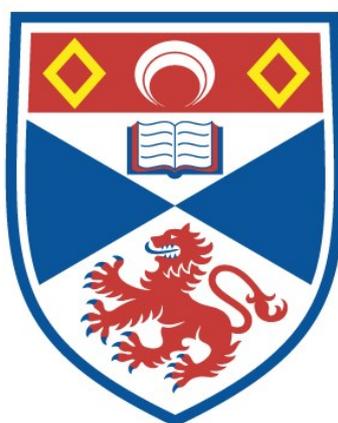


FROM SUBJECTIVITY TO AGENCY:  
MICHEL FOUCAULT AND HANNAH ARENDT ON "REFUGEES",  
"PROBLEMS" AND "SOLUTIONS"

Natasha Emilie Georgina Saunders

A Thesis Submitted for the Degree of PhD  
at the  
University of St Andrews



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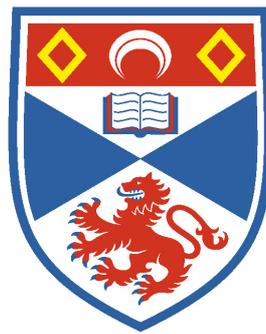
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From Subjectivity to Agency:  
Michel Foucault and Hannah Arendt on “Refugees”,  
“Problems” and “Solutions”

Natasha Emilie Georgina Saunders



University of  
St Andrews

This thesis is submitted in partial fulfilment for the degree of  
PhD  
at the University of St Andrews

Date of Submission  
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# ABSTRACT

This thesis makes a historically grounded theoretical contribution to an emerging “critical” approach to refugee studies. Utilising the insights of Michel Foucault and Hannah Arendt, it seeks to reconceptualise academic and policy understandings of what has come to be known as “the refugee problem” through an examination and critique of its (implicit) conceptual foundations. The thesis proceeds through a series of historically-informed moves oriented by the relationship between power, subjectivity, and agency, and argues that the key to reconceptualising the refugee problem lies in understanding how these three concepts rely upon and reinforce one another in a particular historically contingent configuration.

The objectives of this thesis are threefold and connected. First, it unpacks a deceptively unproblematic term, “the refugee problem” to reveal the complicity of understanding the “refugee (as) problem” in perpetuating the plight of increasing numbers of the world’s population, despite the alleviation of the difficulties these people face being the professed goal of the refugee regime. Second, in so doing it contributes to a growing body of literature seeking to counter the voicelessness and abjection into which refugees and asylum seekers are cast. And third, on the basis of this, to begin a conversation about rethinking the nature of the “solutions” we seek to a reframed “refugee problem.”

Engaging in a (Foucaultian) genealogical analysis of “the refugee problem”, the first half of the thesis charts the historically-contingent development of a distinct “refugee problem discourse”, revealing that the construction of refugees as passive victims of political forces is the *effect* both of such discourse and of the international refugee regime as a classificatory regime of truth and subjectivity, rather than an expression of any essential nature of “the refugee.” The thesis then turns to Hannah Arendt’s work as a theoretical lens through which to reframe our understanding of the “refugee problem” and to investigate how to identify and open up creative forces for re-subjectification processes and “solutions” not tied to the classificatory and subjectivising logic of the refugee regime or sovereign state system. Practices of rights claiming, and the City of Sanctuary movement in the UK are examined as two such processes, with the potential of posing “counter-narratives” of problems and solutions which challenge the technocratic, or population-management approach of the refugee regime.

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You often hear that the life of a PhD student is a solitary one, but such has not been my fate. I have been blessed with some wonderful colleagues and friends, particularly Kieran, Antonio, Larissa, Nasrin, Andreas’s A and P, Hannah, Helga, Max, Simon, Francesco, Yoav, Masa and Chris. Long days in the office were made brighter, procrastination made easier, evenings more relaxed and fun-filled by your presence in my life (and office), and I love you all very much. To Joshua and to Sarah: you are both living proof that distance makes no difference to kindred spirits, and I thank you from the bottom of my heart for your friendship, love and support.

Finally, I dedicate this thesis to my mother, Jacqueline, who was taken from me twice, and forever half way through this journey, and to my brother, Nicholas, my sister, Francesca, and our wonderful father, Geoff. Every milestone in my life will be bittersweet because one of us is gone forever. But through the darkest of times we have stuck together, done our very best, and stayed strong for each other. The sentiment behind the old adage that you can’t choose your family couldn’t be less appropriate for us, as I would choose each of you in a heartbeat. Our family is what has kept me going through the good times and the bad, and that will continue to be the source of my own strength. I dedicate this thesis to you and to mum.

