

Refugee Repatriation

Justice, Responsibility and Redress

Megan Bradley



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press,
New York

www.cambridge.org
Information on this title: www.cambridge.org/9781107699557

© Megan Bradley 2013

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2013

Printed and bound in the United Kingdom by the MPG Books Group

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Bradley, Megan, 1980–

Refugee repatriation : justice, responsibility and redress / Megan Bradley.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-02631-5 (hardback) – ISBN 978-1-107-69955-7 (paperback)

1. Repatriation. 2. Return migration. 3. Refugees. I. Title.

JV6217.5'B73 2013

325 – dc23 2012043992

ISBN 978-1-107-02631-5 Hardback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to
in this publication, and does not guarantee that any content on such
websites is, or will remain, accurate or appropriate.

Contents

| | |
|--|----------|
| <i>Acknowledgements</i> | page vii |
| <i>List of Acronyms</i> | ix |
| Introduction | 1 |
| The rise of return: political origins and practical implications of the focus on repatriation | 2 |
| Theoretical implications of the focus on repatriation | 8 |
| Reparations: a new threshold for morality in international politics? | 13 |
| Structure and scope of analysis | 16 |
| Contested terms and concepts | 20 |

Part I Foundations of state responsibility and just return

| | | |
|----------|--|-----------|
| 1 | Forced migration and the responsibilities of states: moral and legal perspectives | 27 |
| | Responsibility in political theory | 28 |
| | The responsibilities of states: legal views | 36 |
| | Breaking the bond and the imperative of repair: theorising responsibility for forced migration | 40 |
| 2 | The conditions of just return: a minimum account | 44 |
| | Why worry about just return? | 46 |
| | The foundations of just return: legal provisions on repatriation and their moral and political implications | 51 |
| | At the heart of the matter: return and redress, return as redress | 61 |
| 3 | The tools of repair: redress for returning refugees | 65 |
| | Competing conceptions of redress | 66 |
| | From the long shadow of Versailles: the modern reparations movement | 71 |
| | Refugees in the reparations movement: recent history of an emerging norm | 73 |
| | A norm in progress | 92 |

| | |
|--|-----|
| Part II Historical experiences of return and redress | |
| Introduction to Part II | 95 |
| 4 Return and redress in Guatemala | 99 |
| Negotiating return, negotiating peace | 102 |
| Realising return and redress | 108 |
| A model return? | 117 |
| 5 Return and redress in Bosnia and Herzegovina | 122 |
| Enabling and undermining return: the Dayton peace process | 124 |
| Redressing ethnic cleansing: diverse attempts, limited success | 131 |
| Disconnects among return, redress and responsibility | 143 |
| 6 Return and redress in Mozambique | 149 |
| Ending war in Mozambique | 153 |
| An unlikely success? Return and the consolidation of peace | 156 |
| Unfinished business? Reparations, reconciliation and return | 158 |
| Just return and the responsibilities of a crippled state | 169 |
| 7 Analysis of case studies | 173 |
| Crafting redress for returnees: insights from Guatemala, Bosnia and Mozambique | 174 |
| Implications for theorising state responsibility and just return | 183 |
| | |
| Part III Beyond repair? Grappling with hard cases | |
| Introduction to Part III | 191 |
| Characteristics of hard cases | 193 |
| Snapshots of hard cases | 197 |
| Just return in hard cases | 202 |
| 8 Just return and the Palestinian refugees | 207 |
| Contested lands and terms | 211 |
| The 1948 exodus: origins and attribution of responsibility | 213 |
| Resolving and redressing Palestinian displacement: frameworks and past efforts | 221 |
| The best we can do? Imagining just return in the Palestinian case | 226 |
| Conclusion | 239 |
| | |
| <i>Bibliography</i> | 248 |
| <i>Index</i> | 285 |

Acknowledgements

My explorations of accountability for displacement and the questions of justice raised by refugee repatriation processes began almost a decade ago, when I first started graduate studies at the University of Oxford. As this project has moved towards fruition, I have been lucky enough to accrue debts of gratitude to more people than I can name.

Matthew Gibney and Richard Caplan were invaluable guides and sounding boards as I examined these issues as a doctoral student. I could not have asked for better supervisors. Matthew and Richard continuously challenged me to rethink my assumptions and sharpen my analyses, and I sincerely appreciate their flexibility, humour, and warm support for my work and professional development. It was only when I began teaching my own students that I fully realised how lucky I was to have two such exceptional scholars and teachers working with me over the years.

I am also grateful to the many friends and colleagues who shared their insights and support as I refined this work. I am especially grateful to Roger Zetter, Anne Hammerstad, Alex Betts, Henry Shue, Adam Roberts, Graeme Rodgers, Katy Long and Stephanie Silverman for their comments on earlier versions of some of these chapters. This project succeeded only with the support of many friends, including Cathy John, Kate Spencer Ellis, Anni Oskala, Stephen Doughty, Leah Gray, Emily Schaming, Anna Sheftel, Kate Desormeau, Chau Le, Shani Winterstein, Rachel Brulé, Meredith Williams, Tania Esposito, Clarice Reis and Catherine Lu. Any errors or shortcomings are of course my own responsibility.

In addition, I would like to thank the organisations who provided the financial and institutional support necessary to make this project possible, including the Wingate Foundation, the Pirie-Reid Scholarship Fund at the University of Oxford, the British government's Overseas Research Student Award Programme, the Sauvé Foundation, and the International Development Research Centre, where I had the wonderful opportunity to work alongside stimulating colleagues, including Tim Dottridge, Roula El-Rifai, Gisèle Morin-Labatut and Luc Mougeot. As a Cadieux-Léger Fellow in the Canadian Department of Foreign Affairs and International

Trade (DFAIT), I benefitted from the chance to enhance my research through discussions with policymakers and the staff of DFAIT's Policy Research Division. I am especially grateful to Mariève Dubois and Jessie Thomson for their help and insights. At Saint Paul University my colleagues, particularly Karlijn Desmasure, Jean-Guy Goulet and Paul Rigby, were a great source of encouragement and advice, while at the Brookings Institution I would like to thank the members of the Brookings-LSE Project on Internal Displacement, especially Bryce Campbell and Beth Ferris. In recent years I have benefitted from the chance to work on an investigation of the interface of displacement and transitional justice with colleagues from Brookings and the International Center for Transitional Justice. Participating in this project deepened my appreciation of the complexities that accompany efforts to redress displacement, and I am especially grateful to Roger Duthie for shaping my thinking on these issues.

The introduction and Chapter 3 include material published in 'Rethinking Refugeehood: Statelessness, Repatriation, and Refugee Agency' *Review of International Studies* (2013, First View), © British International Studies Association, published by Cambridge University Press. Chapter 2 features material previously published in 'Return in Dignity: A Neglected Refugee Protection Challenge' *Canadian Journal of Development Studies* 28(3) (2009), pp. 371–382, published by Taylor & Francis and 'Back to Basics: The Conditions of Just Refugee Returns' *Journal of Refugee Studies* 21(3) (2008), pp. 285–304, published by Oxford University Press. I am grateful to the publishers for their permission to reproduce these articles.

Working with Cambridge University Press has been a great pleasure. I would like to thank John Haslam and Carrie Parkinson, as well as the anonymous reviewers who shared such thoughtful and constructive comments.

