

# Inheriting the Right of Return

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*This Article assesses one kind of argument for an intergenerational right of return in the context of the Israel/Palestine conflict. The question is whether descendants of those who were made refugees in the 1948 War can acquire occupancy rights from their parents through inheritance and bequest over territory that they have never lived on. Standard arguments for their inheriting such rights fail for a range of reasons. However, a less familiar argument for inheritance or bequest succeeds—descendants can acquire such rights because their parents have an interest in their being able to live the kind of life that, due to the violation of their rights, they were deprived of.*

## INTRODUCTION

The 1948 War that took place when the State of Israel was created resulted in a large number of Palestinian refugees. Many lived in poor conditions in refugee camps in, for example, Gaza, the West Bank, and Lebanon. Others escaped to, for example, Jordan, where they were typically somewhat better off, and were granted some citizenship rights. Many Palestinians wished to return, and their right of return was recognized in international law.<sup>1</sup> However, all but a very small proportion were denied return, and their homes, businesses and moveable property were requisitioned by the new state.<sup>2</sup>

Let us call the group of people who were born on the territory that is now governed by Israel, and who were excluded and denied return in 1948, “the

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1 See G.A. Res. 194 (III) (Dec. 11, 1948).

2 For an account of the legal structures that led to this appropriation, see Sabri Jiryis, *The Legal Structure for the Expropriation and Absorption of Arab Lands in Israel*, 2(4) J. PALESTINE STUD. 82 (1973).

original Palestinian refugees.” They are almost all dead. They had occupancy rights and property rights. Occupancy rights are the bundle of rights that a person has to live in a particular territory—in this case, in the whole territory of Palestine—to travel over that territory, to buy and sell property within it on an equal basis, to contribute to the development and functioning of its public social and political structures, and so on. Property rights include the rights of ownership over moveable and immoveable property, but also a set of more particular rights to property, such as easements over land, rights to the profits of sale, and so on. Anyone who evaluates the history impartially will agree that both their property and occupancy rights were violated by those who prevented them from returning and who appropriated their property.

There is a question whether their property and occupancy rights have faded over time. Some argue that as their plans change, their interests in the particular property and territory that they live on diminishes, and their rights fade.<sup>3</sup> But even if this is true in some cases, it has little bearing on our case. Many of the original Palestinian refugees retained an expectation of return—they continued to struggle for return and planned their lives accordingly, up until death.

Furthermore, this view supposes an implausibly strong correlation between the strength of a person’s right and the strength of the interest that it protects. But rights can be strengthened or weakened by the conduct of the right-holder and the conduct of others. Suppose that a person has a right that normally depends on her making or retaining certain plans, as those plans are essential to her having certain interests. Now suppose that she does not make or retain those plans, because she believes that her rights will be violated. Then her lacking the relevant plans has much less bearing on her right. For otherwise one person could undermine the right of another by threatening its violation.<sup>4</sup>

Let us suppose, then, that the original Palestinian refugees retained property and occupancy rights at their deaths. The more challenging question is intergenerational: whether Palestinian refugee descendants have rights that are similar to those their parents had. In a recent book, Anna Stilz helpfully distinguishes three arguments for inter-generationally grounded occupancy rights:<sup>5</sup>

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3 See, e.g., Jeremy Waldron, *Superseding Historic Injustice*, 103 *ETHICS* 4 (1992); MARGARET MOORE, *A POLITICAL THEORY OF TERRITORY* 139–161 (2015).

4 There is a dispute about the extent to which the strength of rights depends on the strength of interests. For discussion in this context, see, e.g., David Lefkowitz, *Autonomy, Residence and Return*, 18 *CRITICAL REV. INT’L SOC. & POL. PHIL.* 529 (2015); Victor Tadros, *The Persistence of the Right of Return*, 16 *POL. PHIL. & ECON.* 375 (2017); CHRISTOPHER HEATH WELLMAN, *OCCUPANCY RIGHTS AND THE RIGHT OF RETURN* (unpublished manuscript).

5 See ANNA STILZ, *TERRITORIAL SOVEREIGNTY: A PHILOSOPHICAL EXPLORATION* (2019).

1. *Identity*: people have rights to reside on territory because of the connection between the territory and their cultural and/or ethnic identity; a connection that arises on an intergenerational basis.
2. *Struggle*: future generations acquire rights to territory by joining the just struggle of their parents to secure the right of return.
3. *Inheritance*: original refugees can pass their property and occupancy rights on to their descendants.

My main focus is on the last of these arguments, but I also set out my views about the first two, for as we will see, there are relationships between these arguments, and between the values they appeal to.

Part I offers a general account of how the right of return is best understood. Part II offers a brief argument against *Identity* as a standalone argument for the right of return. Part III explores *Struggle*. I have defended *struggle* in previous work. One objection to a right of return is that those who claim such a right, despite never having lived on the territory, lack any substantial connection to the territory. A mere wish or whim to live somewhere does not give a person a powerful right to live there.<sup>6</sup> In response, I suggested that through political struggle, the first generation retain a deep connection to their territory; their descendants legitimately join that struggle, and so form legitimate plans to return with their parents; and their plans continue to have significance after their parents die. In her book, Stilz accepts that argument, but only with respect to those who lack adequate opportunities to develop alternative life-plans. I argue that this restriction is unwarranted.

Part IV considers two versions of *Inheritance*. The first appeals to the idea that individuals can voluntarily transfer their occupancy rights. I show that this argument fails because individual occupancy rights are not transferable in that way. The second relies on the ability of groups to transfer those rights. I show that this argument also fails, because even though groups are able to transfer their rights, there are restrictions on their ability to determine whom to transfer them to. Part V defends a much narrower version of *Inheritance*: that those whose occupancy rights have been violated can transfer their rights to their descendants, not because they retain transferable occupancy rights at death, but because they are able to offer opportunities to their children to live lives connected to those they would have been able to live had their rights not been appropriated. In the Conclusion, I explore the connections between the intergenerational arguments that I explore.

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6 Tadros, *supra* note 4.

## I. HOW TO UNDERSTAND THE RIGHT OF RETURN

The backdrop to an argument for the right of return is the uncontroversial idea that people have a right to move around the globe, and to interact on an equal basis with others, including settling elsewhere, insofar as their ability to do this does not impose costs on others. Any restrictions on immigration must be justified by the restrictions and costs that this will place on others. There is disagreement about the strength of the interest that people have in global movement and interaction, and settling anywhere in the world, where some think that this is sufficiently important to ground a human right, and others doubt that this is so.<sup>7</sup> There is also a question when an interest grounds a right, but not a human right. But the general idea that there is some interest in global movement and interaction is relatively uncontroversial, and that interest is surely powerful enough to ground a right where there are no competing considerations.

