

Justifying the Right of Return

David Miller*

With the Israeli-Palestinian conflict in mind, this Article asks whether there is a human right to return to one's country, and if so what justifies it. Although such a right is widely recognized in international law, who can claim it and on what basis remains ambiguous; the ambiguity is revealed by asking what "country" means in "return to one's country." I argue that to treat the right simply as an adjunct of citizenship is too narrow an approach, even though the right has a role to play in managing inter-state relations. As with other human rights, personal autonomy might be proposed as a justification for the right of return. But although the autonomy interest in developing long-term life-plans may explain the right not to be forcibly displaced from the place where you live, it cannot explain why there is a right to return once displaced, particularly in the case of people who enjoy an adequate set of options elsewhere. Instead we need to invoke the need to belong to a homeland, access to which the right of return protects. The Article explores a homeland's different dimensions and considers various respects in which the need to belong might be thought too indeterminate to ground a right. Finally it distinguishes and evaluates the return claims of Jews and Palestinians to Israel/Palestine; only Palestinians whose homeland this remains can claim a human right of return as analyzed and defended here.

* Senior Research Fellow and Professor of Political Theory, Nuffield College, University of Oxford. Earlier drafts of this Article were presented to the Workshop in Practical Philosophy, University of Bergen, 9–10 May 2019, the Conference on Historical Justice in the Context of the Israeli-Palestinian Conflict, Faculty of Law, Tel Aviv University, 28–30 May 2019, and the Oxford/Queen's workshop in Legal and Political Philosophy, 10 June 2019. I am very grateful for comments received on all these occasions, and especially to Professor Ruth Gavison who acted as my respondent in Tel Aviv. Cite as: David Miller, *Justifying the Right of Return*, 21 THEORETICAL INQUIRIES L. 369 (2020).

INTRODUCTION

According to Article 13 (2) of the Universal Declaration of Human Rights:¹

Everyone has the right to leave any country, including his own, and to return to his country.

This is a right we take for granted every time we travel abroad on business or on holiday. It seems at first sight uncontroversial: we would be scandalized if each time we returned to our country we had to do more than establish our legal identity by producing a passport or other such document in order to be admitted. We justifiably value the right to leave, but how much would that right be worth if by leaving our country we ran the risk of never being allowed back in? But matters are not so simple when we pass from individual cases of return to collective cases. Now the right of return is likely to prove highly contentious: think of displaced populations eager to return to their homelands, and citing the right of return as their justification for being allowed to do so. Perhaps the most prominent case is that of the exiled Palestinians, for whom their right of return to historic Palestine has become an article of faith and a major source of political contention. Equally, Jewish immigration to the land of Israel is often justified as an exercise of Jews' right to return to their original homeland. Since it may not be possible jointly to satisfy both of these claims to return, some would question whether the right of return applies in these cases of mass movement. At the very least, we are in urgent need of some clarity on whether return can be claimed *as a human right*, whether it can be claimed by people moving en masse as well as singly, and if the right does indeed exist, how it could be justified.

At this point I need to explain briefly how I understand human rights.² They are moral rights that ought to be given legal recognition in both the domestic law of states and international law. They serve to specify a global minimum that people everywhere, regardless of societal membership or cultural affiliation, are owed as a matter of justice. They are owed this in the first place by those who wield power in the places where they are living—by their governments, in the normal case. But if for some reason the local power-holders are unable or unwilling to deliver this minimum set of entitlements,

1 G.A. Res. 217 (III) A, Universal Declaration of Human Rights [hereinafter UDHR] (Dec. 10, 1948).

2 I draw on my fuller treatment of this question in David Miller, *Grounding Human Rights*, 15 CRITICAL REV. INT'L SOC. POL. PHIL., 407 (2012); David Miller, *Border Regimes and Human Rights*, 7 L. ETHICS HUM. RTS., 1 (2013); David Miller, *Personhood versus Human Needs as Grounds for Human Rights*, in GRIFFIN ON HUMAN RIGHTS (Roger Crisp ed., 2014) [hereinafter *Personhood*].

then the responsibility falls on people and governments in other countries to overcome the deficiency. To establish that a candidate right qualifies as a human right, one must show that it forms an essential part of a set of rights that together provide the right-holders with the opportunity to lead a minimally decent human life. On my account, we begin with the core idea of a human life itself as made up of a number of activities which are reiterated across the many more specific forms of human life that have arisen at different times and places. We can then identify a set of basic needs that must be fulfilled if a decent human life is to be possible—material needs such as food and shelter, but also needs to engage in communal life, to form intimate relationships, to express one’s beliefs and cultural identity, and so forth. Human rights secure the conditions under which these needs can be met. They do so either by protecting people from threats that would prevent them from satisfying their needs—such as being coerced not to engage in activities such as playing music or engaging in a religious ritual—or by imposing obligations to provide resources that fulfil needs, such as food or basic healthcare.

The present Article applies this general understanding of human rights to the specific case of the right of return, which as we shall see often finds a place in the major human rights documents that inform international law. I will show, however, that we cannot achieve clarity on the nature and extent of the right simply by examining the relevant sources from the UDHR onwards; instead what we find is considerable ambiguity over what the right of return actually means in practice (Part I). We therefore need to explore the right’s moral foundations in an effort to resolve the ambiguity. I consider first whether the right of return might be treated merely as an incident of citizenship, and argue that at best this provides an incomplete justification (Part II). Next I examine the currently most popular way of grounding the right, namely by appeal to the value of individual autonomy, and argue that this, too, does not succeed (Part III). Instead we need to appeal to a particular human need, the need to belong to a homeland, in order to explain why return, specifically, is a human right, while there is no equivalent right to enter countries other than one’s own (Part IV).

Having defended such a need-based justification for the right of return, I argue in the final Part of the Article that this provides us with a perspective from which to evaluate specific return claims, such as the claims of Jews and Palestinians to return to Israel/Palestine. It allows us to ask whether either or both of these groups can justify return by appeal to human rights. It is important to remind ourselves, however, that return claims can have a wider significance than this. Both the right of return asserted by Palestinians and

Israel's Law of Return (for Jews)³ have become laden with political meaning over and above the assertion of a human right on the part of the groups in question. They have become, in effect, ideological doctrines. Because the phrase 'the right of return' has for both sides come to encapsulate claims about historical responsibility, reparations, national identity and so forth, taken as a whole these two doctrines are almost certainly incompatible.⁴ In this context, it is very much worth asking what form of return either party to the conflict can claim *as a matter of human rights* – which may well turn out to be much less than they are currently claiming politically.

Note also that in focusing on return as a human right, I am setting aside the wider issue of "justice in return," which would involve enquiring into the conditions under which return to one's country would meet higher standards of distributive and reparative justice.⁵ Questions such as the right to re-appropriate abandoned property would be included under this heading. It would also involve investigating the criteria according to which repatriation to one's homeland would qualify as fully voluntary.⁶ These are important questions, but human rights ought not to be stretched to cover all aspects of justice. As indicated above, they are best understood as devices to fulfil basic human needs and to protect people from forms of political domination that would prevent them from leading decent lives.⁷ So full justice certainly demands of states that they should protect human rights, but it asks considerably more than this. Here again, I am only dealing in this Article with questions that arise directly from the idea of a human right of return.