This project has helped me understand better both the complexity and preciousness of coming home. My homecomings are always joyful, thanks to the unfailing love and support of my family, particularly my parents Mary Lou and Roger Bradley, and my husband, Tim Wideman. I dedicate this work to them, with much gratitude and all my love.

List of Acronyms

| | |
|------------|--|
| AJR | Association for Justice and Reconciliation |
| BiH | Bosnia and Herzegovina |
| CALDH | Centre for Human Rights and Legal Action |
| CCPP | Permanent Commissions of Guatemalan Refugees |
| CEAR | Special Commission to Aid Repatriates |
| CEH | Commission for Historical Clarification |
| CERD | Committee on the Elimination of Racial Discrimination |
| CIO | Rhodesian Central Intelligence Organisation |
| CIREFCA | International Conference on Central American Refugees |
| COHRE | Centre on Housing Rights and Evictions |
| CONDEG | National Council of Displaced Guatemalans |
| CONTIERRA | Presidential Office for Legal Assistance and Resolution of Land Conflicts |
| CRPC | Commission for Real Property Claims of Displaced Persons and Refugees |
| ECHR | European Court of Human Rights |
| FAO | Food and Agriculture Organisation |
| FONATIERRA | National Land Fund |
| FONTIERRAS | Land Fund |
| FORELAP | Work and Production Reintegration Fund |
| FRELIMO | Front for the Liberation of Mozambique |
| GPA | General Peace Agreement for Mozambique |
| GRICAR | International Advisory and Support Group for the Return of the Guatemalan Refugees |
| HDZ BiH | Croatian Democratic Union of BiH |
| IACHR | Inter-American Court of Human Rights |
| ICC | International Criminal Court |
| ICG | International Crisis Group |

| | |
|---------|--|
| ICISS | International Commission on Intervention and State Sovereignty |
| ICJ | International Court of Justice |
| ICTR | International Criminal Tribunal for Rwanda |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| IDMC | Internal Displacement Monitoring Centre |
| IDPs | Internally Displaced Persons |
| ILA | International Law Association |
| ILC | International Law Commission |
| INTA | National Institute for Agrarian Transformation |
| IOM | International Organisation for Migration |
| IRO | International Refugee Organisation |
| JNA | Yugoslav People's Army |
| MINUGUA | United Nations Verification Mission in Guatemala |
| NGO | Non-Governmental Organisation |
| OAU | Organisation of African Unity |
| OCHA | Office for the Coordination of Humanitarian Affairs |
| OHR | Office of the High Representative |
| ONUMOZ | United Nations Operation in Mozambique |
| PA | Palestinian National Authority |
| PACs | Civil Defence Patrols |
| PCIJ | Permanent Court of International Justice |
| PCPSR | Palestinian Centre for Policy and Survey Research |
| PIC | Peace Implementation Council |
| PLIP | Property Law Implementation Plan |
| PLO | Palestine Liberation Organisation |
| PNC | Palestinian National Council |
| REMHI | Recovery of Historical Memory Project |
| RENAMO | Mozambican National Resistance Movement |
| RRTF | Reconstruction and Return Task Force |
| RS | Republika Srpska |
| RSG | Representative of the United Nations Secretary-General on Internally Displaced Persons |
| SDA | Party of Democratic Action |
| SDS | Serbian Democratic Party |
| UNCC | United Nations Compensation Commission |

| | |
|-------------|---|
| UNCCP | United Nations Conciliation Commission for Palestine |
| UNGA | United Nations General Assembly |
| UNHCR | Office of the United Nations High Commissioner for Refugees |
| UNHCR EXCOM | Office of the United Nations High Commissioner for Refugees Executive Committee |
| UNRRA | United Nations Relief and Rehabilitation Agency |
| UNRWA | United Nations Relief and Works Agency for Palestine Refugees in the Near East |
| URNG | Guatemalan National Revolutionary Unity |
| WOLA | Washington Office on Latin America |

Introduction

Certain crimes lie beyond the reach of repair. From torture and systematic rape to enslavement and ethnic cleansing, many of the violations that force refugees from their homes count among those injustices for which it is impossible to truly make amends. During the Cold War, many if not most refugees were resettled in western countries, defusing the explosive question of how refugees may be reconciled with their states of origin. Today, however, permanent resettlement is a rare solution to refugee crises. For millions of refugees, repatriation to their countries of origin is no longer an option but an imperative, the only alternative to the limbo of protracted displacement. This raises some critical questions: What can refugees legitimately expect from return? Are they entitled to anything more than a haphazard journey back to ruined or reoccupied homes in communities where their livelihoods are uncertain and their welcome lukewarm at best? If so, what are the conditions of a *just return* process? Who is obliged to ensure these conditions are met? While sometimes fierce public and academic debates probe the obligations states of asylum owe to those harboured within their borders, the issue of what states of origin owe to returning refugees has often been overshadowed. Yet experiences from Guatemala and Cambodia to the Balkans and Afghanistan indicate that identifying the state of origin's responsibilities to returnees and ensuring these duties are met is integral to safe and sustainable repatriation and peacebuilding processes and, in turn, a stable political future.

Historically, questions of justice and the ability of impoverished refugees to straggle back to their homes have rarely found space on political or scholarly agendas. However, over the past 25 years, the repatriation of refugees and the rectification of past injustices have emerged as multifaceted, pressing challenges for state policymakers and humanitarian practitioners alike. As former United Nations Secretary-General Kofi Annan argued in 2005, 'The return of refugees and internally displaced persons is a major part of any post-conflict scenario. And it is far more than just a logistical operation. Indeed, it is often a critical factor in

sustaining a peace process and in revitalising economic activity' (Annan 2005). The success of return operations depends on the ability of governments and non-state actors to confront and respond to the questions of justice the repatriation process puts front and centre, from the resolution of land disputes to accountability for the atrocities and inequalities that fuel forced migration.

Drawing on the tools of international law, moral theory, and political and historical analysis, this book focuses attention on the responsibilities states of origin bear towards their repatriating citizens and articulates a minimum account of a just return process. I contend that the goal of a just return must be to put returnees back on equal footing with their non-displaced co-nationals by recasting a new relationship of rights and duties between the state and its returning citizens. The conditions of just return match the core duties a legitimate state must provide for all its citizens: equal, effective protection for their security and basic human rights, including accountability for violations of these rights. Indeed, in the following chapters I will argue that remedies such as property restitution, compensation, apologies and truth commissions play a critical role in creating the conditions for a just return, as it is through such forms of redress that the state of origin may re-establish its legitimacy by acknowledging and attempting to make good on the duties it abrogated by forcing its citizens into exile. However, redress and return are invariably imperfect processes. While this book maintains that reparations are a critical expression of accountability for forced migration, and an essential component of a just return, it also engages in a detailed examination of the legal, moral and pragmatic political problems associated with efforts to uphold at least a degree of state responsibility for displacement and provide redress to returnees.