How should we understand the right of return? The term “right of return” is somewhat misleading. What the original Palestinian refugees had (or at least were entitled to, assuming that any restrictions on these rights imposed by the British Mandate were unjust), and then lost, were occupancy rights over the whole of Israel/Palestine. They also had particular legal property rights in certain land, homes and businesses that they lost in 1948 or shortly afterwards.

The right of return is not fundamentally concerned with property rights. Owning immoveable property in a territory is neither necessary nor sufficient for a right to reside permanently in that territory with the range of political rights that go with permanent residence. It is not necessary, as many citizens of states lack ownership rights over immoveable property. But it is also insufficient because a person may own immoveable property in a state that she is not a citizen of, and where she lacks permanent residency rights.

The property rights that Palestinians had, and that were violated, cannot now be restored to the current generation for the most part because most of the property over which they had rights either no longer exists or is fundamentally altered. There is a difficult question when rights to that actual property survive alterations in property, that I set aside. I assume that the appropriate remedy for the violation of these property rights is mainly compensation rather than

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7 Compare JOSEPH CARENS, *THE ETHICS OF IMMIGRATION* (2013); Keiran Oberman, *Immigration as a Human Right*, in *MIGRATION IN POLITICAL THEORY: THE ETHICS OF MOVEMENT AND MEMBERSHIP 1* (Sarah Fine & Lea Ypi eds., 2016), with Christopher Heath Wellman, *Immigration and Freedom of Association*, 119 *ETHICS* 109 (2008); STILZ, *supra* note 5, at ch.7.3.

specific performance, given that specific performance is typically either impossible or extremely demanding and burdensome.

The central question is whether the current generation of Arab Palestinians who are currently excluded from part of the territory of Israel/Palestine have occupancy rights over Israel. The best reading of the right of return is that this is a right to occupancy over the whole of Israel/Palestine, as opposed to a right just to return to the particular part of the territory that the returnee (or their ancestors) occupied.<sup>8</sup> A person's occupancy rights are not restricted to the particular land that they own, nor the village or county they reside in. Rather, people have occupancy rights over a larger territory, including parts that they have never lived in. For example, it is a central part of my occupancy rights that I can permanently reside in any part of the UK. And that allows me to plan my life within the territory that I have rights over. I might decide, for example, to live in the Midlands for a while and retire to the coast. Or to move nearer to friends and relatives who live in the South later in life, and so on. Such plans are not contingent on my ability to secure rights of citizenship, as I have occupancy rights over the whole territory. And as a result, I come to see that territory as central to my political identity. Political decisions to change the borders of a country do not affect these rights; indeed, my occupancy rights over the territory determine when it is permissible for the UK to change its borders.

The occupancy rights that Palestinians most plausibly claim are not exclusive. They are the right to share occupancy of the whole territory with Jewish Israelis, Arab Israelis, and other minorities on an equal basis. These rights include the right to buy and sell property, the right to participate in public life on the territory on an equal basis with co-members, the right to access public resources on the territory on an equal basis, the right to participate in shaping the social and political community and institutions on an equal basis, and so on.

For this reason, arguments for the right of return are best seen as arguments for a one state solution, where that state recognises and grants equal political and social rights to Arab Palestinians, Jews and others within the whole territory of Israel/Palestine.<sup>9</sup> This is because restrictions on occupancy rights are inherent

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8 For this narrower view of the right of return, see, e.g., Raja Halwani, *The Right of Return*, in RAJA HALWANI & TOMIS KAPITAN, *THE ISRAELI-PALESTINIAN CONFLICT: PHILOSOPHICAL ESSAYS ON SELF-DETERMINATION, TERRORISM, AND THE ONE-STATE SOLUTION* 72 (2008).

9 For some cultural and practical arguments for a one-state solution, see, e.g., Raja Halwani, *The One-State Solution*, in *The Israeli-Palestinian Conflict*, *supra* note 8, at 198.

to state structures. Thus, a two-state solution restricts the occupancy rights that Palestinians have to only part of the territory that Palestinians enjoyed such rights over prior to 1948. However, the one state solution may come in various forms—occupancy rights over the whole territory are consistent, for example, with devolved power structures that govern different parts of the territory.

Any occupancy right of this kind is *pro tanto*, and it may be defeated. One controversial feature of my view is that ethnic and cultural self-determination of the Jewish people through state structures that are distinctively Jewish cannot defeat the right, because state structures that are oriented to protect some ethnicities and cultures over others is impermissible.<sup>10</sup> I will not defend this feature of my view further here, but just note that this idea is endorsed by many liberals. However, if nationalist arguments succeed against this view, the erosion of nationalist ideals must be balanced against any occupancy rights of Palestinian refugees.

Security, as well as political and economic costs, though, may defeat the right of return. There are difficult empirical and moral questions about assessing these costs when compared with alternatives, such as various two state solutions. In doing so, we must consider not only costs to current citizens of Israel, but the whole community over generations. And we should consider different ways of ameliorating those costs. So, my argument is only intended as part of an overall case for a one state solution. However, even if that overall case fails, the argument provides the backdrop against which to assess any alternative solution: what is owed in compensation, recognition, apology, and so on, depends in part on whether the argument for a *pro tanto* right of return succeeds.

## II. IDENTITY

*Identity* rests on the general idea that people sometimes have occupancy rights based on the fact that living on that territory connects importantly with their cultural, religious or ethnic identity. It seems plausible that many Palestinian refugee descendants value living on the territory for this reason, and that they do so because of the connection between the land and their ancestors—especially their parents.<sup>11</sup>

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10 The idea of a neutral state that can realize cultural ambitions of both Arabs and Jews was an important, though ultimately unsuccessful, part of both Zionist thought and political negotiation about Israel/Palestine. For an overview, see *id.* at 214–16.

11 For an argument that historic and cultural ties ground the right of Palestinians to self-determine in historic Palestine, see, e.g., Halwani, *supra* note 8, at 96–99.