3 Law of Return, 5710–1950, SH No. 51 p. 159, as amended (Isr.).

4 For supporting evidence, see for example Adina Friedman, *Unraveling the Right of Return*, 21 REFUGEE: CANADA'S J. REFUGEES, 62 (2003); Nadim Rouhana, *Truth and Reconciliation: The Right of Return in the Context of Past Injustice*, in EXILE AND RETURN: PREDICAMENTS OF PALESTINIANS AND JEWS (Ann Lesch & Ian Lustick eds., 2005).

5 See MEGAN BRADLEY, REFUGEE REPATRIATION: JUSTICE, RESPONSIBILITY AND REDRESS 44–64 (2013) [hereinafter REFUGEE REPATRIATION]; Megan Bradley, *Is Return the Preferred Solution to Refugee Crises? Exploring the moral value of the right of return*, in THE POLITICAL PHILOSOPHY OF REFUGEE (David Miller & Christine Straehle eds., 2020).

6 See, e.g., Mollie Gerver, *Refugee Repatriation and the Problem of Consent*, 48 BRIT. J. POL. SCI., 855 (2016).

7 *Supra* note 2.

I. INTERPRETING THE RIGHT OF RETURN IN INTERNATIONAL LAW

As indicated above, we cannot understand the right of return merely by consulting the relevant international law documents. Nonetheless we need to begin with these, not least because the existing philosophical literature that addresses the topic is quite sparse.⁸ The UN Declaration is by no means the only human rights document in which the right of return is listed. In slightly different versions, it appears in the International Covenant on Civil and Political Rights (ICCPR),⁹ the European Convention on Human Rights,¹⁰ the American Convention on Human Rights,¹¹ the African Charter on Human and Peoples' Rights,¹² and so forth. There are also more detailed statements, such as the UN's *Draft Principles on Freedom and Non-Discrimination in respect of the Right of Everyone to Leave Any Country, including His Own, and to Return to His Country*, and the *Strasbourg Declaration on the Right to Leave and Return*.¹³ One might conclude from this that the right of return is at the least clearly established and well defined as a human right under international law. But that would be a mistake. As I shall explain shortly, international lawyers themselves are quite conflicted about the meaning and status of the alleged right. What might initially appear to be small differences of wording between the various documents may conceal quite different ways of understanding the right of return. In any case, we need to look beyond the documents themselves, on the one hand to the actual practice of states, and on the other to the moral grounding of the right, in order to grasp it properly.

I am going to start, however, by exploring the meaning of the right of return as set out in the international charters and conventions, because the ambiguities

8 This may be because philosophers have frequently set themselves the more ambitious task of justifying international freedom of movement. Clearly if that could be defended, movement in the form of returning to one's own country would fall out as an easy case. Note, however, the philosophically informed work on refugee repatriation, specifically, found in BRADLEY, *REFUGEE REPATRIATION supra* note 5; KATY LONG, *THE POINT OF NO RETURN: REFUGEES, RIGHTS, AND REPATRIATION* (2013) and MOLLIE GERBER, *THE ETHICS AND PRACTICE OF REFUGEE REPATRIATION* (2018).

9 G.A Res. 2200A (XXI) (Dec. 16, 1966).

10 Eur. Consult. Ass., *Convention for the Protection of Human Rights* (1950).

11 Organization of American States [OAS], *American Convention on Human Rights*, (Nov. 22, 1969).

12 African Union, *African Charter on Human and Peoples' Rights*, (June 21, 1981).

13 These are both conveniently reproduced as appendices to HURST HANNUM, *THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE* (1987).

found there turn out to be revealing. The two most important ambiguities, for present purposes, are these: what “country” means in phrases such as “return to his country,” and whether the right of return is understood to be a right exercisable only singly by individuals, or also includes the right exercised collectively by large groups when they seek to return to their homelands. I will discuss each of these ambiguities in turn.

In some formulations of the right we are discussing, the reference to “country” is replaced by a reference to the claimant’s status as a national. For example, The European Convention on Human Rights, Protocol 4, Article 3 (2) states:

No one shall be deprived of the right to enter the territory of the State of which he is a national.¹⁴

If we compare the wording of this Article with the wording of the UDHR Article with which I began, we see that in one respect it is more generous, since it protects the right of entry of nationals who are not *returning* (i.e., those who have never lived in the state but who qualify as its nationals), while in another respect it is considerably less generous, since it excludes people who may have lived in the state and regard it as their home, but are not nationals. It also excludes those who have been deprived of their citizenship by the state to whose territory they wish to return. (For present purposes, the distinction between nationality in the legal sense and citizenship is unimportant, and I will treat “national” and “citizen” as equivalent statuses in what follows.)

It is not clear whether the various international law documents recognize the full significance of the distinction between “country” and “nationality” in their formulations. Consider for example the wording of the UN *Draft Principles*, section II:

- (a) Everyone is entitled, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, marriage or other status, to return to his country.
- (b) No one shall be arbitrarily deprived of his nationality or forced to renounce his nationality as a means of divesting him of the right to return to his country.
- (c) No one shall be arbitrarily deprived of the right to enter his own country.¹⁵

14 *Supra* note 10, at Protocol No. 4, art. 3 (2).

15 Cited in HANNUM, *supra* note 13, at 147–48.

Clauses (a) and (c) interpret the right of return in such a way as to apply to anyone returning to the place which they can justifiably claim to be their own country regardless of whether they have the legal status of citizen there. Clause (b), on the other hand, defends the right of return for *nationals* against states who are tempted to undermine it by arbitrarily denationalizing those of their citizens who they do not want to readmit. There is nothing strictly incoherent in defending both versions of the right together—i.e., interpreting it broadly so that it includes both everyone who can claim to be a genuine returnee *and* everyone who qualifies as a national of the state in question—but it is somewhat curious to see the latter sandwiched between two assertions of the former as though the drafters did not recognize the ambiguity, or perhaps consciously chose to blur it.¹⁶

To achieve greater clarity here, I propose to distinguish four possible ways of specifying who can claim the right of return. The main distinction is between residence-based (R) and citizenship-based (C) conceptions, but each of these can be given a narrower or a wider interpretation.

The right of return to state S might be held by:

R1: Everyone who has lived in S for substantial periods of time and has the right to reside permanently, whether or not they are also citizens.

R2: Everyone who has lived in S for substantial periods of time, whether or not they have a formal legal entitlement to do so.

C1: Everyone who is legally a citizen of S, whether or not they have resided in S.

C2: Everyone who is sufficiently connected to S by ties of inheritance, culture, etc. so as to be “effectively” a national of S, whether or not they are legally citizens or have resided in S.

International lawyers are divided on which of these gives the correct specification of the right of return.¹⁷ Some argue that the right of return is tied directly to nationality, and by way of justification point to the accompanying obligation on the part of states not to undermine the right by arbitrarily depriving citizens

16 Further ambiguity is introduced by the fact that the relevant section is headed “The Right of a National to Return to his Country,” which suggests that the drafters all along intended these principles to apply only to nationals, the narrower view. For evidence that the meaning of “country” was deliberately left imprecise by those responsible for drafting the ICCPR, see Kathleen Lawand, *The Right to Return of Palestinians in International Law*, 8 INT’L J. REFUGEE L., 532, 549–50 (1996).