The rise of return: political origins and practical implications of the focus on repatriation

Although the right to return is acknowledged in numerous United Nations resolutions and Article 13(2) of the Universal Declaration of Human Rights, 'the right of return has not figured prominently in general discussions of refugee rights. The major thrust of these discussions has been on the right *not* to be returned' (Dowty 1994: 26). Indeed, the 1951 Convention Relating to the Status of Refugees refers to repatriation principally in the negative terms of *refoulement*.¹ In contrast, the UNHCR Statute identifies the facilitation of repatriation as one of the organisation's principal functions and calls on the High Commissioner to 'provide

¹ I use repatriation and return as synonyms throughout.

for the protection of refugees . . . [by] . . . assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities' (UNGA 1950). However, throughout much of the Cold War, return was often sidelined in favour of other solutions that better served western political interests. It was only in the aftermath of the Cold War that return emerged as the predominant solution to displacement, and with it a wide range of policy challenges, from the provision of protection and development support in return communities to the resolution of returnees' land claims. Although UNHCR (2011: 5, 17) statistics show a consistent decline in refugee repatriation rates since the end of 2004, the refugee agency insists that 'voluntary repatriation remains the preferred solution among most of the world's refugees', not to mention its governments. Even with declining repatriation rates, the overall number of returnees remains considerable: between 1998 and 2007, 11.4 million refugees returned to their countries of origin through more than 25 large-scale repatriation programmes; for every refugee resettled between 1998 and 2008, 14 returned to their home countries (UNHCR 2008: 10).²

Return in the early post-WWII years and during the Cold War

Noting that the three durable solutions to displacement, voluntary repatriation, local integration and resettlement, are often listed in order of preference, Goodwin-Gill (1995: 32) suggests that, much like many contemporary governments, the drafters of the UNHCR Statute regarded voluntary repatriation as the ideal resolution to displacement. This early preference for repatriation is reflected in the fact that between 1945 and 1947, the United Nations Relief and Rehabilitation Agency (UNRRA) spent more than \$3.6 billion on relief and repatriation for those displaced by World War II (Martin et al. 2005: 82).³ However, only a few years later, the United States and France attempted to 'torpedo' the inclusion of repatriation in the mandate of the High Commissioner for Refugees (Holborn 1975, Harrell-Bond 1989: 46). For the western powers confronting the rise of the eastern bloc, 'it was virtually inconceivable that refugees from . . . the USSR would be willing to return home, or should be forced to repatriate. Nor was the West able or willing to conceive of refugee problems outside Europe' (Harrell-Bond 1989: 46, Holborn 1975).

² Interestingly, while refugee repatriation rates have declined in recent years, increasing numbers of internally displaced persons (IDPs) have returned, with some 2.9 million IDPs returns recorded by UNHCR in 2010, the largest amount in some 15 years.

³ This text focuses on repatriation movements post-World War II. For analyses of earlier return processes, see, for example, Long (2009).

By the time the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was signed in 1969, the proliferation of refugee problems outside Europe was all too clear. The OAU Convention (Article 5.5) emphasises the importance of the voluntary repatriation of refugees, calling for ‘every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations, to facilitate their return’. In practice, however, in the first decades of the modern refugee regime, many influential countries and international organisations were hesitant to promote voluntary repatriation as a solution to refugee crises. After World War II, UNHCR’s precursor, the International Refugee Organisation (IRO), did not encourage the repatriation of displaced persons to Communist countries where they could be persecuted as traitors. In the early years of UNHCR’s work, the use of repatriation as a durable solution was limited as millions of refugees who ‘voted with their feet’ against repression and conflict in Communist-aligned countries were offered permanent resettlement in the west. In essence, resettlement was used by the west as a sharp political slight against the eastern bloc (Loescher 2001a, Martin et al. 2005: 81–86).

Certainly, the Cold War period saw several significant if troubled repatriations processes. For example, UNHCR facilitated the repatriation of almost 10 per cent of those who fled during the 1956 Hungarian refugee crisis. In spite of the initial opposition of western governments to the operation, UNHCR viewed the facilitation of repatriation to Hungary as an opportunity to overcome its almost total isolation from the eastern bloc (Loescher 2001b: 36). A few years later, the largest repatriation movement on record began with the return of some 10 million displaced persons to the newly independent state of Bangladesh between 1971 and 1972 (UNHCR 2000: 59–60). Despite the complexity and importance of some of these cases, the ethos of the refugee regime nonetheless remained focused on the resolution of displacement through resettlement and local integration. With the decline of Cold War rivalries, however, the political logic underpinning the large-scale resettlement of refugees evaporated, and permanent resettlement opportunities ‘largely withered away’ (Hathaway 1997: 533).

Increasing returns in the aftermath of the Cold War: rewards, risks and a changed regime

A few years before the end of the Cold War, the refugee regime began to address the question of repatriation in a more explicit manner. In Conclusion No. 40 of 1985, the UNHCR Executive Committee articulated an institutional doctrine to guide voluntary repatriation activities, and

by the late 1980s, UNHCR, donors and many host states were broadly united in the effort to transform repatriation from a rhetorical concession into the principal durable solution for refugees. UNHCR declared the 1990s the 'Decade of Repatriation', and during this period return programmes expanded considerably, framed as a contribution to regional stability and international security (Hammerstad 2000: 392–396). At the same time, local integration opportunities waned as the developing countries hosting the vast majority of the world's refugees adopted increasingly restrictive asylum policies, in part as a protest against inadequate progress in establishing 'burden sharing' mechanisms between the global North and South (Kibreab 2003: 26, Loescher et al. 2008: 48–50, Ogata 2005).

This shift towards return in the late 1980s and early 1990s elicited a volley of critiques from scholars and refugee advocates alike. While UNHCR, reluctant host states and governments that scaled down their resettlement quotas were – and are – quick to aver that most refugees prefer return as the durable solution to their displacement, critics rightfully underline that the evidence substantiating such claims is often thin (Harrell-Bond 1998, Takahashi 1997). Many scholars, practitioners and policymakers contend that the upshot of the focus on return is the erosion of asylum rights, the legitimisation of restrictive policies intended to prevent refugees from accessing shelter in wealthy western democracies and the creation of unrealistic expectations among the displaced (Adelman and Barkan 2011, Chimni 1993, Hathaway 2007). Many of the same critics see self-interested motivations behind the promotion of return and question the voluntary nature of many repatriation movements. Indeed, temporary protection and 'mandated return' programmes often make little or no pretence towards voluntariness, in spite of the risks associated with privileging the judgement of states over that of refugees, who may better understand the specific dangers posed by repatriation (Chimni 1993: 454).

Many of these critiques remain highly relevant. But despite the risks associated with return as a durable solution to displacement, a strong conviction has emerged that voluntary repatriation movements should be supported because they have the potential to help to consolidate peace processes. This conviction is reflected in UN Secretary-General Boutros Boutros-Ghali's influential 1992 report *An Agenda for Peace*, which argued that 'Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order . . . [and] repatriating

refugees' (UNSG 1992, para. 55). In keeping with the view that peace processes and return movements are closely connected, virtually all of the dozens of peace agreements concluded since 1995 recognise the right of the displaced to return not only to their country of origin, but to their original homes (Phuong 2005).