Let us suppose that their living on the territory can be valuable for this reason. One question is whether this is sufficiently valuable to ground occupancy rights of those who do not currently live on the territory. Stilz denies this and thinks that competing claims of current occupants are stronger.<sup>12</sup> Even if the claims of current occupants are stronger, that does not show that the Palestinian refugee descendants have no right of return; only that they lack a right to exclude the current population of Israel, which I take it is uncontroversial anyway, as noted earlier. But Stilz may nevertheless be right that *Identity* is not a powerful argument in favor of occupancy rights.

Stilz's argument for this view is not completely clear, but I think she is roughly right. The mere fact that a person believes (even correctly) that living on a territory will be important for reasons of identity does not give that person a very powerful interest in living there on its own. Values such as identity are sufficiently weighty to make a significant difference to her rights only where she has a plan to live in the territory she seeks to occupy and invests in executing that plan. Without that, identity claims just seem like one amongst a range of different ways in which the person can give their lives value. At least this is so where the person lives in decent circumstances, with other opportunities to secure things that they value.

But now suppose that a person lacks sufficient independent grounds for occupancy rights over the territory but plans to live there for reasons of identity. Even if she is harmed by being prevented from executing her plan, she has no valid complaint against being harmed in that way. For she ought not to have formed and invested in a plan to do something that she had no right to do. Thus, any claim from identity relies on there being sufficient independent grounds of the right of return.

Against this, it might be argued that identity claims can be sufficiently strong to ground a right of return independently of any plan to secure those claims. Suppose that a state is deciding between two people who wish to emigrate to it, where one has deep identity connections with the state. And suppose that there are good reasons to let only one person in. It might be argued that, other things being equal, identity connections can be decisive. If this is right, it suggests that identity can ground occupancy rights—it can ground a right that the person with the claim is granted occupancy over another.

Even if it is true in some cases, though, I think that this idea is important in such a narrow range of cases that it lacks practical significance. Consider a simple two-person case, where there is some resource (be it territory, or some other kind of resource), *r*, that has great significance for X because of X's identity. That resource is also instrumentally useful both to X and Y to secure

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12 STILZ, *supra* note 5, at ch. 3.6.

some range of goods, such as opportunities for employment, or security, or health. Does X have any greater right to *r* than Y?

Other things being equal, it seems plausible at first blush that the fact that X values *r* for its cultural significance provides a reason why *r* should go to X. To see that this is initially intuitive, suppose that there are two bundles of resources, *r* and *s*, and I am allocating these resources to X and Y. These resources are equally valuable for X and Y instrumentally—they are equally good at producing goods that do not have cultural significance for X and Y, and that they value equally. So were it not for the cultural significance of *r* for X, X and Y would be indifferent between *r* and *s*. It may seem that I should allocate *r* to X and *s* to Y.

This is true where no further exchanges can be made between X and Y, or with others. For in that case, the allocation under consideration is (in some sense) Pareto Optimal—X prefers *r* to *s* for good reason; Y is indifferent between *r* and *s* for good reason. It is better for X to get *r* rather than *s*, and no worse for Y to get *s* rather than *r*, so X should get *r* and Y, *s*. Where further exchanges are possible, though, Y may have an objection to allocating *r* to X. Y has good reason to want *r* so that Y can trade with X or others who value *r* more. Y, in that case, may end up with more than she would be provided, if she were just provided with *s*. In that case, both X and Y have reason to want *r* in the initial allocation. X will get more of what she values if she is initially allocated *r*; Y will get more of what she values if she is initially allocated *r*, and there is nothing to choose between these outcomes, other things being equal.<sup>13</sup> In that case, we might attempt to find an impartial mechanism to determine who gets *r* to improve *ex ante* fairness, such as some kind of lottery.

In fact, if anything, reasons of culture and identity are significantly weaker than some other basic values, such as health, in determining how to allocate resources, including territory. To see this, suppose that *r* is culturally valuable to X, but provides health benefits to Y. If I allocate *r* to X and *s* to Y, Y will trade further goods for *r* to receive the health benefits. Because of the cultural value of *r* to X, though, the price will be high. In that case, I should allocate *r* to Y because Y should not have to pay extra for health benefits because X culturally values *r*.<sup>14</sup>

Furthermore, the case of allocating occupancy on the basis of identity is much weaker where this will result in others being worse off, as will normally be the case. Suppose that X and Y and their partners and descendants will

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13 This idea is somewhat inspired by RONALD DWORKIN, *SOVEREIGN VIRTUE*, ch. 1 & 2 (2000).

14 There is a related idea in Thomas Scanlon, *Preference and Urgency*, 72 J. PHIL. 655 (1975).



be worse off in terms of expected education, employment and health, if they are not granted occupancy in a country. Can identity claims compete with these claims, so that if other things are equal between X and Y, the person with stronger identity claims should be admitted? It seems doubtful that these claims are strong enough to make a difference, where the alternative is to give X and Y equal chances of being granted occupancy.

For this reason, I doubt that *Identity* is a good argument for occupancy rights in general, or in the context of Israel/Palestine. Of course, that argument cuts both ways in the dispute between those who wish to occupy Israel/Palestine. *Identity* neither supports the right of Palestinians to claim occupancy, nor the right of Jewish people, or any other citizens of Israel, to resist their right of return.

### III. POLITICAL STRUGGLE AND THE RIGHT OF RETURN

Here I briefly set out my previous argument for an intergenerational right of return—a version of *struggle*. That argument has three main dimensions. It relies on two different ways in which the strength of interests and the strength of rights come apart. First, even if Palestinian refugee descendants have relatively weak interests in return, their rights are less weak because one significant reason why these interests were undermined was in order that they would not have a right of return, would not seek return, or would lack international support for their return.

Second, even if current Jewish Israelis have relatively strong interests in Palestinian refugee descendants not returning, these interests have less significance in decisions whether to grant return, because they have these interests as a result of being the intended beneficiaries of the injustices of their ancestors.<sup>15</sup> Of course, Palestinians have also committed injustices in the course of their struggle. But that would only provide a reason against granting the right of return if those injustices cause the right of return to be granted. As they almost certainly set back the Palestinian cause, they provide no such reason.

Third, I argued that Palestinian refugee descendants have stronger interests in returning where they have legitimately joined the political struggle of the original Palestinian refugees who are their ancestors. Here is the main idea.

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15 There is a question whether this argument applies to all Israeli Jews—some might argue that Jews who were encouraged to come to Israel from neighboring Arab and North African countries were not the intended beneficiaries of excluding Palestinians from Israel. This raises complexities that I cannot address here.