17 See also Jeremie Bracka, *Past the Point of No Return? The Palestinian Right of Return in International Human Rights Law*, 6 MELBOURNE J. INT’L L., 272, 298–302 (2005).

of their nationality (C1).¹⁸ Others argue that the right applies to all those who are lawfully present in a country, regardless of citizenship status: having granted someone permanent residence, a state cannot then (unless there are exceptional circumstances) refuse that person reentry if she leaves (R1).¹⁹ Support for interpretation R2 can be drawn from various documents connected to the peace settlement in Bosnia/Herzegovina, including, for example, Security Council Resolution 947, which “[a]ffirms the right of all displaced persons to return voluntarily to their homes of origin in safety and dignity with the assistance of the international community.”²⁰ The phrase “homes of origin” intuitively conveys the idea that someone who has once been settled in a place has a right to return there, and this applies regardless of changes in citizenship or other legal status such as came about through the breakup of the Yugoslavian state. Finally, some commentators defend the rather broad interpretation C2 by appeal to the *Nottebohm* decision of the International Court of Justice,²¹ which used various criteria to determine which of two countries an individual was “substantively” linked to, and in which therefore he enjoyed “effective” (i.e., non-legal) nationality. The underlying rationale for this way of understanding the right of return was spelt out by a contributor to the 1972 Uppsala Colloquium, a meeting of legal and human rights experts from 25 countries convened to examine the meaning of UDHR Article 13 (2):²²

A person’s “country” is that to which he is connected by a reasonable combination of such relevant criteria as race, religion, language, ancestry, birth and prolonged domicile. Governments come and go, and their political fluctuations and vagaries should not affect the fundamental

18 See, for example PAUL SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 179 (1983); Ruth Lapidot, *The Right of Return in International Law, with Special Reference to the Palestinian Refugees*, in 16 *ISRAEL YEARBOOK ON HUMAN RIGHTS* 103 (Yoram Dinstein ed., 1986).

19 See, for example Stig Jagerskiold, *The Freedom of Movement*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 180–81 (Louis Henkin ed. 1981); HANNUM, *supra* note 13, at 56–60.

20 Cited in Alfred-Maurice de Zayas, *The Right to One’s Homeland, Ethnic Cleansing, and the International Criminal Tribunal for the Former Yugoslavia*, 6 *CRIM. L. F.*, 257, 311 (1995). For discussion of how the right of return was implemented in this case, see Megan Bradley, *Liberal Democracies’ Divergent Interpretations of the Right of Return: Implications for Free Movement*, in *DEMOCRATIC CITIZENSHIP AND THE FREE MOVEMENT OF PEOPLE* (Willem Maas ed., 2013).

21 *Nottebohm (Liech. v. Guat.)*, Judgment, 1955 I.C.J 1 (Apr. 6).

22 *Supra*, note 1, at Art. 13 (2).

right of human beings, such as the right to return to one's own country and to have a homeland.²³

I do not intend to try to establish which reading of the right of return in international law is "correct," even supposing that question has a definite answer (perhaps different bodies of international law point in different directions).²⁴ The implication we should draw is that different extensions of the right correspond to different ways of justifying it, as I shall argue below. Before moving beyond international law, however, I need to address its second ambiguity, over whether the right of return can be asserted by individuals when they are acting as part of larger groups, such that it can be appealed to in cases like those that arise in the aftermath of ethnic cleansing, or the mass exodus of refugees. Again, international lawyers give different answers to this question.²⁵ For some it seems obvious that if the individual members of a group have the right of return, this must apply regardless of whether they are acting singly or as part of a larger movement of people. As Lawand puts it,

[t]he fact that an individual left his or her country as part of a mass movement does not prejudice his or her rights as an individual. To subsume an individual's rights into those of the displaced group is contrary to the objects and purposes of human rights instruments generally and would render illusory most of the rights which they are intended to protect.²⁶

Against that, others argue that the relevant human rights documents were not meant to apply to circumstances of mass movement. Jagerskiold, for example, argues that the right of return contained in the ICCPR

is intended to apply to individuals asserting an individual right. There was no intention here to address the claims of masses of people who have been displaced as a by-product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from

23 THE RIGHT TO LEAVE AND TO RETURN: PAPERS AND RECOMMENDATIONS OF THE INTERNATIONAL COLLOQUIUM HELD IN UPPSALA, SWEDEN, 19–21 JUNE 1972 343 (Karel Vasak & Sidney Liskofsky eds., 1976). "Prolonged domicile" is mentioned here, but only as one of a number of factors that might be used to establish sufficient connection, not as a necessary condition.

24 For cases yielding different interpretations of ICCPR Article 12(4), which proclaims a person's right to enter his own country, see SARAH JOSEPH & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY* 408–17 (2013).

25 Bracka, *supra* note 16, at 302–03.

26 Lawand, *supra* note 19, at 543.

Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from the Arab countries.²⁷

There is no simple way to resolve this disagreement. On one side, we might think that circumstances of mass expulsion or flight are precisely those in which the right of return has its greatest importance, given the vulnerability of those who are displaced. On the other side, the return of large numbers of people to the territory of a state can raise questions about social order, democracy, cultural identity, and so forth which seemingly cannot be dismissed simply by proclaiming an individual right of return. To make further progress, we need to explore some alternative ways of grounding the right, which will prove to have implications for its content.

II. THE RIGHT OF RETURN AS A CITIZENSHIP RIGHT

Consider first a way of grounding the right that is suggested by position C1 above, which assigns the right of return only to nationals of the state in question. This view implies that the right of return is one of the incidents of citizenship. Just as the state cannot deprive one of its citizens of the right to vote or the right to a fair trial, so it cannot deprive her of the freedom to reside on the territory of the state, and must therefore allow her to reenter should she decide at any time to leave. Having this right protects her access to the other rights of citizenship. The state cannot relieve itself of its obligation to her by forcing or inducing her to leave and then refusing to let her back in. At the same time, it protects other states from having to incur unwanted responsibilities. If a UK citizen emigrates to Canada, though without acquiring citizenship there, and proves to be a burden on the Canadian state, Canada can ask him to leave on the basis that the country he came from cannot refuse to take him back. Obviously this will only work so long as the right of return is accompanied by stringent constraints on the state's right to denationalize its citizens. But if such constraints are in place, then it seems we have found a (statist) way of justifying the right of return.

The justification appeals both to the individual's interest in not becoming stateless (since with the right of return in place he can always reactivate his citizenship rights in the country that first awarded them) and to the state's interest in being protected against unwelcome responsibilities; other states

27 Jagerskiold, *supra* note 20, at 180.

cannot simply expel their unwanted citizens and refuse to take them back.²⁸ It may be questioned whether this provides a suitable justification for the right of return *as a human right*. This will depend on how far we are prepared to allow human rights to be shaped not merely by the interests of their bearers but also by the interests of the states that have to implement them.

Whatever view one takes on the last question, however, a right of return tied in this way to citizenship as its justificatory ground will be subject to some obvious limitations. First, it will not apply to people who leave a country where they have no rights of citizenship, even if they have become dependent on that country for their survival, or have close personal connections there. A recent example was provided by the so-called “Windrush scandal” in the UK, where people of Caribbean origin who had been living in the country for 50 years or more, but had never formalized their status, suddenly found themselves at risk of deportation and/or being refused reentry to the UK.²⁹ Moreover, the right could be interpreted so as to exclude citizens living abroad who have either already acquired a second citizenship in their new country of residence or would be able to do so if they applied for one. For these people, removing their right of return would not render them stateless, since they have access to an alternative form of citizenship.

