. Although only a minimal set of moral values resonate across cultures, this does not mean that thin morality is 'substantively minor or emotionally shallow' (Walzer 1994: 6). As Walzer (1994: 6) freely admits, 'There isn't much that is more important than ''truth'' and ''justice'' minimally understood.'

While various objections can be raised to Walzer's concept of thick and thin morality, his account compellingly underlines the importance of not overstretching claims about universal

principles or values. A sounder approach is to reason from the basis of a limited set of moral values or obligations that can realistically be expected to hold in diverse cultural and political circumstances. The moral systems of political communities that have undergone mass migrations are likely experiencing serious shockwaves. Yet even in such turbulent circumstances, cultural mores persist that affect how individuals perceive justice and engage in political processes, including those associated with repatriation and reintegration. A minimum account of just return should identify core principles and benchmarks to guide policymakers, while leaving ample room to expand on the concept of a just return and the activities that may be undertaken in pursuit of it, in accordance with particular values and beliefs.

The Foundations of Just Return: Legal Provisions on Repatriation and their Moral and Political Implications

Article 13(2) of the Universal Declaration of Human Rights sets out the right of return, but places no conditions on the quality of this homecoming. Yet just as there are conditions such as access to legal counsel and an impartial judiciary that must be met before a defendant can be said to enjoy her right to a fair trial, there are conditions that govern the just implementation of the refugee's right to return. As Zieck (2004: 33) points out, the 'handful of legal norms that govern the solution [of return] are fairly simple, yet in their straightforwardness prone to concealing its complexity'. International law states that repatriation processes must be voluntary, and must take place in 'conditions of safety and dignity'. These terse legal norms have garnered widespread support from states, international organizations, scholars and advocates, and represent the pillars of legal justice for returnees. They must therefore be accounted for in any politically and legally tenable theory of just return. Thinking about the conditions of just return is an opportunity to contextualize these legal provisions, and explore their political and moral nuances. My analysis suggests that the international legal norms on voluntariness, safety and dignity are bound up with compelling moral principles of equality, liberty and accountability, which must underpin any defensible account of just return.

In this section, I will discuss the evolution and implications for just return of the norms on voluntary repatriation and return in conditions of safety and dignity. This discussion must be prefaced with the recognition that a vital pre-condition for just return is the cessation of the conditions that forced refugees to flee their homes in the first place. Internationally supported repatriation processes typically take place between the original exodus and the official cessation of refugee status for all the members of a particular refugee group. The cessation of refugee status is only intended to take place when the actors involved are soundly convinced that the causes of flight have been permanently resolved, and it is tacitly understood that the conditions under which return takes place may fall short of the standards for cessation (Zieck 2004: 37). International agencies such as UNHCR *facilitate* or actively *promote* return, depending on the extent to which conditions have improved in the country of origin. The facilitation of return involves services such as coordinating transportation and documentation for those refugees who request assistance to repatriate. In contrast, when UNHCR promotes return, it directly encourages refugees to consider return as a viable solution to their displacement, and often negotiates tripartite agreements with the states of origin and asylum, to govern the return process. When UNHCR promotes rather than facilitates return, it also offers a wider range of assistance programmes, such as 'go and see' visits and local reintegration initiatives.

International organizations like UNHCR play a pivotal role in working with states of asylum and states of origin to ensure that conditions of return are just. However, any discussion of just return must be informed by the recognition that actors such as UNHCR often face dilemmas in which they are pushed by countries of asylum or other actors to actively promote repatriation, even when conditions in the country of origin are far short of ideal (Zieck 2004: 37–40). In these cases, UNHCR's policy is to support return operations 'when the life or physical integrity of refugees in the country of asylum is threatened to the point that return is the safer option' (UNHCR 2002, para. 29). Although this type of balancing act is an unfortunately necessary reaction to the political realities of the contemporary refugee regime, it unavoidably has negative consequences for the preservation of the voluntary nature of repatriation processes.