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# INTRODUCTION

“A critique does not consist in saying that things aren’t good the way they are. It consists in seeing on what type of assumptions, of familiar notions, of established, unexamined ways of thinking the accepted practices are based.”  
(Foucault, 1981: 456)

As of the end of 2014, the United Nations High Commissioner for Refugees (UNHCR) estimates that 59.5 million people, or roughly 1 in every 130 people worldwide, are forcibly displaced (UNHCR, 2015: 2). UNHCR was established in 1950 to repatriate or resettle the 1 million Europeans still displaced by the Second World War, and its mandate was originally intended to last only three years. The intervening six and a half decades have seen ever-increasing numbers of displaced persons, indicating the inability (or perhaps unwillingness) of the international community to “solve the problem.” With each year that passes more and more people are flung by circumstance onto dusty highways at the margins of the world, unsafe or unwanted where they came from and increasingly unwelcome wherever these roads lead them.

The objectives of this thesis are threefold and connected. First, I aim to unpack a deceptively unproblematic term, the “refugee problem”, to reveal the complicity of a certain conceptualisation of the problem in perpetuating the plight of increasing and alarming numbers of the world’s population, despite the alleviation of these difficulties being the professed goal of the refugee regime and academic work on refugees. Second, in so doing I aim to contribute to a growing body of critical literature within refugee studies which seeks to counter the voicelessness and abjection into which those labelled refugees, asylum seekers, the stateless, or illegal/irregular migrants are cast. And, third, on the basis of this, to begin a conversation about rethinking the nature of the “solutions” we pursue to a reframed refugee problem. It is my contention that the works of Michel Foucault and Hannah Arendt are ideally suited to help achieve these three objectives, and to provide a theoretical framework under which to unite some vital but somewhat disparate critiques of the more traditional “problem-solving approach” to studying and “dealing with” refugees and the refugee problem.

At the root of this enterprise is the observation that how one conceives of solving a problem, and measuring the success of those solutions, is inseparable from what one understands that problem actually to be. As simple and obvious as this sounds, I posit that there has in fact been little reflection on the nature of the refugee problem that states, non-

governmental organisations (NGOs), international organisations, and academics all seek to address, such that an inherent conflation of two very different problems is at work in much of the literature on refugees: the problem *of* the refugee, and problems *for* refugees. I contend that the “refugee problem” is the first of these – the refugee *as* problem, for the state and smooth functioning of the international system. The international refugee regime was instituted to address this problem, rather than the problems that being a refugee poses for those who come to be seen as such. The relative failure, on the part of academics and practitioners alike, to differentiate between these two problems, has meant that the durable solutions of the refugee regime come to be seen as equally well addressing any problems that refugees might *face* by solving the problems that refugees *pose*. To conflate these two problems is to do more than recognise their interconnectedness. The durable solutions – repatriation, resettlement, and assimilation – are structural solutions to a legal anomaly: the breakdown in relationship between an individual and her state of origin or ordinary residence, manifested in flight across the border. When this relationship breaks down and a person flees across an international border, she becomes a charge of the international community until such time as a functioning state-citizen relationship can be re-established, and order, therefore, recovered. A breakdown in the state-citizen relationship is indeed a problem for the refugee, as much as it is a problem for the smooth functioning of the international system, but, as I intend to show as this thesis progresses, this problem is not of exactly the same nature for the refugee as it is for the state (system). Following Hannah Arendt, I contend that the refugee’s predicament is one of “worldlessness” and “superfluity”, and her ejection from the citizen-state-territory trinity is a symptom of a more fundamental structural problem at work in modern political life. If this is indeed the case, then re-establishing the formal state-citizen relationship should not necessarily be understood as sufficient to address the problems that come with existing in a state of worldlessness and superfluity. Ultimately, then, this thesis calls for a reconfiguring of our understanding of the “refugee problem” from the perspective of the refugee rather than the state.

Applying the theoretical insights and methodological approaches of Arendt and Foucault to this enterprise can, and by necessity must, also reconfigure our understanding of who, or what, a refugee is, such that not only can we distance ourselves from the belief that the refugee is “by nature” an apolitical, voiceless, abject, humanitarian victim, and see the refugee as an inherently political actor, but also that the distinctions made in policy, and much academic work, between refugees, asylum seekers, the internally displaced, irregular migrants, and illegal immigrants come to be understood as distinctions which serve the needs of modern political rationality, rather than expressions of any essential nature of each of these categories of people on the move. This will not come as a surprising claim to those working within refugee studies who take a more “critical” stance – much important work has been done showing how the

interests of the “global north” are served by distinguishing between categories of migrants (e.g. Chimni, 1998), and how these categories circumscribe the rights and agency of those caught within them (e.g. Zetter, 1991, 2007). However, I contend that the theoretical and methodological approaches of Arendt and Foucault can unite these critiques in a potentially more powerful way by revealing how these categories are not simply a result of structural functions of the international system, but, more fundamentally, are the result of the deeper structures of knowledge production and political *rationality* upon which the functioning of the international system, and refugee regime, depend. Unpacking the “refugee problem”, then, necessarily involves a critical examination of the subject of the “refugee” – how and why she came to be, what kind of subject she is, and how and why she came to be a “problem.” I contend that there is no such thing as “the refugee” per se, except considered as an abstract category of knowledge/power, but, rather, people within and affected by specific types of relationships. The “refugee”, in other words, is a product of the particular configuration of power-knowledge relations in modernity. Recognising how these relationships function, and why they function in the way that they do, is the first step toward challenging and reconfiguring them in potentially less constraining ways.

