Whose Rights, Whose Return? The Boundary Problem and Unequal Restoration of Citizenship in the Post-Yugoslav Space

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ABSTRACT The paper argues that the right to return should be upheld as one of the political principles for mitigation of the boundary problem in post-conflict societies. Restoration of citizenship pursued through justified politics of return contributes to democratic reconstitution of post-conflict societies. In post-Yugoslav space, however, the politics of return of refugees, internally displaced persons, diaspora and deportspora can be charged with promoting some forms of citizenship inequality, preferring some citizens over others and impeding or effectively blocking the return of those who are not desirable.

Introduction

In democratic theory, there has been a recent revival of interest in the so-called boundary problem: how to legitimately delimit the political community relevant for democracy (see Cheneval, 2011; Miller, 2009; Whelan, 1983). Boundary-drawing, separation of one people from another, was the result of historical contingencies with borders being entrenched, moralized and guaranteed by international law. Nonetheless, challenges arising from globalization, secession and immigration have again stressed the controversial nature and practical relevance of the boundary problem often addressed in the literature as a philosophical problem only.

In this paper, I argue that the right to return should be understood as one of the political principles for mitigation of the boundary problem which is of special importance for post-conflict polities such as those in post-Yugoslav space. Understood strictly procedurally as a decision method, democracy cannot successfully solve the boundary problem. But in its substantive form as a political regime of which political equality is a constitutive element, the boundary problem can be democratically mitigated by making citizenship more inclusive. Therefore, without taking into account the politics of return as a politics of restoration...
of citizenship, scholars fail to evaluate citizenship regimes appropriately, but also citizenship regimes fail to satisfy democratic legitimacy criteria.

I begin my discussion by elaborating specificities of the boundary problem in post-conflict societies. Then, I continue by providing an interpretation of the right to return and politics of return that mirrors social and political effectiveness of the right to return. Then, I spell out why I use the citizenship constellations approach to explain and evaluate the creation of conditions for return by the main players involved in the politics of return. Three different politics of return in the post-Yugoslav region are presented in the following sections and their purpose is to illustrate how outcomes of different politics of return within citizenship constellations often produce inequalities and unevenness of citizenship. In conclusion, and building on the empirical case of the post-Yugoslav region, I restate the normative relevance of speaking about return in terms of citizenship and democracy.

The Boundary Problem in Post-conflict Societies

The boundary problem is the problem of *demos*, a problem of legitimacy of the people who are usually themselves taken as a source of legitimacy of the government. As Sofia Nasstrom writes,

> The contention is that first we have the people, and then we have legitimacy. The former is the basis of the latter. By shifting focus to the above framework of legitimacy, however, the role of the people changes. The people is no longer the source, but the object, of legitimacy. We cannot first stipulate who the people are only then to go on doing democratic politics as usual. Rather, people-making is what legitimacy is all about. It raises a continual quest for legitimacy. (Näsström, 2007, p. 643)

This continual quest for legitimacy stems from the unsolvable boundary problem—who should decide what majority of which unit has the final say in deciding on secession? If the democratic legitimacy of *demos* stems from potential members of *demos* consenting to belong to *demos*, whose consent has been asked? This is the most prominent version of the boundary problem, but this paper will be dealing with another manifestation of the boundary problem that arises as another legitimacy gap between already the contestable decision on *demos* (application of continuity model or new state model) and reality of expulsion and return for some but not others.

Even though the post-Yugoslav republics could rely on pre-defined *demoi* of the republics within Yugoslavia, they still had to face the boundary problem—who belongs to *demos*—since the very decision to apply a so-called continuity model (Brubaker, 1992, pp. 278–279) is a decision on the boundaries which had to be made and could have been decided otherwise. Boundaries always include some while excluding others. There is a difference, however, whether boundaries drawn fail to include those who potentially will have had legitimate claims to membership (e.g. immigrants) or whether their drawing effectively excludes those who were yesterday’s members (e.g. refugees). Boundary drawing or people-making in the post-Yugoslav states did not take place only through formal decisions on citizenship legislations but also via the enterprise of expelling one population out of a territory and preventing prospects of its return. Citizenship regimes1 (Shaw & Štiks, 2012, p. 311) of these new states have not been moulded *ex nihilo*; furthermore, they have been conceptualized as a result of internal dynamics and external
influences, but at a time with specific understanding of what counts as legitimate. The dishonourable European history of expulsion of peoples and expropriation of their possessions, from Jews to Sudeten Germans, fortunately no longer represents contemporary norms of democratic legitimacy. But rarely, if ever, has people-making been done without illegitimate expulsions and various kinds of exclusions. Ethnic cleansing is a way of deciding who should belong (and who should not belong) to people. It is a method of boundary drawing which is clearly immoral and illegitimate, and nothing can make it legitimate. Therefore, delimitation of demos taking place as a result of the expulsion of former citizens without the possibility for those who fled to restore their citizenship cannot be considered as a legitimate solution of the boundary problem today. Although the boundary problem indicates that there is no perfectly legitimate demos, that cannot be an argument against our attempts to criticize illegitimate measures of its definition and hope for approximation of legitimacy as a normative ideal. The question is what should be done afterwards—is there a justifiable way to reverse ethnic cleansing and remedy historical injustices Here is where the idea of return as a restoration of citizenship and an attempt at reversing of ethnic cleansing comes in (Long, 2011). Clearly, some wrongs cannot be remedied and ethnic cleansing can never be undone—the boundary problem of the post-conflict societies exceeds any proposed or wish-for solution. This is a tragic fact, but it is not an argument against making this world more just, and demos more legitimate.