The original Palestinian refugees had a right of return. Furthermore, they had a right to return with their families, so whilst they were alive, their descendants had a right to return with them. Whilst the original Palestinian refugees were alive, then, Palestinian refugee descendants had a legitimate basis on which to form and attempt to execute a plan to return.

Now notice the earlier contrast that I offered between people who merely value living on a territory because of their claims of identity, and those who form and invest in executing plans on the basis of identity. The interest that the latter group have in returning, I suggested, is stronger. But that interest has weight only if the plan was formed on a legitimate basis. My plan to live in your house does not ground a right to live there, even if I am strongly culturally attached to it, and even if my plan now gives me a powerful interest in living there. For my cultural connection with your house is an insufficient justification for forming that plan in the first place. However, the fact that the original Palestinian refugees have a right to return with their descendants provides a legitimate basis. The fact that the Israeli state wrongly denied them the opportunity to execute these plans makes them no less legitimate. Once their parents die, they remain committed to return, and as their plan to return was formed on a legitimate basis, their interest in return is legitimate, and they have a right to return based on that interest.

Stilz agrees that this argument succeeds, but thinks that it does so only where the Palestinian refugee descendants lack adequate alternative opportunities for a flourishing life where they are, or elsewhere. I don't see the case for this restriction. Consider a Palestinian couple who are wrongfully excluded from their home in 1948, move to Jordan, and have a decent standard of living. The couple have been deprived of the particular kind of life that they were living in Palestine, so for the next 40 years they struggle to return.

They have a child in 1949, who also has a decent standard of living in Jordan. Growing up, the family plan to return on the basis that they are entitled to do so. They thus plan what their life will be like on return, including making plans with friends, family members and business associates, who live in Israel. These plans include plans for their child to integrate into family life in Israel. The child joins their struggle, aiming for the family to return together to restart the business that their parents ran in Palestine. Their plans are thwarted by the Israeli government, which wrongly prevents them from returning. In 1988 both parents are killed. However, the child still has family in Israel, and has built up contacts who will provide him with business opportunities if he is permitted to return. He also wishes to return to honor his parents' struggle, and to partially realize their plan for the family to return.

Stilz's view seems to be that as this child has adequate opportunity for welfare in Jordan and could have flourished by forming and investing in other

plans, his right to live in Israel is no stronger than mine. But why? It cannot be claimed that the child ought not to have formed plans to return whilst his parents were still alive; he had a legitimate basis to do this, given that at that stage, he had a right to return with his parents, who were intending to execute their rights. The fact that he had other opportunities is irrelevant. Why should he take such opportunities rather than the one that he legitimately chose? And once he has formed the plan to return, his identification with the territory provides a significant basis for the right of return.

Now consider an objection: this argument for the right of return is implausibly narrow, because it does extend to those who do not struggle to return. In response, the argument can be extended to at least some of these people. Consider those who do not join the political struggle to return because they think that the struggle is futile, as the Israeli government is powerful and intransigent, so the prospects of success are too low. *Struggle* can be extended to these people on the basis of an idea that I noted earlier. Suppose that a certain interest grounds a right, but the person with the corresponding duty undermines that interest. The right is not normally eroded. Wrongdoers cannot normally deprive others of their rights by eroding the interests that ground those rights, especially where this is done either in order to extinguish the right, or to ensure that it is not secured. This argument applies to those who do not join the struggle because, due to unjust Israeli actions, they believe the struggle to be futile.

In contrast, those who do not join the struggle simply because they find alternative goals to pursue that they value more than return do not have the right of return on the basis of *Struggle*. But this does not seem objectionable. Those who plan to return on the basis of joining the intergenerational political struggle for the Palestinians do seem to have a complaint about being denied return that those who form other plans lack. That is not to say, of course, that no other argument can be found for their right of return—I will suggest below that another can. It is just that this particular argument does not support such a right.

#### IV. INHERITANCE

*Inheritance* aims to support the right of return by showing that occupancy rights are transferred between the original Palestinian refugees and their descendants. Here I reject two versions of that view, before defending an alternative version in the next Part.

## A. Individual Inheritance

First, let us consider a straightforward argument that Palestinian refugee descendants inherit occupancy rights directly from their ancestors, in the same way as ownership rights are inherited.

### 1. *Simple Individual Inheritance:*

- I. Each member of the group of original Palestinian refugees had property rights to particular property, and occupational rights to the whole territory of Israel/Palestine.
- II. When they were wrongly excluded from Israel, they retained these rights because they neither waived nor forfeited them, and the rights did not fade to nothing over time.
- III. People have the normative power to voluntarily transfer rights like these to their descendants at death.
- IV. They intentionally transferred these rights to their descendants.
- V. Palestinian refugee descendants acquired property rights to particular property, and occupational rights to the whole territory of Israel/Palestine, as a result of this intentional transfer.
- VI. Occupational rights to the whole territory of Israel/Palestine are what a right of return amounts to.
- VII. Therefore, Palestinian descendants have a right of return.

Let me begin with a quick note about IV. Some may doubt that the original Palestinian refugees intentionally transferred their rights to their descendants. To do so, they must have believed that they had those rights, and that they were capable of intentional transfer. Perhaps some original Palestinian refugees did not believe these things.

Even if so, *Inheritance* does not fail for this reason. Even if they failed to transfer their rights intentionally, they would surely have done so had they known they had the rights. Inheritance does not generally depend on full knowledge of the rights that I have. Suppose that I die, and a Picasso that my parents owned was stuffed away in the attic. My children inherit the Picasso simply on the basis that I intended to transfer all of my property rights to them. Something similar is true of the original Palestinian refugees.

The main challenge to *Inheritance* concerns III. Not all rights are voluntarily transferrable by the right-holder, and we need an argument why these rights, in particular, are. Here is what it means for a right to be voluntarily transferable by the right-holder: the right-holder can directly transfer her right to another person through the exercise of a normative power. Exactly what is required to exercise a normative power is disputed, but normally this is sufficient: where

X has a normative power to alter the rights and duties that Y has, X alters those rights and duties by successfully communicating to Y her attempt to alter Y's rights and duties, and Y accepts X's attempt to alter these rights and duties. For example, promising is a normative power that is exercised where X successfully attempts to communicate to Y his attempt to bind himself by promising, and Y accepts his promise, resulting in X having a duty to do what he promised.<sup>16</sup>

Inheritance involves the exercise of a normative power too. A standard way in which the right to inherit arises is through bequest on death. The relevant communicative act is typically a will, and through this mechanism, the person who dies transfers her property rights to the inheritor.

