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Civilization – increasingly parsed in less morally loaded terms as the condition of being modern – was something to be attained with the help of technical and social scientific expertise *after independence* by a means of state policy and external assistance. But what did civilization in the new Cold War sense actually mean? Rationality, the defence of property rights, to be sure; and liberty? Initially yes, but as modernization theorists came to entertain doubts about the capacity of Third World countries to modernize under democratic leadership, the spread of liberty came to be equated with defence of property rights against communism and the leadership of army generals and dictators.

In this postwar world, law and claims of ethical superiority no longer offered justifications for intervention, least of all to defend rights. As the number of sovereign states mushroomed, pressure on states to expand the realm of rights depended more than ever on public opinion – domestic and foreign, sometimes swept up into the official policy of states, at others expressed through newly powerful NGOs such as Amnesty International. As international organizations such as the UN backtracked from earlier more interventionist regimes where sovereignty was concerned, it was NGOs that acted as chief defenders of individuals and collective groups against their own states, but this was a much weaker kind of defence.

In short, the collapse of the old civilizational certainties both fostered a more global sense of international community and simultaneously weakened the system's capacity to force through observation of rights of various kinds. A combination of NGOs and rhetorical exhortation made little headway against the spread of sovereign states in the former colonial world. The European Convention showed that states *could* derogate powers to a genuinely enforceable rights regime, but this regional arrangement was the exception, not the rule. Perhaps this brief sketch helps explain why, in the 1990s, with the re-emergence of genocide as an international problem, frustration with the UN's inability to respond adequately fed calls for a new basis for intervention, new criticisms of the doctrine of sovereign sanctity, and calls for some kind of return to an idealized version of nineteenth-century liberal imperial crusades. Currently one reads about demands to replace – or supplement (but doesn't it come to the same thing?) – the UN with a 'league of democracies' that can act when state leaders sacrifice their right to rule by failing to respond to humanitarian crises. Here too the sovereignty criterion is under challenge. But that is not so surprising as the way proponents of such arrangements unproblematically return to the language of civilizational superiority in the name of defending rights. It is hard, I think, if the kind of conceptual trajectory I have outlined here has any validity, to avoid seeing such moves, for all their self-proclaimed practicality, as exercises in nostalgia for a world centred on Europe and 'European values' (whatever those may be thought to be) at the very moment when the world is moving in a different direction.

The "Human Rights Revolution" at Work *Displaced Persons in Postwar Europe*

G. Daniel Cohen

"When this ghastly war ends," gloomily predicted Franklin D. Roosevelt in October 1939, "there may be not one million but ten million or twenty million men, women and children belonging to many races ... who will enter into the wide picture – the problem of the human refugee."¹ Six and a half years later, Eleanor Roosevelt confirmed the forecast of her then deceased husband. "A new type of political refugee is appearing," she wrote in February 1946, "people who have been against the present governments and if they stay at home or go home will probably be killed."² To be sure, these statements could have adequately described earlier instances of forced displacement, none the least the refugee exodus from the Reich of the late 1930s. But although continental Europe had been awash with stateless and exiled people from the end of the First World War to the advent of Nazism, the presidential couple envisioned "the problem of the human refugee" as an impending postwar crisis more than the continuation of an older phenomenon. Two decades of isolationism and restrictive immigration quotas may have blinded American eyes to the magnitude of European displacement prior to 1939. The prospect of renewed American engagement with the world, however, revived strong interest for "Europe on the move." Observing this phenomenon at both ends of the conflict, Franklin and Eleanor Roosevelt were undoubtedly right: the scale of the European refugee problem at the end of the Second World War went beyond anything seen before.

Writing on the eve of Victory in Europe, Hannah Arendt similarly reflected upon the impending refugee crisis. "It would be a good thing," she observed in April 1945, "if it were generally admitted that the end of the war in Europe will not automatically return thirty to forty million exiles to their homes." And then the former refugee from Nazi Germany divulged one of the greatest challenges the authorities would face: "[A] very large proportion," she warned, "will

¹ *The New York Times*, October 18, 1939.

² Quoted by Mary Ann Langdon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, 2001), 29.

regard repatriation as deportation and will insist on retaining their statelessness." Arendt had evidently in mind the yet unquantified Jewish survivors of the Final Solution but also referred to other types of anti-Soviet Eastern European displaced persons (DPs). Altogether, she presciently pointed out, "the largest group of potentially stateless people is to be found in Germany itself."³ Contrary to the military and humanitarian focus on population management, Arendt believed that the "DP problem" was first and foremost political in nature. From 1946 to the end of the decade, the vocal and conspicuous "last million" of Europe's DPs – a multinational group of Jewish and non-Jewish asylum seekers unwilling or unable to go home – amply corroborated her predictions.