The Right to Return to One’s Own Country When One’s Own Country is a New Country

The right to leave and return to one’s own country is one of the most basic human rights. Without going into a never-ending philosophical debate about the meaning and function of human rights, I will assume here that they represent an instrument for ensuring respect for the dignity of human beings and the willingness of international community to impose obligations on the governments violating human rights. Almost all the scholarship dealing with the migration-citizenship nexus has concentrated on the right to leave one’s own country (right to emigrate) and the paradoxical lack of an internationally recognized right to immigrate, and corresponding lack of duty of states to accept immigrants. This might wrongly imply that the right to return to one’s own country, as a codified right, is largely problematic in its conceptualization and implementation. Quite the contrary, the codification of the right to return was more a postscript to the right to leave, perceived as a more important right in the context of the Cold War. It was not until 1999 that the UN Human Rights Committee in its General Comment No. 27 on freedom of movement identified who are the persons entitled to exercise this right by way of clarifying the meaning of the concept of ‘one’s own country’ with regard to article 12 of the 1966 UN International Covenant on Civil and Political Rights, which states that ‘No one shall be arbitrarily deprived of the right to enter his own country.’ Importantly, the elaboration of this right in the mentioned General Comment is the following:

The scope of ‘his own country’ is broader than the concept ‘country of his nationality’. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered
to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. (Emphasis added)

This interpretation of the right to return implies that the right is somewhere in between the right to citizenship and the right to denizenship, since it sanctions the return to one’s own country which may be a different country or part of a different country by the time of an individual’s return, but it does not necessarily imply that return will be followed by citizenship status. It seems that, in the absence of any human right to denizenship or human right to immigration, this right could only be effectively protected by citizenship legislation of these new countries which would include all of the people with the right to return into their citizenries, immediately or after a short passage of time. Once again, this points to the Arendtian paradox of rights: deprived of citizenship, stateless people, asylum seekers and refugees are under the protection of human rights declarations and conventions, but at the same time, human rights turn out to be the privilege of citizens since only a political community where they belong can protect their human dignity (Arendt, 1973, pp. 295–297). In an analogous manner, the right to return should be universal human right independent of new countries’ citizenship legislation, but at the same time, it cannot be respected without new states’ adjusting their sovereign right to determine their citizenries in such a way to include those with the right to return. This right is, however, contingent on historical circumstances of potential returnees—their individual or familial histories confirming ‘special ties to or claims in relation to a given country’.

The post-Yugoslav states applied a continuity model of citizenry with the exception of Kosovo which applied a new state model (Krasniqi, 2012, p. 354). That meant that all previous citizens of particular Yugoslav republics have automatically been considered as citizens of new independent states. In this context, the right to return would also imply an additional layer of citizens or would-be citizens beside those who were already included via the legal continuity model. These would be former Yugoslav citizens with republican citizenship other than citizenship of the republic where they actually resided. The claim that the right to return ought to be among the principles to determine citizenry of a new state is not the claim that the right to return is the solution of the boundary problem, or differently put, the problem of democratic constitution of the peoplehood. The argument is that with no democratically acceptable procedure that would solve the boundary problem—constitution of demos—we must face the less ambitious but not less pertinent task of democratic reconstitution, permanent process of regaining legitimacy through inclusion of those with special ties with some country. One of the necessary principles of democratic reconstitution in post-conflict societies by which excluded members have been again included into citizenship is the right to return.

There are several objections that could be raised against this right. I will address two of them: the so-called supersession thesis and the unfairness of the imposition of this right to the people who do not want to exercise it.

The supersession thesis, formulated by Jeremy Waldron, expresses how the injustice of some state of affairs may be superseded by circumstances (1992). Waldron does not say that the former unjust actions stop being unjust, rather that the injustice of state of
affairs established at some moment may be superseded by circumstances, for instance, changes in social and economic environment, at another moment in time. That implies that those who were entitled to certain rights and resources just before the injustice began would no longer be entitled to them upon change in circumstances (Waldron, 2004, p. 241). What are these circumstances in post-Yugoslavia because of which forced migration, discrimination and dispossession no longer represent injustice crying out for correction? In the case of post-Yugoslav states, it is perhaps most appropriate to emphasize the change in political and economic system. For instance, as it will be presented below, as a result of this change, occupancy/tenancy rights (OTR)\(^3\) no longer exist, but the real problem is why their conversion into property rights was allowed for some and not others. Also, if restitution of property nationalized during communist experiment is accepted, there can hardly be a principled argument against restitution of property of refugees. The post-Yugoslav story shows that this change in circumstances does not justify the arbitrariness of application of some rights and discriminatory decisions over which people will benefit from them.

There is an understandable worry of overburdening new demos with claims for reversing historical injustice; however, there is also a significant difference in strength of moral claims between the victims who can still return or be compensated for the direct unjust treatment and the successors of victims of historical injustice (injustice that took place many decades or centuries ago). This is another change in circumstances that may warrant supersession of injustice. Waldron thinks that the major focus of justice is on the present-day people and that some rights, including the right of return, may be waning because the morally important relationship between a person and the thing—be it property or, I would add, a country—is also disappearing (Waldron, 1992, p. 15). It might suffice to simply say that many of the directly affected in post-Yugoslavia are still present-day people whose lost rights still have a moral significance for their life and identity. Marmor replies to Waldron presumption that Palestinian refugees’ attachments to Israel are not significantly strong enough to warrant the right to return, by pointing out continuously expressed protest because of denial of their rights (2004, p. 326). The same goes for many refugees from post-Yugoslav states. Viktor Koska’s analysis of identity discourses among refugees from Croatia living in Serbia shows that for them the acquisition of Croatian citizenship plays a particular role that new Serbian citizenship can never provide—it is a type of protest identity, a reminder that they once lived in Croatia where they had been equal citizens, not just refugees or newcomers (Koska, 2015). As long as this is the case, the claims for remedial justice cannot be interpreted as morally insignificant and cannot support the supersession of rights.