Undoubtedly, repatriation movements unfolding in the context of volatile peace processes have in some instances been more limited in scope than is often implied by UNHCR, particularly in cases of ethnic conflicts when refugees would be minorities in return communities (Adelman 2002, Adelman and Barkan 2011, Dumper 2006: 13). However, it has nonetheless become clear that the success of repatriation movements and peace operations are indeed often closely intertwined (Black et al. 2006, Dumper 2006b, 2007, Weiss Fagen 2003, 2005, 2006). In some circumstances, return movements can help to stabilise insecure border regions and may serve as an important expression of confidence in fledgling peace processes. As the 2009 *Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict* argues, 'visible peace dividends that are attributable to the national authorities, including early employment generation and supporting returnees, are . . . critical to build the confidence in the government and the peace process' (UNSC 2009, para. 18). In addition, refugees may return with important training and skill sets developed while in exile, which may enable them to make valuable contributions to peacebuilding and development (Milner 2009: 27–28).

Yet in many instances, repatriation has not been a boon for peace processes. Almost inevitably, repatriation movements generate tensions at the local level as returnees attempt to reclaim lost properties and have to confront former neighbours who may have been complicit in the violations that forced them from their homes. Influxes of returnees may further stretch already limited services such as schools and clinics, may be met with hostility on the part of those who were unable to seek shelter abroad and perceive returnees as having been 'spoiled' with international support. In worst-case scenarios – which are all too common – premature and forced return movements can overwhelm and undercut 'fragile institutions' in countries struggling to emerge from conflict, exposing returnees to unnecessary and unacceptable risks, and ultimately setting back peace processes by potentially reigniting conflict and forced migration flows (Milner 2009: 26–27, Rodicio 2001, 2006, Utting 1994). These risks are particularly pronounced in cases of massive return movements. For example, Afghanistan has seen the repatriation of some 5 million refugees since 2002, representing approximately one-quarter of the country's population. Reflecting on the failure to provide returnees

with the support essential to make repatriation a sustainable contribution to peace, the head of the UNHCR mission in Afghanistan recently characterised the agency's approach to return as 'a big mistake, the biggest mistake UNHCR ever made' (AFP 2011, IRIN 2012).

High-level initiatives such as the development by the UN Secretary-General's Policy Committee of a 'Preliminary Framework for supporting a more coherent, predictable and effective response to the durable solutions needs of refugee returnees and IDPs' attempt to minimise these risks, and maximise the contributions returns may make to peacebuilding processes.⁴ However, this initiative focuses on prompt access to durable solutions for those recently displaced by conflict and does not address the millions of refugees now in conditions of protracted displacement. Perhaps the greatest difficulty associated with the increased focus on return as the 'preferred' solution to displacement is that many refugees now remain in an indefinite limbo, forced to wait for beleaguered peace processes to gain traction, or for stagnant conflicts to move towards resolution, rather than having the opportunity to access local integration or resettlement opportunities.⁵ By the end of 2010, approximately 7.2 million refugees were in situations of protracted displacement, as viable conditions for return had not yet taken hold, but other solutions were foreclosed to them (UNHCR 2011: 2). In a 2010 speech to the United Nations General Assembly, UN High Commissioner for Refugees, António Guterres lamented that 2009 was the 'worst [year] in two decades for the voluntary repatriation of refugees', due to the impossibility of return to countries locked in conflict. Nonetheless, his speech underlined the regime's persistent focus on return as the preferred and predominant solution to displacement. 'Despite the lower number of refugees able to return to their countries in conditions of safety and dignity', Guterres (2010) argued, 'voluntary repatriation remains a vital solution. Indeed, with major conflicts failing to resolve, it becomes all the more important to act on the opportunities which do exist for voluntary repatriation.'

In short, since the end of the Cold War, the refugee regime has changed dramatically and perhaps irrevocably. The problems associated with

⁴ Framed as a follow-up to the Secretary-General's 2009 Report on Peacebuilding, the framework emphasises a rights-based approach premised on the state of origin's responsibility for its displaced citizens. It will be piloted in three countries in 2012 and 2013. See Secretary-General's Policy Committee Decision 2011/20 (UNSG 2011a).

⁵ Adelman and Barkan (2011) suggest that this problem is particularly acute for refugees who would be ethnic minorities if they were to return to their countries of origin and suggest that the insistence that refugees have the right to return is in large part to blame for this conundrum.

return are troubling for anyone concerned with the rights and wellbeing of refugees, but this does not alter the political realities now underlying the international refugee regime: affluent countries lack the incentive and domestic support necessary to resuscitate large-scale resettlement programmes. The lauded tradition of hospitality towards refugees in the developing world, and particularly in Africa, is flagging and unlikely to be revived without a substantial breakthrough in donor support and burden sharing. The prospects of such a breakthrough are bleak, as evidenced by the confounding of UNHCR's recent attempts to enable the permanent local integration of Burundian refugees who have been living in Tanzania for decades. While efforts to improve the protection of refugees and ensure their access to a sufficiently wide range of durable solutions remain of the utmost importance, increased focus on repatriation is not a passing trend but a definitive change in the structure of the international refugee system. Scholars and advocates should be concerned that, despite this change, repatriation has attracted only modest attention from researchers to date, and the theoretical framework underpinning return remains comparatively undeveloped (Takahashi 1997: 593, Zetter 2004: 299). For example, in spite of UNHCR's mantra that repatriation must take place 'in conditions of safety and dignity', the UNHCR *Handbook on Voluntary Repatriation* offers little discussion of the meaning of dignified return beyond setting out a dictionary definition of dignity (UNHCR 1996: 11). As the onus has shifted from states of asylum and resettlement countries to states of origin to provide a durable solution to displacement in the form of repatriation, there is a pressing need for more rigorous examination of the conditions of just return and how states may realise these conditions.

Theoretical implications of the focus on repatriation

The rise of return as the dominant durable solution to displacement also has significant implications for the prevailing theoretical conceptions of the refugee predicament. Historically, few political theorists and philosophers have systematically engaged with the problem of refugees, with the notable exception of Hannah Arendt. As a refugee from Nazi Germany, Arendt discusses refugees and statelessness in *The Origins of Totalitarianism*, a text that has become a touchstone for scholars grappling with the nature and consequences of forced migration. Theorists such as Giorgio Agamben (1994) have drawn on Arendt to position the refugee as the 'central figure of our political history', and her contribution continues to illuminate certain aspects of the refugee problem. However, structural changes in the international system, including the increased focus on

repatriation, mean that Arendt's depiction of refugees as stateless, right-less 'scum of the earth' no longer so clearly reflects or suggests avenues for resolving the challenges faced by the majority of the world's refugees (Arendt 2004: 343).

