

This Refuge is Our Country: What Canada can Teach the World About Human Rights

Chapter One: The Philosopher in Exile

Uncorrected author's draft.

In March of 1933, German politicians voted to grant their new Chancellor Adolf Hitler the power to govern with impunity. Members of the Nazi party physically attacked parliamentarians before the vote to influence its outcome, but this terror campaign, it soon turned out, was nothing next to what would follow. It was suddenly normal for critics of the government to be beaten in the street. The most outspoken anti-Nazi activists became the first victims of the newly established concentration camp system, at the same time as anti-Semitic decrees expelled Jews from the civil service and other positions. In response to the wave of persecution, thousands of people began to flee the country. Among them were a young Jewish woman and her mother who, shortly after the initial anti-Jewish laws, left their home in Berlin for the last time.

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The frightened women made their way south to the Erzgebirge mountain range, which marked Germany's frontier with Czechoslovakia. Neither one had a passport or visa. They were familiar, however, with a German exile group in Prague, which had set up a network of safehouses for escaping Jews and leftists. Armed with this knowledge, the two Berliners went to the mountain town of Carlsbad, where they sought out a kind-hearted family who could provide them with a simple yet invaluable means of avoiding the border patrol: the house they lived in had its front door in Germany and its back door in Czechoslovakia. The two fugitives were taken in by their benefactors while it was light out, offered dinner, and released into the night. When their feet touched Czech soil, two things happened. They became refugees. And they set in motion a major episode in the history of human rights.

The escaping Jews were Hannah Arendt, age 26, and her mother, Martha Beerwald. Why was their flight from fascism so remarkable? The answer has to do with Hannah Arendt's later transformation into one of the great political thinkers of the 20th century. Arendt's philosophy was influenced by her experience as a refugee. So the best place to start in understanding Hannah Arendt, and what we can learn from her about human rights, is by retracing the steps of her journey. As we will see, it is a journey that has much in common with that of other refugees still today.

Arendt did not stay long in Czechoslovakia. After sending her mother to the relative safety of East Prussia (from where she would flee the Nazis again five years later) Arendt continued on to Switzerland and then France, where she was reunited with her husband. Günther Stern, a Communist and friend of the famous playwright Bertolt Brecht, had fled Germany several months in advance

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of his wife and mother-in-law. He was prompted to do so after Brecht had an address book confiscated by the Gestapo, which Stern feared would shortly result in the arrest of everyone it named. Now, in Paris, he and his wife were part of a wave of 25,000 German refugees, 85 percent Jewish, who had poured into France, a greater number than that received by any other country.

Arendt's exile in Paris was not a happy time. On a personal level, her marriage was falling apart. Even before they became refugees, it was clear she and her husband had many differences. When it came to politics, for example, she never shared his commitment to communism. (Before the Nazis came to power, in fact, she was barely interested in politics at all, and always dated her political awakening to the rise of Hitler.) Now Arendt and her husband had little to unite them save the hardscrabble urgencies of refugee existence. When Stern left Paris in 1936 for New York, his marriage to Arendt had long been over in all but name.

Things were hardly better for Arendt on a political level. The arrival of the German refugees, even though they represented a minuscule portion of France's population, was regarded in France as a major crisis. To be sure, there were people who spoke out on the refugees' behalf. They included not only French Jews, but Socialists, liberals, left-wing Catholics and a few stray conservatives. But throughout the 1930s, these partisans of "hospitality," to use the term they most frequently invoked, had to engage in a fierce political battle with conservative and centre-left politicians, rank and file union members (union leaders tended to be pro-refugee) and business groups, all of whom filled the air with cries of "France for the French!," and denounced the Jews as economic parasites and "undesirables."

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France's refugee crisis came to a head at the end of the decade. By this point Arendt's personal situation had improved somewhat: she was employed by a French Jewish charity, and had managed to have her mother join her from Prussia. There was even a new man in her life, another German (albeit non-Jewish) refugee named Heinrich Blücher. But after Hitler's annexation of Austria in 1938, which sent another wave of desperate Jews into France, the political situation of every refugee in Paris deteriorated. France introduced repressive laws making admission much more difficult. Jews who were already present were barred from certain jobs when they weren't sent back to Germany. Others were turned away at the border. A wave of despair spread through the Jewish community, and many refugees chose suicide. After a Polish Jew living in Paris shot a German embassy official, the Nazis responded with *Kristallnacht*, the night of broken glass, burning and looting Jewish homes and synagogues across Germany. Anti-refugee voices in France were already alleging a Jewish conspiracy to drag France into a needless war with Germany; *Kristallnacht*, perversely, was taken as evidence for this view, and resulted in calls for harsh reprisals against refugees. Paris's Jews lived in terror of what would happen next.