The second objection—that people may not want to return—demands clarification of the meaning of having a right. To defend the right to return as a principle for mitigation of the boundary problem does not imply that it is a duty for people to exercise this right. The right to return is understood here in its extensive version which includes right to physical return, return of rights and creation of political environment conducive to return through, for instance, removal of obstacles to return, the imposition of sanctions upon those who actively impede return, or, where necessary, providing extra incentives for return. Conversely, creation of obstacles for returnees conveys important information with regard to desirable effect of return on citizenship regimes and boundaries of demos. It is up to returnees to decide whether or not to return, but they cannot make an autonomous decision not to return without this right.
There are arguments, some arising from reluctance of refugees themselves to return to places where they are no longer welcome and might be living in fear, that it might be better to defend the rights of these people to asylum and citizenship elsewhere. There is no territory in the world which is unoccupied for them to create a new political community—they must seek asylum or immigrate to an already existing country which has a sovereign right to decide whether or not to grant them asylum or residence permits. The defence of the right to return should not be understood as competitive with the right to asylum, however; the unconditional right to return to one’s own country is more elaborated than the conditional and, in some cases, only temporary right to asylum. There is no right for people to settle where they please and countries of destination may not offer them a straightforward path to equal citizenship, especially if they arrive in great numbers and are considered to be a burden. The choice might be between the right to return to one’s own country where one might be unwanted, and a possibility of becoming an equal citizen, the second class citizen, a refugee or an irregular migrant in a foreign country. In each particular case, citizenship opportunity structure may be different and ultimately the decision of a person in this position will be different. The right to return adds more opportunities for these people so that they can make their own choice in the given circumstances; it does not constitute an obligation to always do the same thing.

Finally, the right to return is not only a remedial right that corrects injustice caused by denial of citizenship rights. The normative status of this right depends on the meaning of citizenship and today it is taken for granted that citizenship entails the right not to be expelled from your own country. Therefore, the right to return also plays a role of prevention. It addresses the problem of moral hazard in letting injustice without redress which might seem as rewarding injustice by the passage of time. Return is an attempt of retroactive process of regaining legitimacy, or at least saying no to illegitimacy, no to the way of solving boundary problems by removing a part of the people. Some of these people were persons dissenting during the initial process of boundary drawing (secession), attempting to form another political community and differently delimit demos. Others did not even try to exclude themselves, but have been expelled or forced to flee simply by virtue of who they were, or who they have perceived to be—an ethnic–religious–political Other or even an enemy. In both cases, their consent was not asked—they either had no meaningful influence over the decision on boundary drawing or were simply denied the right to be left within the defined demos. Thus, the right to return says no to such an undemocratic manner of solving conflicts among people. Otherwise, how can we be sure that in future situations political adversaries will not be dealt with in the similar manner? Especially if there is an assumption that those expelled themselves were guilty of various crimes hence the denial of their right to return—would not that argument always be available as pretext for future ethnic cleansing or other expulsions just as it has been abused so many times before? The right to return also symbolizes the respect for difference in opposition to homogeneity of people, confirming that minority returnees are citizens with legitimate claims and rights. Ultimately, it provides opportunities for genuine reconciliation among the different peoples. If the right to return and the return of rights for some people has been secured but not for others, we cannot expect that this unjustified difference does anything else but further anchor divisions among peoples and precludes meaningful reconciliation.
A Citizenship Constellations Approach to Politics of Return: Where and by Whom are the Rights Granted, Protected and Exercised?

Return has not always been as globally prioritized among other durable solutions for refugees, such as local integration and resettlement, as it is today. This primacy was established after the end of Cold War, as a flipside of increasing immigration problems, but also as a consequence of the apparently ever larger number of refugees and emigrants fleeing from countries torn by civil wars. In post-Yugoslav post-conflict societies, the right to return has been reaffirmed as ‘the right to return to their homes’ in Bosnia and Herzegovina or the ‘right to sustainable return’ in Kosovo as the most comprehensive elaboration of the right encompassing even the integration of refugees as a right. There is ambiguous application of the right to return, however, and return processes in the post-Yugoslav space indicate that there is no impartial nor unconditional support for the implementation of that right by the international community. As geopolitics determines whose rights will be acknowledged and assures whose rights will be respected, the concept of politics of return is proposed for analysis of return to post-Yugoslav states. That does not mean that the right to return should not be considered as an important ethical and legal principle and that it should not be applied as a guiding principle of politics of return. Evaluation of these politics will depend on how these politics mirror the right to return. As it is the case with other human rights, the right to return has become the object of political struggles and its exercise can be seen as a symbol of political action. Who is returning—and who says who is returning—is a background against which a particular account of citizenship is promoted, an account of what it means to be a citizen of a new country that is never neutral nor uncontroversial.

The politics of return encompasses political, legislative and administrative efforts by governments, international organizations and non-government organizations to change opportunity structures for potential returnees by way of securing their right to return. Therefore, the politics of return is a concept which helps us to discern both promotion and direct or indirect prevention of return in a particular context. Different politics of return may serve different political purposes: restoration of normalcy, re-establishment of previously mixed communities, continuation of ethnic segregation, development, or a mere rhetorical device for the legitimization of new states which in fact may be effectively blocking significant return. Each of these political purposes pursued by different politics of return eventually affects the shape and scope of citizenship in different ways, approximating it to or departing from the key democratic value of equality.

There are three different politics of return that can be detected in the post-Yugoslav region and all of them are a direct or indirect result of conflict and post-conflict situations. These are: the politics of return of refugees and internally displaced persons in the aftermath of humanitarian emergencies; the politics of return of diaspora, especially highly qualified diaspora, that is, scientific diaspora, and investment diaspora; and the politics of return of the abject class of migrants—rejected asylum seekers, irregular migrants, convicted criminals, that is, the so-called deportspora (Nyers, 2003, p. 1070). These three politics of return elucidate how problematic the idea of returning ‘home’ to ‘one’s own country’ may be, as homes and homelands can be ‘made, re-made, imagined, remembered or desired’ (Black, 2002, p. 126). Different legal, functional and symbolic concepts of home are attached to different politics of return by different actors: returnees, countries of origin and countries of destination. Moreover, different citizenship rights have been
contingent on return for different categories of returnees. Before briefly tackling each of these three politics of return, I should explain my choice to use a type of upgraded structural (constellation) approach for explanation of these politics.