Indeed, the "DP story" comprised two distinct chronological sequences, one logistical and one more markedly political. It is generally assumed that at the end of the war there were approximately eight million civilians in Germany who qualified as "displaced persons" under the United Nations Relief and Rehabilitation Administration (UNRRA, 1943–1947) and Allied military directives: foreign workers, slave laborers, prisoners of war, and liberated concentration camp inmates formed the bulk of this predominantly Eastern European population. Between the spring and the fall of 1945, six to seven million DPs were returned to their countries of origins – forcibly and often tragically in the case of Soviet nationals. Yet in September 1945, 1.2 million refugees still remained in Western Allied hands. As it became increasingly clear to humanitarian personnel and Allied military commanders at the start of 1946, return rates significantly dwindled among the remaining DPs. Their refusal to go home, routinely analyzed by various surveys, was motivated by political, economic, or psychological factors. Combined with fresh arrivals from beyond the "iron curtain," the diminishing appeal of repatriation facilitated the long-term presence of one million DPs in occupied Germany (small numbers of refugees also lived in the DP camps of Austria and Italy). Brought to Germany by the Nazis as foreign workers and slave laborers, 400,000 Poles and Polish-Ukrainians amounted in March 1946 to nearly 50 percent of the DP population (Polish-Ukrainians were later independently classified as "Ukrainians"). From 150,000 to 200,000 Estonians, Lithuanians, and Latvians formed a sizeable Baltic group, including former Wehrmacht conscripts and volunteers, migrant workers, and slave laborers as well as civilians who fled the advance of the Red Army. In early 1946, Holocaust survivors represented less than 10 percent of the overall DP population. But to the small group of Jews liberated by the Allies in the spring of 1945 was gradually added a substantial number of postwar Jewish "infiltrates," predominantly of Polish origin: At the peak period of 1947–1948, approximately 200,000 Jewish refugees lived in the American occupation zone of Germany. Alongside these main groups whose size constantly evolved because of repatriation, emigration,

³ Hannah Arendt, "The Stateless People," *Contemporary Jewish Record*, 8 (April 1945), 137–153.

and the entrance of newcomers, small numbers of anticommunist Yugoslavs, Slovaks, Hungarians, and other Eastern European nationals completed the demographic makeup of the "last million."⁴

Like many contemporary statistics documenting the DP world, this figure, if never far from the reality, was not always accurate. The International Refugee Organization (1946–1952), the agency created by the United Nations to care for the ever-fluctuating "last million," generally added prewar refugees and other European stateless persons situated outside of Germany in order to round up this tally. But without much empirical distortion, the IRO could safely advertise the DPs to the world as the "last million" of refugees from the Second World War desperately searching for asylum countries. Emblematic of the longer political sequence of postwar displacement, this expression essentially pertained to Holocaust survivors and non-Jewish anticommunist refugees, the two distinct components of a DP camp system that stretched from northern Germany to Sicily.

The history of postwar refugees has been thoroughly documented by the official historians of the humanitarian agencies in charge of the DPs. More recently, scholars have delved into the records of these organizations to cast new light on the DP experience in postwar Germany and Austria, whether by focusing on particular nationalities or by offering a more comprehensive view.⁵ Recent or more dated, most accounts predominantly concentrate on the humanitarian aspect of "relief and rehabilitation." Undeniably, the difficult delivery of food rations, health care, or housing accommodations amid the material devastation of postwar Germany remained a daunting challenge for the charity organizations and international agencies entrusted with this mission. "Surely in recorded history," observed the head of UNRRA "Displaced Persons" division in 1947, "there has been no group of unwilling migrants that has posed such complex problems."⁶ But whereas the DP episode provided the arena for the largest humanitarian intervention in the immediate postwar years, it also informed the rise of the human rights movement characteristic of the 1940s. "Today," Hannah Arendt observed in 1949, "the whole question of the Rights of Man has taken a new life and pertinence." This new concern was partly due to the interwar "emergence of an entirely new category of human beings ... who do not possess citizenship" but also to the "new millions of displaced persons" added by "the events of the forties." The DPs, argued Arendt, propelled human rights to the center of postwar international politics: "[T]he problem of statelessness on so large a scale had the effect of confronting the nations of the world with an inescapable and perplexing question: whether or not there really exist such 'human rights'

⁴ George Woodbridge, UNRRA. *The History of the United Nations Relief and Rehabilitation Administration*, vol. 3 (New York, 1950), 42–3.

⁵ The most thorough overview to date is Mark Wyman, *DPs: Europe's Displaced Persons 1945–1951*, 2nd ed. (Ithaca, N.Y., 1998).

⁶ Fred Hoehler, "Displaced Persons," in George B. Huszar (ed.), *Persistent International Issues* (New York, 1947), 10.

independent of all specific political status and deriving solely from the fact of being human?"⁷ For contemporary international jurists, the "DP question" – namely, the fact that nearly a million people refused, for various reasons, to abide by the directives of their national government – reflected one of the main features of the postwar human rights agenda: the curtailment of state sovereignty in favor of the rights of individuals. "Behind the affairs of people deported and exiled from their homes," wrote a legal scholar in 1948, "there is the chief question of the relation of the individuals towards the international community."⁸

Although seldom used by the activists and political actors of the 1940s, the expression "human rights revolution" is commonly employed today to describe the advent of the human rights era in the aftermath of the Second World War. According to this widely held view, it was during this pivotal decade that a handful of dedicated "visionaries," not all of them of Western origin, mounted a successful assault against the old concept of state sovereignty: Following the "gathering storm" of the interwar years and the ideological "crusade" of the wartime period, the "revolution" launched in 1945 challenged the "Leviathan-state" to curtail some of its traditional prerogatives in favor of the rights of individual citizens.⁹ In this evolutionary narrative, the predominantly "juridical revolution" of the postwar years allegedly laid the groundwork for subsequent "advocacy" and "enforcement" phases in the last decades of the twentieth century.¹⁰ The idealist celebration of human rights as the "idea of our time," particularly prevalent in the West since the end of the Cold War, hinges therefore on a revolutionary reading of the 1940s: Against overwhelming odds and despite many contradictions (such as the persistence of racial segregation in the United States and of European rule in the colonial world), human rights became at that time a matter of international responsibility by challenging the nation-state's monopoly on the conduct of international affairs.