### **Situating this Study**

This is an inherently historical enterprise. History has occupied a marginal place in academic work on refugees and the refugee problem. In his final editorial as founding editor of the *Journal of Refugee Studies*, Roger Zetter gave what he called an “admittedly crude” categorisation of the disciplinary backgrounds of the work published in the journal’s first thirteen years, showing that a meagre four per cent could be classed as “historical” (Zetter, 2000: 351). This is to some extent to have been expected. When academic work on refugees gathered pace and refugee studies began to carve itself out as a distinct field of inquiry, the very real issues of the welfare and legal status of refugees, and the problems of movement and reception they engendered were also priorities for government agencies, and relief organisations. This coincidence of priorities saw academic debate dominated by what Marfleet calls “refugee policy studies” (Marfleet, 2007: 137). This policy focus retains its dominant position now that academic and policy concern has shifted to the management and control of population movement in general, with historical analysis remaining side-lined (2007: 138). On the rare occasions when the past is referenced, one of two ideas appears: the first maintains that refugees are “as old as history” – people have always sought refuge abroad and so there is little *qualitatively* new in the refugee of today. The existence of “sanctuary practices” throughout the ancient and medieval worlds is considered to be sufficient evidence for the belief that there

have always been refugees. The second idea is that refugees have only existed as a distinct category of person since they were defined as such by the 1951 *United Nations Convention Relating to the Status of Refugees* (hereafter the Refugee Convention). In other words, “refugee” is a purely legal category, and so while people may certainly have been displaced prior to the mid-twentieth century, the legal status of refugee did not exist prior to this point in time (Marfleet, 2007: 138). Actual historical investigation rarely follows the proffering of these claims, such that they take on the guise of ahistorical truisms, to one of which one must declare allegiance before swiftly moving on to the real object of one’s study. To claim that refugees have always existed, because people have always fled war and persecution and sought sanctuary elsewhere, is, I argue, to divorce the refugee from such trans-historical but context-dependent concepts such as responsibility, agency, and status, but also by default divorces our present political conditions and *the bodies of knowledge and ways of knowing upon which they rest* from any degree of responsibility for the problem. To claim that refugees have only existed since 1951 is to at least recognise the constructed nature of the “refugee” as a subject, but is to focus too narrowly on questions of legal definition, and risks leaving unexamined the non-legal aspects of the identity of the “refugee” upon which, I argue, the refugee regime is really based, and so further risks buying into the dominant narrative of problems and solutions highlighted above. It is my contention that investigation into the history of the refugee and “refugee problem” is necessary to illuminate our present structural conditions. In the approach taken by this thesis to studying the refugee and “refugee problem”, I respond to Marfleet’s call to bring history into the refugee studies fold. Moreover, in taking a genealogical approach to the “refugee problem”, informed by an understanding of the interconnection of power, subjectivity, and agency, this thesis contributes to a growing critical approach to the refugee problem which has begun to problematise the refugee regime itself, the restriction of political agency to the citizen, and the propensity of humanitarian regimes to silence those they aim to assist.

For the more traditional “problem-solving” approach to the refugee problem, great emphasis has been placed in recent years on the impact of globalisation on migration, and the difficulty that so-called “mixed migration flows” pose both to states and UNHCR in identifying and providing protection to refugees (Betts, 2010; Crisp and Desesaigne, 2002; Kelley and Durieux, 2004; Van der Klaauw, 2010). A perceived shift in policy focus from refugees in particular to the problems posed by forced migration more broadly has led to academic debate over whether incorporating the study of the refugee problem into the broader field of Forced Migration Studies may prove beneficial, and enable scholars to produce more policy-relevant research that aids individuals on the ground regardless of whether they have crossed an international border (Adelman and McGrath, 2007; DeWind, 2007; Hathaway 2007a). The implicit assumption operative in much of this work is that the refugee regime exists, first and

foremost, to protect the rights of refugees, even if its work may be vulnerable to the vagaries of high politics (Betts, 2010; Gibney, 1999; Goodwin-Gill, 2008; Hathaway, 2007b).