The Voluntary Character of Return

The conventional insistence that return may only take place at the refugee's voluntarily expressed wish is often seen as the upshot of the refugee regime's cardinal rule against *refoulement*. While provisions on return in 'conditions of safety and dignity' did not begin to appear in major international agreements until the late 1980s, the 1950 Statute of the Office of the United Nations High Commissioner for Refugees gives the Commissioner a mandate to facilitate *voluntary* repatriation. The first significant piece of international law to include detailed principles on voluntary return, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, emphasizes the 'essentially voluntary character of repatriation' (Article 5.1). Fifteen years later, the 1984 Cartagena Declaration on Refugees underscored the 'voluntary and individual character of [the] repatriation of refugees' (Article 12). UNHCR Executive Committee Conclusion No. 40 (XXXVI) of 1985 set out the terms for the agency's rapidly expanding involvement in repatriation operations, emphasizing that 'the repatriation of refugees should only take place at their freely expressed wish and the voluntary and individual character of [the] repatriation of refugees . . . should always be respected'.

UNHCR's courage of conviction on this point has wavered over the past 20 years. Prompted by the popularization of temporary protection measures, UNHCR, UN Member States and refugee advocates have become enmeshed in a fierce, unresolved debate on whether return can be involuntary, and yet legally and morally just (for a discussion of the rise of temporary protection measures in Europe, see Gibney 2000). In other words, is 'mandated repatriation' simply a euphemism for *refoulement*? (Hathaway 1997: 554) Scholars Hathaway and Chimni have served as two of the foremost protagonists in this debate. Arguing from a legal perspective, Hathaway (1997: 551, 553) maintains that refugees are entitled to 'dignified and rights-regarding protection *until and unless* conditions in the State of origin permit repatriation without the risk of persecution'. Chimni (1993: 454) counters that 'to substitute the judgement of States and institutions for that of refugees, is to create space for repatriation under duress, and may be tantamount to *refoulement*'.

Given the dearth of firm legal guidance on the permissibility of mandated return, a normative analysis may help guide practice. Clearly part of what makes the creation of refugees so heinous is that it strips citizens of much of their capacity to make free decisions about their lives. A just return process should counteract this coercive experience by empowering returnees to choose between as wide a range of options as possible regarding their repatriation. This does not mean that refugees must have the right to stay in their country of asylum indefinitely.

Repatriation may run against the refugee's preference, but this does not necessarily entail that it is unjust. Generally speaking, a sovereign state is entitled to restrict the entrance of non-members, but is obliged to forgo this prerogative when a refugee is seeking asylum (Walzer 1983). However, when conditions in the refugee's country of asylum are stable and the reasons for the refugee's flight have been resolved, a country of asylum may legitimately require the refugee to repatriate, as it reasserts its right to limit non-members' access to its political community. To be sure, many states of asylum have historically abused this right by prematurely terminating the protection offered to refugees. Albeit repugnant, this abuse of power does not vitiate the argument that in certain circumstances, asylum may legitimately be extended on a temporary basis, and revoked at the discretion of the host state.

Although the crucial choice of whether or not to repatriate may ultimately be made by the host state, the country of asylum is only one of the many actors who determine the range of choices open to the returnee: the state of origin can and should put other important choices into the refugees' hands, such as whether to return to original homes or relocate to a new community, and what shape reintegration and development programmes should take. The legally and morally problematic nature of involuntary return underlines the importance of international cooperation to support the state of origin's ability to create the best possible conditions of return. If just conditions of return are in place, including basic security, respect for human rights, and viable development prospects, more refugees are likely to make the choice to return voluntarily, thereby sidestepping the difficult question of forced repatriation.

Return in 'Conditions of Safety and Dignity'

The voluntary nature of repatriation and refugees' ability to exercise choice are closely intertwined with the notion of a safe and dignified return. The notions of safety and dignity also bear heavily on the pursuit of justice in return. Provisions on return in conditions of safety and dignity emerged relatively recently in the international refugee regime, yet this norm is evolving into a critical principle for the protection of returnees. To be sure, the notion of dignity is deeply embedded in both 'hard' and 'soft' international law. For example, Article 1 of the Universal Declaration of Human Rights proclaims that 'All human beings are born free and equal in dignity and in rights.' However, there is no commonly accepted definition of dignity (or, indeed, of safety) in national or international law.