Realist-minded writers have recently cautioned against idealization and morality tales. The emergence of international human rights, they maintain, was not the sole product of tenacious visionaries bent on creating "fire-walls against barbarism"; nor was it only spurred, as idealists contend, by a "war-weary generation's reflection on European nihilism and its consequences."¹¹ The historian and legal scholar A. W. Brian Simpson, for instance, argued in a detailed study that the meteoric rise of human rights after 1945 primarily resulted from "complicated interrelationships between individuals and institutions, and governments, with their varied ideological commitments

⁷ Hannah Arendt, "The Rights of Man: What Are They?" *Modern Review*, 3 (1949), 24–37.

⁸ Eudard Reut-Nicolussi, "Displaced Persons and International Law," in *Recueil de Cours*, Institut de droit international (Paris, 1948), 64.

⁹ Paul Gordon Lauren, *The Evolution of International Human Rights* (Philadelphia, 1998), 130–205.

¹⁰ Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, 2001), 5.

¹¹ *Ibid.* 4

and perceptions of reality, history and self interest."¹² For Mark Mazower, pragmatic calculations chiefly accounted for the widespread preoccupation with human rights during and after the Second World War. Rather than a smiling revolution in moral standards, the dawn of the human rights age was a "strange triumph" largely made possible by the desire of the Great Powers and many small nations alike to finish off the moribund interwar system of minority rights in favor of more expedient individual rights, abstract enough to be safely embraced. Thus staunch advocates of mass expulsions of ethnic minorities, such as the Czechoslovak leader Edvard Beneš, could at the same time ardently champion "a Charter of Human Rights throughout the world" for the postwar era. Seen in this light, the ideology of human rights paradoxically reinforced – as much as it sought to restrict – the supremacy of state interest.¹³

Nonetheless, one common feature unites these diverging lines of interpretation: Whether critical or apologetic, assessments of the "revolution" primarily focus on the motivations of the drafters rather than on the actual enforcers of human rights. This imbalance is easily justifiable: As pointed out by most international jurists in the 1940s and 1950s, the international proclamation of human rights, resounding as it may have been, was noticeably devoid of enforcement mechanisms. As the renowned international lawyer Hersch Lauterpacht pointed out in 1947, the cautious refusal of the United Nations Commission of Human Rights to recognize the right of individual citizens to petition the world organization against abusing states significantly weakened the challenge against national sovereignty.¹⁴ The French jurist René Cassin, and with him a substantial number of legal commentators, opposed this pessimism: "From one side of the world to the other and from the bottom to the top of the social ladder, workers on strike, victims of racial and religious discrimination, persecuted intellectuals ... all invoke with great hope this Universal Declaration." Yet Cassin readily admitted that this landmark document, as its preamble stated, set only "a common standard of achievement for all people and all nations" to be attained in the future. For the time being, he recognized, the Declaration – including its important provisions regarding refugees and political asylum – served only as "a magnet and a goal for the aspirations of mankind."¹⁵ Despite the efforts deployed by the United Nations to underscore the impact of the Universal Declaration and encourage the worldwide celebration of a newly created "Human Rights Day" (1949), the "revolution" of the 1940s was overwhelmingly perceived by its advocates

¹² A. W. Brian Simpson, *Human Rights and the End of Empire. Britain and the Genesis of the European Convention* (New York, 2001), vii.

¹³ Mark Mazower, "The Strange Triumph of Human Rights, 1933–1950," *Historical Journal*, 47 (2004), 379–398.

¹⁴ Hersch Lauterpacht, *International Law and Human Rights* (London, 1950), 397.

¹⁵ René Cassin, "La déclaration universelle et la mise en oeuvre des droits de l'homme," in *Académie de droit international. Recueil de cours*, vol. 2 (The Hague, 1951), 239–267.

and critics alike as being more declarative than legislative, more suggestive than binding.¹⁶

The limited number of nongovernmental organizations (NGOs) specifically concerned at the time with international human rights further prevented the "revolution" from being fully put into force. As opposed to the thousands of human rights NGOs operating in the world today, only a handful of such organizations were in existence in the mid-1940s. The most prominent among them, the New York-based International League for the Rights of Man and the Paris-based Fédération Internationale des Droits de l'Homme, epitomized the historical and geographical continuity uniting the "human rights revolution" of the 1940s with the "Atlantic revolutions" of the late eighteenth century. But like the more numerous (and predominantly American) civic, religious, labor, educational, or women's organizations enlisted by the United Nations to participate in the drafting of human rights, their role remained essentially consultative. Indeed, as a study by William Korey indicates, the first postwar NGOs saw standard setting as their main priority: namely, "the establishment of international norms by which the conduct of states can be measured or judged."¹⁷ As such, early NGOs may well have "revolutionized the language of international relations, which statesmen of an earlier era and even some of the recent period would have found strange and unacceptable."¹⁸ But until the later appearance of more militant watchdogs committed to fact-finding and implementation – such as Amnesty International after its creation in 1961 – the "enforcement revolution," facilitated by the détente era and the unraveling of the Cold War, still remained a fairly distant prospect.

The history of DPs in postwar Europe, however, complicates this established chronology. As the following essay argues, the DP experience immediately put to test the language of human rights hammered out in the 1940s. Deemed by the Big Powers "the most important show on earth" despite the fact that from China to India/Pakistan and the Middle East mass displacement spanned a large part of the globe between 1945 and 1949, Europe's DPs provided the first concrete field of experimentation for postwar human rights principles. The international agencies in charge, alongside Allied military authorities, of the governance of European refugees in occupied Germany and Austria – including, during the peak period of 1947–1948, approximately 250,000 Jewish refugees and Holocaust survivors – enforced some of the most important rights forged and adopted by the United Nations. The right of everyone "to leave any country" (Article 13 of the 1948 Universal Declaration), "to seek and enjoy in other countries asylum from persecution" (Article 14), and "to a nationality" (Article 15) all directly pertained to the ongoing DP crisis;

¹⁶ United Nations, Department of Social Affairs, *The Impact of the Universal Declaration* (New York, 1951).