There are several explanations of return at hand. Given the topic of this paper—how politics of return affect citizenship regimes, and with that, the boundary problem—it is most suitable to rely on a structural approach which understands return as a social, institutional and contextual issue, affected by factors in the place to which migrants are planning to return: political structure, economic structures and normative values structuring social relations (Cassarino, 2004). The structural approach needs to be ameliorated by the so-called citizenship constellations perspective since readiness and preparedness to return depend not only on factors in the country of potential return but also on factors and status and rights of returnees in countries of asylum/admission/residence. According to Bauböck (2010a, p. 848), citizenship constellations are ‘structures in which individuals are simultaneously linked to several such political entities, so that their legal rights and duties are determined not only by one political authority, but by several’. For the purposes of this paper, citizenship constellations should be understood in a more flexible manner, as refugees often have no recognized citizenship at all, whereas other types of returnees may have dual or multiple citizenship. The constellations approach compensates for the inadequacy of the standard structural approach which usually has not taken into account transnational, back-and-forth, movement of people. In principle, I advocate for the transnational concept of return in which human mobility, open-endedness and transnational returnees’ networks are integrated into ‘durable’ solutions for returnees and return is not understood exclusively as a final act of return to the country of origin. In this paper, however, I wish to emphasize the political importance of a viable option of return home so that home can be reconstructed (and demos reconstituted) not to postulate that everyone ought to return, but that everyone has the right to return. This emphasis on return is not in conflict with transnationalism per se above all since a citizenship constellation approach is a combination of structuralism and transnationalism which allows migrants to be stakeholders in both countries of origin and settlement, or differently put, countries of return and asylum.

A compelling question is where and by whom are the rights granted, protected and exercised keeping in mind the displacement of sovereignty in general and recomposition of political communities in the post-Yugoslav space followed by creation of weak states in particular. For instance, since large forcibly displaced populations present huge resource and capacity challenges, countries of origin may be reluctant to welcome returnees back because of the agenda of cementing ethnic cleansing as a result of war but also because reparations or compensations owed to refugees as measures of restorative justice are a financial burden which may be unaffordable to governments in place. Particular politics of return are thus often a result of governance by conditionality and negotiations among political actors within citizenship constellations—host states are also interested in reducing economic burdens that displaced populations put on their shoulders and, if they are powerful enough, they will impose return from the ‘outside’ by international actors such as the EU as an exclusive right conditioning it with state recognition, financial assistance, accession to international organizations or visa-free regime (Mesić & Bagić, 2010, p. 138). The countries of origin then accept the return of refugees in exchange for external legitimacy more than for reasons of internal legitimacy. There often is a necessity of international involvement for return to succeed, with the downside being the dependency of
respect for human rights of returnees on international monitoring, meaning the mechanisms for their promotion may easily collapse once there is no outside pressure.

Bauböck differentiates between horizontally overlapping citizenship constellations formed by independent states with partially overlapping memberships and the so-called vertically nested citizenship constellations where members of several polities are nested within a larger encompassing polity (2010b, p. 302). It is clear that former Yugoslav citizenship corresponded to the vertical nested citizenship. As almost all returnees once lived in the same country having the same citizenship status and rights, there is a certain injustice that some of these rights only apply to refugees from one post-Yugoslav state and not another. Although overlapping citizenship constellations replaced the nested citizenship constellation in the post-Yugoslav space, European states which have often been countries of destination need to be included into the constellation equation. These constellations are both horizontal and vertical—but not nested, or at least, not yet. I call them hierarchical citizenship constellations since European countries (usually the EU member states) have significant leverage over the development of citizenship regimes of the post-Yugoslav states, some of which joined the EU already (Slovenia and recently Croatia) while the others strive towards becoming ‘nested’ in it.

Overlapping and hierarchical citizenship constellations taken as units of analysis and offering different possibilities for access to status elucidate various inequalities among returnees—some of them may be deliberately unjust while others are unintended consequences of these complex and stratified relations which produce uneven citizenship. Citizenship has been one of the most positively evaluated concepts precisely because it is mostly about equal membership in self-governing community. How are we to account for such an equal membership within not so self-governing citizenship constellations?

Bauböck (2010b, p. 302) outlines two limitations: firstly, citizenship policies within constellations need to respond to moral claims of individuals but in such a way that they are mutually coordinated and without producing unjustifiable burdens for other countries; secondly, it is important to consider equality between individuals positioned differently within a constellation.

While in overall agreement with Bauböck, I offer a somewhat contextualized and expanded answer to the question of what kind of equality—equality among whom and equality of what?—I would look for within citizenship constellations. To respond equally to moral claims of potential returnees, equal rights to return and equal restoration of rights needed for the sustainable return or free and informed choice on a durable solution other than return for people in equal or similar situations is critical. If we compare the post-Yugoslav situation with the most extreme one, that of the Palestinian refugees, it will be clear that the right to return has not been officially denied. Many of the people in question have a legal right to citizenship of their country of origin. But the enjoyment of their citizenship rights is missing in such a way that it is more prudent not to return to a ‘home’ which is no longer welcoming. Effective hindrance of return for some people, especially by passage of time, represents effective elimination of physically absent legal subjects of a polity from its political body. Also, unevenness as the unintended effect of different politics of return may not be as unjust as deliberate exclusion and unequal treatment, but it may still be unwarranted and as such should be addressed and remedied.

Bauböck’s concept of citizenship constellations is methodologically compatible with Francis Cheneval’s philosophically justified proposal for the most optimal mitigation of
the boundary problem: the creation of multiple *demos* with legitimacy of any particular *demos* being ‘critically dependent on a relational setting of relatively open but independent *demos*’ (2011, p. 21). The criterion of openness helps to reduce the exclusion resulting from the boundary problem solutions in which some members accept each other, but their decisions on membership violate principle of non-discrimination by excluding others. All returnees are affected by different citizenship regimes and it would be ideal that they are given proper choice to decide about where and how to continue their lives; after all, *demoi* have allowed respect for rights legitimately attached to returnees’ positions within citizenship constellations. Besides openness, the proposed multiple *demoi* solution depends on mutual coordination of citizenship and return policies of *demoi* that would have the capacity to reduce or even eliminate the exclusion or unequal protection of rights resulting from the singular boundary problem solutions.

Having underlined both explanatory advantages and normative problems of the citizenship constellations approach, I would like to turn to application of this approach to three different politics of return in post-Yugoslav space differentiated according to the types of returnees. Each of these politics is, for reasons of space, briefly sketched with emphasis on the most important problems that occurred in securing the right to return, return of rights, and creation of political environment conducive to return. The empirical material presented serves as an illustration of the extent of production of citizenship (in)equality and democratic reconstitution via return politics in the post-Yugoslav region for which all political actors within these hierarchical citizenship constellations are responsible.