Arendt was principally concerned with European Jewish refugees who fled the Holocaust. Many of these refugees were indeed literally stateless as the denaturalisation laws of the Third Reich stripped millions of unwanted minorities of their citizenship. This practice has since been explicitly forbidden under international law, with the development of treaties such as the 1961 Convention of the Reduction of Statelessness.⁶ At the time, however, the minorities' legal predicament was more ambiguous, as international law did not yet fully conceive of individuals as the subjects of international rights and obligations (Benhabib 2004: 54, 68).⁷ Certainly, Arendt's concerns with statelessness ran much deeper than questions of legal status. For Arendt, the displacement of refugees across Europe exposed the poverty of human rights rhetoric and the 'fiction' of justifying the state system in terms of the protection and promotion of human rights (Agamben 1994). Although Arendt (2004: 344) writes that 'the very phrase "human rights" became for all concerned – victims, persecutors, onlookers alike – the evidence of hopeless idealism or fumbling feeble-minded hypocrisy', she is nonetheless adamant about the political and ethical value of this very discourse (Isaac 2002: 507). Her principal observation and concern was that refugees were powerless to stop their state from robbing them of their rights as citizens. Left without the protection of a state, refugees were unable to find 'a community willing and able to guarantee any rights whatsoever' (Gibney 2004: 2). The 'right to have rights', Arendt concluded, depended on membership of a political community; as membership was distributed according to the

⁶ Article 9 of the 1961 Convention on the Reduction of Statelessness provides that 'a contracting state may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds', while Article 7 indicates that 'if the law of a contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality'. The 1961 Convention entered into force in 1975, and was preceded by the 1954 Convention Relating to the Status of Stateless Persons. It is important to note that international support for both treaties has been lacklustre: the 1954 Convention has 59 signatories, while the 1961 Convention has only 31. However, instruments such as the 1948 Universal Declaration of Human Rights also provide some general protection against statelessness. For instance, Article 15(2) of the Universal Declaration of Human Rights underlines that 'No one shall be arbitrarily deprived of his nationality.'

⁷ The minorities treaties overseen by the League of Nations purported to provide some protection to minorities against acts such as forced denaturalisation. However, the protection provided by these treaties was meagre and not universal, and members of the affected minority groups had no standing in the legal bodies responsible for the implementation of the treaties (Roucek 1929).

prerogative of states, citizens risked being rendered ‘stateless’ refugees or, as Arendt put it even more bluntly, ‘superfluous’ (Benhabib 2004: 50). In other words, ‘the loss of citizenship rights . . . contrary to all human rights declarations, was politically tantamount to the loss of human rights altogether’ (Benhabib 2004: 50).

While aspects of Arendt’s argument continue to resonate, this book suggests that Arendt’s focus on refugees as powerless and fundamentally stateless is now rather anachronistic (Bradley in press). This is attributable to factors such as changes in the geographic scope and political impetus of refugee flows; the codification of human rights in international law; and, perhaps above all, the increasing importance of repatriation and the reconstitution of the relationship between refugees and their states of origin, a possibility largely unforeseen by Arendt. As Gibney (2004: 4) observes, ‘the circumstances that confronted Europe with refugees between 1930 and 1950 had their source in what have turned out to be relatively transient forces . . . that emanated from *within* Europe’; most refugee crises now originate *outside* Europe, due to civil wars, ethnic strife, and the persistent difficulties associated with building solid state structures in conditions of impoverishment. Unlike in Arendt’s time, most contemporary refugees are not technically stateless but remain citizens of their states of origin.⁸ Refugees certainly lack effective state protection, but this is unfortunately true for almost every citizen of deeply dysfunctional states such as Afghanistan and Haiti, displaced or not. If it is to maintain its analytic incisiveness, ‘statelessness’ cannot simply mean a lack of robust state protection. Very different courses of action are required to resolve the predicament of people who are literally stateless, and to ensure that the citizens of abusive or failing states, including refugees, can avail themselves of stronger state protection systems. While a stateless person must carve out a fresh space for herself as a recognised member of a state’s political community, a refugee can already lay claim to a place in a state’s political community, albeit one in marked need of improvement.

⁸ In this connection, it is helpful to note the distinction between *de jure* and *de facto* statelessness. According to Batchelor (1998: 170–174), a *de jure* stateless person is one who ‘is not considered as a national by any State under the operation of its law’. This reflects the formal definition of statelessness set out in the 1954 Convention relating to the Status of Stateless Persons. While the drafters of the 1954 Convention and the 1951 Convention relating to the Status of Refugees assumed an overlap between refugees and *de facto* stateless persons, in light of refugees’ inability to benefit from effective national protections, ‘neither *de jure* nor *de facto* statelessness necessarily signifies the existence of a well-founded fear of persecution under the terms of the 1951 Convention . . . if stateless persons are really to benefit from the provisions of international or regional instruments developed to resolve cases of statelessness, they must be able to show *de jure* statelessness’ (Batchelor 1998: 172). Statelessness and refugeehood are, therefore, not legally synonymous.

In the aftermath of the Holocaust, it was inconceivable to Arendt and her contemporaries that Jewish refugees should be expected to return to and reconcile with their states and former neighbours. Arendt (2004: 372) wrote that the first loss refugees suffered was ‘the loss of their homes, and this meant the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world’. Arendt saw this loss as permanent and irreparable, and, indeed, Holocaust survivors who returned to their homes were often cast out of what remained of the Jewish community as traitors (Borneman 2004: 129). I do not wish to debate whether the Holocaust was the pinnacle of human atrocity; however, it must be acknowledged that many other sweeping genocides have followed on from the *Shoah*. In recent decades, millions of refugees who survived these crimes have had to return to their countries and face the task of rebuilding their lives and their place in the political community of the state. This has never been an easy process, but the practical experience of returnees demonstrates that while Arendt’s diagnosis of the refugee’s dilemma may be prescient, her despair at finding a remedy to their predicament is premature.

Even while displaced, many refugees are engaged in the process of pursuing political membership in their state of asylum or, more importantly for the purposes of this book, regaining space in the political community of their country of origin. Arendt argues that the life of a refugee separated from her community is ‘mere existence in all matters of public concern. This mere existence . . . can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or the great and incalculable grace of love’ (Arendt 2004: 382). However, many refugees have proven themselves to be astute political actors in multiple arenas, using diaspora networks to affect political change in their country of asylum and in their home communities (Van Hear 1998). In particular, some refugees manage to leverage the rights accorded to them under international law to negotiate the conditions of their return with their states of origin. The significance of the inclusion of individuals as subjects under international law and the codification of human rights was unanticipated by Arendt, but has arguably been one of the defining features of international politics since the end of World War II. Without doubt, many of the international legal provisions designed to protect individuals’ human rights remain notoriously weak, particularly due to the absence of effective domestic and international enforcement mechanisms. However, international human rights laws have at least limited the ability of states to violate the rights of their citizens without consequences, and increased the ability of refugees and their advocates to voice compelling claims for assistance and recompense.

Turton (2005: 278) argues that ‘to emphasise the horror and pain of the loss of home . . . and to say nothing – or little – about the work of producing a new home or neighbourhood, whether in a refugee camp, resettlement site, detention centre, city slum or middle class suburb, is to treat the displaced as fundamentally flawed human beings, as lacking what it takes to be social agents and historical subjects. It is to see them . . . as a category of “passive victims” who exist to be assisted, managed, regimented and controlled’. While Arendt (2004: 382) saw the refugee as robbed of ‘his political status in the struggle of his time’, the actions of refugees from Guatemala to Mozambique have shown this theoretical picture to be incongruous with the reality of refugees as political actors. ‘Displacement’, Turton (2005: 258) writes, ‘is not just about the loss of place, but also about the struggle to *make* a place in the world, where meaningful action and shared understanding is possible’. Equally, it may be about the struggle to *regain* one’s place in the world – a process that merits greater attention as geo-political changes and alterations in the structure of the international refugee regime have pushed repatriation to the forefront of efforts to find durable solutions to displacement.