Subject to taxation, property owners normally have the power to bequeath private property, and that seems to support the inheritance of property rights in circumstances where a person is wrongly deprived of her property. Consider

*Bike:* Mary owns a bike which Nora steals. Mary and Nora each have daughters. Nora passes the bike to her daughter, Nelly. Mary dies, and her daughter, Mollie, is left without a bike.

Nelly must 'return' the bike to Mollie on the basis of an argument similar to *Simple Individual Inheritance*:

- I. Mary had property rights over the bike.
- II. When her bike was stolen, she retained those rights because she neither waived nor forfeited them, and they did not fade to nothing over time.
- III. People have the normative power to voluntarily transfer rights like these to their descendants at death.
- IV. Mary intended to transfer these rights to Mollie.
- V. Mollie acquired property rights to the bike as a result of this intention to transfer.
- VI. Having such a property right is what the right of return of the bike amounts to.
- VII. Therefore, Mollie has a right of return of the bike

Some argue by analogy that *Simple Individual Inheritance* succeeds.<sup>17</sup> But that argument is unsafe. The general difficulty is that not all of our rights over property are voluntarily transferable. Quite generally, our rights over property

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16 It is a controversial matter whether uptake and acceptance are required for the exercise of any, or all, normative powers like this. I leave this matter aside.

17 Though it is not set out very clearly, I think that something like this is intended in ALAN JOHN SIMMONDS, *BOUNDARIES OF AUTHORITY*, ch.7 (2016).

vary with a wide range of factors. There is a bundle of property rights, and we have only some of these rights over some things. This is a general weakness with many Lockean-style arguments that aim to determine what rights we have by considering how rights are acquired and transferred in the case of private property. Each property right, including the right to transfer rights, needs to be argued for on its own merits.<sup>18</sup> Whether the original Palestinian refugees had the power to transfer their property and occupancy rights to their descendants cannot be determined by comparing cases of private property like *Bike*.

Consider Annie Stilz's view that occupancy rights are relevantly similar to the rights in cases like:

*Bench*:<sup>19</sup> There is a park bench with enough room for one person, and too many people who would like to sit there to have their lunch. Andy arrives in the park first and sits on the bench. Bob pushes him off and sits in his place. Carol and Delia would also like to sit on the bench. They stand and wait in a queue. As Carol got there first, she is at the front of the queue.

Here is an intuitive way of understanding this case. Andy has the right to sit on the bench, and he does not lose that right by Bob pushing him off. He is permitted to shove Bob aside and sit on the bench. If he is unable to do this, when Bob gets up, he is entitled to sit on the bench rather than Carol or Delia. But suppose that Andy needs to get back to work. He is not permitted to transfer his right to sit on the bench to Delia rather than Carol. Carol is permitted to sit on the bench rather than Delia, as she is ahead in the queue, even if Andy attempts to transfer his right to Delia. Andy thus lacks the normative power to transfer his occupancy right to the bench to Delia, or anyone else. And if you doubt this about this case (which I think only a minority will), there are surely some rights that are not transferable.

Our question is whether the occupancy and property rights of the original Palestinian refugees are transferrable, like Mary's property rights in *Bike*, or whether they are not, like Andy's right to occupy the bench in *Bench*. As far as I can see, no one has argued for either view, and we mostly find assertion and counter-assertion, relying on analogies with cases very different from occupancy rights themselves, such as *Bike* and *Bench*.

Here is one fact that distinguishes occupancy rights from property rights, which supports the view that occupancy rights are not transferrable. If X has a

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18 See generally, Victor Tadros, *Ownership and the Moral Significance of the Self Social*, 36 SOC. PHIL. & POL'Y FOUND. 51 (2020).

19 STILZ, *supra* note 5, at 78–84.

full set of property rights to  $p$ , Y necessarily lacks a full set of property rights to  $p$ . For this reason, if X has a full set of property rights to  $p$ , and Y then gains a full set of property rights to  $p$ , X loses his property rights to  $p$ . Now consider the view that Y has property rights to  $p$ . This entails that X lacks property rights to  $p$ . This supports one argument in favor of the normative power to transfer property rights. It is often appropriate that X has control over whether he loses his other property rights and how. He has that control only if he has the normative power to determine whether others acquire rights to the property.

Nothing similar is true about occupancy. An occupancy right is the right to move freely in a territory, to participate in political processes on that territory, to buy and sell property on that territory, and so on. Unlike the case of property, one person's full occupancy rights need not be affected by others gaining such rights. In that case, we might reasonably ask: why should Y's occupancy rights depend on X's decisions?

Without an answer, we should conclude that occupancy rights are not transferable, and this seems plausible. I am permitted to transfer my occupancy rights to others only if I have control over whether they have such rights. I could, for example, swap my occupancy rights to the UK with a non-UK citizen; say a Chinese citizen. But I lack the normative power to swap these rights—there is no obvious reason why the decision whether the Chinese citizen gains occupancy rights to the UK should depend on whether or not I have renounced my rights. We can both have full occupancy rights to reside in the UK.

Perhaps there are practical considerations why the decision whether to grant the Chinese citizen occupancy rights should depend on my decisions. For example, in the case of overpopulation, where there is a shortage of resources, a state might adopt a "one in, one out" policy. But that is no reason for me to have the normative power to determine the occupancy rights of the Chinese citizen. It is only a reason why the Chinese citizen should be granted occupancy on condition that I no longer use the relevant resources. Furthermore, as citizens create as well as consume resources, there is no reason in principle why decisions whether to grant the Chinese citizen rights should depend on whether or not I continue to consume resources. In that way, the case of occupancy seems even weaker than in *Bench*, where there is a fixed resource and the question is how to allocate it once one person occupies the bench.

This at least gives us reason to doubt that the analogy with cases like *Bike* supports *Inheritance*. Mary had the right to transfer her property rights to the bike to anyone else, including Mollie. It is then a short step to the idea that she can transfer those rights at death, which is all that is needed for an argument

for inheritance. Even if Palestinian refugees can transfer their property rights to their descendants at death, which they presumably can, we do not have an argument for their ability to transfer their occupancy rights, and that is what is needed to support the right of return.

## B. Group Inheritance

One response to this concern focuses on the group of Palestinians rather than individual Palestinians. It is more plausible that there is a group right of the whole citizenry of a country to voluntarily transfer occupancy rights to other citizens. The citizenry seems to have the normative power to grant occupancy rights to noncitizens through an appropriate political and legal process.