¹⁷ William Korey, *NGOs and the Universal Declaration of Human Rights* (New York, 1998), 3.

¹⁸ Ibid.

and so did newly proclaimed guarantees against arbitrary deprivation of citizenship and state interference with freedom of movement, opinion, and faith. Displacement, in short, prominently loomed in the background of human rights activism; it also served as an important testing ground for the new principles set forth in the international arena.

To make sense of the relationship between the "revolution" and this laboratory phase of modern political asylum, I will examine how some of the main human rights principles discussed throughout the decade were implemented, or at times bypassed, in the Western management of forced displacement. The governance of DPs served as an immediate echo chamber for the language of human rights in the 1940s. The affirmation of a new relationship between individuals and states, the universal scope of individual rights, and the lingering question of protection of minorities not only were issues debated by visionaries, drafters, and international delegates in lengthy deliberations, but also directly pertained to the lives of postwar European refugees.

Individuals versus Nation-States

The Second World War seriously challenged the idea that the normal place for citizens is within the territory of their state. The rough estimate of seven to eleven million DPs found by the Western Allies in the course of their push to Berlin was a vivid illustration of this new possibility. Postwar Germany, one historian observed, unexpectedly became the "unlikely host to hundreds of thousands of its former victims," including Jews, concentration camp inmates, and forced laborers, mostly regrouped in the American and British occupation zones.¹⁹ The nation-state order, however, was promptly reasserted: Most DPs voluntarily returned home in the summer and fall of 1945. For Soviet nationals, unfortunate "pawns of Yalta," return was compulsory.²⁰ Under UNRRA, an agency curbed to allied military control, the overall policy was to repatriate all (non-Jewish) DPs to their country of origin as a means to swiftly eliminate the disrupting effects of the Second World War. Repatriation was supposed to be voluntary, but because of Grand Alliance considerations, Soviet nationals (most of them liberated POWs) were initially targeted for forcible return "home," where they more often than not faced execution, deportation, or redistribution.²¹ The recognition of the individual's rights against the omnipotence of the state – one of the key human rights principles of the postwar era – was therefore blatantly violated by Western powers despite the multiple references to human rights contained in the Charter of the United Nations adopted at

¹⁹ Atina Grossmann, "Victims, Villains, and Survivors: Gendered Perceptions and Self-Perceptions of Jewish Displaced Persons in Occupied Post-War Germany," *Journal of the History of Sexuality*, 11 (2002), 291–318.

²⁰ Mark R. Elliott, *Pawns of Yalta. Soviet Refugees and America's Role in Their Repatriation* (Urbana, Ill., 1982).

²¹ Pavel Polian, *Deportiert nach Hause. Sowjetische Kriegsgefangene im "Dritten Reich" und ihre Repatriierung* (Munich, 2001).

the San Francisco Conference in June 1945. At the end of the Second World War, Allied repatriation policies still reflected the enduring supremacy of state sovereignty in the emerging postwar order.

However, the policy of forcible return eventually subsided with the rise of Cold War tensions. In February 1946, a UN resolution stipulated that DPs who expressed "valid objections" to returning to Soviet bloc countries should not be compelled to do so: Repatriation was from then on a free offer to all DPs. Even if claimed by their countries of origin—for punishment and/or reconstruction purposes—DPs found in the network of UNRRA camps in Germany a protective environment. The pace of voluntary repatriation dramatically dwindled in 1946, when it became clear that most of the remaining DPs refused to go home. As one of the first historians of DPs pointed out, it then "dawned upon Allied authorities that repatriation would no longer be acceptable for this group."²² In December 1946, the International Refugee Organization (IRO) was created by the United Nations (without the support of the Soviet bloc) to find resettlement solutions for the DPs. Free from military control, the IRO was a modern-type agency imbued with internationalist spirit. In Germany, the IRO became in charge of nearly a million refugees composed of Poles, Jews, Ukrainians, and nationals of the Baltic states who refused or were simply unable to return "home." Many factors accounted for this refusal: for Jewish Holocaust survivors, the resurgence of anti-Semitism in Poland and a desire to "divorce Europe"; for Baltic and Ukrainian DPs, the fear of Soviet retribution and strong nationalism; for Poles, anti-communism as well as straightforward economic motives; and for all, the continuation of a century-old East-West migration trend.

Placed under the Western guardianship of the IRO after 1947, the "last million" of the DPs experienced the advent of a new and more balanced relationship between individuals and states: With repatriation no longer an option, the DPs were indeed free to opt (if accepted by a host country) for citizenship elsewhere, Israel or the New World in most cases. As such, they became the first group to concretely and simultaneously realize a possibility inscribed in Article 15 of the UN Declaration: "No one shall be denied the right to change his nationality." The recognition of the right to secede from a state ("the right to leave a country" in the Declaration) reflected the increasing Western awareness of the repressive nature of Soviet communism and of the desire of Holocaust survivors to leave Europe behind. But if postwar European refugees became subjects of international law, it is also because of a groundbreaking shift in internationalist politics: the collapse of minority rights into individual rights, one of the main staples of the "human rights revolution."