The 1969 OAU Convention and the 1984 Cartagena Declaration were the first major international instruments to emphasize the importance of return in conditions of safety, with Article 12 of the Cartagena Declaration stating that repatriation must 'be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.' Neither agreement mentions dignity. The 1989 International Conference on Central American Refugees (CIREFCA) Declaration and Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons, appears to be the first significant agreement to incorporate articles on return in safety and dignity, pledging to ensure that refugees could repatriate 'under conditions of personal security and dignity that would allow them to resume a normal life' (Article 3). After the signing of the CIREFCA Declaration, provisions on safe and dignified return were incorporated in a striking number of national laws, international agreements, peace treaties, Security Council resolutions, and General Assembly resolutions, including the Millennium Declaration. In a particularly strong indication of the growing traction of norms on

safe and dignified returns, the duty to enable internally displaced persons (IDPs) to return to their homes 'in safety and with dignity' was included in the Guiding Principles on Internal Displacement (Principle 28.1).

In spite of their abundance, these provisions offer only limited insight into the origins and meaning of the idea of safe and dignified return. A content analysis of the speeches delivered by the UN High Commissioners for Refugees between the late 1970s and 2006 suggests that UNHCR rhetoric on return in safety and dignity predated and arguably triggered the watershed of provisions on safe and dignified returns in international laws and agreements. Ninety-two per cent of the speeches delivered by High Commissioners between the late 1970s and 2006 addressed return, with 25 per cent of the speeches including the rhetoric of return in 'conditions of safety and dignity'. This analysis demonstrates that High Commissioner Hocke´ was largely responsible for popularizing the language of return in safety and dignity, as 100 per cent of the speeches he delivered from 1986 to 1989 tackled the subject of repatriation, while two thirds linked repatriation with the notion of dignity (Bradley 2008).

While these speeches illuminate the leading role UNHCR played in introducing and developing the concept of safe and dignified repatriation as an important protection norm foundational to the concept of just return, they also point to the troubling antecedents of the idea. Barnett and Finnemore (2004: 101) suggest that when UNHCR became actively concerned with human rights conditions in refugees' countries of origin in the 1980s, the agency 'tried to avoid offending sovereignty-sensitive governments by asking for ''safety and dignity'' and not a marked improvement in human rights.' In a speech on displacement in the former Yugoslavia, High Commissioner Ogata (1992) infamously contended that protection 'means not only the right to seek asylum from persecution, it also means the right of return for all those who so desire, and above all, it means the right to be allowed to remain in one's home in safety and dignity.' To be sure, strong theoretical arguments can be mounted in support of the right to remain. However, conditions in much of the former Yugoslavia had deteriorated so dramatically that, at the time, advocating for the right to remain was incompatible with due regard for civilians' wellbeing. This application of the rhetoric of safety and dignity undercut both its credibility and its relevance to the concept of a just return.

Beyond the troubling origins of this norm, the concept of return in safety and dignity has at times proven difficult to use as a practical guideline for the governance of return processes.[7] This is in part because the concepts of return in safety and dignity are, as Zieck (2004: 37) acknowledges, 'rather indeterminate'. Through the 1996 UNHCR *Handbook on Voluntary Repatriation: International Protection* and subsequent policy documents, UNHCR has elaborated on the content of this principle, focusing in particular on the physical, legal and material safety of returnees. This tripartite approach to safety for returnees is further developed in documents such as UNHCR's background paper on voluntary repatriation for the Global Consultations on International Protection. According to UNHCR, physical safety entails a secure return environment in which there is protection from attacks and harassment; guaranteed freedom of movement; and access to de-mined or at least demarcated land. Legal safety involves the equal recognition of returnees as citizens before the law, and 'non-discriminatory access [to] and exercise of civil, economic, social, political and cultural rights' (Englbrecht 2004: 101). Material safety implies access to humanitarian assistance and essential services in the early phases of the return process, and, in the longer term, sustainable reintegration and economic development opportunities. Indeed, material conditions often have a decisive effect on the decision to repatriate, as well as on prospects for reconciliation, as the reconstruction of relationships at the grassroots

and community levels can be undermined by conflict over scarce resources and development opportunities (Englbrecht 2004: 101–102).