Although not principally concerned with Arendtian theory, this book will serve as a rejoinder to the prevailing Arendtian conception of refugees as fundamentally stateless. It will in effect argue for the need to shift the discourse on the nature of refugeehood from a focus on the refugee as stateless to the refugee as an actor who bears legitimate claims for the reconstitution of her relationship with her state of origin. Further, this book will emphasise the importance of reorienting theorising on refugees so that it is relevant to the experience of the majority of contemporary refugees who remain in the developing world, without the opportunity to secure membership in a new political community. Theorists such as Benhabib (2004) are helpfully building on Arendt’s articulation of the dilemmas posed by lack of protection and disenfranchisement from the political community by arguing for the right of refugees to gain new citizenships. However, the significance of this type of project is limited by the current political reality in which only a tiny minority of refugees have the opportunity to seek asylum or acquire citizenship in the affluent, multicultural democracies of primary concern to Benhabib. Rather than assuming that the answer to the refugee’s dilemma lies in the acquisition of a new political community, this book will investigate how refugees may regain membership in their original political communities, but on new, more equitable terms. These terms must involve the acknowledgement and rectification of past injustices and a concomitant redistribution of power, so that returning refugees are not at the mercy

of their state but have the ability as citizens to hold the state accountable for the protection of their rights.

Reparations: a new threshold for morality in international politics?

Although unforeseen by Arendt and largely overlooked by the refugee scholars who have followed in her tradition, reparation is emerging as a key tool to promote accountability for human rights violations and help reconstitute the relationship between abusive states and the victims of injustice, particularly refugees. The individual's right to redress under international law evolved out of the post-World War II human rights regime, and is reflected in agreements such as the International Covenant on Civil and Political Rights. Prior to the emergence of the modern human rights regime, the 1928 Permanent Court of International Justice *Chorzów Factory* ruling laid down the basic remedial norms for violations of international law. The court ruled that 'reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation that would, in all probability, have existed if that act had not been committed' (PCIJ 1928, Shelton 2002: 835).

According to the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereafter UN Reparation Principles), the term 'reparations' encompasses five main types of remedy: restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition (UNGA 2005a). Restitution aims to restore the conditions that existed prior to a violation, and often involves the return of homes, artefacts or land (Du Plessis 2003: 630). Traditionally seen as the legally preferable form of remedy, restitution is 'required of the responsible state unless it is materially impossible' or 'involves a burden out of all proportion to the benefit deriving from restitution instead of compensation' (Arzt 1999, Shelton 2002: 849). It is often impossible to restore the conditions that existed prior to the human rights violations that cause citizens to seek asylum, such as torture. In these cases, remedy is often achieved through compensation, which principally involves monetary payment for material or moral injuries, or satisfaction, which addresses non-material injuries through mechanisms such as official apologies; judicial proceedings; and truth commissions (Gillard 2003: 531–532). Rehabilitation involves the provision of assistance such as medical, psychological and social services as a form of redress, while guarantees of non-repetition of the violation from the offending state may require legal and institutional reform, with a

view to both remedying past crimes and deterring future abuses (UNGA 2005a).

While these legal definitions are informative, redress is not simply a legal principle, but is also rooted in political, ethical and religious discourse. Barkan (2001: xviii) contends that the legal tools of remedy, such as restitution, compensation and satisfaction, 'are all different levels of acknowledgement that together create a mosaic of recognition by perpetrators for the need to amend past injustices'. Drawing on Barkan's work, I shall base this discussion on a comprehensive political conception of reparations or redress as the 'entire spectrum of attempts to rectify historical injustices' (Barkan 2001: xix). Although broad, this definition is salient because it encompasses the diverse yet interrelated approaches that may be taken to remedy injustice, including legal initiatives such as trials, administrative processes such as property restitution commissions, and political efforts such as apologies and truth commissions. I use reparations and redress as synonyms, and conceptualise the struggle to 'redress the legacies of massive human rights abuses that occur during armed conflict and under authoritarian regimes' as the central concern of transitional justice (Duthie 2011: 243). While I draw more on the terminology of reparations politics than transitional justice, I understand these to be intimately connected if not overlapping enterprises.

The provision of redress by West Germany to the state of Israel and individual Holocaust survivors was the first major example of a modern reparations process, which played a decisive role in the political rehabilitation of Germany and establishment of the Israeli state (Lustick 2005). However, the fledgling reparations movement largely stagnated until the early 1990s when class action suits were filed in US courts against three prominent Swiss banks for their complicity in the Holocaust. This sparked renewed interest in the question of addressing historical injustices and launched several complex reparation cases onto domestic and international political agendas, including compensation for Korean 'comfort women' and Japanese North Americans interned during World War II, and apologies for the abuse of indigenous peoples in Canada and New Zealand (Bazyler 2002: 15). Longstanding debates on reparations for slavery were reinvigorated in the United States, at the same time as South Africa struggled to recognise and redress the history of apartheid. Although numerous pressing reparation cases remain sidelined the world over, Barkan (2001: xvii) argues that the growing push to redress past injustices 'provides a new threshold for morality in international politics'.

This trend has engaged national governments, donors, NGOs, survivors' groups, various UN agencies and other inter-governmental organisations. Although different reparations mechanisms have been woven into many recent peace agreements and reconstruction plans, it nonetheless appears that in some instances this 'new threshold for morality' has struggled to exert influence in post-conflict scenarios where the stakes are often highest. This book will consider redress for returning refugees as a testing ground for the traction of international norms on redress, and how they can be translated into politically volatile domestic contexts. Clearly not only refugees but all victims of serious human rights violations have a right to redress, and a stake in the transitional justice processes through which remedies may be conveyed (Roht-Arriaza 2004). However, I will argue that redress for refugees is particularly crucial because remedies such as real property restitution, compensation and truth-telling processes may help to create just conditions of return and have important implications for fostering security and development in post-conflict states. In essence, providing redress and creating conditions of just return is often in states' long-term interests. Given that the provision of redress is morally and legally well grounded, and is often a prudential policy for states in the process of political transition, this book will question why so many refugees have been denied access to redress, and why reparations programmes involving refugees have been at best only partially successful. Various reasons for states' resistance to initiate reparations programmes will be explored, including their reluctance to engage in time-consuming, politically contentious and costly negotiations. In many cases, efforts to redress refugees' land losses and other grievances are simply sidelined in favour of traditional, aid-based approaches to facilitating return and establishing security (Foley 2008).

Reparations have often been examined as a legal process and an abstract philosophical conundrum, but it is only in recent years that studies have begun to emerge on the links between transitional justice and displacement, and the possibility that the provision of different forms of redress may be a critical component of efforts to address displaced persons' concerns and strengthen societies in the process of reconstruction.⁹ While the body of research on the interface of displacement, transitional

⁹ See, for example, Leckie (2003b, 2008), Williams (2007), Duthie (2011, 2012a), and Bradley (2012a). Organisations that have taken a leading role in examining the connections between transitional justice and displacement include the Refugee Law Project, the Brookings Institution and the International Center for Transitional Justice (see <http://ictj.org/our-work/research/transitional-justice-and-displacement>).

justice, reconciliation and redress is growing rapidly, many of the studies that have been conducted to date have focused on isolated cases of real property restitution programmes evaluated from legal or socio-legal perspectives and have not explored the practical and conceptual links between property restitution commissions and other transitional justice initiatives such as trials, truth commissions and grassroots reconciliation projects. This has made it difficult to appreciate the significance for refugees of the reparations movement in its totality, both theoretically and in terms of its concrete impact in post-conflict communities. By adopting an approach that brings together legal, moral and political analysis to inform the study of redress and return, this book aims to advance understanding of the connections between these processes.