A predominant view in the scholarship of human rights history is that this shift occurred in the early 1940s, when Great Powers politicians and

"visionaries" alike seized upon the war to devise a different future by shying away from the League of Nation's failed system of minority protection.²³ Alongside philosophical idealism and a desire to demarcate the West from totalitarian tyranny, political pragmatism loomed large behind the wartime acceptance to let the interwar minority treaties die an unlamented death. Some wartime proponents of individual human rights, such as the Czech leader Eduard Beneš, were at the same time planning the eviction of ethnic minorities (in this case, ethnic German) after the defeat of Nazism. "Behind the smoke-screen of the rights of the individuals," caustically writes Mark Mazower, "the corpse of the League's minorities policy could be safely buried."²⁴

It is significant, however, that former political refugees stood among the most idealistic supporters of individual rights. To be sure, not all refugee lawyers, scholars, or activists were enthusiastic about the individualization of human rights. Raphael Lemkin's intense preoccupation with genocide (which the Polish refugee lawyer framed as the murder of a *group*, not of a mere aggregate of *individuals*) was very much at odds, politically and culturally, with the individualist overtones of postwar human rights discourse.²⁵ But although Lemkin, the solitary crusader, sought to salvage part of the heritage of interwar minority protection in his plans for a Genocide Convention, others celebrated the Kantian promises of postwar individual rights. In exile in New Zealand during the war, the Austrian-born philosopher Karl Popper envisioned an "open society" in which "human individuals and not states or nations must be the ultimate concern not only of international organization, but of all politics, international as well as national and parochial."²⁶ For the lesser known jurist Eduard Reut-Nicolossi, who fled Italian fascism in the 1930s, what broke down after the Second World War was no less than "Hegel's apotheosis, the State is God on earth."²⁷ The distinguished international lawyer Hersch Lauterpacht, the drafter of an influential "International Bill of the Rights of Man" in 1945, triumphantly hailed the dawn of a new era. "The individual," Lauterpacht declared in 1950, "has now acquired a status and a stature which have transformed him from an object of international compassion into a subject of international right. The time is now ripe for assessing the significance of these changes ... in the functioning of international society."²⁸

One of these most immediate changes pertained to the governance of forced displacement in occupied Germany: The turn to individual rights concretely meant the abandonment of the League of Nation's collective recognition of

²³ Carole Fink, *Defending the Rights of Others. The Great Powers, the Jews and International Minority Protection, 1878-1938* (Cambridge, Mass., 2004), 357-358.

²⁴ Mazower, "The Strange Triumph of Human Rights," 389.

²⁵ John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (New York, 2008).

²⁶ Karl Popper, *The Open Society and Its Enemies* (Princeton, 1950), 576.

²⁷ Reut-Nicolossi, "Displaced Persons and International Law," 65.

²⁸ Lauterpacht, *International Law and Human Rights*, 4.

²² Wolfgang Jacobmeyer, "The Displaced Persons Problem: Repatriation and Resettlement," in Johannes-Dietrich Steinert and Inge Weber-Newth (eds.), *European Immigrants in Britain 1939-1950* (Manchester, 2002), 10.

refugees in favor of individual eligibility. The first international charter on the protection of refugees, the 1933 Geneva Convention, defined refugees according to the principle of national and ethnic origin: "any person who does not enjoy the protection of the Government of the USSR or the Turkish Republic." White Russians and Armenians, the largest refugee groups of the post-World War I era, were the main clients of the Nansen humanitarian system. Under the auspices of the League of Nations (and in the interwar context of minority rights), it was theoretically enough to be a member of a designated group of displaced and stateless persons in order to have access to asylum protection ("Nansen passports") and certain basic rights guaranteed by international convention.²⁹ After 1945, and especially so under the IRO (1947–1952), DPs were screened on an individual basis: The hundreds of personal files left in the IRO archives amply document the fascinating hearings and interviews conducted by "eligibility officers" in the DP camps.³⁰ Only Holocaust survivors, deemed ideal types of victims until communist dissidents supplanted them as the Cold War unfolded, entirely bypassed the individual screening process.³¹ It has been recently proposed that "ideas of Germany as modernity's consummate 'rogue state' have deeply colored twentieth-century views of international justice."³² Less noticed, however, is the role played by occupied Germany as a field of experimentation in the individualization of international law. The Nuremberg Trial and the subsequent war crimes trials (1945–1949), with their emphasis of individual accountability over *raison d'état* (and their search for individual guilt amid the trumpeting of German "collective guilt"), were one aspect of this process. Human rights legacies of Nuremberg, convincingly argues Elizabeth Borgwardt, "included legitimating the idea of individual responsibility against crimes against international law."³³ The administration of refugees in occupied Germany illustrates another aspect of this individualization process: More than any other groups in the 1940s, the DPs epitomized the transition from *collective* to *individual* human rights.

Mirroring the individual turn of the "human rights revolution," the abandonment of the League's policy of group acceptance in favor of individual selection was also triggered by more political motivations. "Who is a genuine, bona fide refugee?" asked lengthy IRO "eligibility guidelines" designed to help screeners identify authentic victims among the masses of DPs. Being a Pole, a

²⁹ Claudena Skran, *Refugees in Interwar Europe: The Emergence of a Regime* (New York, 1995).

³⁰ G. Daniel Cohen, "Naissance d'une nation: les personnes déplacées de l'après-guerre 1945–1951," *Genèses*, 38 (2000), 56–78.

³¹ "Things began to run smoothly," recalled the director of a Jewish refugee camp, "because an order was issued from above that every Jew for the very reason that he is a Jew is eligible for UNRRA assistance." See Malcolm Proudfoot, *European Refugees 1939–52. A Study in Forced Population Movements* (Evanston, Ill., 1956), 350.

³² Paul Betts, "Germany, International Justice, and the Twentieth Century," *History and Memory*, 17 (2005), 45–86.