**Politics of Return of Refugees and Internally Displaced Persons (IDPs)**

Ethnic cleansing was a major outcome of wars in Yugoslavia, with internecine conflict being especially intense in Bosnia and Herzegovina, Croatia and Kosovo. In the aftermath of such conflicts which caused mass displacement, return has been seen as a high post-war priority because of the plight of displaced, the cost of influx of refugees on host communities, and in the attempt to bring back ‘normalcy’. In one way or another, all three conflicts were examples of domicide, ‘deliberate destruction of a home’ (Porteous & Smith, 2001, p. ix), or ‘a war against homes on behalf of their idealized homelands’ (Tuathail & Dahlman, 2006, p. 242) where enormous number of homes were destroyed or severely damaged, minority houses being systematically burnt or occupied by the members of the majority ethnic group. Such a loss of home is the negation of life ‘in its social spatial context’ (p. 246) and while repossession of property is just one element of return politics, its importance as a pre-requisite to return and reintegration of the displaced is apparent, especially when victims are still alive and struggling to support themselves.

There are, of course, differences between these cases. Bosnia and Herzegovina is widely considered as the most successful story in the post-Yugoslav region when it comes to the actual return of refugees and displaced persons and the return of their property rights. The legal and institutional setting allowed for a more effective politics of return as all the key documents, including the Dayton Peace Agreement, postulated that early return of refugees and displaced persons was hugely important for the settlement of the conflict. Being an example of the emerging right to post-conflict property restitution, Bosnia and Herzegovina also acknowledged the right to repossess apartments for which refugees or displaced persons had occupancy/tenancy rights. With regard to the creation of a more favourable environment for return, there were legal provisions about holding liable those
officials and other persons who prevent or delay the right to return that have been put into effect by the Office of High Representative (OHR) and its Reconstruction and Return Task Force.

In addition to this, or perhaps precisely as a stimulant to these actions of the OHR, it should be noted that a couple of years after the end of the war, western European states started pressuring Bosnian refugees to return to Bosnia and Herzegovina (Williams, 2006). Although favourable for the return of refugees by way of securing stronger incentives for the OHR to ensure the implementation of property laws, the effect of the operation of the citizenship constellations in this example cannot be understood without comprehension of the non-admission policies of countries of asylum. In the same vein, international community and international donors were committed to supporting return to the exact places of origin so that the consequences of ethnic cleansing could be overturned. Nevertheless, many wanted to avoid minority return and thus they have changed their status of refugees to status of displaced persons and more often than not returned not to their place of origin, but to another municipality or entity where their ethnic community was the majority. 7

Croatian politics of return was far less affected by international actors and dominant citizenship regimes than was the case with Bosnian return politics. After Operation Storm, more than 19,000 Serb houses were occupied by Croat refugees from Bosnia and Herzegovina and Croats displaced from elsewhere. In 1995, a law on temporary usage of abandoned property was promulgated. The Constitutional Court of Croatia annulled this law in 1999 and almost all of the properties have now been formally repossessed by their Serb owners. While property return has been the most successful segment of Croatian return politics, the situation with OTR represents a paradigm of unequal treatment of refugees from ethnic minorities and an example of uneven position of displaced persons of the same category in citizenship constellations. At the beginning of processes of privatization in independent Croatia, OTR were transformed into ownership rights in such a way that OTR holders could buy the apartments where they lived at favourable rates. This possibility lasted until 1996 when the concept of OTR was abolished, affecting some 30–40,000 families of Serbian ethnic origin who became refugees and were arbitrarily stripped of their rights to their apartments upon fleeing from Croatia (ECRE, 2010).8Although presented as a solution for this problem, the Housing Care Programme (HCP) has hardly been an adequate substitute. It remains silent about the discriminatory nature of OTR cancellations, thus confirming the position of the Croatian government that it has no legal obligation towards the former OTR holders and needlessly divides concerned refugees into two categories subject to different conditions for acquiring housing rights. Due to the pressure of the international community, predominantly the EU, which made the opening of the EU–Croatia accession negotiations conditional upon finding a better solution to this problem, the HCP was reopened, although again without reasonable justification for protracted differentiated treatment of different OTR holders as potential beneficiaries of the HCP (Grupa 484, 2011; HRW, 2003). The main concern here is that the HCP is not the measure of restoring justice and treating equal citizens equally (as other Croatian citizens could buy their socially owned apartments during privatization and then sell them). The problem has been addressed on humanitarian grounds instead of on the ground of solidarity with fellow citizens who have been unfairly discriminated against.

As for Kosovo, one of the arguments for NATO military intervention against the Federal Republic of Yugoslavia in 1999 was reaffirmation of the right to return. The
The same right has been repeated seven times in the UNSC Resolution 1244 where ‘the safe
and unimpeded return of all refugees and displaced persons to their homes’ is unquestion-
ably understood as one of the reasons for the establishment of the international civilian
mission in Kosovo after 1999. While the return of displaced Kosovo Albanians was an
immense success, as less than two months after the end of the war, the vast majority of
Albanian refugees and displaced persons—more than one million—had returned to their
pre-conflict homes, the return of non-Albanians who had fled Kosovo when the inter-
national civilian mission was deployed has been a complete failure.