What seems to be missing, when the right of return is justified solely as a way of protecting a person’s other rights as a citizen and avoiding statelessness, is an appreciation of the fact that people have a separate strong interest in being able physically to return to the place that they regard as their homeland, which at this point could be understood either as a return to a physical location, a return to a social network, or a return to a cultural community. In Part IV I will look more closely at the idea of a homeland, and at how its component parts are interrelated. For people with this interest, being offered citizenship somewhere else, even if the basket of rights that comes with it is quite plentiful, cannot substitute for being allowed to live in that special place. If this thought is correct, then although states may have an interest in construing the right of return narrowly so that it is held only by nationals in the formal sense (i.e., their own citizens), we need to look for a way of grounding the right that

28 Nevertheless, states may be tempted to place a more restrictive interpretation of the right of return in the case of their own citizens, and a more expansive interpretation in the case of citizens of other states who they are currently sheltering (and want rid of), such as refugees. See the discussion in Bradley, *supra* note 20.

29 The *Empire Windrush* was the ship that had brought around a thousand West Indians to Britain in 1948 after an appeal posted in Jamaica for immigrants to come and work in the UK. Their arrival was recorded via landing cards, but in other respects their status in the UK was never clarified.

gives it a wider scope. That doesn't mean that the justification explored in this Part of the Article is irrelevant. Human rights frequently have multiple groundings. In particular, a right can be grounded both in the direct interest the bearer has in exercising the right, and in the supporting role it can play vis-à-vis other rights. For example the right to freedom of speech is grounded both in the speaker's need for self-expression, and in the importance of free speech for the effective exercise of democratic rights, by others as well as the speaker. So it may be important to underline the way in which a right of return protects a person's status as citizen. But if we believe it should do more than that—that it should apply also to some noncitizens, like the Windrush families, and to people who have emigrated and secured citizenship abroad—we need to look for a different kind of justification.

III. INDIVIDUAL AUTONOMY AS A GROUND FOR THE RIGHT OF RETURN

The most obvious way to justify the right of return as a human right is to show that it is necessary to protect a basic human interest. Several authors have proposed that the interest in question is the interest in individual autonomy.³⁰ Grounding human rights in autonomy is a familiar strategy: it plays a central role in James Griffin's well-known "personhood" account of the basis of human rights, for example.³¹ As my comments in the Introduction imply, I do not accept this justificatory strategy. A major concern is that autonomy is too culturally specific as a ground for human rights, since while it is a core value in contemporary Western societies, it does not appear to have this status elsewhere, where less emphasis is placed on a person's capacity to choose their own plan of life, and more on their ability to live a good life.³² But since many authors believe that it is possible to justify human rights by showing that they protect the conditions for living an autonomous life, I will set that general concern aside for now. The specific issue to be addressed is whether an appeal to the value of autonomy can provide sufficient justification for

30 For an extended argument to this effect, see Christine Straehle, *Refugees and the Right to Return*, in *THE POLITICAL PHILOSOPHY OF REFUGEE* (David Miller & Christine Straehle eds., 2020). Note that Straehle's argument is developed so as to apply to the specific case of refugees, allowing her to bring in autonomy-relevant factors that may not be present in other cases in which return is sought.

31 JAMES GRIFFIN, *ON HUMAN RIGHTS* (2008).

32 I have expressed this worry, among others, about Griffin's theory in *Personhood*, *supra* note 2.

asserting a strong right of return on the part of those who have been voluntarily or involuntarily displaced from their homelands.

The argument that it does this begins with the assertion that to be autonomous one must have the ability to form and carry out plans and projects, and these are typically spatially located. So being removed from the place in relation to which my plan of life has been formed, and then barred from re-occupying it, would be a severe setback to my autonomy. As Stilz puts it,

Occupancy of territory is connected to autonomy because it plays an important role in almost all of our plans. We build our lives on the assumption that our goals, relationships, and pursuits will not be unexpectedly destroyed through forced displacement. If I structure my goals and choices against the background of continuing legal residence in a particular territory, and if I am there through no fault of my own, then respect for my autonomy tells in favor of allowing me to remain there since it would be impossible to move me without damage to nearly all my life plans.³³

Lefkowitz argues that even this does not go far enough, since it still treats secure residence as merely a means to the pursuit of whatever goals a person might have:

For many people, however, particular territories are not merely means to the pursuit of a good life, but integral to the very way of life they pursue. Respect for a person's autonomy requires not only respect for his or her ability to use objects or physical spaces as means to their ends, but also respect for his or her ability to set ends. Here, the relevant end is the pursuit of a territorially grounded conception of the good; that is, the pursuit of a way of life located in a particular place.³⁴

33 Anna Stilz, *Nations, States, and Territory*, 121 *ETHICS* 572, 583–84 (2011) [hereinafter *Nations*]. In her later work, Stilz continues to defend the importance of located life-plans, but without making it a condition that these should be autonomously formed. As she puts it, “my account of territorial occupancy is not grounded in the interest in autonomy, but in a broader interest in carrying out the located projects that we happen to have, whether or not these projects were acquired through a process of evaluation and choice” (Anna Stilz, *Occupancy Rights and the Wrong of Removal*, 41 *PHIL. & PUB. AFF.* 324, 337 (2013) [hereinafter *Occupancy*]). This shift reflects a concern that an autonomy-based account may not correctly capture the interest that indigenous groups in particular may have in occupancy rights.

34 David Lefkowitz, *Autonomy, Residence, and Return*, 18 *CRITICAL REV. INT'L SOC. & POL. PHIL.* 529, 533 (2015).

These arguments undoubtedly provide a strong case for protecting people from forcibly being removed from the places where they live.³⁵ Compelled removal prevents autonomously chosen plans and projects from being brought to completion insofar as they are place-specific. Indeed even the threat of removal interferes with autonomy, since it deters people from developing plans that depend upon their ability to stay living where they are, thus restricting the range of options available to them. Although autonomy doesn't require a person to have *unlimited* options, it's plausible that for most people, their most important projects do depend on having a secure place in which to live ("place" here meaning locality or neighborhood rather than individual dwelling).

The right to return, however, only comes into play in the case of people who have already left that place, and it is therefore not a direct corollary of the right not to be removed. There are different cases to consider: first, whether the removal is voluntary or involuntary, and second, whether it involves *individual* displacement or *collective* displacement. We might think that an autonomy-based right of return would only apply to those who have been involuntarily displaced, since these are the people whose plans of life have been disrupted against their will, and remain disrupted so long as they are excluded from the place where those plans were formed. But before reaching that conclusion, we should consider why the right might still be important to those who have chosen to leave. One reason is that a voluntary emigrant might later come to regret her decision. She might realize that her most important projects were located in the place she has left and cannot be reproduced in the locality or the country where she has now chosen to live. So perhaps there is a universal, autonomy-based right of return that anyone can claim, regardless of the cause of their present displacement.

To assess this argument, we need to consider what autonomy prescribes in general when people voluntarily make life-changing decisions. As they open new doors for themselves, is it essential that the old doors should also remain open in case they change their minds and come to regret their previous decision? Here we can learn something by reflecting on a wider range of cases in which we do not think that the possibility of later regret requires that the rejected options should be kept open. When people sell their houses, they are not awarded the right to buy them back if they later come to rue their decision. Equally, people who quit their jobs don't have the right to be reemployed if they come to realize that they have made a serious mistake.

35 Without defining "forcible removal" precisely, I intend it to cover both the case where a political authority deliberately compels people to move, and the case where living conditions in the relevant place become so degraded that there is no reasonable choice but to move; civil war exemplifies the latter.