³³ Elizabeth Borgwardt, *A New Deal for the World. America's Vision for Human Rights* (Cambridge, Mass., 2005), 243.

Ukrainian, or a citizen of one of the Baltic states was not technically enough to receive DP status. What mattered for the IRO and even more so today was the production by refugees of a persuasive narrative of political persecution, decipherable according to contextual human rights standards. In the postwar years, "anti-fascism" and later "anti-communism" were the political norms that came to define political refugees in the eyes of the West.³⁴ The careful evaluation of individual refugee tales (a radical novelty in asylum policies) stemmed from both an inclusive and exclusive idea of rights. As persecuted people (or risking persecution if returned to their home country), the DPs were for all intents and purposes protected as refugees even if most of them were not technically "stateless" (many still carried identification documents from their country of origin). The primacy of persecution over statelessness as a key identifier of modern refugees had already been asserted by internationalist advocates in the 1930s: "[O]ther features of the existence of the refugee, such as the absence of national status, may be incidental but are not essential to his quality as refugee."³⁵ This legal position was translated into a rigorous eligibility system after 1945. In the DP camps, the veracity of persecution claims was thoroughly reviewed by military officers and international civil servants trained to identify, among other potential intruders, former "collaborators," "Quislings," and "auxiliaries" of the Nazi order. As such, the shift from collective to individual rights – so crucial for the shaping of contemporary political asylum – also reflected the broader context of denazification and retribution across the European continent.

Universalism for the Happy Few?

One of the main features of the "human rights revolution" was its strong universalist outlook. From Franklin D. Roosevelt's "supremacy of human rights everywhere" (1941) to the 1948 Universal Declaration of Human rights proclaimed "as a common standard of achievement for all peoples and all nations," universalist rhetoric colored the human rights talk of the decade. That this resuscitation of eighteenth-century natural rights was performed while Southern segregation and European colonialism were still solidly entrenched has been pointed out countless times, not the least by participants in the Civil Rights and anti-colonial movements. The contradictions of human rights universalism, however, were also reflected in the world of European mass displacement. The answer to the fundamental question "Who is a Refugee?" was grounded in the specific context of postwar Europe; yet it was ultimately couched in strong universal language in the 1951 Geneva Convention, a bill of rights for political refugees that crystallized in international law the main legacies of the DP experience. In this document, still

³⁴ Kim Solomon, *Refugees in the Cold War: Towards a New International Refugee Regime in the Early Postwar Era* (Lund, Sweden, 1991).

³⁵ Sir John Hume Simpson, *The Refugee Problem: Report of a Survey*, (London, 1939), 4.

governing the attribution of refugee status today, a refugee is broadly defined as "any person ... outside his country of origin" with a "well-founded fear of persecution." In 1951, however, the universal language of the Geneva Convention was strongly curtailed by historical and geographical limitations inherited from the DP years: In order to seek a compromise and prompt ratification, delegates at Geneva decided that only "events occurring in Europe before 1 January 1951" should be considered for the future recognition of political refugees.³⁶ A few years after the Second World War and in the midst of the Cold War, the shadow of Hitler and Stalin significantly weighed upon "universal" perceptions of political persecution.

The universal impulse of international human rights was also cut short by the rigorous selection of DPs. A French international jurist compared this policy to "picking and choosing." The West, argued Roger Nathan-Chapotot in 1949, was now "fishing chosen individuals among masses of refugees and displaced persons. This fishnet bears the name Allies-United Nations."³⁷ In post-war Europe, international humanitarianism did not encompass all the DPs and refugees who viewed themselves as such. The policy of UNRRA and the IRO, for instance, was to not include ethnic Germans expelled from Eastern Europe, even the very few who sought DP status instead of reintegration in West Germany: Refugees with German-sounding family names were particularly scrutinized in the interview process. Similarly, applicants suspected of collaboration with Nazi Germany were prevented admission into the DP community. Ukrainians and Baltic states' nationals were especially targeted, despite their arguing, and at times proving, that their occasional enrollment in the Wehrmacht was coerced. This "atmosphere of perpetual screening" elicited bitterness and resentment. "Such screenings," lamented American advocates of Ukrainian refugees, "bring real terror to displaced persons."³⁸ Other observers of refugee hearings in the camps noted that "each and every question sets a trap."³⁹ Clearly, the selection of DPs reproduced the norms of the victors' justice: "How many DPs," worried an IRO official, "sought a shelter in our camps, merely to hide and escape retribution at home?"⁴⁰

The idea that refugees could now be divided between "true" and "false" – a dichotomy that would have made little sense for interwar humanitarians

³⁶ United Nations Convention Relating to the Status of Refugees, 28 July 1951. The wording "in Europe or elsewhere" was offered as an option to the signatories, but was eventually rejected by the overwhelming majority of contracting states. The temporal and geographical limitations were eventually lifted from the Convention in 1967.

³⁷ Roger Nathan-Chapotot, *Les Nations-Unies et les réfugiés. Le maintien de la paix et le conflit des qualifications entre l'Ouest et l'Est* (Paris, 1949).

³⁸ Walter Dushnyck and William J. Gibbons, *Refugees Are People. The Plight of Europe's Displaced Persons* (New York, 1947).

³⁹ Léon Richard, "Le problème peut-il être résolu?" in *Chemins du Monde. Personnes Déplacées* (Paris, 1948), 338.