However, the purpose and role of the regime itself have come under increasing scrutiny in recent years. For many scholars operating from a postcolonial perspective or utilising the work of political theorists such as Giorgio Agamben, the refugee regime is best understood as a tool of international statecraft, rather than a separate humanitarian entity that states occasionally (and increasingly) seek to co-opt when it suits their purpose. Scheel and Ratfisch (2014), Andrijasevic and Walters (2010), and Barutciski (1996) analyse regime actors such as UNHCR and the International Organisation for Migration (IOM), and argue that they are in fact integral actors in a global regime of population management and act as problem-framers. Soguk (1999) demonstrates the role that the refugee regime plays in helping to continually re-inscribe the state as the rightful guardian of political life in what he terms “practices of statecraft.” A much broader body of work in Migration and Forced Migration Studies, oriented around the prism of security and securitisation, has documented in immense detail the development of a global regime of border control and deportation, indicating the ability and eagerness of states to coordinate with each other and various international organisations to prevent or reverse movements of “undesirables” (Bigo 2002; Dauvergne, 2007; Newman and Van Selm, 2003; Salter, 2006; Walters, 2002; Watson, 2009).

In addition to the position of actors such as UNHCR, or other aid organisations, within the refugee regime and a global regime of population management, the specific field activities of these groups have come under scrutiny for the, albeit perhaps unintended, consequences of the system of humanitarian relief. Anthropologist Liisa Malkki was amongst the first scholars to focus on the ability and propensity of humanitarian practices to “silence” refugees. In her ethnographic work among Hutu refugees in Tanzania and aid organisations charged with their relief, she revealed how humanitarian practices abstract refugees’ predicaments from specific political, historical and cultural contexts by rendering refugees a mass of undifferentiated victims in need of charity (Malkki, 1995 and 1996). Malkki, and others, do not deny the unfortunate need for humanitarian relief efforts, but these same practices have the effect of producing “anonymous corporeality and speechlessness” (Malkki, 1996, 389). Rajaram (2002) has noted a similar effect in his examination of Oxfam campaigns on behalf of refugees, as has Johnson (2011) on the representations of refugees in pictures utilised by UNHCR for fundraising. Hyndman (2000) and Agier (2011) have both examined in great detail the system of the humanitarian management of displaced populations operative in camps and the dehumanising effects they have on the inhabitants of these spaces of protracted waiting.

That humanitarian practices silence the recipients of its aid, and render them apolitical subjects is becoming an accepted fact within studies of refugees and forced migration. But scholars are beginning to devote attention to the reactions of these humanitarian subjects to the practices that silence them, thereby challenging their status as voiceless victims who should simply receive aid with gratitude rather than speak up and seek to exert influence on the politics of their protection. Redclift (2013) and Rygiel (2012) both examine how everyday life within camp spaces is infused with the agency of those caught within them. Moulin and Nyers' (2007) analysis of refugee protest in Cairo examines the challenge posed to UNHCR over defining populations of care, and who is empowered to speak on the subject of refugee status and protection. Johnson's (2014) study on rethinking politics from irregularity charts the everyday experiences of the politics of migration control on the part of irregular migrants in Tanzania, Australia, and Morocco, demonstrating that while the system seeks to render these migrants powerless and voiceless, they nevertheless exert agency and enact a series of challenges to the practices which seek to control them. A growing body of literature in Citizenship Studies is similarly problematizing the status of the citizen as the political subject *par excellence*, and the casting into abjection of those whose legal status renders them "outsiders". Political movements of non-status migrants agitating for employment rights have caught the attention of scholars, who examine these movements from the perspective of the politics of citizenship, and through the agency that non-citizens possess and exercise despite the system of nation-states formally precluding them from doing so (Beltran, 2009; Monforte and Dufour, 2011; Nyers, 1999, 2003, 2006b). Isin and Nielsen (2008) argue that such acts on the part of the non-citizen "other" should be understood as "acts of citizenship", whereby citizenship ceases to be understood as a status but as a practice which *creates* citizens. This approach to citizenship enables a shift in the focus of political action to more diffuse, diverse, and unpredictable spaces, subjects, and issues.

The survey of work above is certainly not exhaustive, but shows that questions of subjectivity, agency, and the actions of the international refugee regime can and have been approached from a variety of theoretical perspectives including feminism, postcolonialism, and "global political society". They employ ethnographic studies, interviews, case studies, textual analysis and the insights of specific political theorists to illuminate practice. Just this brief survey reveals the wealth of theoretical and methodological approaches that one could take to the study of refugees and the refugee problem, and particular projects lend themselves more toward certain approaches than others. The project undertaken in the following pages should be understood as a work of political theory, first and foremost. Isaiah Berlin suggests that the project of political theory is "an inquiry concerned...with the critical examination of presuppositions and assumptions, and the question of the order of priorities and ultimate ends

[...] in a society in which there is not total acceptance of any single end” (quoted in Zivi, 2012: 10). On this account, political theory is “part of an effort to make visible dominant ways of thinking so that we can recognise their value and their limits, so they can be modified or rejected if need be, always knowing full well that the modifications suggested are open to contestation” (Zivi, 2012: 10). This thesis is, at its heart, a political theoretical investigation of the “refugee problem.”