Levels of physical, legal and material safety are interdependent, and have repercussions not only for returnees but also on the wellbeing of other members of return communities. Resolution 1998/26 of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities is tantamount to a checklist of many of the aspects of just return that fall under the rubric of physical, legal and material safety. The resolution acknowledges:

> . . . the right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence, including . . . their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy all necessary social and economic services, in an environment free of any form of discrimination.

By emphasizing the need to abolish all forms of discrimination, Resolution 1998/26 affirms that re-establishing the returnee as an equal citizen in her country of origin is an integral part of the pursuit of physical, legal and material security for repatriating refugees. Taken in total, resolutions such as 1998/26 and the UNHCR repatriation handbooks provide detailed insight into the content of safety as a core condition of just return. These details are consistent with the expectations a repatriating citizen can justifiably bear towards a reformed, responsible, legitimate state of origin. As Shacknove (1985: 281) argues, 'No reasonable person would be satisfied with less.'

In contrast to the progress made in identifying criteria to judge the safety of return operations, the concept of dignity remains murky. The UNHCR (1996: 11) Handbook on Voluntary Repatriation concedes that 'the concept of dignity is less self-evident than that of safety', and suggests that

> In practice, elements must include that refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the *full restoration of their rights*.

These provisions support the notion that a just return must involve protection for human rights, including accountability for past violations. Notably, the *Handbook on Voluntary Repatriation* links respect for returnees' dignity with the durability of repatriation, a connection which is bolstered by many NGOs involved in return operations (UNHCR 1996: 14; Ferris 2002).[8]

In spite of these clarifications, UNHCR's policy statements and handbooks tend to characterize dignity as an item on an operational checklist; in fact, the first point on the agency's Checklist of Main Protection Activities in Voluntary Repatriation Operations is the need to 'ensure the voluntary nature of repatriation and that it takes place under conditions of safety and dignity' (UNHCR 1996: 70). Yet the concept of dignity is too cross-cutting and complex to be reduced into a checklist. The theoretical perspectives on dignity developed by philosophers and political theorists can shed greater light on the meaning of dignity, and its implications for the conditions of just return.

To be sure, there is no definitive philosophical account of dignity. While some theorists portray dignity as the source of human rights and an essential, inalienable quality of all human beings, others contend that dignity is itself a right, or is achieved through respect for basic rights. Some scholars depict dignity as simply self-respect (Pritchard 1972; Spiegelberg 1971). Although most contemporary theorists agree that cultural context can affect how dignity is expressed, most also view dignity as inextricable from the notion of equality amongst human beings.

Kant offered perhaps the most influential philosophical account of dignity, asserting that each individual possesses dignity by virtue of being an autonomous person. Owing to this dignity, persons must treat each other as ends in themselves, rather than merely as means. Feinberg objects to the suggestion that rights are inherent to human beings in light of their dignity. Rather, Feinberg (1970: 252) contends that human dignity should be conceived of as the 'recognizable capacity to assert claims. To respect a person, then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims.' Building on Feinberg's foundation, Meyer (1989: 533) persuasively argues that dignity must also involve the capacity for self-control: 'A person who has human dignity is fundamentally a person who is self-possessed; he at least has the capacity to give direction to his own life.' Although Meyer's argument is based on Feinberg's decidedly un- Kantian precepts, his emphasis on the importance of autonomy and the ability to exercise choice strongly echoes key components of Kant's moral framework. In Meyer's account, an abusive or overbearing state represents a serious threat to the individual's dignity, as such a state undermines the citizen's ability to direct her own life, and may turn a deaf ear to her legitimate claims.