⁴⁰ René Ristelhueber, *Au secours des réfugiés. L'œuvre de l'Organisation Internationale des Réfugiés* (Paris, 1951), 141.

clinging to the collective approach – was reinforced with the arrival in Germany of the first anticommunist dissidents following the 1948 Prague coup. Here the potential intruders were the "economic adventurers" seeking to emigrate to the West (preferably North America) under the guise of political dissidence. The IRO swiftly adapted its methods to this new reality: "If a refugee comes from Eastern Europe, he is required to prove that the abandonment of his country of origin was forced upon him by the fear of racial, religious or political persecution." Political refugees, in short, were not ordinary migrants. One important feature of contemporary political asylum was being created in the DP camps of occupied Germany: the obligation for asylum seekers to bear the burden of proof in their claim of political persecution. Opposition to a regime had to be evidenced by religious or political persecution, or "by proven membership to a political party ... known to be the subject of persecution."⁴¹ In the IRO archives, many personal cases illustrate the process through which "true" political and "false" economic refugees were sorted out. A young Czech waiter, for example, said that he escaped to Germany "because his father, during a birthday celebration, expressed anticommunist sentiments and was denounced. Two days later, he was informed that the police had sought him and fled to Germany." His story was not considered convincing, primarily because he made the unfortunate mistake to admit "that his salary of 600 Kcs was insufficient for his needs."⁴²

These practices of exclusion, justified by a pervasive worry to provide DP status to "bona fide applicants" only, should not be overstated. Refugees turned down by the IRO – less than 20 percent overall – were not forcibly returned to their countries but simply left to fend for themselves or handed over to West German welfare organizations. In the case of anti-communist dissidents, the qualms of UN agencies and NGOs about "false refugees" soon became irrelevant when the United States tailored its immigration policies to receive a large number of "escapees" from the Soviet bloc. If anything, the exclusion of certain categories of refugees was a reminder that in the modern era, political asylum is not a guaranteed human right, but merely "a right to have rights" (to use Hannah Arendt's famous formulation). The Universal Declaration framed only "the right to seek and to enjoy in other countries asylum from persecution" (art. 14), not the right to be automatically granted asylum. By considering the claims of all applicants to DP status and ensuring due process (including the possibility for DPs to appeal negative decisions), the international civil servants in charge of the postwar refugee question in Europe were faithful to this agenda. In one area, however, the management of displacement did go beyond the scope of contemporary human rights standards: the tacit recognition of self-determination as a human right for Jewish victims of genocide.

⁴¹ National Archives (Paris), IRO Records (Paris, Archives Nationales), AJ43/141.

⁴² Ibid., Case 15 723.

Genocide and Self-Determination

"The notion of self-determination," wrote Ken Cmiel in an important review article, "was also part of the mid-century human rights debates. The trouble was, Westerners did not agree that this was a fundamental human right."⁴³ Western liberal thought, once mesmerized by the pacifying promise of self-determination, was now looking askance at "Wilson's reactionary principle ... inapplicable on this earth."⁴⁴ The dwindling appeal of Wilsonian idealism was also felt at the level of international politics. Although in 1945, "self-determination" was briefly mentioned in the first article of the UN Charter, the Allies had clearly "lost their enthusiasm for it as anything approaching a panacea."⁴⁵ Despite the mobilization of Asian and African anti-colonial activists, Latin American nations and Soviet-bloc countries, the Universal Declaration also fell short of equating self-determination to a right. As an analyst of the deliberations observed, "the colonial peoples were put in the Declaration in more than one place, although not in as clear a manner as their defenders wished."⁴⁶ Besides the uneasiness felt by representatives of European colonial powers regarding self-determination, the notion was also problematic because it referred to the entitlement of groups and not individuals, the new backbone of post-1945 human rights. Unsurprisingly, therefore, "self-determination of peoples remained off the radar screen of Western NGOs," even after two UN covenants declared it a right in 1966.⁴⁷

The place of Holocaust survivors in the postwar refugee system complicates this view. The approximately 20,000 Jewish concentration camp inmates found in Germany and Austria by the Western Allies in the spring of 1945 (later joined by nearly 200,000 Jewish refugees, predominantly Polish, who had survived the war in the USSR) did not initially elicit overwhelming compassion. U.S. Army General George Patton, for instance, let it be known that the "Jewish type of DP is, in the majority of cases, a sub-human species," "lower than animals."⁴⁸ Yet from being handled by American authorities "just like Nazis treated Jews, except that we do not exterminate them" (to quote the scathing report written by Truman's envoy Earl Harrison in the summer of 1945), Jews evolved into a protected refugee population accommodated in specific Jewish camps. The separation of DPs by nationality or ethnic groups rapidly became a main feature of the refugee universe: Touring Germany, the American journalist Janet Flanner reported in 1948 that "in order to maintain peace and cut down the number of fist fights, the IRO tries to arrange

⁴³ Kenneth Cmiel, "The Recent History of Human Rights," *American Historical Review*, 109 (2004), 117–136.

⁴⁴ Popper, *The Open Society and Its Enemies*, 662.

⁴⁵ Rupert Emerson, *The Right to Self-Assertion of Asian and African Peoples* (Cambridge, Mass., 1964), 296.

⁴⁶ Johannes Morsink, *The Universal Declaration of Human Rights. Origins, Drafting and Intent* (Philadelphia, 1999), 97.

⁴⁷ Cmiel, "The Recent History of Human Rights," 128.