The rights of the original Palestinian refugees to participate in occupancy decisions were violated. But they retained the right to participate in making those decisions. This, it might be argued, makes it appropriate for them to have the right to transfer occupancy rights as a group. Even if their own processes for determining how to do this are defective, they are better than nothing, and defective processes are all that they can achieve given the unjust circumstances in which they live.

To explore this argument, let us see whether citizens of a country have the normative power to transfer occupancy rights as a group, and any limits to that power. Consider this case that I owe to Kit Wellman:<sup>20</sup>

*Island:* The Sooners permissibly occupy an uninhabited island and live there for a while. There is only room for 1000 people to live on the island, but luckily there are exactly 1000 Sooners. Later, 1000 Later-Descendants wrongly drive them from the Island because they want to live there. They prevent the Sooners from returning. The next generation of 1000 Sooner-Descendants wish to live on the Island, but now 1000 Later-Descendants live there.

Must the Later-Descendants cede the island to the Sooners? Wellman thinks so. Some might doubt this because the disruption will harm Later-Descendants. But this is not an argument against the right of return; only that this right is overridden by costs to the Later-Descendants. Suppose that the Later-Descendants have somewhere else to go—the now uninhabited place where their ancestors lived before driving the Sooners out—and their lives there will be as good as they would have been had their ancestors not wrongly driven the Sooners out. Then the concern with their being harmed by being driven

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20 See WELLMAN, *supra* n.4.



out of the island seems insufficient to override any occupancy rights of the Sooner-Descendants.

It might be argued that this case is more like the case of property rights considered earlier for this reason. The occupancy rights of the Sooners are transferable. They could, as a collective, transfer those occupancy rights to others. They are permitted to grant other people the right to occupy the island. To see this, suppose that prior to being driven out one of the Sooners is willing to leave the island. The Sooners are then permitted to determine whether to grant an outsider the right to co-occupy the island. Indeed, the Sooners could have swapped their occupancy rights with inhabitants of another similar island, simply because both groups fancied a change. Exactly what political process would make such a swap effective is a difficult matter. But surely some kind of process, say one involving a super-majoritarian referendum taken in the light of a proper informed public debate, or some such, would be sufficient.

If this is right, there is then a tricky question how to assess whether the relevant conditions of transfer are satisfied in the case of the Palestinians. The difficulty arises because it is not clear who is in the demos to determine whether such a transfer occurs—which Israeli citizens would legitimately participate in the process of determining whether to transfer occupancy rights to the Palestinians, given that the occupancy rights of at least some of these citizens were granted without the participation of Palestinian refugees?

Fortunately, we don't need to address this difficult question, as the argument under consideration fails for another reason. A right to voluntarily transfer one's rights is expansive if one can determine not only whether to transfer or cede such a right to others, but also who acquires that right. Groups of citizens lack expansive rights to voluntarily transfer their occupancy rights to others. We do not have expansive normative powers voluntarily to transfer all of our property rights. In some cases, we are permitted to decide whether to cede our rights to others, or not, but we lack latitude over whom to cede them to.

Consider:

*Jewel:* Margo is travelling in a poor country and is carrying an expensive jewel with her that her mother gave her. Two people, Nola and Ophelia, act as her guides. Everything is equal between them, except that Nola has five children and Ophelia has none. Margo wishes to give her jewel to one of the two to sell, and they cannot be made to share. If she gives the jewel to Nola, her children will be lifted out of poverty, whereas Ophelia will spend the money on fancy clothes.

Let us suppose that Margo is permitted either to keep the jewel or to give it away. If so, she has the normative power to voluntarily transfer her property rights over the jewel to another person, or not to do so. Nevertheless, if she

gives it away, she must give it to Nola rather than Ophelia. Thus, although she has the normative power to voluntarily transfer her property rights over the jewel to another person, that power is not expansive. She cannot transfer that right to whomever she chooses.

And even if you disagree about this case, there are surely cases like this, for this is an instance of a more general feature of morality that is increasingly familiar. Sometimes, X has three options: (a), (b) and (c), which have impersonal value in rank order. However, even though (b) and (c) are better than (a), X may be entitled to pick (a) for reasons of agent-relativity—the significance of X’s autonomy, for example, may permit X to pick (a), even where (b) or (c) are better. However, it does not follow that if X forgoes (a), the value of his autonomy also permits X to pick either (b) or (c). For example, I may be permitted to rescue no one if rescuing anyone will cost me a leg. But if I decide to rescue others at the cost of a leg, I must rescue the greater number, other things being equal. *Jewel* seems to be a similar case.

Exactly when such restrictions arise is a matter of dispute and I cannot defend a particular view here.<sup>21</sup> But at least we can see that even if the original Palestinian refugees had the right to grant occupancy rights to others, it does not follow that they had the right to grant them to their descendants in particular. And I doubt that the right to transfer occupancy rights is expansive. Often, citizens of a country have powerful reason to grant occupancy rights to family members of current occupants. But the main reason for that is not that citizens are generally permitted to favor family members of citizens over others. It is rather that people have a right to live with their families. That was the kind of reason I offered earlier, when considering whether the original Palestinian refugees had the right to return with their descendants.

That fact cannot play a role in supporting *Inheritance*, for there we are considering whether a person or group has a right to grant occupancy rights to their descendants at death, so they will not be able to live with their descendants. Where there is no question of families being reunited, I doubt that groups generally have rights to grant or transfer occupancy rights on the basis of family bonds.

Consider:

*Transfer Choice*: The Sooners are living on the island and are approached by two groups who wish to move there: the Laters and the Others. The

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21 For some recent discussion, see Theron Pummer, *Whether and Where to Give*, 44 PHIL. & PUB. AFF. 77 (2016); Theron Pummer, *All or Nothing, But if Not All, Next Best or Nothing*, 116 J. PHIL. 278 (2019); Joe Horton, *The All or Nothing Problem*, 114 J. PHIL. 94 (2017); Thomas Sinclair, *Are We Conditionally Obligated to Be Effective Altruists*, 46 PHIL. & PUB. AFF. 36 (2018).

Sooners have grown tired of the island and prefer to live on another unoccupied island that they have discovered, that suits them well, but is unsuitable for everyone else. The Sooners share a history of cooperation with the Others, and thus prefer that they be benefited rather than the Laterers. If they are permitted to decide whether to grant occupancy to the Others rather than the Laterers that is what they will do. However, the Laterers have stronger reasons to move to the territory than the Others. The Laterers have developed life plans as a community that depend on features that used to be present in their territory but are now absent due to unforeseen climate change. The Others, in contrast, just fancy a change.