Giorgio Agamben has been by far the most influential political theorist for many of the studies above and more (Darling, 2009; Diken 2004; Edkins, 2000; Edkins and Pin-Fat, 2005; Jenkins, 2004; Rajaram and Grundy-Warr, 2009). Drawing on Arendt, Foucault, Benjamin and Schmitt, Agamben (1998; 2000) presents a theory of sovereignty which he considers to be the hidden truth of Western political life since Aristotle. Sovereignty – the most central governing principle of international and domestic political life – constitutes the body politic by deciding on who is excluded from it. Agamben returns to Aristotle and the differentiation between *zoe* – what Agamben calls “bare life” – and *bios* – which he refers to as “politically qualified life” – and argues that the state, or the sovereign, is the one who decides which individuals count as politically qualified life, and are thus subject to the law, and which individuals will be excluded from the protection of the law and be rendered bare life. All politics is, by necessity, therefore *biopolitics*. To be declared bare life is to be declared “homo sacer”, a figure from Roman law who could be killed with impunity but not sacrificed. “Homo sacer” is thus included in the legal order precisely through his exclusion from it. The ability to declare someone “homo sacer” is fundamental to sovereignty and is thus an ever-present danger to all. Importantly, since this ability is the most fundamental and constitutive aspect of sovereignty, it is not the exclusive purview of authoritarian or totalitarian states but also, and, Agamben argues, increasingly, operative in liberal democratic societies. The allure of Agamben for those studying refugees and the refugee problem lies in the space of the “state of exception”. To be “homo sacer” is to live within a state of exception – in which the law is completely suspended – and as states make increasing use of this most basic of sovereign powers, camps for the warehousing of bare life have become an ever-present and permanent feature of the political landscape, such that the camp actually forms the paradigmatic space under modernity, and the figure of the refugee kept within them, the hidden cipher of politics. The refugee camp, and the detention centre, should be understood as spaces of exception, within which people are reduced to bare life, and not as benign spaces for the distribution of aid or speedy determination of refugee status. Further, the existence and reproduction of spaces of exception and the reduction of increasing numbers of people to bare life should be understood not as an unfortunate exception to the normal functioning of a liberal democratic system, but as the most fundamental expression of the hidden logic of that system.

Agamben's work has not gone without criticism. Within scholarship on refugees and forced migration, the *totality* of the life of abjection that those rendered bare life are cast into has been brought into doubt as it leaves little room for understanding how, in the face of such abjection, these individuals are in fact able to act and to act politically (Johnson, 2014; Walters, 2008). While the camp can rightly be understood as a space of domination, exploitation and inequality, it cannot be conceived solely as such, as the social and political relations that emerge within any given space, including a camp, will be determined by their historical, spatial and material specificity (Redclift, 2013; Sigona, 2015). For Ellermann (2010) Agamben's account distorts the space of exception within liberal democratic regimes by failing to account for the presence of law within them. Detention centres in Germany (the focus of her study) are in fact governed by legal rules, not martial law, and the ability of migrants to prevent their deportation by destroying their identification papers indicates the functioning of, if nothing else, international legal rules regarding deportation and admission of nationals and non-nationals. From a purely theoretical perspective, Fitzpatrick (2001) dissects Agamben's historical moves in his reconstruction of "homo sacer", and puts his interpretation of Roman law in doubt. Kalyvas (in Ek, 2006) questions the utility of Agamben's insights for a politics that could resist the seemingly unstoppable march of sovereignty and the exception, while Blencowe (2010) seeks to recover the enterprises of Arendt (as does Owens, 2010) and Foucault from Agamben's self-proclaimed "corrections" of them, and argues that whatever the merits of Agamben's work may be, the biopolitics that he describes is not the biopolitics of either Arendt or Foucault, and his work should not, therefore, be considered a substitute for, or cognate of, theirs. Finally, Colatrella (2011) claims that Agamben's trans-historical account of sovereignty and "homo sacer" leaves too many vital questions unanswered for anyone seeking to utilise his theory of (bio)politics:

An explanation of historical or political phenomena must address the question of why? Why now and not later, or before? Why in this place and not the other? Why the differences in degree between places or times? Why is this group under attack and not another one? [...] Why is a discourse of biopolitics, or of changing methods of social discipline and control emerging in a given century instead of another? (103)

In making sovereignty as the decision on the exception the hidden foundation of all politics since Aristotle, Agamben's theory is not able to answer questions such as these, which seek more historically-grounded explanations and insights. I will turn, therefore, not to Agamben, but to two of the thinkers that he drew inspiration from – Arendt and Foucault. This is not a judgment on the accuracy of Agamben's insights or the work that draws inspiration from it. It is simply to recognise that some thinkers are more useful to a particular project than others, and

the historical nature of this work renders the approach of Arendt and Foucault a more suitable match.