Strikingly, many authors such as Minow (1999) who are concerned with dignity and massive human rights violations advance a potentially dubious notion of dignity as a quality that can be stolen and restored through political interventions. For example, Goodwin-Gill (1989: 9) writes that the 'purpose of international protection must be to support refugees, and to try to restore their dignity so as to enable them to exercise their essential rights.' Yet there are no clear paths to stifling or reviving dignity. While some survivors of human rights violations attest that transitional justice mechanisms such as truth and reconciliation commissions restored their dignity, others reject the suggestion that a political institution could ever remedy the indignities they suffered. Still others proclaim that they retained their hold on their dignity, in spite of the degrading treatment meted out by their abusers (Bradley 2008).

In light of the highly subjective nature of dignity and its diverse theoretical interpretations, how can those responsible for repatriation operations enact their commitment to ensure that return is safe and dignified? How do the notions of safety and dignity relate to a just return? Despite their diverse philosophical approaches, scholars such as Kant, Feinberg and Meyer convincingly demonstrate the link between dignity and the exercise of free choice. Furthermore, there is broad consensus on the importance of showing equal respect for others' rights and dignity. Equality and choice are not only central to the notion of dignity. As Margalit (2005: 214–215) suggests, the notion of justice itself is constituted by two values, liberty and equality. By restoring refugees' security and protecting their human rights, a just return process enables returnees to enjoy their liberty on equal terms with their fellow citizens.

In the following section, I will contend that states' commitment to upholding returnees' safety and dignity, and by extension their liberty and equality, demands (among other things) that serious inequalities and injustices are recognized, and steps taken to rectify them. Just as there is a subjective element to dignity, there are innumerable competing conceptions of justice. Integrating reparations into return operations therefore cannot guarantee that returnees will

perceive the process as wholly dignified or just. However, the responsibility of the state of origin and other key actors such as UNHCR must be to ensure that the conditions of return are commensurate with respect for dignity in terms of liberty and equality. The provision of redress is one critical demonstration of this respect.

Return and Redress, Return as Redress

> The same moviemaker of the subconscious who, by day, was sending her bits of
> the home landscape as images of happiness, by night would set up terrifying
> returns to that same land. The day was lit with the beauty of the land forsaken,
> the night by the horror of returning to it. The day would show her the paradise
> she had lost; the night, the hell she had fled (Kundera 2002: 16–17).

There is no panacea for all the risks of return. As exiled Czech author Milan Kundera captures in his novel Ignorance (above), the prospect of return melds together great optimism and almost overwhelming trepidation. A dignified, safe and ultimately just return requires that a complex array of factors be brought into alignment, from the presence of peacekeepers and de-mining teams, to the creation of functioning legal systems and opportunities for economic development. Given the wide range of challenges that must be surmounted in the course of a successful repatriation process, why focus on redress as a critical component of just return? In this section I will briefly argue that the duty to redress the injustices at the root of displacement is implicit in the commitment to respect returnees' dignity and human rights. Furthermore, reparations initiatives such as compensation and real property restitution make invaluable contributions towards increasing returnees' physical, legal and socio-economic security, while expanding the range of choices the refugee can make in the context of the return process (Williams 2006: 29). This increases the likelihood that refugees may voluntarily decide to return, thereby circumventing the controversy surrounding 'mandated' repatriation. Redress is therefore instrumentally valuable, as it supports the political goal of enabling sustainable return and contributes to efforts to realize principles such as the right to security and due process under the law. Yet redress also has intrinsic value as a requirement of justice and a reflection of respect for refugees' dignity.

In stressing the centrality of reparations to just return, my intention is not to downplay the importance of other facets of the return process, such as integration initiatives ranging from employment generation strategies to the establishment of schools and clinics. These types of activities are essential to the success of repatriation operations, and in some cases can positively influence inter-communal reconciliation (Chayes and Minow 2003). However, my view is that redress is the aspect of the return process most closely connected to questions of *justice*. For returnees, reparations can help overcome the material challenges associated with repatriation, as well as address the moral and political problem of putting returnees back on equal ground with their fellow citizens. This is not to say, however, that non-returning refugees and non-displaced citizens may not also have legitimate claims for redress. Indeed, in many cases efforts to remedy forced migration and enable just return should be integrated into broader state-sponsored reparations schemes that address grievances shared by the displaced and non-displaced alike.[9]