The answer came in the fall of 1939. Hostilities between France and Germany had now formally begun (albeit in the form of the phony war, before the bombs began to fall) and France ordered that all German men with suspicious political backgrounds be interned. It didn't matter that Heinrich Blücher and thousands of others had fled Germany precisely because they were Communists, and so would be the last people on earth to engage in pro-Nazi activities. Blücher was sent to a labour camp in a small French village, sleeping with two dozen other

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men in a barn that left them exposed to the constant cold rain, where he soon became ill.

Through desperate lobbying, Arendt managed to secure Heinrich Blücher's release (a friend of hers tracked down a widow of a police prefect who agreed to serve as his guarantor). When Blücher returned to Paris he and Arendt married. But instead of a honeymoon, they had to contend with a new internment order—one that now included most German women. Four months after their wedding vows, Arendt and her bridegroom reported to separate sports stadiums in Paris. Arendt was made to sleep on the stone bleachers of the Winter Velodrome alongside other Jewish women branded "enemy aliens." Every time a plane passed overhead they feared it was a German bomber come to end their lives. Finally, after a week, Arendt and the other female refugees were taken to a camp near Gurs, a town in southwest France. Constant rains had turned the camp into a muddy swamp. Although inmates were not forced to work, the residents kept themselves busy emptying the latrines and engaging in other chores to stave off despair.

During her internment, with the war situation growing worse, not knowing whether she would ever see her husband again, Arendt was overcome with thoughts of killing herself. It was a question many other camp residents also considered. At one point, there was talk among the refugees of committing suicide en masse, as a form of protest against the way they had been treated by the French government. But the inmates soon decided that this would only please their captors. As Arendt later wrote, "When some of us suggested that we had been shipped there *pour crever* [to be snuffed out] in any case, the general mood turned suddenly into a violent courage of life."

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Several weeks after Arendt's arrival in Gurs, German troops invaded Paris. All communications broke down and the camp descended into chaos. Many women decided to stay, afraid to leave the one place their husbands would at least know to look for them. When Gurs later came under the jurisdiction of the collaborationist Vichy government, most of these inmates were handed over to the Nazis for extermination. Arendt was lucky: she had somewhere she could go. The same Paris friend who had secured Heinrich Blücher's release, a wealthy German exile, was renting a house near the Southern French town of Montauban. Arendt could reach it by travelling on foot and hitchhiking.

Montauban was in total confusion when Arendt arrived: Many homes had been left empty in the panic of war, and the mayor had chosen to express his opposition to the new Vichy government in northern France by turning empty buildings over to former internees. As a result, thousands of refugees were streaming into Montauban from all across France. They slept on empty floors, dragging in every mattress they could find, creating conditions almost as crowded and cramped as the camps they had just escaped.

It was against this backdrop that Arendt had one of the happiest experiences of her life. One day she found herself on the main avenue of Montauban. There, amid piles of mattresses, furniture and garbage, she saw her husband walking down the street. Blücher's camp had been evacuated when the Nazis took Paris, and he had joined the great migration of people—travelling on bicycles, in the backs of trucks, on foot with everything they could carry—streaming into unoccupied Southern France. Surrounded by crowds of refugees scavenging for scraps of food and tobacco, others seeking word of missing loved ones, Arendt and Blücher fell into a deep embrace. There would be other hurdles still to come.

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They would have to go to horrendous lengths to obtain visas. They would only narrowly avoid arrest. But from that moment forward, Hannah Arendt redoubled her “violent courage of life.” Travelling with her husband, and followed shortly by her mother, she reached the safety of the United States in 1941.

What can we learn by looking back at Hannah Arendt’s experience today? Luck clearly played a major role in her eventual escape to safety, such as her chance meeting with her husband in Southern France. Arendt and Blücher were also fortunate to marry when they did. Shortly after their ceremony, wartime condition made obtaining a French marriage license next to impossible. The special emergency visas Arendt and Blücher eventually obtained were given only to single people—individually—or to couples who could produce a license. Unmarried couples had to chose which of them would stay behind and hope for some other opportunity of escape. Yet although these and other details were unique to Arendt’s case, she is not the only person fleeing persecution whose survival has been due to chance. Many refugees continue to make it to safety after just barely catching the right flight or running from their homes at the last possible minute. In this and other ways, Arendt’s experience calls to mind the situation of people still seeking asylum today.