### **Arendt and Foucault on Refugees**

Foucault never held the refugee, or the refugee problem, as a subject of his historical studies, notwithstanding his interest in the plight of the Vietnamese Boat People in the 1970s, and this may explain his relative absence from the refugee studies literature. There is, however, a small body of work that seeks to utilise Foucault's insights (Doná, 2007; Hardy, 2003; Lippert, 1999, 2006; Lui, 2004; Muller, 2004; Soguk, 1999), namely his understanding of biopolitics. Arendt's work has had a more marked influence on studies of refugees and the refugee problem, and references to the systemic origins of the refugee problem in the twentieth century outlined in *The Origins of Totalitarianism* can now be found in a great many works (for example, Agier, 2008; Haddad, 2008b; Malkki, 1995, 1996; Marfleet, 2006; Nyers, 2006). But her ability to contribute to the search for solutions is considered limited due to what many commentators take as the narrowness of her conception of politics and political agency and its inapplicability to questions of social and economic marginalisation. It is, thus, more common to recognise the influence of Arendt's work, but then to turn away from her toward a more "useful" theorist such as Rancière (Nyers, 2003), Warner (Beltran, 2009), or Lefèbvre (Squire and Darling, 2013), or to question the continued utility of her insights on refugees at all (Bradley, 2013). I contend, however, that Arendt's work is indeed both relevant to the refugee problem today, and that the criticisms of her conception of politics and agency are mistaken and based on a highly selective reading of her vast body of work. By taking a wider view of her work we can see how it contains valuable insights and tools for reframing the refugee problem and the search for solutions. Regarding Foucault's work, I seek to build upon the groundwork done by the scholars above and demonstrate how there is more of use to those studying refugees and the refugee problem in Foucault's thought than simply his conception of biopolitics, and argue that the very heart of his work – the interplay between power, knowledge, and the subject – is the key to unpacking the "refugee problem," in that it allows us to investigate how it is, and has become, possible to "know" anything about "refugees" and the "refugee problem", and what are the consequences of this drive for knowledge.

i. Theoretical Framework: Power, Subjectivity, and Agency

Foucault and Arendt are not often studied together. On the surface they appear to be engaged in fundamentally different enterprises: Arendt is concerned with classical macro-political themes, such as the nature of political regimes and the virtues that sustain the public sphere; whereas Foucault is fascinated by micro-political contexts such as prisons and asylums, and suggests that the traditional concern of political theory with the macro-political context of states and sovereign power is what has led political theory astray (Marquez, 2007: 3). Arendt celebrates power and politics, whereas Foucault paints a darker and more suspicious picture of power relations and their influence on politics (Allen, 2002: 131). However, this initial characterisation of their differences is premature. Both Foucault and Arendt share a distrust of the modern state and its degradation of properly political space, and an understanding of politics conceptually broader than the work of professional politicians, including similar conceptions of political space and its importance to freedom (Marquez, 2007: 3). Both thinkers reject the Hegelian/Marxist philosophy of history as an intelligible process moving toward a specific condition of human freedom, and are thus both committed to historicising philosophical and political inquiry (Allen, 2002: 132). Both share a concern with race thinking in modern political thought and practice, and, finally, they share a central concern with the inter-relationship of the concepts of power, subjectivity and agency.

Arendt and Foucault ground their conceptions of power in a critique of one and the same understanding: one which equates power with the rule of law and presupposes that the imposition of a sovereign's will upon his subjects is the power relation *par excellence* (Allen, 2002: 132). Foucault takes two major exceptions to this model of power. The first is in its assumption that power is restricted to a limited sphere within social and political life, residing in the hands of the sovereign and wielded over individuals in and through the sovereign's commands. The individual, on this model, is assumed to be free from power wherever (s)he is out of reach of the sovereign, and, further, is presupposed as a fully formed, constant and unified subject who is then *caught up* in power relations (Allen, 2002: 133-135). The law, on this model, is made the basic manifestation of power, and the model of sovereign power sets itself the task of accounting for the ideal genesis of the state (Foucault, 2004b: 265). Foucault inverts this mode of analysis to focus on peripheral relations of domination and subjugation of subjects in their mutual relations. This is not to deny that there are regulated forms of power in the central locations of the sovereign and the state, but these are not the *only* locations of power worthy of analysis. The second exception that Foucault takes is that this is a model in which power is an essentially negative, prohibitive and repressive force. This, for Foucault, is but a half-truth, since power "doesn't only weigh on us as a force that says no, but it traverses and

produces things, it induces pleasure, forms knowledge, [and] produces discourse” (Foucault, 1977: 120). He thus introduces a new model for the study of power. In *The History of Sexuality* he states that “power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society” (Foucault, 1998: 93). Power is something that is *exercised* from innumerable points in *relation*, rather than something that is acquired, seized, shared, or something that one can give up to another. It is the intertwining of the productive and repressive aspects of power that is the key to understanding the relationship between power, subjectivity and agency in Foucault’s work.