The persecution of Serbs in post-war Kosovo was not only a means of revenge for pre-
viously suffered atrocities and the ethnic cleansing campaign by Serbian security forces,
but the creation of a new reality where the self-determination of Kosovo as an ethnically
Albanian state would be hard to resist in the future (Hochschild, 2004, p. 290). Yet, inter-
national civil and military missions (KFOR and UNMIK) did practically nothing to
prevent this new ethnic cleansing and did not perceive the return of IDPs from Serbia
to Kosovo as a priority. The lack of proper response to the problem of ethnic purifi-
cation of Kosovo is particularly puzzling when one is reminded that certain lessons, such as
the importance of early return, should have been learnt from the Bosnian experience of a semi-
protectorate which was similar to that emerging in Kosovo and analogous vast resources
on the side of international actors in Kosovo. As the majority of IDPs who never returned
to Kosovo fled to the rather powerless FR of Yugoslavia, then held in low regard interna-
tionally (later the separate states of Serbia and Montenegro), which treated IDPs as citi-
zens, there was no pressure from powerful European states who wished to initiate and
facilitate the IDPs’ return. Therefore, the attention paid to their right to return was differ-
ent from the one paid to the return of Kosovo Albanians, but also to all other displaced
persons from other post-Yugoslav regions, putting these displaced in unequal position
in Kosovo and uneven position internationally. Later on, UNMIK produced two
Manuals on Sustainable Return, provisional institutions of self-government established
Ministry for Communities and Return, and, upon declaration of independence in 2008,
Kosovo included in its Constitution, that was based on the internationally sponsored Ahtis-
sari Plan, a provision on the right to return. However, given how late all these policies were
drafted and the complete failure of implementation, the narrative on return to Kosovo
amounts more to a window dressing by both Kosovo authorities and international actors
than to an effective politics of return. Since there have been numerous security inci-
dents—looting, arson, even murdering returnees and consistent resistance by the receiving
community to accepting returnees back home, especially in the so-called difficult return
areas; the government even had to introduce a so-called ‘balancing component’. To be
exact, if within a project ten houses are to be built for ten displaced Serb families, then
two will be built for socially vulnerable Albanian families. Similarly, Kosovo Serb
representatives from north Kosovo insisted that any return of Kosovo Albanians to the
north should be reciprocated by the return of Kosovo Serbs in south (OSCE, 2010,
p. 12). These are just some of the local examples of negotiation between the right to
return and the power of established members to exclude.

As Jenne (2010, pp. 372–373) argued, in these three cases, the principal barrier to minor-
ity return was the logic of ethnic spoils in which ethnic entrepreneurs of a group that

gained control over a community’s resources through war had strong incentives to deter

displaced groups from returning and reclaiming rights. Through high or low intensity

etnic discrimination, displaced were to be excluded from a share of the community
resources. Explaining why she treats each of the three cases—Bosnia, Croatia and Kosovo—as su\textsuperscript{i} gener\textsuperscript{is} interventions with regard to returns programmes, Jenne evidences that many of her informants confirmed how little the three post-war administrations have learnt from past experiences of each other (Jenne, 2010, p. 380, note 4). Precisely because of this, I find that the most practical example for the earlier proposed multiple demo\textsuperscript{i} sol\textsuperscript{u}tion is a regional approach to refugee and IDP situations that could have prevented unjustified inequality of treatment of refugees’ rights. In fact, regional cooperation with regard to refugee return was part of the EU’s policy of conditionality towards post-Yugoslav countries within the Stabilization and Association Process (SAP); however, it was not prioritized enough as the other SAP conditions. International actors created a problem of negotiability/optionality of a right to return instead of promoting it as a right for everyone. Immediate regional solution would have avoided difference in handling of OTR in Bosnia and Croatia; more importantly, it would have prevented creation of a protracted displacement situation. Only now with revival of the regional approach through the Regional Housing Programme (which unfortunately does not include Kosovo), there is a chance for durable solutions for refugees in these states—return or local integration depending on the choices of refugees themselves.

Demo\textsuperscript{i} model requiring openness would in particular recommend more options for return that returnees can choose from: from return to pre-war home to return elsewhere within the country where returnees feel safe. It is exactly that cases of successful voluntary return to difficult sites in Bosnia show relevance of refugee communities’ bottom-up organizing in ensuring return, although the role of local actors is more complementary to the role of international actors in securing return than self-sufficient. Still, when refugee communities are part of the process of creating and coordinating refugee policies, they are participants in the decisions about boundaries—that way, they can support, direct or legitimize international actors’ and donors’ policies (Belloni, 2007, p. 125; Stefanovic & Loizides, 2011, p. 424). Belloni writes that in Bosnia urban life for refugees from rural areas has moved from necessity to preference that should have been taken into account instead of initial insistence towards return to pre-war home (Belloni, 2007, p. 130). Similarly, urban return was not promoted in Kosovo even though it would have been more sustainable to expect that young people would return to towns rather than to rural area. Only now, more than a decade after the war, there is an attempt to organize the first urban return project—return to Prizren.

\textbf{Politics of Return of Diaspora}

While preventing return of minority refugees, all post-Yugoslav states have set up institutions dealing with diaspora matters, promoting, among other things, the idea of return of diaspora members. One of the instruments was the liberalization of citizenship legislation (Ragazzi & Balalovska, 2011) for co-ethnics opening doors for the unusual ‘returns’ of the second- or even third-generation children of first-generation immigrants to their parents’ and grandparents’ country of origin (reversal of the old migration for whatever reason). The proper diaspora return is in fact immigration of co-ethnics, but ‘for the protagonists themselves, it is very much a real, ontological return to the land of their ancestors’ (King & Christou, 2010, p. 168). Besides, the right to return may also entitle a person to come to the country for the first time if he or she was born outside the country and the special ties to the country were maintained.
The political discourses on return of all post-Yugoslav states also prioritize the language of return to historical homeland—moral obligations towards co-ethnics and honouring their contributions in winning wars or remedying suffering that political exile for some diaspora members has caused in the previous period. What initially started as hope that upon gaining independence or democratic changes a rich diaspora will return and invest at home has soon transformed into the ill-conceived substitution of needs for highly skilled immigrants with the return of highly qualified diaspora (reversing the brain drain) which could be attracted by playing the ethnic and emotional card. Now emphasized in the discourse of return are policies targeting potential returnees on the grounds of their skills and resources. This is not unusual for emigration and developing countries: many of them have begun pursuing policies of engaging with their diasporas (their organization, facilitation of investment, political participation and return) realizing the potential diaspora offers for the development of their home countries. Overall, engaging with diaspora by promoting their return is testing their commitment to the maintenance and restoration of the homeland.