The full restoration of refugees' rights, which UNHCR (1996: 11) holds to be a fundamental element of a safe and dignified return, is not only a forward-looking process, but must also involve efforts on the part of the state of origin to recognize and respond to the violations that

forced refugees from their homes in the first place (Bradley 2008). This accords with widely accepted view that the agent morally responsible for a violation of rights typically bears remedial responsibility for past wrongs. Kant (1991: 98–99) recognized the inseparability of redress and dignity, arguing that 'the dignity of humanity in us' requires that we not 'suffer [our] rights to be trampled underfoot by others with impunity.' From the perspective of claims-based theories of rights, reparations are essential to dignified, just return because they restore displaced persons' ability to assert claims, particularly against their country of origin. Reparations achieve this outcome in a variety of ways. In particular, redress mechanisms such as trials and claims commissions relocate refugees as citizens with fundamental moral and legal prerogatives, such as the right to lodge a grievance with national or quasi-international authorities, and to receive an even-handed response to this concern. International actors' growing support for reparations mechanisms such as compensation and real property restitution commissions underscores their unwillingness to allow states of origin to strip refugees of their capacity to make reasonable claims for security and respect (Bradley 2008).

By exposing refugees to physical and economic insecurity, return can erode their sense of dignity and restrict the choices available to them for the future. Effectively designed reparations programmes can help to counteract this process by improving both social relations and economic conditions.[10] For instance, restoring lost housing and land provides returnees with shelter and a valuable resource. Indeed, regaining lost property is a core component of just return because many returnees' economic security hinges on access to their land, which they use for activities such as agriculture or commerce. Furthermore, 'few things are as sacred to people as their homes, properties and lands' (Van Boven 1993: x). Enabling return to original homes may go further to creating a sense of psychological security and justice for repatriating refugees than any other initiative. The musings of an elderly refugee woman from Banja Luka who regained her home through the Bosnian property restitution process illustrate this point:

'You must be persistent. If I hadn't been persistent, I would never have returned
to my home. I still have lots of problems. My house needs repairs and
the secondary occupants stole all my possessions. But I am home. I have my
freedom' (Badil 2002).

Many UN resolutions and peace agreements espouse the increasingly predominant view that the right to return involves not only the right to repatriate, but also to re-occupy one's original home (Leckie 2003: 4). Reparations, particularly housing and property restitution processes, are clearly essential to making good on this more rigorous interpretation of the right to return. Yet just as reparations play a key role in enabling the right to return, return itself can be seen as a form of redress. Re-crossing a border is merely one of a long series of steps that comprise the return process, and which together contribute to rectifying the injustice of forced migration by restoring the conditions that existed prior to displacement, and establishing a viable, respectful relation of rights and duties between the state and its returning citizens.[11] While Takahashi points out that 'the theoretical framework for voluntary repatriation remains relatively underdeveloped, compared to other aspects of the refugee issue', this paper suggests that redress may serve as an overarching theoretical concept through which to understand the return process (Takahashi 1997: 593). In reflecting on processes of restoration and responsibility, we may find the origins of a broader theory of return.

1. The views expressed in this paper are solely those of the author, and do not reflect the positions and policies of the Department of Foreign Affairs and International Trade Canada. I am grateful for comments on this work provided by Matthew Gibney, Richard Caplan, Mariève Dubois and two anonymous reviewers. Any errors or omissions are my own.

2. For example, in his 2005 address to the UNHCR Executive Committee, former UN Secretary-General Kofi Annan argued: 'The return of refugees and internally displaced persons is a major part of any post-conflict scenario. And it is far more than just a logistical operation. Indeed, it is often a critical factor in sustaining a peace process and in revitalizing economic activity.'