Arendt took flight from an anti-Semitic campaign that eventually became the worst genocide of all time. This made her a quintessentially modern refugee. Not because every refugee is necessarily fleeing genocide, but because before the Armenian genocide refugees of this kind did not exist. Today we have been taught by events in Cambodia, Bosnia, Rwanda and Sudan not to be surprised

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when genocide or its cousin, ethnic cleansing, drive yet another group of refugees across yet another border. Yet even today, crises of this kind are still exacerbated by the inability of outsiders to reckon with evil. When refugees from genocide come forward to recount their experiences, they are often initially met with scepticism. Arendt herself was one of the first people to point out the inverse relationship between persecution and believability. “[T]he very immensity of the crimes,” she wrote, “guarantees that the murderers who proclaim their innocence with all manner of lies will be more readily believed than the victims who tell the truth.”

If a refugee is often running from events that are literally incredible, the challenges he faces in escaping, by contrast, can be all too banal. Recall that when Arendt and her mother left Germany, they had no travel documents. This wasn't because they were absent-minded, or left in a hurry. It was because they faced the same dilemma anyone does who flees persecution by her own government. If the authorities are out to kill you, they are unlikely to process your passport application. (Even travelling to a foreign consulate to obtain a visa can sometimes be impossible: governments have been known to kill dissidents who make public a desire to flee abroad.) Today, legitimate asylum-seekers who cross borders by land often still arrive without papers. And with the rise of the jet age, when air travel without identification is next to impossible, it has also become common for genuine refugees to reach the safety of the West by travelling on false passports.

Then there is the question of why Arendt and her family did not seek asylum in Switzerland or some other nearby country, and continued on to France. Beginning in 1933 and for several years afterward, Switzerland did admit

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refugees, but always on the understanding that, as with Arendt, they were merely passing through, and would not seek asylum in Switzerland itself. As time wore on however, and the situation of German Jews worsened, Swiss officials became increasingly concerned that Switzerland not be, in the words of a Swiss police official, “saturated with Jews.” So in 1938 the Swiss government sealed its borders and, when thousands of desperate refugees arrived, forcibly returned them to the Nazis.

In the context of the 1930s Switzerland’s policies were unremarkable. We do not like to think about it now, but during the Great Depression anti-Semitism was not confined to Nazi Germany. All Western countries eventually closed their doors to Jewish refugees. This was the main reason so many at first fled to France. As the historian Vicki Caron notes, geographic proximity to Germany and other factors certainly played a role in France’s refugee influx. “Most important, however, was the fact that France had not yet implemented immigration restrictions, in sharp contrast to Great Britain or the United States.”

If we can be grateful Western states are no longer in the grip of an anti-Semitic conspiracy, the situation of France in 1933 nonetheless illustrates an enduring aspect of refugee politics. Namely, that the number of asylum-seekers a country receives is influenced by the policies of other refugee-receiving states. Many commentators on refugee issues, not to mention government policy makers, have a tendency to focus on their own country in isolation. This can cause them to overlook the full range of factors that do and do not bring asylum-seekers to their shores. There have been situations, for example, where one country has deliberately made its asylum program less welcoming in the hope of attracting fewer refugee claimants, only to see the overall number of applications

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go up instead—because neighbouring countries have simultaneously made their own policies even harsher. Rather than solve any problems, the result is a race to the bottom that puts the needs of refugees at risk.

Finally, the refugee debate that took place in France can teach us something. On the one side there were those such as the French police officer who wrote in 1933 that German Jews, “will soon constitute groups of discontented and violent exiles: veritable ghettos from the moral point of view, as well as the point of view of hygiene!” Today we recoil from the prejudice in this remark, and read with relief the words of those who spoke out for refugees. A typical representative was the minister of the French government who told the chamber of deputies that it was, “an honour for our nation to remain loyal to the generous traditions of hospitality on which it has always prided itself.” And yet, as fundamentally opposed as these viewpoints were, they also had something in common.

To raise the idea that the presence of Jews or any other foreigners represent a menace at the level of “hygiene” is to see them as a form of contamination. France will be infected by their presence. But note that a similar standard is employed—albeit in a much more humane way—in the suggestion that France will fail to live up to its “generous tradition of hospitality.” Only this time, France will be damaged by *not* welcoming refugees. Extending back to the French Revolution and beyond, France had long seen itself as a great and magnanimous nation that took in political exiles in times of need. If France does not live up to this tradition in regard to German refugees, the politician was arguing, it will in a way fail to be itself, cease to be truly French.