The reason might seem obvious: granting such return rights would interfere too much with security of tenure. Barry, who has bought Jim's house, would live in constant worry that Jim might reappear to claim his property back; ditto Sarah, who has been given the job that Elizabeth left. However, it is revealing that we do not seem to respond to the possibility of regret in such cases even in the much weaker form of giving the displaced person first refusal if the abandoned option should become available again. If Barry later decides to sell, he is neither legally nor morally required to offer Jim the chance to buy his house back at current market value, nor do we require Elizabeth's previous employer to give her back her job if Sarah leaves. In both these cases, we understand that an autonomous choice will typically mean opening up a new set of possibilities while decisively abandoning some of those that currently exist, so there is a sense in which we would not be respecting a person's capacity to choose if we insisted on giving them an unlimited right to go back on what they had already decided.³⁶

So why would the same reasoning not apply to a person who decides freely to emigrate? Why, on autonomy grounds, should they be allowed to have second thoughts and decide that after all their life projects would be best carried out in the country where they had been living? Of course, a decision to leave a country is not exactly analogous to a decision to leave a house or a job. For one thing, the former decision involves a more comprehensive renunciation of rights, as the discussion in Part II made clear.³⁷ In case the emigrant comes to realize that they have made a serious mistake, perhaps there should be a period of time within which they are granted a right of return. But why should the right persist for more than a couple of years or so after they have made the move and are settled in the new country, if it is grounded in personal autonomy—which as we have seen is normally understood to require renouncing old options when new ones are chosen? It therefore seems that individual people who choose to leave cannot demand an unlimited right of return on autonomy grounds alone.

The same reasoning would apply, perhaps even more strongly, to a *group* that leaves in order to pursue a project that they believe cannot be carried out

36 The furthest we appear to be willing to go in protecting people against regret is to insist in certain cases on a short cooling-off period within which a person is entitled to cancel a contract they have made, such as a hire-purchase agreement to buy some expensive household item.

37 Moreover, it is typically less costly to grant emigrants a right of return than it would be to offer house sellers and job-quitters the right to change their minds, since when a person returns to her country, she does not by that act itself displace any other right-holder.

while living where they now are—for example, a religious community whose members think that only by emigrating can they find the isolation they need to live a spiritual life. In this case, a person who leaves takes with him the social milieu within which his later projects are to be carried out, so again on autonomy grounds it is hard to see how he could have a strong claim to return to enjoy the options he has freely abandoned.

At first sight, things look very different in the case of individuals or groups who are compelled to leave their places of residence, and especially their countries. As suggested above, all of their located life plans, to use Stilz's phrase, are disrupted, and not of their own volition. So they suffer an immediately loss of autonomy, since previously chosen life-plans cannot be carried out. But we must also ask about what happens to the displaced people, and about the range of options that are available to them in the place they move to. These options will not be identical to the ones they have lost, but they might be roughly comparable. This will depend on the perspective from which they are valued, and initially we should expect people who already had territorially based life plans to find the set of options they now face less valuable, since the specific components of their original plans are unlikely to be available. But this might change with the passage of time; it clearly cannot be the case that people can only find valuable the options they are currently pursuing, otherwise we would never witness the phenomenon of people emigrating voluntarily to make new lives for themselves. So why not expect those who are involuntarily displaced to revalue options and make autonomous choices among the set that they now face? Why should the loss of autonomy be more than temporary?

Again it may be illuminating to consider the position of people who are forced to leave their homes or their jobs. To some extent we protect people legally against these losses. They cannot be evicted or sacked arbitrarily. Reasons and notice must both be given. Nevertheless, landlords can evict tenants when their tenancies expire, people who default on their mortgages can lose their homes, and local authorities can purchase houses compulsorily for public projects; likewise employers can declare workers redundant or dismiss them for unsatisfactory performance. Some may want to argue that current law and policy gives people too little protection against these forced displacements.³⁸ Nevertheless, the fact that we permit them to happen suggests that in these fairly important domains we do not recognize an autonomy-based human right against removal. We allow the interests of landlords and

38 In the case of housing, see Katy Wells, *The Right to Housing*, 67 *POL. STUD.* 406 (2019).

employers to prevail, presumably on the assumption that the people displaced will find other homes and other jobs and adjust their life-plans accordingly.

To return to the case of involuntary displacement between countries, it looks as though an appeal to autonomy will only generate a right of return in the case of those who are displaced to locations where the set of available options is poor. This is of course important: many refugees find themselves in precisely this situation. Forced to leave their own countries, they very often end up in camps that may provide the basics but few other opportunities. Note, however, that even here autonomy considerations do not strictly require a return to the country of origin. Indeed, given the choice, many refugees would prefer to be resettled in rich countries that provide them with a wider range of options than would have been available at home. The general point is that if we ask what the conditions are under which a person can live an autonomous life, then on the one hand we can say that they must have access to a sufficiently good set of life-options to choose from, while on the other that the environment in which they live should be sufficiently stable that they can form and carry out longer-term plans. This is why it's at least plausible to think that an appeal to autonomy can be used to justify many of the human rights that we would expect to find on the standard list—food, shelter, healthcare, employment, education, etc.—and also a right against involuntary displacement. What invoking autonomy cannot justify, however, is a right to return to the specific place in which a person's life-plans were originally formed.³⁹

However we must also consider collective displacement. Intuitively we have a strong sense that when communities are forced to move against their will, they have a strong claim to return. Moore gives the example of the Inuit from Labrador who were moved away from their traditional hunting grounds:

Adaptation was difficult, not because the policy involved the rupture of personal relationships, but because it was closely bound up with the way of life of the people in the community, and it was very difficult, culturally and personally, to adapt to a context in which caribou hunting was not possible; the migratory patterns which the people had been

39 What if these plans are such that they can only be carried out in that original place, and the person in question is unwilling to change them? Human rights do not shield individual life-plans. Consider a skilled craftsman who identifies closely with his work. He might be a cabinet-maker working at a time when the demand for handmade furniture is declining. If the firm he works for goes bust, he cannot call on a human right to be provided with employment of that specific kind. The personal loss in such a case is real, but not one that human rights can protect against.

taught were no longer relevant; and people were left without their past cultural resources, unable to adapt to this new, quite different context.⁴⁰

Stilz offers a similar example involving the removal of the Navajos from Arizona in the 19th century to launch her argument about the wrong of removal.⁴¹ In both cases, the fate that befell these peoples seems to provide good grounds for asserting their human right to return to the places from which they had been evicted.

What is noticeable about these examples, however, is that neither author explains their wrongness by appealing to individual autonomy. Moore explicitly rejects autonomy as providing the appropriate way to think about removal and return,⁴² and Stilz, having initially favored autonomy as a grounding⁴³ clarifies that her argument about the Navajos requires only that individual Navajos should endorse their traditional herding practices, not that they should choose them autonomously.⁴⁴ It is no accident that the most compelling collective return cases concern indigenous groups whose identity is formed by longstanding practices such as hunting and herding that can only be carried out in the group's ancestral home. What is being denied by removal is not individual autonomy but the continuation of a way of life that defines the group.

Whatever merit there is in using autonomy as the basis for human rights in general, it does not succeed in grounding a robust right of return. It cannot explain why it should matter so much to people that they be able specifically to return to their homelands.⁴⁵ This emerges most clearly in the case of people who exercise their autonomy by choosing to emigrate. If we believe that such

40 MARGARET MOORE, *A POLITICAL THEORY OF TERRITORY* 41 (2015).

41 *Occupancy*, *supra* note 33, at 324.

42 MOORE, *supra* note 40, at 142–46.

43 *Nations*, *supra* note 33, at 583–84.

44 *Occupancy*, *supra* note 33, at 337.