Structure and scope of analysis

This book has three main parts. Part I (Chapters 1, 2 and 3) addresses the moral and legal foundations of the responsibility of states for displacement and sets out a minimum account of what must be involved in a just return process. In Chapter 1, my discussion of the legal dimensions of the responsibilities states of origin bear for forced migration concentrates on human rights law and the international law of state responsibility, while my examination of the moral foundations of state responsibility draws on the work of David Miller, as well as the distinctive insights Andrew Shacknove offers into issues of responsibility, refugeehood and return. Briefly, Shacknove (1985) suggests that states and citizens are bound by a minimal relation of rights and duties, the breakdown of which engenders refugees. When the state fails to respect citizens' rights, the bond between the citizen and the state is fractured. Chapter 2 argues that the state has a moral and legal duty to attempt to remedy this rift by creating just conditions for return, and applies the tenets of human rights law, rights-based theories and philosophical discussions of human dignity to develop a picture of the minimum conditions a state is obliged to guarantee for its repatriating citizens. At a minimum, I argue, a just return must establish or re-establish returnees as equal citizens entitled to benefit from a legitimate relationship of rights and duties with the state and effective, equitable protection for their basic human rights and security. This must include accountability for past violations of these rights, expressed through the provision of appropriate forms of redress, such as property restitution, compensation and apologies. These reflections on the conditions of just return and the role of reparations in establishing these conditions is informed by an analysis of the international refugee regime's repatriation framework, which stresses that return must be

voluntary, and must take place in 'safety and dignity'. Chapter 3 begins the work of connecting this normative argument to the practice of states and other key actors in the refugee regime by tracing the emergence and evolution of international norms on redress for refugees, which have at times been intimately tied to the desire of host and donor states to promote repatriation as the primary durable solution to displacement.

The arguments developed in Part I are based on the premise that it is important to consider states' legal and moral obligations, and the pragmatic political conditions for action in concert with one another. Large-scale repatriations processes are one of the many cases in which the 'neat separation of politics and law', and indeed also morality, 'seems increasingly anachronistic' (Reus-Smit 2004: 1). It is clear that legal principles, moral argument and political practice influence one another to varying degrees and that both legal and moral principles, if they are to have any practical import, must grapple with the competing interests and constraints faced by states domestically and in the international arena. A three-pronged approach that considers the interplay between politics, law and moral argument is essential, as no one element can provide a comprehensive response to the puzzle presented by state responsibility for displacement and just return.

Since abstract explanations of state responsibility for forced migration and just return naturally cannot capture all the complexities inherent in actual reparation and return processes, Part II examines efforts to redress refugees repatriating to Guatemala (Chapter 4), Bosnia and Herzegovina (Chapter 5) and Mozambique (Chapter 6), drawing out the insights these cases hold for the account of just return and state responsibility for displacement developed in Part I.¹⁰ These cases raise important theoretical questions about the nature, allocation and exercise of responsibility for displacement, and serve as valuable sources of insight into the characteristics of effective reparations programmes for returnees. In this connection, a secondary goal of the case studies is to use them to identify some of the key qualities of redress initiatives that are conducive to supporting the safe, durable and ultimately just resolution of displacement. Rather than attempting to generate a checklist or blueprint for planning just return and redress processes, the aim is to stimulate productive reflection on the challenges of shifting from theory to practice. With this in mind, the cases of Guatemala, Bosnia and Mozambique were selected

¹⁰ This is of course not to suggest that the actors involved in repatriation and redress processes in Guatemala, Bosnia and Mozambique were committed to enabling the just return of refugees in the vein suggested in Part I. Indeed, the repatriations to Guatemala, Bosnia and Mozambique fell far short of the conditions of just return set out in Part I.

because they share several critical characteristics that enable meaningful comparison, but also raise distinct challenges. These cases all involved the repatriation of refugees under peace agreements, signed in the early to mid-1990s, were facilitated with the support of the international community and followed on from wildly destructive armed conflicts in which state agents were complicit in human rights violations. Yet these cases also vary in terms of the size of the movements; the role of international actors; the involvement of refugees in negotiating the conditions for their return; the types of reparations mechanisms used; and the intensity of calls for redress from local, national and international actors. The cases are, therefore, sufficiently similar to make structured, focused comparison possible, while also demonstrating variations that challenge different aspects of my normative argument. Examining the Mozambican case is particularly important in this respect, because the return to Mozambique is widely considered in the international community to have been a success, despite the fact that the justice issues associated with the war and the massive uprooting of the civilian population were not tackled head on by formal national or international institutions. In this case, redress was typically mediated by 'traditional authorities' who subvert simple categorisation as state or non-state actors, bringing into relief the complexity and diversity of approaches to redress in historically weak states.

Each case explores four critical issues: the historical and socio-economic context; the framework for repatriation and redress established in peace treaties, national laws, UN resolutions and key political statements; the mechanisms used to redress grievances including but not limited to land claims; and the roles played by key actors including the state of origin, international agencies and refugees themselves. In each case, I consider the implications of redress for the durable, equitable reintegration of returnees into the political community of their countries of origin. In the conclusion of each case study I examine the particular challenges and insights raised by the case, such as the implications of state collapse for the attribution of state responsibility for displacement in Bosnia, and the significance of the direct involvement of Guatemalan refugees in negotiating the conditions of their own return.

Through these cases, I probe the stark practical and theoretical limits of redress as an expression of state responsibility and a vehicle for reconciling returnees and their states of origin. Two of the threads that run throughout these cases are the observation that enabling just return and ensuring accountability for the crimes at the root of displacement require a long-term approach, and that although remedies for refugees (where available) have typically focused on the return of real property, the state is also obliged to redress non-material human rights violations

inflicted on refugees through mechanisms such as apologies, truth commissions and criminal tribunals. Chapter 7 elaborates on these and other key points raised by the cases and discusses the characteristics of reparations programmes that may make good on the state of origin's obligation to redress its returning citizens.

In light of this analysis, Part III goes on to examine the challenges presented by 'hard cases' involving the protracted displacement of (*de jure*) stateless refugees. By extending my analysis to tackle the case of the Palestinian refugees, I interrogate how questions of state responsibility, redress and just return are affected when the displaced cannot make their claims for redress as citizens. While the Palestinian case is indisputably difficult, this discussion seeks to demonstrate that it is not entirely *sui generis* (Dumper 2006a, 2006b, 2007). Indeed, some of the earliest political debates on redress for returnees took place at the United Nations in response to the Palestinians' displacement, and set the stage for the development of international norms on reparations for refugees which have helped inform the resolution of various subsequent cases of forced migration. Rather than bolstering a trend of overly introspective scholarship on the Palestinian refugees, Chapter 8 identifies the implications of the concept of just return for hard cases, such as that of the Palestinian refugees, and explores how the insights on the negotiation and implementation of reparation and return in Bosnia, Mozambique and Guatemala may be applied to advance the resolution of the Palestinians' longstanding exile. At the same time, I use the Palestinian case as an entry point for a discussion of some of the most complex questions surrounding redress and just return, including the resolution of inter-generational claims, and link between reparations and the acceptance of moral responsibility for the historical injustices surrounding displacement.