Both sides in France’s refugee debate, in short, invoked a vision of national identity. This is especially worth recalling today, when refugees have become

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subjects of international law, and there is a tendency to approach refugee issues in dry, legalistic terms. Make no mistake, international refugee conventions are an important development since Arendt's time. But laws do not interpret themselves, and different countries have implemented the same treaty in very different ways. To understand these differences, we need to broaden our focus beyond the law and take into account issues of national self-understanding. As we will see, refugee debates in many countries hinge not only on the question, How should we treat these strangers who need our help? All too often, they hinge on a much more emotional question. Who are we?

These then, are only some of the lessons we can learn by looking back at one of the worst refugee crises of all time. But there is another lesson: the one Arendt herself drew. It was contained in *The Origins of Totalitarianism*, the 1951 book that made Arendt's name. *Origins* was Arendt's attempt to comprehend the central political events of her lifetime, notably the rise of Fascism and Stalinism, which Arendt considered philosophically indistinguishable. The book ranges over many other topics, however, and includes a chapter that may be the most widely read essay on refugees ever published.

Arendt pointed to the unprecedented refugee crisis Europe experienced in the aftermath of World War I, a time when many international borders were being redrawn. In the 19th century, Eastern and Central Europe had been dominated by four Imperial dynasties that ruled over many different nationalities and language groups: The Hapsburgs of Austria-Hungary, the Romanovs of Russia, the Ottomans of Turkey and the Hohenzols of Prussia. World War One caused all four empires to implode and be replaced by states that, most often, embodied the

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aspirations of a particular nationality. Parts of the Austro-Hungarian Empire, for example, were divided into the new states of Hungary and Austria. Latvia, Estonia and Lithuania similarly achieved independence from Russia. Poland, which had been partitioned by Prussia, Austria-Hungary and Russia, became an independent nation for the first time since 1795.

Many of the new countries' borders were only finalized after warfare with their neighbours. But even when new states did not engage in protracted fighting, they saw enormous flows of people cross their frontiers; ethnic Germans who had lived in Poland and elsewhere poured into Germany, Bulgarians went to Bulgaria, Hungarians to Hungary and so on. To get a sense of the enormous numbers of refugees travelling in all directions, we need only recall that 320,000 Armenians had fled to Europe (and the Middle East) to escape the Turkish genocide, just as hundreds of thousands of Jews were simultaneously driven out of Eastern Europe by a wave of pogroms—and all this occurred while a million people were fleeing the Russian Revolution and millions more were displaced by the Great War itself.

Arendt noted that many asylum-seekers from this period received the same treatment as did refugees of her generation. A large number were denied entry to countries they attempted to enter while others were forcibly expelled. The new democracy of Hungary for example, sealed its borders so tightly that hundreds of people were trapped for months and, in some cases, years, inside the train stations where they arrived. The United States and Canada introduced highly restrictive immigration policies, choking off an important avenue of escape. Even when refugees did make it across a border, they were often unable to obtain work or residency papers, and so lived a precarious existence made up in equal

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parts of poverty and fear of deportation. Many were herded into camps, much like Arendt had been, where dysentery and cholera were a constant menace. The result was that, according to one estimate, in 1926 there were still 9.5 million refugees stranded across Europe.

Arendt pointed out what a new phenomenon this was. Before World War I, refugees numbered in the thousands, not the millions. The rise of nationalism was a major contributing factor to the appearance of refugees in massive numbers. Eastern and Central Europe's division into nation-states was the culmination of a long process that had begun over a century before, according to which Europeans saw themselves not as members of villages, cities or estates, but nations. Nationalist logic says everyone should speak the same language and observe the same customs. This new thinking not only drove millions of people from their homes, but it meant that if they sought refuge in another state, unless it was one that housed their own national culture, they could expect to find themselves again unwelcome—and sometimes even people who did share the culture of the majority were still turned away.

Yet Arendt's purpose in recalling Europe's first mass refugee crises was not merely to offer a historical discussion. Indeed, her essay eventually leaves history behind and soars into the realm of philosophy. Because for Arendt, what the experience of refugees ultimately showed was the impossibility of human rights.

Arendt drew a common distinction between the rights of citizens and the rights of human beings as such. In our capacity as citizens, we are entitled to the protection of our own government. A refugee is someone who loses that protection and all the entitlements that go with it. When such people show up at the border of a new country, they can not assert the same rights as people who

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live there, such as the automatic right of entry. All refugees can appeal to is their sheer humanity, and the moral claims that are supposed to extend from it.