45 Autonomy is sometimes appealed to in order to justify a human right to freedom of movement internationally: see, for example Kieran Oberman, *Immigration as a Human Right*, in *MIGRATION IN POLITICAL THEORY: THE ETHICS OF MOVEMENT AND MEMBERSHIP* (Sarah Fine & Lea Ypi eds., 2016). However even if it is true that increasing the number of options open to a person increases their autonomy (something there is reason to doubt), when autonomy is used to ground human rights, it must be interpreted as a threshold concept: human rights provide their bearers with sufficient, not unlimited, autonomy. For the argument that there is no human right to international freedom of movement, see David Miller, *Is There a Human Right to Immigrate?*, in *MIGRATION IN POLITICAL THEORY: THE ETHICS OF MOVEMENT AND MEMBERSHIP* (Sarah Fine & Lea Ypi eds., 2016). For present purposes, however, the main point is that an autonomy approach can count the number of options open to a person, and the subjective value they

people nonetheless possess a human right to return to their countries of origin—a right that could only be forfeited under the most extreme circumstances—we need to justify this in another way. But even for those who are forced to leave, individually or collectively, appealing to autonomy can at best explain the immediate wrong of removal, but cannot show why a right of return should persist even after those displaced have had the opportunity to develop new life-plans. So to show that both those who choose to leave and those who are involuntarily displaced, but to option-rich places, nonetheless retain a right to return to their own countries, we need to seek a different justification.⁴⁶

IV. THE NEED TO BELONG TO A HOMELAND AS GROUNDS FOR THE RIGHT OF RETURN

To find a better foundation for a robust right of return, we need to adopt a communitarian perspective, one that acknowledges the special nature of the ties that exist between a person and the country she recognizes as “home” and therefore the importance of having secure and ongoing access to that place. We need, in other words, to appeal to the human need to belong. But belong to what? Here I need to introduce and explain the idea of a homeland, an idea that is suggested by the indigenous examples discussed in the previous Part, and also by the last of the four specifications of the holders of the right of return listed in Part I (C2), which referred to people who are bonded to a country by ties of culture and ancestry. So what is meant by a “homeland”—a concept that appears in many different European languages: “patrie” in French, “patria” in Italian, “Heimat” in German, “fosterland” or “hemland” in Swedish, etc.? In order for the concept to make sense, we must first begin with the people whose homeland it is. This might be a nation in the modern sense, but there are also pre-modern and present-day indigenous groups whose identity connects them to a physical place in a similar way. The homeland is regarded as the collective possession of the people in question, and in normal cases they will also be its current occupants—though as we have seen people who have been forcibly expelled from their homeland are likely still to regard

attach to them, but it gives no special weight to options that are only available in someone’s original homeland.

46 At this point it may be worth reminding the reader that we are searching for a way to justify a general right of return on the part of those who have left or been displaced from their home countries, no matter how the uprooting has come about. Among these there will be some whose claim to return is strengthened by additional reasons, for example those who can demand it as reparation for the injustice of involuntary exile.

it as rightfully theirs. There is an internal connection between the physical area of land that constitutes the homeland and the cultural life of the group, though the exact form that this connection takes will vary somewhat from case to case. So in describing the characteristic features of a homeland, I do not mean to lay down necessary and sufficient features for one to exist.

The homeland is the area that the group has inhabited over time, and with the passage of time it will typically have imprinted the land with its own distinctive culture.⁴⁷ It will have cultivated parts of the terrain to meet its material needs, while at the same time endowing specific places within it with symbolic significance—there will be sacred sites, a distinctive architecture, memorials to various historic events, and so forth. But the physical properties of the land will also have shaped the group's culture, again both in a material sense, as the group adapts its way of life to the physical possibilities and constraints of its habitat, and in a cultural sense, as both natural and manmade features of the land are celebrated in art, literature, folksong, etc. (this is the lesson we learn from the cases of the Labrador Inuit and the Arizona Navajo).⁴⁸ The homeland is also often understood to be the place where the people's forebears were born, lived, and died: in the most extreme case, as with the ancient Greek idea of autochthony, they are understood to have sprung from the soil in a literal sense.⁴⁹ However, group members' relationship to the homeland is not simply one of (real or imagined) historical memory; there is also an element of immediate experience. The person who returns to the homeland after travelling abroad will at once have a direct sense of being "at home" as she looks at and listens to the goings-on around her. This double-sided quality of attachment to the homeland is well brought out by Tuan in the following passage:

A homeland has its landmarks, which may be features of high visibility and public significance, such as monuments, shrines, a hallowed battlefield

47 Note that the concept of "homeland" used in this article differs from Chaim Gans' idea of a "formative territory," understood as the territory that is of primary importance in forming the historical identity of the group in question. See CHAIM GANS, *THE LIMITS OF NATIONALISM* Ch. 4 (2003). A homeland must be a place that the group either occupies now or has occupied in the recent past, whereas a formative territory may simply be a place that ancestors of the group are believed to have lived in millennia ago. Of course, a homeland may *also* be a formative territory, and vice versa.

48 For a wide-ranging survey of representations of the homeland in art, see Simon Schama, *Homelands*, 58 *SOC. RES.* 11 (1991).

49 The same idea (though in a less literal form) can be seen at work when the homeland is referred to as the "fatherland" or "motherland" of the people.

or cemetery. These visible signs serve to enhance a people's sense of identity; they encourage awareness of and loyalty to place. But a strong attachment to the homeland can emerge quite apart from any explicit concept of sacredness; it can form without the memory of heroic battles won and lost, and without the bond of fear or of superiority vis-à-vis other people. Attachment of a deep though subconscious sort may come simply with familiarity and ease, with the assurance of nurture and security, with the memory of sounds and smells, of communal activities and homely pleasures accumulated over time.⁵⁰

It is important to add here that, with the exception perhaps of very small indigenous groups, different group members will have attachments to particular places within the homeland. So the general link between the group and the homeland is supported by numerous more specific links between individual members and places or areas within it. It is also worth adding that there will often be a region that the group recognizes as its heartland, and other areas that, though still seen as belonging to the homeland, are nevertheless regarded as more peripheral—for example, those that have remained uninhabited and have no special features that are celebrated in the group's culture.⁵¹ Finally, note that the group's homeland may or may not coincide with the territory over which it currently exercises political jurisdiction. The group will of course aspire to have a sufficient degree of control over its homeland to enable it to preserve its valued connection to that place, and to continue to shape it for the future. If the group is a modern nation, it will probably aim to have a state whose boundaries coincide with the periphery of the homeland. But for various reasons, including in some cases the parallel claims of rival groups, it may have to compromise on that aspiration. In exceptional cases, it may not even be able to govern the area that it regards as the most iconic.⁵²

Having now outlined the part that the homeland plays in the collective identity of the group whose homeland it is, we are now in a position to see how it can be invoked to support a right of return. The argument proceeds in three steps.

First, it is a widespread if not universal feature of human beings that they have a need to belong: they experience their own identity as bound up with

50 YI-FU TUAN, *SPACE AND PLACE: THE PERSPECTIVE OF EXPERIENCE* 159 (1977).

51 This distinction between heartlands and outlying areas is explored at greater length in MOORE, *supra* note 40, at 118–22.