States of asylum, internally displaced persons (IDPs) and those ousted to make way for development projects may also have legitimate claims to redress. Indeed, it is widely accepted that those uprooted through processes such as slum clearances and the construction of infrastructure such as dams have a right to compensation for their losses, and a significant body of literature has developed on the aims and strategies of effective reparations programmes for 'oustees'.¹¹ However, this discussion focuses more narrowly on redress for returning refugees. While there are numerous competing and compelling definitions of the term 'refugee', this discussion concentrates on people who have fled their countries because of persecution and lack of effective state protection.

¹¹ See, for example, Cernea and Mathur (2008), Cernea and McDowell (2000) and Penz (2003).

Cases where the state is in principle willing but in practice unable to offer protection raise challenging questions for any theory of state responsibility for forced migration, which are addressed in part through the case study of Mozambique in Chapter 6.

Contested terms and concepts

Some of the terms and concepts that run throughout this book demand a word of clarification. As stated above, I conceive of redress, or reparations, as the ‘entire spectrum of attempts to rectify historical injustices’ (Barkan 2001: xix). Although I primarily use the language of reparations politics rather than transitional justice, I understand these to be closely intertwined endeavours. My discussion of state responsibility for displacement and just return focuses principally on refugees as citizens who have been compelled to flee their states of origin due to persecution or lack of state protection from violence (Part III considers the predicament of refugees who are *de jure* stateless). Chapter 1 engages in a detailed examination of the notion of state responsibility for displacement from a range of moral perspectives and in light of international legal norms. Following Krasner (1983: 2), I view norms as ‘standards of behaviour defined in terms of rights and obligations’.

Just return intersects with various conceptions of justice, including cosmopolitan, retributive, restorative and distributive justice. While the development of a complete theory of justice is well beyond the scope of this book, Chapter 2 argues that a theory of just return can be constructed on the basis of a minimum conception of justice that puts a premium on liberty, equality and accountability. Conceptions of justice vary widely across cultures and between individuals, particularly in the aftermath of the atrocities that often accompany refugee flows. It must therefore be stressed that I have not taken on the presumably impossible goal of developing an account of just return that could meet each and every returnee’s expectations or perceptions of justice. Rather, my much more modest aim is to identify the minimum obligations that states of origin may reasonably be expected to shoulder in the context of a return movement, leaving room for returnees and their states of origin to negotiate additional actions that may need to be undertaken in order to render return viable and just from the particular perspective of different groups. At the outset, it must also be clarified that I do not wish to overstate the role that attending to justice issues may play in shaping the ‘success’ of a return operation. Other, related factors such as: the availability of effective reintegration and reconstruction programmes and development assistance; land scarcity; popular attitudes towards return;

the conditions in host states and access to information on conditions in return communities will also decisively affect the security and durability of repatriation as a solution to displacement (Koser 1997, Zetter 2005). Ultimately, the relationship between the justice and perceived success of a repatriation movement will depend largely on how success is defined. If success is understood simply as relieving host countries of their 'burdens', then the justice of a return movement may well be unrelated to its success. My contention is that from a legal and moral angle, the justice issues raised by return cannot be legitimately scuttled, and should be factored into calculations of success in return operations. Given the propensity of historic grievances to fester and undermine community cohesion, attending to these concerns in a forthright manner also appears to be a prudent course of action for states and other actors concerned with promoting stability and reconciliation in countries emerging from conflict and widespread displacement. Thus, if success is understood more comprehensively as the safe, dignified and durable resolution of displacement in a way that advances broader processes of transitional justice and peacebuilding, returnees' justice claims must figure centrally.

In addition to responsibility and justice, citizenship is another foundational concept in this book that eludes simple definition. This work rests on the basic conviction that in general 'everyone living under the authority of a state should have a say – an equal say – in how that authority is exercised' (Gibney 2006: 11). In this respect, my work reflects a perhaps predominately western conception of citizenship as closely tied to claims for equal standing among the individual members of the polity. This vision of citizenship has been critiqued by theorists concerned with citizenship in post-colonial states, who underline the discord between the borders drawn by colonial powers and the boundaries of pre-existing political communities, and suggest that membership in sub-state groups may be more important, practically and analytically, than the notion of the citizenry as a collective of equal individuals.¹² Yet contestations over which individuals should be counted as citizens in non-western countries make it clear that notions of citizenship as an individual claim to equal membership rights exert significant influence even in states where individualistic traditions are not necessarily deeply rooted. This notion of citizenship therefore represents a reasonable point of departure for a discussion of the obligations states of origin bear towards their returning citizens (Gibney 2006: 11–12).

¹² See, for example, Kabeer (2002) and Adejumbi (2001).

Last, what does the notion of repatriation itself entail? Hammond (1999: 230) argues that

Amongst the most problematic terms in the repatriation canon are the words *return* and *returnee*, which imply that by re-entering one's native country a person is necessarily returning to something familiar. These terms are riddled with value judgments that reflect a segmentary, sedentary idea of how people ought to live, what their relation to their homeland should be, and ultimately how they should go about constructing their lives once the period of exile ends. The implication of these terms is that returnees should seek to move backward in time, to recapture a quality of life that they are assumed to have enjoyed before becoming refugees or that those who remained behind might currently enjoy . . . because post-repatriation life, or 'home' in the discourse of repatriation, is rooted in the country of origin it is considered by outsiders to be necessarily better than the life in exile.

In a related vein, Ranger (1994: 289) reflects that:

The concept of 'repatriation' derives from the idea of a 'patria' and this in turn implies that an individual's primary identity, rights and obligations derive from the membership in a 'nation'. The nation encapsulates 'home' in terms of language, culture, rights to citizenship and land. Yet this is precisely what is at stake in many countries which generate refugees and returnees . . . Even where the idea of return to one's 'country' is a national as well as a local sentiment, that idea co-exists and sometimes conflicts with many other senses of identity and entitlement.

Similar concerns have also been expressed by scholars who question both the assumption that refugeehood is necessarily inferior to life in the country of origin, and that the 'natural' solution to displacement is for refugees to return not only to their state but to their 'original' homes (Allen and Turton 1996, Malkki 1992, 1995). This discussion of just return does *not* presuppose that return is the inherently preferable solution to displacement, that refugees identify strongly with their state of origin or that a primordial connection links exiles to their 'homelands'. While repatriation itself may in some cases represent a valuable form of redress for refugees who have long dreamed of going back to their countries and birth places, return should not be narrowly defined as refugees' resumption of residency in their former homes or on their ancestral lands.¹³ Conceptualising repatriation merely in terms of returnees' geographic location obscures the broader political challenges at stake in the process. Rather than idealising return as the preferred solution to displacement, I simply contend that the responsible exercise of sovereignty requires states to recognise and redress the thwarted claims to equal

¹³ For contrasting perspectives, see, for example, Warner (1996: 162).

membership in the political community borne by citizens who have been forced to seek shelter abroad. In this account, repatriation is not so much about crossing a border, returning to a particular physical location or reviving lost ways of life, as it is a critical opportunity to restructure political relationships between states and citizens, with a view to ensuring a more equitable, peaceful future.