But in practice, Arendt bitterly pointed out, simply being a human being entitled refugees to nothing. Between the wars, even when refugees were not turned away at a border, or interned in camps where they died of disease, or driven to such despair that they took their own lives; even when refugees received enough scraps of charity to simply stay alive, they lived in a state of rightlessness. There was little they could do on their own behalf except keep running, until they found some country that would absorb them. But those sorts of decisions: to admit refugees; to let them work; to effectively treat them like a citizen—these were not decisions refugees themselves had any influence over. What decent treatment refugees did receive was due to acts of pity extended at the discretion of receiving states. Refugee “rights” never entered into it.

This was the case even in countries that had inscribed the principle of human rights in law. Since the 18th century, intellectuals and politicians such as Thomas Jefferson and the Marquis de Lafayette, representatives of the American and French Revolutions respectively, had proclaimed their belief in the “Rights of Man,” as human rights were first called. This is the view that “every man is born with inalienable and indefeasible rights,” as Lafayette once put it. Yet even in wealthy advanced nations where this idea was the foundation of the legal system, there were no rights for refugees. As Arendt scathingly remarked, “The Rights of Man, supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based on them—whenever people appeared who were no longer citizens of any sovereign state.”

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The conclusion Arendt ultimately drew concerned the nature of rights. Rights, she argued, are not something we obtain simply by being born. Rather, we acquire rights through our membership in a political community. In the modern world, this means being a member of a sovereign state. And despite the rhetoric of “universal human rights,” states do not equally uphold the rights of every human being on earth. Rather they grant overwhelmingly priority to enforcing the rights of their own citizens. Refugees are human beings who are in essence citizens of nowhere. Which is to say, they are human beings with no rights worth speaking of.

Arendt summed up her view in a famous passage in which she says the very idea of human rights is nothing more than an abstraction:

“The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in the abstract nakedness of being human . . . [refugees knew] that the abstract nakedness of being human was their greatest danger.”

Today, when human rights have become the moral currency of our time, passages such as this can be hard to read. But to understand how Arendt could lash out at the idea of human rights, I would point to her own experience as a refugee. Perhaps more than anything, Arendt’s attack on human rights was an attack on the hypocrisy she saw everywhere around her. France and other countries proclaimed their belief in human rights—not rights for citizens, or Frenchmen, or Christians, but rights for *human beings*—at the same time as she

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and countless other refugees were treated with contempt. The ultimate explanation of the inter-war crisis of asylum, Arendt concluded, was the simple fact that the world is divided into states. In a political universe founded on national sovereignty, truly universal human rights are an impossibility. The refugee turned away at the border of a liberal state is the human embodiment of this philosophical contradiction. In Arendt's words, "It was a problem not of space but of political organization."

As this sentence is written the world is again grappling with the issue of asylum. Debates over refugee issues, often acrimonious, have become a part of political life in many Western countries. Australia triggered an international incident in 2001 when it forbade a Norwegian freighter carrying several hundred asylum-seekers from landing on its shores. Even before the September 11 massacre, the United States became so concerned about terrorists posing as refugees that it introduced a sweeping new asylum policy, one so restrictive observers have said it "essentially wipes out asylum as we know it." In 1993 Germany took the extraordinary step of amending its constitution to reduce the number of refugee applications it receives. Across Europe, the flip side of European nations opening their borders to each other has been an unwelcoming attitude toward everyone else, to the point that refugee advocates now refer to Fortress Europe. Twice in recent years concerns over refugee flows have contributed to military action. The 1999 intervention of the North Atlantic Treaty Organization (NATO) in Kosovo was partly motivated by the desire of nearby states to avoid an influx of displaced Kosovars. Following a coup in Haiti,

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Former President Bill Clinton gave as a reason for the 1994 invasion that restored Jean-Bertrand Aristide to power the need “to secure our borders.”

It was not supposed to be this way. In the aftermath of World War II, when Europe was once again awash with displaced people, the United Nations introduced two measures to deal with refugees. One was the 1951 Convention Relating to the Status of Refugees, or the Geneva Convention. By signing it, Western countries pledged not to return a genuine refugee to danger, and defined a refugee as someone with “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” The UN also established a High Commissioner for Refugees (UNHCR), an office which would provide direct assistance to displaced people around the world.

Both the Geneva convention and the High Commission have proven to be indispensable innovations. In hindsight, however, they seemed most successful during the Cold War. Not only was this a time when the global refugee population was comparatively small, falling from 15 million in the late 1940s to 2.9 million by 1975, but the defining asylum-seekers of this period were defectors from the Soviet Bloc. Defectors often received a welcome reception in the West, partly out of genuine humanitarian concern, but also because Western governments wanted to score a PR victory in the struggle against communism.