52 For an example, consider the prominent role given to the Lithuanian forest in the national imagination of the Polish people, even though for long stretches of time that area was not under Polish political jurisdiction: see SIMON SCHAMA, *LANDSCAPE AND MEMORY* Ch. 1 (2004).

the identity of social groups. These can be of many different kinds, but they certainly include the physically located groups, such as nations, that were introduced to explain the idea of homeland. So the need to belong includes not just the need to belong to the group, but also to the place in which it is rooted. To satisfy this need, one must either be physically present in the homeland, or have the opportunity to return there when one wishes to. Having a homeland is in this respect analogous to having an individual home; as the saying goes, home is the place where they have to take you in. In one sense, therefore, you don't possess a home, or a homeland, if you are debarred from going and staying there.

Second, although people can over the course of time come voluntarily to acquire new identities, including new national identities, it is important that this should be their own decision and not one forced upon them by circumstances. Even those who choose to emigrate with the intention of becoming nationals of the society to which they are moving usually keep a strong emotional connection to their original homeland. A French person living abroad may be as distressed as a Parisian when he hears that the cathedral of Notre Dame has been engulfed by flames. They become in effect binational, and would resent being forced to renounce their original identity.

Third, the need to belong is a deep human need, a need of sufficient weight to support human rights. Since in order to satisfy it one must have access to the homeland of the group one identifies with, and since that homeland is likely to correspond more or less closely to the territory in which one was born and/or raised and/or had dwelt in for most of one's life, to protect it one must have a right of return to that place in particular.

To clarify this further, consider three possible objections to the claim that a right of return can be grounded on the need to belong. The first would say that although the need to belong to a group of some kind may be universal, the need to belong to a place-related group, such as a nation, is not. In the world today, there are many who identify themselves as cosmopolitans, and whose more specific ties of identity may be formed with like-minded people—fellow-enthusiasts for some cause or cultural practice—no matter where they live. Apparently they have no need to belong to a homeland. Yet without entering the debate about whether there is something impoverished about the life of a person who has no roots that fasten him to a particular place, it is enough to observe that when rights are grounded on basic human needs, the needs that count are ones that are widely shared as part of the human form of life, without necessarily being experienced by everyone. There are people who feel no need to have sexual relationships, or to experience art or music. Yet we continue to assert human rights to sexual freedom and freedom of artistic expression because we know that for the great majority

of people everywhere life would be miserable if they had no opportunity to fulfil these needs. Likewise, the right not to be forcibly displaced from one's homeland, and the corresponding right to return to it from abroad, are justified by observing that belonging to the place they identify as home is a basic need whose fulfilment matters greatly to most people. They would find the prospect of being permanently exiled from that place acutely distressing.

A second objection is that, inasmuch as the right of return is claimed by virtue of identification with the homeland, it seems to depend on subjective facts about the claimant, and these cannot adequately ground such a right. But this is to misunderstand the justificatory argument at work here. Starting from the claim that the need to belong is a human need, it defends a human right that everyone has to return to the country that qualifies as their homeland. There is then, for each person, a further question as to how that country is to be identified—a question that is normally straightforward to answer, but that can become practically pressing in legal cases; for example, cases in which someone was born in country A but has subsequently spent much of her life living in country B, and the issue is whether A can still count as her homeland for purposes of exercising the right of return. When trying to establish whether the person is “effectively” a national of A, the court is likely to take account of a mix of objective and more subjective factors, including time spent in A, personal or business connections with people living there, etc.⁵³ Someone's mere assertion that they “feel” that they belong to country A would never be enough. But this has nothing to do with the right of return as such, only with whether the right can be claimed in relation to a specific country. Like other needs, the need to belong is not itself subjective.

A third objection focuses on the concept of “homeland” and claims that it is amorphous in a way that makes it an unsuitable basis on which to claim a right. When introducing the concept, I noted that it combines several different elements, and no doubt if we were to ask people what they regard as “their home” or “where they come from,” we would get different answers that reflect this complexity. Some might identify the place quite narrowly as a village or a valley. Others might specify a cultural milieu, such as the region where a language or a dialect is spoken—say the Ladin-speaking area of South Tyrol. Yet others would think of their homeland in much larger terms, such as a culturally variegated nation (within which, however, they would also have lesser loyalties to particular places). For the purpose of justifying a right of return, however, these differences will rarely matter.⁵⁴ The right of return is

53 For some relevant cases, see JOSEPH & CASTAN, *supra* note 24, at 408–17.

54 At least for return at the individual level. When we consider cases of collective return, in contrast, the way that “homeland” is specified may be important,

a right to enter the state where your homeland is located. So long as there is internal freedom of movement, therefore, the right gives a person access to that special place no matter how widely or narrowly it is defined. So long as an out-of-territory Ladin-speaker has the right to enter Italy (and has freedom of movement within the country), he can make his way to the valleys where Ladin is mainly spoken.

It is, of course, a contingent question whether the sought-after homeland will continue to exist in a recognizable form with the passage of time. It may be destroyed by physical changes, such as the desertification of a once-fertile valley or the drowning of an island home by rising sea levels; it may also be eroded by cultural change, either because of inward or outward movements of population⁵⁵ or because the people who remain no longer speak the language or practice the religion that they once did. This has two consequences. First, it explains why when the right of return is formalized in law, it is usually time-restricted, applying only to the displaced person and her immediate descendants.⁵⁶ It will generally be implausible to claim that one has a need to belong to the place where one's remoter ancestors lived, not least because the claim will almost certainly rely on the place in question having physical and/or cultural features that it no longer possesses; in other words, the claim is a claim to return to a largely fictitious "home."⁵⁷ Second, it shows that the need to belong is a need that cannot always be satisfied for a particular person. The place that would otherwise count as his homeland may no longer exist, taking account of its different dimensions. But this does not undermine the case for a human right of return. Although on the view I am defending, human rights

because of the possibility that the designated place has meanwhile been occupied by another group.

- 55 Here I am considering population changes that occur by legitimate means. Clearly the intentional destruction of a homeland, whereby the current occupants are forced out and replaced by others, as in ethnic cleansing or certain forms of colonialism, raises much larger issues that cannot be dealt with here.
- 56 Such a restriction is often justified by referring to the legitimate claims of later occupants, who might have to be displaced if a time-unlimited right of return were granted: see, for example the argument put forward in Jeremy Waldron, *Superseding Historic Injustice*, 103 *ETHICS* 4 (1992); Jeremy Waldron, *Settlement, Return, and the Supersession Thesis*, 5 *THEORETICAL INQUIRIES L.* 237 (2004). Waldron also, however, points out that it becomes less plausible for a person to claim a deep need to be in a place after they have been removed from it for a long time.
- 57 On this point, see especially Alon Harel, *Whose Home Is It? Reflections on the Palestinians' Interest in Return*, 5 *THEORETICAL INQUIRIES L.* 333 (2004); Waldron, *supra* note 56.

are to be explained by reference to the basic needs whose fulfilment they protect, they cannot always guarantee that every such need will be satisfied. The right to marry protects the need to form stable, loving relationships, but some people who would like to marry never find the right partner; similarly for the right of return, and the homeland that (on the view I am defending) provides its underlying rationale.