One common argument for the significance of occupancy rights is that a person who lives in a territory develops life plans with their community around features of that territory. Moving people significantly disrupts their plans of life. This is a reason why the Sooners are permitted to stay on the island, even where they have the opportunity for a better life elsewhere. If the Sooners are required to move, they lack the power to shape their own lives by picking which territory they live on (subject to consent by the Others). And this entitles them to stay.

But if they are willing to leave, they are not entitled to swap with anyone they wish to. The life plans of the Laterers will be significantly disrupted if they are not permitted to move as a community to the island. Their life plans are not centered on the actual territory that they live on, but on features of the island. Thus, they may have a claim to the island over the Others.

It is not even obvious that the Sooners are permitted to act on the basis of their personal relationship with the Others, other things being equal. Suppose that everything is equal between the Laterers and the Others, except that the Sooners have historic relationships with the Others. I doubt the Sooners are permitted to decide who to permit to live on the island on this basis.

Perhaps some might think that things are different between parents and children. Suppose that the Others are descendants of the Sooners. When the Sooners give birth, their children are taken by storks to the Other territory, where they are raised by Others. However, the Sooners retain close contact with their children by Skype. There is no room for these children on the island, and partial population swaps are impossible because the Sooners are all stuck together with powerful cosmic glue. Are they then permitted to swap with their children rather than the Others, other things being equal, when they decide to leave the island?

I think not for this reason. Territory is a common resource that everyone has equal claims to, other things being equal. The Sooners have special rights

over the island insofar as they live there, because of the disruption to their lives that moving would cause.<sup>22</sup> But this consideration cannot give them a right to ensure that the lives of their children are advanced via the right to determine whether their descendants have occupancy rights to the island. This case is just like a case where a person is deciding how to allocate a resource that she has no rights over, but that she has control of. And I doubt that this allocation can be made on the basis of agent-relative considerations.<sup>23</sup>

## V. INHERITANCE AS AN APPROPRIATE RESPONSE TO INJUSTICE

The argument concerning inheritance that I just rejected rests on the idea the original Palestinian refugees had some rights that they did not lose, and that could then be passed on to others. This argument fails, because although they retained occupancy rights until death, they either originally lacked the normative power to transfer those rights and powers, or they lacked the normative power voluntarily to determine who to transfer those rights to. Thus, we have not yet found a basis for their right to bequeath their occupancy rights to their descendants.

Some might draw the more general conclusion that *Inheritance* is a fifth wheel in any argument for the right of return. For, it might be thought, in order to support that argument, we need to find something that distinguishes Palestinian refugee descendants from others that shows that the original Palestinian refugees had the power to grant occupancy rights to their descendants. But any such argument will rest on facts that give descendants special rights to the territory. Either such facts directly support the right of return, in which case *Inheritance* is redundant, or they do not support *Inheritance*. For example, suppose that identity considerations, or considerations of political struggle, give the original Palestinian refugees a reason or duty to transfer their rights to their descendants rather than others. That might seem to support *Inheritance*. But it also makes *Inheritance* redundant, for these rights directly support the right of return without relying on *Inheritance*.

But this objection misses another possibility. The justification of the power to transfer rights and powers can be either transferor-centered or transferee-centered. Considerations of identity and political struggle concern the interests or complaints of transferees. In contrast, transferor-centered considerations

22 For a further discussion, see Tadros, *supra* note 4.

23 There is a developing literature on the limits of agent-relative considerations in determining what it is permissible to do. For discussion of a range of views, and a more developed defence of the idea in this paragraph, see VICTOR TADROS, *TO DO, TO DIE, TO REASON WHY*, ch. 5 & 9 (2020).

ground the right of return in the interest that the original Palestinian refugees had in transferring their rights to their descendants, and so they do not pick out interests that can be relied on directly to support the descendants' right of return.

Here is a further feature of the *Inheritance* arguments explored so far. They do not rest in any important way on the fact that the rights of the original Palestinian refugees have been violated, and that they have therefore been unable to realize the value of the occupancy rights they had. Rather, they rely on the fact that the violation of their rights does not make them lose occupancy rights. As they have not lost these rights, the question arises whether they are transferable. But that fails to consider whether victims of rights violations gain new rights, and indeed they do. These new rights are acquired as an appropriate response to wrongdoing.<sup>24</sup> It is thus unsafe to draw conclusions about the rights of either the original Palestinian refugees, or their descendants, that consider only whether the pre-violation rights of the original refugees are still in force.

The transferor-centered argument that I develop begins with the familiar idea that the wrongness of removing the original Palestinian refugees is grounded in the disruption to the significant, and legitimately developed, life plans that members of that group had to live a certain life with their community on their territory. Those life plans were deeply connected to their communities, which were sustained in the land that they inhabited, and were enriched by the historic culture of Palestinians. Preventing them from returning also prevented them from salvaging or rekindling those life plans, as they were entitled to do. The loss that grounds the wrong, then, is a loss in the realization of a particular plan of life on a particular territory in conjunction with those whom they have personal relationships with, and with the wider community of which they were a part.

When a person is wronged, wrongdoers and non-wrongdoers alike owe it to that person to respond appropriately to the facts that make the conduct wrong. Sometimes the appropriate response is simply to respond to a person's loss by providing something equivalently good, or to provide her with the opportunity of achieving something equivalently good. This is normally appropriate for less culpable wrongs that are concerned with property that can be replaced without loss. A person who has had her bike negligently destroyed is adequately compensated with a new bike, or with money to buy one, on the basis that she does not care about that bike in particular.

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24 For an argument that wrongdoing itself gives rise to secondary duties, see Victor Tadros, *Secondary Duties*, in *CIVIL WRONGS AND JUSTICE IN PRIVATE LAW* 185 (Paul Miller & John Oberdiek eds., 2020).

But this response is inadequate for the kind of wrongful loss that we are concerned with here. One reason is the kind of value that grounds the wrong. I may have no objection to the removal of my bike if a better one is put in its place. But I do object to being uprooted from my life even if a better life is put in its place. I value my life by virtue of its distinctive qualities, and not simply because of how good it is. Another reason is the culpability involved in the wrong. Our reason to respond to the disadvantage that the original Palestinian refugees suffered is not only that they lost something of great and distinctive value to them, but also that they lost it as a result of highly culpable and racist attitudes that persisted over time, and that motivated the continued wrong done to them.