Just how powerful this combination of motives could be was evident during the Hungarian crisis of 1956, when the Soviet Union suppressed a democratic revolution in its Eastern European satellite. By sheer co-incidence, the Hungarian government had cleared the barbed-wire and landmines along its border with neutral Austria a mere three weeks previously. As a result, 180,000 people were

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able to escape, a figure which, when combined with the 20,000 more who went to Yugoslavia, represented two percent of the total Hungarian population.

UNHCR, working closely with Western governments, quickly co-ordinated one of the most successful refugee operations of all time. Unlike the lingering refugee crises that lasted for years after both World Wars, over 150,000 Hungarians were granted permanent asylum in 35 Western countries within six months, an incredible achievement.

In the late 1970s however, the international refugee situation began to change. Their numbers started to climb again, to the point that there are today over 11 million. If we add people displaced within their own country and similar groups who also receive aid from to the United Nations High Commissioner for Refugees the total rises to 31 million. This is down from 1992 when the global population of displaced people was even higher, but clearly refugees are an enduring fact of political life. In hindsight, the late fifties to late seventies seem the exception in a 90-year period that has seen Western countries grappling with one major refugee crisis or another since the World War I events described by Arendt.

But it is not just that there are more refugees today than there were 30 years ago. The increase in sheer numbers has coincided with what has been called “the globalization of asylum.” The spread across the developing world of airports and cheaper air travel have made it increasingly easy for people fleeing civil strife and persecution in places like Sri Lanka, Iraq, Afghanistan and Somalia to reach Europe and North America. In the early 1970s, the total number of asylum claims made in Western European countries never averaged more than 13,000. In the year 2000, the same countries received 412,700 asylum applications. This has

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given rise a widespread concern across Western countries that they are or will shortly be inundated by people from the Third World filing asylum claims not to escape persecution, but to move to a country with a higher standard of living. In response, rich nations have introduced a host of measures aimed at making it much more difficult to claim asylum. Airlines and shipping companies are fined when they transport people without proper documents. Residents of poor countries increasingly require visas to travel to rich ones, and must pass inspection with migration officers posted in overseas airports. Even if they do make it to a Western country, asylum-seekers are often denied work or detained. That is, when they are not summarily expelled at the border or sent back on the next flight.

Such measures are increasingly the norm even in countries that have signed the Geneva Convention. The result is that to some observers, refugees have once again come to symbolize the gap between the rhetoric and the reality of human rights. As was the case after World War I, Western governments today announce their commitment to the moral worth of human beings while giving the back of their hand to refugees who show up at their borders. In the words of Matthew Gibney, a leading refugee expert at the University of Oxford, "liberal democratic states publicly avow the principle of asylum but use fair means and foul to prevent as many asylum seekers as possible from arriving on their territory where they could claim its protections." Gibney's phrase to describe the overall asylum situation today is "organized hypocrisy." It has a familiar ring.

Against this backdrop, it is not hard to see why Arendt's pessimistic view of human rights still attracts adherents. They note that more than 200 years after the declaration of the Rights of Man, 90 years after the refugee crisis that followed

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World War I, fifty years after the Universal Declaration of Human Rights, we still have not been able to implement meaningful rights for refugees. It seems a little late in the day to reply that, while the principle is a good one, we are still casting about for a way to implement it. For Arendtians will in turn reply that after a certain point, impossible ideas become bad ideas. If instead we stopped speaking of human rights altogether it might or might not improve the lot of refugees. But it would at least have the virtue of intellectual honesty.

Such a cynical argument is not the one I want to make. According to Arendt, “the very phrase ‘human rights’ became for all concerned—victims, persecutors, and onlookers alike—the evidence of hopeless idealism or fumbling feeble-minded hypocrisy.” By that standard, I wish to be counted among the most feeble-minded hypocrites and the most hopeless idealists. For I believe there are good reasons to be more optimistic about human rights than Arendt was.

One reason concerns the nature of rights. Some of the most scathing passages in Arendt’s discussion occur when she zeroes in on the idea of inalienable rights and subjects it to merciless criticism. “No such thing as inalienable human rights existed,” she flatly declares. In Arendt’s discussion, a right is only truly inalienable if it is always upheld in practice. But surely that’s not what anyone really means by saying rights are “inalienable.” After all, murder has been a fact of life since societies began, but no one would take this to mean we should not speak of a right not to be killed. Saying rights are inalienable expresses a belief in the inalienable moral worth of human beings. Because we hold this belief, we condemn some practices, such as sending a refugee back to danger, no matter how often they occur. That is very different from claiming such practices are

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never going to happen—the impossible standard a right has to meet before it can be “inalienable” in Arendt’s terms.