There are two objections regarding inequality that could be made here. One relates to the matter of prioritization of one type of diaspora members (ethnic or skilful and rich) by openly inviting them and offering them better working conditions. This preference for a certain group is usually less of a problem than discrimination against a particular group whose return has been denied. The latter is prohibited. This explains why diaspora is a particularly complex political issue in, for instance, Bosnia and Herzegovina as the concept of Bosnian diaspora is somewhat contestable. It comes down to the question of who belongs to the Bosnian diaspora—are Bosnian diaspora members Bosniaks only, or all Bosnian citizens? Another inequality argument concerns disadvantages faced by returnees once they have returned. Overall, they are deterred from returning and competing for highly qualified jobs on the basis of clear criteria, especially because of problems with recognition of their international diplomas, or fear that they will be prosecuted for evading military recruitment that used to be among the most serious obstacles in the previous period.

Politics of Return of the ‘Deportspora’

The return of rejectees—rejected asylum seekers or irregular migrants—is forced return (Gibney, 2013). The majority of governments and international organizations prefer expressions such as induced voluntary return or assisted voluntary return in situations when rejectees are informed about their future removal from the host country, so they choose to return home by themselves and avoid deportation. Still, this is hardly a voluntary decision on the part of the returnees. For facilitation of this type of return—where host countries use the right to return as the duty of the country of origin to accept the returnees—readmission agreements between countries of origin and countries of destination have been designed as instruments of such return. When the deporting country decides on removal or deportation, it should take into consideration human rights concerns. There are doubts, however, that in the case of Kosovo, readmission agreements actually facilitated human rights abuses since forced repatriation of Roma to Kosovo may be seen as breaching the principle of non-refoulement (for recommendations not to deport Kosovo Roma and overall recommendation not to deport Kosovo Serbs to Kosovo, see UNHCR, 2006, 2009).
The politics of return of rejectees is more of a result of the European countries’ politics of return of those that they reject as immigrants than the result of the post-Yugoslav politics of return of their own emigrants. However, a constellation perspective allows us to analyse reintegration of readmitted returnees as a process for which two political entities are responsible, and the actions of one affects actions of the other. According to Walters, deportation is a ‘constitutive practice’ of citizenship and ‘immanent to the modern regime of citizenship’ (2002, p. 288). By exercising what seems to be essential for their citizenship regimes, the European states produce new statuses and practices of citizenship in receiving states, which in these processes of return are states of origin. Politics of return cannot be separated from politics of integration of returnees. Each country is expected to accept its returning citizens as it is its obligation arising from the right to return although almost none has signed readmission agreements without negotiating something in return: visa liberalization in the case of Serbia, Montenegro, Macedonia and Bosnia and Herzegovina, or state recognition in the case of Kosovo, which is the most controversial example of readmission agreements. Once Kosovo unilaterally declared independence, many states that recognized it immediately signed readmission agreements with Kosovo and offered no funding in return for reintegration of returnees. Kosovo was under political pressure to accept these agreements without having the budget or the capacity to receive the returnees in dignity and security (Council of Europe, 2009, para. 156).

In all post-Yugoslav states affected by this type of return—mainly Serbia, Macedonia and Kosovo—the most complex question elucidating a problematic conceptualization of home is the one dealing with deportation of children to their parents’ countries of origin—their parents’ former homes. For these children, Germany, Switzerland, Austria, Sweden or any other deporting state was the only home country they knew. Right from the outset of their return, these children are disadvantaged because of lack of elementary life conditions (their parents sold everything they had before emigrating and left their countries of destination with nothing), either oblivion or lack of knowledge of language, and unfamiliarity with culture and social norms of local community. Given the time some of these rejected asylum seekers or irregular migrants have spent in the deporting states and social connections they have created with citizens of these states, their ties to a particular deporting country may be special enough to justify some potential future interpretations of their right to return to deporting country as their own country. In the current state of affairs, however, European demois still exclude and remove from their territories those who have neither citizenship nor denizenship rights. The countries where rejectees are returning, as countries of their origin, are supposed to be internally inclusive, meaning that they should work on their reintegration into society and restoration of equal citizenship. Receiving states do very little to actually include returnees—many of whom suffered discrimination and deprivation which caused them to seek asylum or migrate irregularly elsewhere—and they often remain invisible and voiceless, somewhere in between their social membership in countries which deported them and legal membership in countries they left years ago and did not wish to return to.

Each country is monitored with regard to developing and implementing a mechanism of sustainable reintegration aiming to improve positions of returnees, but ultimately to prevent them from re-emigrating to deporting states. Although returnees should not be penalized by their countries of origin on their return, recent threats by Schengen states that visa liberalization will be lifted if the number of false asylum seekers or previously
readmitted returnees who re-emigrated from states such as Serbia and Macedonia is not significantly reduced, induces exactly that from countries of origin—the penalization of a certain category of people by restraining some of their citizenship rights, most notably, the right to leave one’s country. \textsuperscript{14} Demoi openness and cooperation on this matter should work towards assistance in reintegration of returnees in countries of origin with possibilities of maintaining their ties with countries of destination or, alternatively, regularization of migration status for those whose ties with the countries of destination are too strong. Otherwise, return ‘home’ becomes an exile.

Conclusion

This paper has stressed that the right to return is one of the essential principles for dealing with the boundary problem. Determination of the ‘who’ of democracy in new or restored states ought not to be separate from determination of those who have special ties to a particular country and, ultimately, the right to return. If citizenship should be accorded to those who have the special ties to a political community, it is important to note that boundary drawing and particular politics of return may work to break those ties for some citizens. Reconstruction of homes and homelands or building of new homes and new homelands requires returnees and citizens to be able to re-establish these ties, reclaim their polities, instead of remaining their outcasts.