Obviously enough, we cannot now give the original Palestinian refugees what they were wrongly deprived of, or anything equivalent. But we can nevertheless do something for them. Consider a member of the original group on her deathbed, but who has a child. Suppose that we could grant her the right to transfer her occupancy rights to her child. Would we have a reason to do this? I think that we would.

Here is why. She would have reason to want to transfer her occupancy rights to her child, because that would provide her with an opportunity to get something like the thing that she was wrongfully deprived of, or something appropriately similar. The parent who mourns the kind of life that she lost may value her child living a life with some similar features. She may value her child rekindling the business that she was prevented from developing; developing friendships and relationships of the kind that she could not with those people who continue to live in Israel or their descendants; enjoying the landscape and historic architecture that she was familiar with as a child, and that she could no longer enjoy; and so on. Parents often want their children to continue in the family business, so that they build the business that their parents started; to retain and preserve the family home; to retain and develop their language and other features of their culture; and so on. And that is an important reason why parents are permitted to pass on their property rights to their children. This general idea can be extended to the original Palestinian refugees and their descendants.

Of course, Israel/Palestine has changed a great deal between 1948 and today, and the life that their children would lead would be very different from the life that they were deprived of. And the Palestinians have developed culturally and politically too, both despite and because of the unjust conditions they find themselves in. But their connection to the buildings, landscape and some of the people in Israel remains significant. A life lived by Palestinian refugee descendants in Israel/Palestine can still be meaningfully related to the life that their parents lost.

Obviously enough, the original Palestinian refugee we are considering would not be permitted to compel her child to live the life that she wants her to live. It would be far too constraining for him to be required to live the life that she wants him to lead. But she does have reason to value his having the opportunity to live that life, and to express her wish for him to live it. He then has the opportunity to realize a valuable aspect of his relationship with her by living that life.

As her occupancy rights were violated, it is appropriate that she has the power to determine whether to provide her child with the opportunity to live the life that she was prevented from leading. And for this reason, there is value in her having the normative power to transfer her occupancy rights to him, or to refrain from doing so. Thus, whether he has the right of return depends on her attitudes and actions.

Because this argument is transferor-centered, it also helps to meet an objection to the transfer of occupancy rights noted earlier: that it is unfair that those with close relationships with the current occupants are advantaged in occupancy decisions as compared with strangers. This fairness objection seems much less powerful where the person who wishes to transfer her occupancy rights has had those rights violated in a way that prevents her from realizing the value of occupancy. In that case, any potential unfairness to those who are not related to her needs to be compared with the disadvantage that the member of the original group has suffered, and that can be ameliorated by her having the power to transfer her rights to her descendants.

Of course, like all rights, her right to transfer her rights to her descendants can be overridden, for example where selective decisions about occupancy have to be made, and there are other reasons to favor both current occupants and strangers. But that only shows that *inheritance* does not ground an absolute right of return, not that it fails.

I now consider two objections to this argument. The first reflects an argument offered and responded to earlier when we considered more standard views about inheritance. Suppose that some of the original refugees do not value their children living the kind of life they lived, because their unjust circumstances have extinguished all hope that they will live such a life. The argument that I have offered may not seem to extend to their descendants, as it is dependent on the original group actually having the attitudes and actions needed to transfer their rights to their children.<sup>25</sup> But, as I suggested before, it is easy to extend the argument to this group: if the only reason why their parents did not have the relevant attitudes or perform the relevant actions is that they were victims of injustice, their children do not lose the rights they would otherwise have.

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25 I owe this objection to Avihay Dorfman and Raja Halwani.

A second objection is that the value that I have pointed to—the value that parents see in their children living the lives they were unjustly deprived of—does not always ground rights of their children. Consider a parent who is wrongly fired from her job, where she valued the particular features of that job. She may regret not being able to do the job, and she may value her child doing that job, but it is not very plausible that her children have a right to be employed in that job.<sup>26</sup>

This case, though, does little to undermine the argument offered. In general, people do not have employment rights based on the fact that they have a deep cultural connection to a particular job. Hiring and firing decisions need not take account of these personal facts. So, the wrong of firing a person is not the wrong of depriving her of the ability to perform an activity that she values in itself. Things are quite different in the case of occupancy, where the grounds of a person's rights are her deep personal connection to the place where she lives and the community that lives there. The appropriate response to the wrongful uprooting of a person is to satisfy the interest that she has in that place.

## CONCLUSION

I have explored three arguments for the intergenerational right of return of Palestinian refugees. I now wish to explore the way in which the considerations that they rest on are mutually supportive.

I suggested that there are two successful arguments for the intergenerational right of return—*Struggle* and *Inheritance*. Both arguments are built on the way in which the relationship between parents and children make a difference to the rights of Palestinian refugee descendants, but in different ways. *Struggle* is based on the way in which children plan whilst their parents are alive when their parents struggle to return. At that point, the parents have a right to return with their children, and their children thus have good reason to form and invest in plans to go live in Israel. The fact that these plans are, perhaps predictably, prevented from execution by the Israeli authorities makes them no less legitimate. To prevent them from returning disrupts these legitimately formed plans, thus preventing them from returning wrongs them.

*Inheritance* does not depend in this way on what Palestinian refugee descendants do. It is an argument that is based on the interest that the original Palestinian refugees have in ensuring that their children have the opportunity to live the life that they valued, and were wrongly prevented from living. Thus,

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26 I owe this objection to Yitzhak Benbaji.



this argument extends to a wider group of Palestinian refugee descendants than *Struggle*—it includes those who have taken no steps to attempt to live in Israel, and have invested in no plans to do so.

However, there are many Palestinian refugee descendants who have joined the struggle for the right of return. For them, the two arguments work in tandem. Their rights are grounded both in the plans that they have legitimately formed by struggling with their parents, and the value to their parents of their having the opportunity to live a life on a territory that reflects the life that their parents lost. The complaint about future generations, namely that they do not acquire rights simply as a result of desires and whims, does not seem powerful when applied to the case of Palestinian refugee descendants because of these connections with their parents and the wrong that was done to them. In light of this, their claims that their identity is bound up with return has significant moral force.

Even if a one state solution, in the end, fails, it is important to recognize what has been lost, and which rights have been infringed, in the process. In order to do that, we need to know the appropriate sources of the right of return, even if that right is ultimately defeated.