For Foucault, individual subjects/agents do not come into the world fully formed. Rather, they are constituted in and through a set of social relations, all of which are imbued with power. Power can thus be understood as a key element in the very formation of individuals as subjects. Individuals are subjected, in the dual sense of *subjected to* the multiple shifting relations of power in their social field, and those relations simultaneously enable the very (com)position of *a subject* (Allen, 2002: 135). Power, then, is a condition of individual subjectivity. This intimate relationship between power and subjectivity is taken by many of Foucault’s critics to commit him to the death of the (acting) subject and thus to a denial of the very possibility of agency. But, Foucault’s claim that the individual is an effect of power does not commit him to any such claim that the individual is *nothing more* than an effect of power. After all, as Allen explains, the ability or capacity to act is only possible with the ability or capacity to deliberate, which involves being a thinking subject (Allen, 2002: 136). If Foucault’s power relations are a condition of subjectivity, then it would follow that they would also be a condition for the possibility of agency as well. As will be shown as this thesis progresses (particularly in Chapter Three), however, the type and degree of agency of any individual subject is linked to the different subject positions that an individual occupies – some subjectivities are more constraining than others.

Much like Foucault, Arendt also does not consider power to be something that one possesses and can thus give up to another. Power, for Arendt, exists only in its actualisation and is always a power potential and not an unchangeable, measurable and reliable entity (Allen, 2002: 139). Arendt takes exception to the “command-obedience” model of power, stating that, if the essence of power is the effectiveness of command “then there is no greater power than that which grows out of the barrel of a gun” (Arendt, 1970a: 37). Arendt bemoans the fact that the terminology of political thought does not distinguish among such key words as power, strength, force, authority, and violence, seeing them all as synonyms because they have the same function: to indicate the means by which man rules over man (Arendt, 1970a: 43).

However, Arendt argues, only after one “ceases to reduce public affairs to the business of dominion” does the “original data in the realm of human affairs appear” to distinguish power from violence, strength and force (Arendt, 1970a: 43). On this understanding, power corresponds to the human ability not just to act, but to act in concert. While strength is the natural quality of an individual in isolation, power springs up between individuals when they act together and vanishes the moment they disperse (Arendt, 1998: 200). Importantly, while power is the result of collective action, it is also, in turn, a condition for the possibility of action (of agency): power both makes possible and preserves the public realm in which individuals act. Thus, as power emerges out of and exists between individuals acting together, it also makes possible such collective action by providing the space within which such actions can be carried out.

Insofar as power is constitutive of public space, it also serves as a precondition for agency and is therefore also, for Arendt, a precondition for subjectivity – the constitution of the subject. In her discussion of action in *The Human Condition*, Arendt tries to recover the originary understanding of action as “beginning something anew” which is fundamentally connected with the human condition of natality: “the new beginning inherent in birth” (Arendt, 1998: 179). This beginning something anew, which Arendt calls action, is constitutive of the individual as agent. Action discloses the “who”, in contradistinction to the “what” somebody is, and this disclosure is implicit in everything somebody says or does (Arendt, 1998: 179). However, this does not mean that action merely expresses a pre-existing identity, nor does it mean that the identity of the actor is purely performative. Rather, the identity of the actor is in part constituted through the action itself:

Although everybody started his life by inserting himself into the human world through action and speech, nobody is the author or producer of his own life story. [...] the results of action and speech reveal an agent, but this agent is not an author or producer. Somebody began it and is its subject in the twofold sense of the word, namely, its actor and sufferer, but nobody is its author. (Arendt, 1998: 184)

Since one’s identity as an actor can only be fully revealed through action in public, and the existence of a public realm in which to act is both constituted by and constitutive of power, it turns out that there is an intimate link, for Arendt as with Foucault, between power, subjectivity, and agency.

ii. Reflections on Method: genealogy and “story-telling”

Questions of methodology become problematic when working with Foucault and Arendt as both thinkers meant intentionally to part company in their work with the supposedly “neutral”

and “objective” traditions of humanist historiography and the social sciences, which presuppose that a theory can remain detached – and that we, as researchers, can remove ourselves to some Archimedean point – from the objects of study. Rather than discussing a methodology, as such, that I will employ in my investigation of the refugee problem and how we might reframe the question of solutions, I will instead discuss Foucault’s and Arendt’s approaches to social inquiry in the hope of elucidating how these are relevant to, and will be utilised in, my investigation.