⁴⁸ Cited in Roger Daniels, *Guarding the Golden Door. American Immigration Policy and*

matters so that each camp houses only one religion or nationality."⁴⁹ In the case of Holocaust survivors, however, the creation of separate Jewish camps had a broader significance. It indicated that the remaining Eastern European Jews were not displaced citizens of their country of origin (Poland in most cases), but an acknowledged national entity. Jewish DPs, in short, amounted to a group anomaly in a new human rights regime increasingly geared toward individuals. They remained, even after 1945, an interwar national "minority." A prominent Zionist international lawyer from the Hebrew University in Jerusalem could therefore argue, not incidentally in 1948, that since the end of the First World War, "the Jewish question was raised to the level of a question involving a nation as a whole, an entity entitled to separate national existence and to the organization of its life within the framework of the State."⁵⁰ The myriad of Jewish DP camps in the American and British occupation zones, with their vibrant Zionist politics, further reinforced the nationalization of Holocaust survivors.⁵¹ They also reflected the territorialization of Jewish history: As the historian Dan Diner pointed out in relation to Jewish DP camps in Bavaria, "it is arguable that the immediate founding of the State of Israel had its beginnings in southern Germany."⁵²

At a time where Western Jewish organizations believed, in the wake of the Second World War, that "being singled out as a minority was itself inviting trouble"⁵³ and preferred the framework of individual rights, the governance of DPs, just like the Zionist movement, viewed Holocaust survivors as a distinct national group. Jewish demands for self-determination coincided with the declared goal of the IRO: "Jewish refugees," stated its director Donald Kingsley, were "one of the principal group for whose resettlement the Organization was established."⁵⁴ With the door of the United States closed until the passing by Congress of the first (and restrictive) DP Act in 1948, and with the scant interest in Jewish refugees shown by other potential host countries, the main resettlement destination was Palestine before May 1948, the State of Israel afterwards. Following the Partition Plan of November 1947, the IRO granted governmental status to the Jewish Agency for Palestine officially mandated to carry out "resettlement." Later, the organization signed an official agreement with the State of Israel formalizing their full collaboration in emigration matters.⁵⁵

⁴⁹ Janet Flanner, "Letter from Aschaffenburg," *The New Yorker*, 30 October 1948.

⁵⁰ Nathan Feinberg, "The Recognition of the Jewish People in International Law," *Jewish Yearbook of International Law* (1948), 1–26.

⁵¹ Zeev Mankowitz, *Life between Memory and Hope. The Survivors of the Holocaust in Occupied Germany* (Cambridge, Mass., 2002).

⁵² Dan Diner, "Elemente des Subjektwerdung: Jüdische DPs in historischem Kontext," *Jahrbuch zur Geschichte und Wirkung des Holocaust* (1997), 229–248.

⁵³ Mazower, "The Strange Triumph of Human Rights," 388.

⁵⁴ United Nations, Department of Public Information, "Statement of J. Donald Kingsley, Director-General of IRO, before the Third Committee of the General Assembly," 10 November 1949 (in IRO Records, 43AJ–166).

⁵⁵ Louise Holborn, *The International Refugee Organization. A Specialized Agency of the*

Although directly involved with the mass emigration of Jewish DPs to Israel (between 120,000 and 180,000), the IRO refrained from taking a straightforward political stance in favor of Jewish self-determination. Financially sponsored by both pro- and anti-Zionist contributors (the United States and the United Kingdom), its official line had to reconcile conflicting positions following the outbreak of the Arab-Israeli war of 1948. Whereas the American delegate to the IRO maintained that former Jewish DPs in Israel worked only "in cooperatives and in areas where the Arabs have not lived," the British representative argued that IRO-sponsored emigration of Jewish survivors was far from neutral: "Who could say that none of those actual persons helped in that way would not occupy a refugee's house or land or join a strategic colony?"⁵⁶ Compromise was eventually reached, because most national delegations at the IRO — such as the French — harbored sympathy for Jewish survivors without overlooking the material plight of displaced Palestinians. The IRO was to assist the humanitarian resettlement of Jews in Israel, but did not want "to become a contributor to the intensification of the Arab refugee problem, or to the preemption of the return of the Arabs to their home." It therefore legitimized migration to Israel on technical "resettlement" grounds: The proven absorption and assimilation capacities of the new country provided sufficient guarantees for what the agency called "firm-reestablishment." Jewish proponents of self-determination did not think otherwise: Nationhood, unanimously claimed the political leaders of the "Surviving Remnant," was indeed the most desirable humanitarian shelter.

Conclusion

The "Human Rights Revolution" of the 1940s was for the most part non-binding. The limited declarative status of the 1948 Universal Declaration, in particular, was quickly underlined even by some of the most internationalist-minded lawyers of the time.⁵⁷ This helps partially explain why human rights gained astonishing prominence in the postwar international arena: They did not fundamentally challenge the nation-state order. The main achievement of the decade was the shaping of a promising vision for the future more than the creation of effective enforcement mechanisms.

Yet Europe's DPs already stood among the first beneficiaries of new international protections. Indeed, the governance of "Europe on the Move" by humanitarian agencies put into practice a wide array of human rights norms enunciated or declared under the aegis of the United Nations. This comes, after all, hardly as a surprise. The American, British, and French enforcers of human rights in DP camps were kin to the Western instigators of the "revolution" (even if Third World actors played a role in the drafting of the Universal

Declaration). The displaced persons were also part of this extended family, as European victims of events directly related to the emergence of "the idea of our time": the Second World War, the Holocaust, and the Cold War. As the scope and language of the 1951 Geneva Convention for Refugees clearly demonstrated, the first human rights regime reflected the historical experiences of wartime and postwar Europe. From 1945 to the early 1950s, the problem posed by non-German displaced persons and soon after, anticommunist "escapees", strongly impinged upon the formulation and enforcement of international protections. For Hannah Arendt, stateless refugees tragically symbolized the end of the "Rights of Man"; yet paradoxically, the postwar refugee question stood at the core of the frustrating, at times hypocritical yet path-breaking "human rights revolution."