So far I have investigated how the need to belong can justify a right of return on the part of individuals who have been displaced either involuntarily or as a result of choice. But now we must consider the case in which a whole community is expelled from (or chooses to leave) its homeland. Here the very idea of an *individual* right of return may seem problematic, for what would the individual be returning to? As I have analyzed the idea of homeland, it depends upon the symbiotic relationship between land, people, and culture, and when the people are expelled, this relationship unravels. So an individual's claim to return only makes sense in this case in the context of a collective right of return, whereby a sufficiently large number of people go back to recreate the located community that has been destroyed.⁵⁸ The exercise of any individual's right of return will depend on the willingness of the other members of the relevant group to seize the opportunity to repatriate and reconstitute the homeland.⁵⁹ This might at first glance seem bizarre. How can an individual's right depend on what other putative bearers of that right are willing to do? But there are other cases that appear to involve this kind of dependence. Consider the right of self-determination. If we treat this as an individual right as well as a collective right, then whether any given person is able to exercise that right depends on whether other members of the relevant "self" are prepared to do what it takes—set up political institutions, participate in them, accept their decisions, etc.—to make the collective right

58 To clarify, an individual person in this situation might still be able to claim a right of *property* in some part of the territory that the group has left, and argue that she should be allowed to go back to occupy the house or land that she owns. But this is obviously different from asserting a right to return as such, which I am arguing derives from the need to belong to a homeland.

59 This point is also made in Victor Tadros, *The Persistence of the Right of Return*, 16 *POL. PHIL. & ECON.* 375, 379–80 (2017). More generally, as discussed above, establishing a right of return cannot always guarantee that an individual's need to belong will be fulfilled. The right must be understood as a right not to be prevented by states or other bodies from returning individually to an existing homeland or returning collectively to reconstitute the homeland in the case of a group that has been displaced. But where a person's homeland vanishes and cannot be recreated, their right becomes empty, and their need cannot be satisfied unless they are able to identify and move to a new homeland.

effective. So either we have to concede that there is no individual right here, or we must say that the individual right is only exercisable on condition that enough others in the relevant group also exercise theirs. In the same way, in cases where the whole group has either voluntarily abandoned or been forced out of their homeland, the right of return must, in the first instance, be exercised at the collective level.

V. THE RETURN CLAIMS OF JEWS AND PALESTINIANS

To end the Article, I will briefly examine how the analysis of the right of return I have provided can be applied to the claims of Jews and Palestinians wishing to return either to the State of Israel or to the Occupied Territories it controls. I need to reemphasize that my focus is on return as a human right, and not on the expressive or reparative purposes that return, or the claiming of it, may serve. Let me start by setting aside the case of those who already enjoy Israeli citizenship. I take it for granted that any Israeli *national* who wishes to return should be allowed to do so, unless there are exceptional reasons, such as a serious security threat, for barring him. To explain this, we need not look beyond the narrow justification of the right of return as an indispensable adjunct to citizenship analyzed in Part II above. The contestable (and contested) cases involve noncitizens wishing to enter—Jews living abroad, or Palestinians displaced to neighboring countries who lack Israeli citizenship.

Under the much-trumpeted Law of Return, Israel has granted anyone with Jewish ancestry the positive right to come to Israel and acquire citizenship. To treat this legal right as justified by the human right of return, however, would be to stretch the meaning of “return” beyond the bounds recognized by international lawyers, even those who would support the most inclusive interpretation listed in Part I above, C2. Although a Jewish person living in New York, say, may identify culturally with Jews in Israel, he cannot in advance of returning claim any ancestral, familial or material connection with that territory. In other words, it is not his homeland, as understood here. Better justifications for the positive right are available: it can be seen either as a way of safeguarding Jews from the oppression they have experienced historically, by providing a guarantee that they can exercise their human right of exit from the state they currently occupy, or as an instrument of national self-determination. In the latter case, the argument is that political self-determination for Jews must involve gathering in a place where they can exercise control over territory, and the right of entry to that place follows

immediately.⁶⁰ I do not wish to evaluate these justifications (which strike me as plausible), but only to emphasize, as others have, that whereas the case for return made by Palestinians is indeed about the return of people who have actually been displaced, voluntarily or involuntarily, the Jewish case is not.⁶¹

Palestinians, therefore, have at least *prima facie* a human right to return to the places in Israel or the Occupied Territories from which they were displaced. Those who have the clearest claim are those who were recently displaced and have been denied the opportunity to become citizens of the states where they reside. If my analysis of the right of return, grounding it in the need to belong, is correct, their only homeland remains historic Palestine, because they have been denied the chance to sink roots in the places to which they have moved. It is irrelevant that the denial of rights to Palestinians may have been a deliberate strategy on the part of receiving states to keep up the pressure for return. The morality of such policies can be questioned, but the Palestinians themselves cannot be held responsible for them. So it is not the mere fact of having Palestinian ancestry or identifying as Palestinian that triggers the right of return: it is the fact that many Palestinians have unwillingly been placed in situations where they have no opportunity to adopt a new homeland, so their need to belong can only be met by returning to Palestine itself. This also means that the right cannot be claimed (as a human right) by people of Palestinian descent who have become assimilated citizens of other countries, at least if their connection to Israel/Palestine dates back half a century or more.⁶²

Since, however, this still leaves some millions of Palestinian who can claim a right of return, the pressing question becomes “return to where?”. As my analysis indicated, the ideal return scenario is one where a person returns at the same time to a physical location, a network of people, a cultural way of life, and a political community. This can readily be achieved only for those able to return to places where Palestinians have continued to live and

60 So far as self-determination goes, the place need not have been the land of Israel: the cultural argument for choosing Israel as the place for Jews to gather is a supplementary one.

61 Or to put the point more carefully, the Palestinian case is at least *centrally* about the return of people who have been displaced within one or two generations—people who had been living in Israel-Palestine or whose parents were. As time moves on, the emphasis may shift towards the idea of reoccupying an ancestral homeland, which would bring the Palestinian argument more closely into alignment with the Jewish argument.

62 To clarify, I have conceded that people who are displaced from country A to country B may for a time have two homelands and be able to claim the right to return to A as well as to B; but that claim must be time-limited, for the reasons set out in Part IV.

to sustain their economic and cultural practices, and even here the issue of citizenship looms large (return to a Palestinian state or to Israel itself?). For most, return would have to be collective, and would involve the recreation of communities in places that can support Palestinian culture, not necessarily the precise locations from which they or their parents were displaced. So we find ourselves very much in the realm of the second best: the Palestinian right of return has to be tailored to take account of other rights, including the collective self-determination rights of Israeli citizens. Those who are skeptical of the idea that the right of return can apply to cases of mass displacement may find their skepticism confirmed by looking at the logistics of Palestinian repatriation.

CONCLUSION

In the face of such skepticism, I have argued that the right of return qualifies as a human right, one that is normally exercisable on an individual basis, but that may under some circumstances need to be realized collectively, by a community of people returning together. Alongside its important role in securing citizenship and preventing statelessness, it is justified by reference to the human need to belong, to have a homeland one can always return to. The normative force of human rights is not diminished by recognizing that there will be unhappy circumstances in which they cannot all be fulfilled. I have argued elsewhere that the mass movement of refugees, now and in the future, is likely to create tragic situations in which the unwillingness of states, and their populations, to admit the refugees will lead to human rights violations on a large scale.⁶³ It is more honest to recognize such situations *as* tragic than to trim down the list of human rights so that the appearance of moral conflict is avoided. At least by so doing the pressure to help as many as possible is sustained, and those whose rights are infringed may later qualify for compensation. This, I believe, is the right way to think about the Palestinians who qualify for the right of return to historic Palestine: as caught up in a tragic situation where it is for the moment impossible for all their human rights to be fulfilled.

63 DAVID MILLER, *STRANGERS IN OUR MIDST: THE POLITICAL PHILOSOPHY OF IMMIGRATION* 162–64 (2016). To clarify, speaking of tragedy here presupposes that states have strong moral reasons for *not* taking in the refugees, as well as strong moral reasons to accept them.