Even though return of refugees and IDPs often takes place long after the initial determination of citizenry, it should not be considered as posterior inclusion, but instead as restoration of membership that should have been confirmed and secured \textit{ab initio}. When members of diaspora are without legal status of citizenship, their return is either a question of posterior inclusion into already bounded \textit{demoi}, or fusion of the right to return with the ethnic criteria for determination of citizenry under the pretext of restoration of historical nation. As long as ‘who’ within a diaspora has the right to return is not ethnically but more inclusively defined—with the reference to special ties to a given country—the politics of return of diaspora can be tailored to uphold more democratic boundaries. The same goes for the return of those members of diaspora who are already formal citizens but are physically and politically absent—their resuming of citizenship and preservation of the existing boundaries is justifiable when the return of all of them is equally promoted. Return of deportspora is also a form of restoration of citizenship of those who for various reasons, from discrimination to economic hardship, informally tried to renounce their citizenship and become members of other polities. The legitimacy deficit lies in the fact that their return is not the return of those who want their citizenship restored—the boundaries are confirmed or redrawn as the effect of external \textit{demoi} of deporting states that are confirming or redrawing their own boundaries. Three different politics of return presented here demonstrate the asymmetry of the political usage of the right to return. If this right is not respected with regard to all refugees and IDPs, why would it be respected with regard to those exiled or deported, the former being invited to return and the latter being forced to return while accepted unwillingly by their states of origin? The objections that return ought to depend on voluntary choice of refugees and strength of their attachments to the country where they want to return or stay (or any other change of circumstances that would trigger supersession of right to return) would have to have at least similar moral force when it comes to rejectees, and in reality it does not. Again, this does not absolve us of responsibility of criticizing this inconsistency.
The right to return that properly inspires politics of return which then serve as democratic reconstitution moment for demos can legitimately be expressed through the autonomous political engagement of all returnees in a direct renegotiation of the content of citizenship with the state and its recognized citizens. Both return and citizenship so conceived should be at the same time objects and instruments of democratic transformation of new polities. Boundary redrawing that produced multiple demoi pertaining to accord to the democratic ideal ought to be accompanied by an understanding that mutual openness of demoi, freedom of movement of their citizens, denizens and returnees with special ties to one or more countries, and dual citizenship in specific cases, should be among the norms of democratic legitimacy (Cheneval, 2011, p. 2).

The unsuccessful democratic reconstitution via return politics in the post-Yugoslav space stands as a warning that the consequences of the actual return politics are not only changed demography and citizens’ rights denied or exported as problems to other countries, but also slim chances for building the inter-ethnic trust and faith in equal opportunity for political influence and justice that democracy requires.

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Notes

1. A citizenship regime is based on a given country’s citizenship legislation defining the body of citizens (i.e. who is entitled to citizenship and all duties and rights attached to that status), on administrative policies in dealing with citizenship matters and the status of individuals, and, finally, on the official or non-official dynamic of political inclusion and exclusion. (Shaw & Štiks, 2012, p. 311)

2. In my dissertation, I argue that democratic reconstitution is a continuous process and that there are several identifiable reconstitution moments such as recognition of old resident non-members, semi-members or excluded members as full members; inclusion of new members; political construction of a new ‘we, the people’; and people’s exercising its constituent power.

3. In the Socialist Federative Republic of Yugoslavia, occupants of socially owned apartments had very strongly protected tenancy rights. These rights were based on personal financial contributions into a common housing fund by those who were granted tenancy rights which included the right to live in their dwelling indefinitely and to transfer this right to direct family members. The Council of Europe’s Resolution 1708 adopted on 28 January 2010 entitled ‘Solving property issues of refugees and internally displaced persons’ invited CoE member states to recognize and protect occupancy and tenancy rights as the right to home in the sense of Article 8 of the European Convention on Human Rights and as possessions in the sense of Article 1 of Protocol No. 1 to that convention.

4. Kibreab (2003) argues that when exile provides opportunities to refugees to enjoy citizenship or denizenship rights in the context of favourable structural factors and often superior to the rights they enjoyed before displacement and will likely enjoy upon return, refugees tend to choose not to return to their places of origin even when conditions that caused their displacement have been eliminated.

5. Koska’s paper in this volume is, again, instructive with regard to this—in the long run, it argues for dual citizenship for integrative purposes.
6. The UN Sub-Commission on the Promotion and Protection of Human Rights has adopted a document ‘Housing and Property Restitution for Refugees and Displaced Persons’ which directly linked the right to return with the right to property restitution in 2005.

7. ‘Minority return’, return to areas where people of the same ethnicity as returnees did not constitute the politically dominant group, was of major concern for international actors.

8. The 2009 case in front of the UN Human Rights Committee—Vojnović v. Croatia—serves as legal evidence that these OTR holders were indeed arbitrarily stripped of their rights.

9. One of the reasons for this spectacular return rate is the fact that the conflict lasted only 3 months and that most of the refugees were in neighbouring countries. Some commentators also note a dramatic change in the political situation as a factor, but also a concern that others will occupy or loot the property that has pushed people to early return. This also coincided with a decline of services in the Macedonian refugee camps (Marsden, 1999, p. 27).

10. FR Yugoslavia, and later on, Serbia, labelled its policies of assistance addressing vulnerable IDPs as ‘enhancement of IDPs livelihoods’ rejecting pressures from international donors to call that ‘local integration’, the second most favourable durable solution after return, arguing that if Serbia is to accept local integration policies, this would imply legitimating ethnic cleansing.

11. Author’s Interview with Mr. Radojica Tomic´, Minister of Communities and Returns, Ministry of Communities and Returns of the Republic of Kosovo, Kosovo Polje, 29 January 2013.

12. The full name of the programme is the ‘Joint Regional Programme on Durable Solutions for Refugees and Displaced Persons’. This is a joint initiative of Bosnia and Herzegovina, Croatia, Montenegro and Serbia re-launched in 2010 when these countries, altogether with the international community, committed themselves to solving the protracted displacement situation in the region.

13. Carens (2009) defends something compatible with this view. He believes that time erodes the state’s right to deport and that people who were raised in a society became members of that society and that they should be treated as such. Also, the 2011 UNHRC decision in Nystrom v. Australia found that non-citizens in some cases may also have the right to enter their ‘own country’.

14. The Macedonian Constitutional Court ruled on 25 June 2014 that an article of the Law on Travel Documents sanctioning a ground for refusal to issue a passport or revoke an existing passport to the Macedonian citizens who have been forcibly returned or expelled from another country is unconstitutional as incompatible with the freedom of movement.

References