Another way to say this is that there is a difference between rights understood in a moral rather than legal sense. If we think of human rights as a moral concept, we are unlikely to concede that such rights cease to exist simply because they are often not upheld in practice. Indeed, it’s precisely because the moral worth of human beings is all too easy to violate that people began speaking of rights in the first place. The Rights of Man were originally used to condemn institutions, such as despotic rule and slavery, that were widespread, ancient and entrenched. Invoking the notion of rights against such institutions was a way of expressing revulsion at the situation of serfs and slaves, and a means of inspiring people to change those situations. So even before we get to the question of how to enforce rights in law, the idea of human rights performs the important task of expressing the judgement we want the law to uphold. In other words, it is precisely because we live in a world of human rights violations that human rights have value as a moral ideal.

However, even if we do distinguish between moral and legal rights, we still face a problem. Most people who believe in human rights want them to be more than talking points or diagnostic tools. We also want rights to be respected in practice. Rather than eliminating the problem Arendt identified, therefore, distinguishing between moral and legal rights transforms it. The problem is no longer to outline how human might be said to exist in the case of refugees. The problem is to show how their human rights might be *enforced*. Meeting this challenge requires more far than distinguishing between moral and legal rights. It requires showing how refugees seeking asylum might have their rights

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recognized in a world of sovereign states, something Arendt thought was impossible. I certainly agree with her that it is difficult. But outlining how we can meet the challenge she left us with is the central project of this book.

To some people this will not seem like much of a challenge. Someone who embraces an open borders view, for example, will be tempted to dismiss it. Open borders advocates believe immigration controls should be abolished. From this point of view, the fact that liberal states police their borders and turn many people away is a contingent rather than necessary feature of those states. Get rid off immigration controls, an open borders advocate will say, and Arendt's challenge disappears. For what she really highlighted is not an inevitable tension between national sovereignty and human rights, but one more reason not to stop anyone at the border, refugee or otherwise.

This response does not really get around the problem. For one thing, the open borders view is controversial (to put it mildly). It is at least arguable that human beings need to live in communities that exercise some form of entry control to maintain themselves. Moreover, we currently live in a world in which states guard their right to enforce their borders very jealousy, and there is no sign of them giving up this aspect of their sovereignty any time soon. Even if the open borders view turns out to be correct, therefore, it will still mark a significant contribution to human rights to show how those rights might be enforced in a world of border enforcement, which is to say, in the world in which we live.

Open borders advocates are not the only people likely to pooh-pooh Arendt's challenge. So might someone who doubts refugees are worth singling out for special treatment. Although the laws of most Western states place refugees in a separate category from other migrants, not everyone is convinced this is a good

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idea. “The legal distinction between ‘refugees’ and ‘immigrants,’ is phony,” the distinguished journalist Michael Kinsley once wrote. Kinsley asks us who we would rather be: a starving peasant in the developing world or someone living under an oppressive political regime like the former Soviet Union? The answer of course, is neither. But if that is the case, why do we treat the two cases differently when it comes to immigration law? Why do we distinguish between economic and political motives for entering a new country?

Kinsley is surely right that there are people in such desperate economic circumstances that their lives are in danger, just as much as the average refugee’s life is threatened by persecution. But the problem with Kinsley’s objection can be seen by asking what people in dire economic circumstances really need. Take his example of someone facing starvation. In countries with food shortages, the poorest of the poor do not have the resources to immigrate. Moreover, there are usually far better ways to assist them than to go through the expensive process of flying them to the West. As Matthew Gibney puts it, “in the case of victims of famine or natural disasters, it is easier for outside parties to deal with the threats people face by exporting assistance or protection (food, building supplies, clean water) to people where they are than to arrange access to asylum.” In the case of someone whose life is threatened by her own government, by contrast, it makes sense to give her priority in the immigration queue, as there are few other ways we can lend her assistance.

A third and final reason not to take Arendt’s challenge seriously is because one doubts that the situation facing refugees is especially grim. Certainly there are limits to the parallels between refugees in Arendt’s time and those of today. But some enduring problems remain. To see what they are, we need to look at

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what happens to asylum-seekers in the United States, Australia and Europe. As we will shortly see, if the record of these countries is anything to go by, we are still living in an Arendtian universe. One in which there are many rights for citizens, but few for human beings.