3. Remedial responsibility denotes a 'special obligation to put [a] bad situation right, in other words to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party that is not shared equally among all agents' (Miller 2001: 454). While academic and political debates on responsibility for refugees typically focus on the duties of states of asylum and international organizations such as UNHCR, states of origin should presumably shoulder the lion's share of remedial responsibility for resolving their citizens' displacement, particularly in those paradigmatic cases in which displacement occurs due to state-sponsored persecution. This view is backstopped by the widespread and deep-seated belief that if B is causally and, in particular, morally responsible for harming C, then B is obliged to remedy the situation.

4. Briefly, I would suggest that when refugees are stateless or are not citizens of the state primarily responsible for their displacement, a just return process would necessarily result in the refugee's (re)acquisition of a functional citizenship. Functional citizenship must include the provision of equitable, effective protection for the citizen's security and basic human rights. In cases in which refugees are stateless, or are not citizens of the state that is principally responsible for their displacement, the state that displaced them is obliged to assist in the process of securing functional rights of citizenship for the refugees. In the Palestinian case, this may involve Israeli support for the creation of a secure and viable Palestinian state, to which the Palestinian refugees would have the right to return. The responsible state is also obliged to provide reparations to people they have displaced, irrespective of whether they are citizens.

5. To be sure, some displaced persons who secure permanent asylum or resettlement in the North return to their countries of origin, and often play key leadership roles in new administrations. For example, as of January 2007, 18 high-ranking representatives serving in the Somali transitional government held Canadian citizenship, including the ministers of education, information, wildlife and trade Conditions of Just Refugee Returns 301 (Wente 2007: A17). Returnees have also held influential positions in the post- Taliban and post-Baathist governments in Afghanistan and Iraq, respectively. These high-ranking, politically connected returnees are certainly not 'typical', although they may have suffered many of the same injustices as those who repatriate in more humble circumstances. These politically savvy, well-educated returnees may help raise the profile of the justice concerns facing the broader returnee population.

6. For example, the majority of Guatemalans displaced during the country's civil war were indigenous peoples with strong connections to their traditional lands. For many indigenous refugees, their displacement was not only physically and economically damaging, but was also a grievous spiritual and psychological injury (Commission for Historical Clarification 1999).

7. See Black and Koser (1999), Long and Oxfeld (2004) and Markowitz and Stefansson (2004) for insightful anthropological and sociological analyses illustrating the difficulty of identifying and, in particular, implementing uniform benchmark indicators to guide return processes. Bagshaw (1997) offers an incisive analysis of the political factors that shape the development of benchmarks for return, focusing on the experience of Bosnia and Herzegovina.

8. The *Handbook* states that return can be actively promoted 'when a careful assessment of the situation shows that the conditions of safety and dignity can be met: in other words, when it appears that objectively, it is safe for most refugees to return and that such returns have good prospect of being durable' (UNHCR 1996: 14). Durability of return is shaped not only by factors such as legal reform and political reconciliation, but also by the material conditions in return communities.

9. De Greiff (2006: 6–7) suggests that effective reparations programmes must be appropriately 'complex', 'coherent' and 'comprehensive'. That is, depending on the needs and constraints in each case, reparations programmes should distribute various material and 'symbolic' benefits (such as apologies), which should be inter-linked in the context of a carefully constructed national transitional justice strategy that responds effectively to the range of crimes that may generate grievances and calls for redress. Although redress processes are often imposed following closed, high-level discussions, ideally they should be negotiated between the state and its citizens, including the displaced, in order to ensure that redress responds effectively to the concerns of different groups. While this is unfortunately rare in practice, experience in countries such as Guatemala offers insight into how such negotiation processes may be approached (see for example Worby 2000, Seils 2002).

10. This is not to say that reparations are the 'silver bullet' for the creation of a just society. Indeed, the nature of a just society is the subject of wide-ranging philosophical and political debate that is outside the scope of this paper. While reparations have a key role to play in enabling just return, understood as a safe and dignified process resulting in the creation of a respectful relationship of minimum rights and duties between the state and its repatriating citizens, redress is only one piece of the puzzle. Similarly, just return is not an endgame, but an opening move in the creation of a just society.

11. If the conditions that existed prior to displacement were systematically unfair, they clearly should not be restored in the name of a 'just' return process.

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