Notes

- 1 **Among them were a young Jewish woman and her mother.** The story of Arendt's escape from Germany and life during France in the 1930s is taken from Elisabeth Young-Bruehl, *Hannah Arendt: For Love of the World*, (New Haven, Yale University Press, 1982). See in particular, Chapter 4, "Stateless Persons 1933-1941."
- 3 **France for the French!** The account of France's refugee crisis draws on Vicki Caron, *Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942* (Stanford, Stanford University Press, 1999). Caron notes that France's refugee policy took a "twisted road" during the 1930s, alternating between welcoming and anti-refugee policies, before culminating in the extremely harsh anti-immigrant laws of 1938.
- 5 **When some of us suggested that we had been shipped there.** Hannah Arendt, "We Refugees," in Marc Robinson (ed.), *Altogether Elsewhere: Writers on Exile* (Boston, Faber and Faber, 1994), p. 113.
- 8 **The very immensity of the crimes.** Hannah Arendt, *The Origins of Totalitarianism*, new edition (London, George Allen and Unwin, 1967), p. 439.
- 8 **Even travelling to a foreign consulate.** See Reg Whitaker, *Double Standards: The Secret History of Canadian Immigration* (Toronto, University of Toronto Press,

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- 1987). Whitaker's book opens with the story of Beatriz Eugenia Barrios Marroquin, who was killed in Guatemala in the winter of 1985-6 while trying to obtain a visa to travel to Canada.
- 8 **Saturated with Jews.** Michal Marrus, *The Unwanted: European Refugees in the Twentieth Century* (New York, Oxford University Press, 1985), p. 157.
- 9 **Most important, however, was the fact that France.** *Uneasy Asylum*, p. 15.
- 9 **Switzerland's policies were unremarkable.** The immigration policies of Western countries in the 1930s are described in *The Unwanted*, Chapter 3. For an example of a country with an especially restrictive policy, see Irving Abella and Harold Troper, *None is too Many: Canada and the Jews of Europe 1933-1948* (Toronto, Lester & Orpen Dennys, 1982).
- 10 **Will soon constitute groups of discontented.** *Uneasy Asylum*, p. 20.
- 10 **An honour for our nation.** Ibid, p. 21.
- 12 **Many of the new countries borders.** My discussion of the refugee crisis after World War One draws on chapter nine of *Origins* and Chapter two of *The Unwanted*. Hungary's sealed borders are discussed on page 72 of the latter.
- 12 **In 1926 there were still 9.5 million refugees.** *The Unwanted*, p. 51.
- 14 **The Rights of Man, supposedly inalienable.** *Origins*, p. 293.
- 15 **The conception of human rights.** Ibid, p. 299-300.
- 16 **It was a problem not of space.** Ibid, p. 294.
- 16 **Essentially wipes out asylum.** Austin T. Fragomen Jr., "The Illegal Immigration Reform and Immigrant Responsibility Act of 1996: An Overview," *International Migration Review*, Vol. 31, No. 2, 1997, p. 443.
- 16 **To secure our borders.** Speech by President, Address to Nation on Haiti, September 15, 1994: www.clintonfoundation.org/legacy/091594-speech-by-president-address-to-nation-on-haiti.htm (last visited February 28, 2005).
- 17 **Fifteen million in the late 1940s.** *The Unwanted*, p. 355.
- 17 **Two point nine million in 1975.** *The State of the World's Refugees: Fifty Years of Humanitarian Action* (New York, Oxford University Press, 2000) p. 310.
- 17 **The Hungarian crisis.** The Hungarian refugee operation is described in *The Unwanted*, p. 359-360.
- 18 **Over 11 million . . . 31 million.** United Nations High Commissioner for Refugees, Frequently Requested Statistics, UNHCR Statistical Online Population Database: "Total Population of concern to UNHCR: Refugees, asylum-seekers, IDPs, returnees, stateless persons, and others of concern to UNHCR by country / territory of asylum, end-2007," available at <http://www.unhcr.org/statistics/49a2c7ff2.html>, last accessed May 8, 2009. Note that UNHCR's global statistics do not include Palestinian refugees, who have their own UN agency and occupy a unique position of permanent displacement.

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- 18 **In the early 1970s . . . 412,700 asylum applications.** Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge, Cambridge University Press, 2004), p. 3.
- 19 **Liberal democratic states publicly avow.** Ibid, p. 229.
- 20 **The very phrase human rights.** *Origins*, p. 269.
- 20 **No such thing as inalienable.** Ibid, p. 229.
- 23 **The legal distinction between 'refugees.'** Michael Kinsley, "An Open U.S. Door for Both Political and Economic Refugees, *The Wall Street Journal*, April 3, 1986. p. 1.
- 23 **In the case of victims.** Gibney, p. 8.