Foucault’s early historical works, which he designates as “archaeologies”, were influenced by a new kind of historical study undertaken by his contemporaries in France, which sought to forsake the reconstitution of the world of which the (historical) document speaks, and seeks not to *interpret* but to *organise* it. The idea driving this enterprise was closely linked to the modernist literary idea that language is a *source* of thought in its own right and not merely instrumental. However, the goal of archaeology is not to open up a field for language to itself “speak” (Gutting, 2005: 32). Rather, Foucault begins from the position that at any given period, there are substantial constraints, beyond those of grammar and logic, on *how* people are *able* to think and speak, and that these “discursive practices” can be recovered through the study of the material traces left behind by a particular historical period and culture. As Dean highlights, this should not be seen as a hermeneutical exercise in the sense of an infinite task of interpretation in which “nothing is primary since the sign itself is already an interpretation of other signs” (Dean, 2002: 15). Archaeology should not be understood as just another mode of interpretation rendering into discourse the unsaid. Rather, it concentrates all its focus precisely on what *is* said and it is this affirmation of the reality of discourse as something to be analysed that prevents archaeology from “retracing the interpretative spiral of hermeneutics” (Dean, 2002: 16). Despite its name, archaeology denies the search for origins and attempts to define the “general system of the formation and transformation of statements” (Foucault, 2004a: 130), making it a concern for the facticity of statements, their relations with each other, and the rules under which they are formed and transformed (Dean, 2002: 16). However, Foucault came to recognise a weakness in this approach – a certain positivism that was unhelpful for those who are concerned with the *uses* of history in the present, and it was this concern that led him, Dean argues, to reflect on the purposes and uses of history in his essay “Nietzsche, Genealogy, History” and to appropriate the term for the more overtly political enterprise of his “genealogy” (2002: 17).

Every society, Foucault claims, has a kind of political economy of truth which delimits what kinds of discourses are true, what the mechanisms and sanctions are for distinguishing true from false, the techniques for acquiring truth, and the status of those who are empowered

to say what is true (Foucault, 1977: 131) – one’s imagination need not stretch too far to see how the very idea of methodology fits this description. In Western societies, Shiner explains

‘truth’ is centred in scientific discourse and institutions [...] [and] is produced and disseminated by great economic and political apparatuses such as the university, the media, or the army. In this system of truth there are many forms of excluded and subjected knowledge. Those who occupy the lowest status in various institutions and conditions of life all find their knowledge discounted. They are a part of a system of power that invalidates their discourse [...] continuously by a set of implicit rules concerning what sorts of concepts and vocabulary are acceptable and what credentials and status are essential for one’s discourse to count as knowledge. (1982: 384)

In his turn to genealogy Foucault is not looking for a “method” which will be superior, either to archaeology or other methods, in objectivity and comprehensiveness, but is instead forging tools of analysis which take their starting point in the political-intellectual conflicts of the present. Genealogy thus incorporates archaeology while correcting what Foucault came to understand as its failure adequately to treat the reality of power. In the traditional approach of historiography, it is assumed that one can trace ideas or institutions back to a sort of founding moment when their essential meaning was first revealed, and the “history” of this idea or institution can then be traced in its continuous development away from the original and essential meaning (Shiner, 1982: 387). Historical materials thus take on the position of ambassadors of historical continuity. Genealogy, on the other hand, rejects such an idea of “origin” as an essence or truth, and, à la Nietzsche, traces not “origins” (*Ursprung*) but “descent” (*Herkunft*) and “emergence” (*Entstehung*) (Foucault, 1971b). Genealogy finds not the purity and promise of a beginning but a series of interplays of power. It deals with the same sub-strata of knowledge and culture as archaeology, but as a plane where the grounds of the true and the false – which are uncovered by an archaeological approach to sources – come to be distinguished via mechanisms of power – which are recovered as a driving and conditioning force. By thus refusing to trace continuities in history, genealogy is also led to reject the subject as the creator of history and the bearer of its continuity; genealogy shows how the subject is created by the power-knowledge complexes of history (Shiner, 1982: 387). By engaging in genealogical analysis, Foucault sees his studies as reversing the Enlightenment goal of critique by “revealing in what is given to us as universal, necessary, obligatory, what place is occupied by whatever is singular, contingent, and the product of arbitrary constraints” (Foucault, 1984b: 315).

Much like Foucault, Arendt almost never discussed methodological problems, and her writings contain only scattered remarks on this topic (Vollrath, 1977: 161). She in fact

described her work in decidedly un-(social)scientific terms as “my old-fashioned storytelling” precisely, Disch argues, to signal her resistance to the traditional dictate that political theory remove itself to an Archimedean point beyond the social world in order to understand its happenings and adjudicate its conflicts of interest (1993: 668). Arendt argues that the Western political tradition has been beset by an “abyss between philosophy and politics” that has left us without the conceptual and ethical resources to understand and resist the horrors of the twentieth century (Disch, 1993: 669) – among which she counted mass displacement and the creation of “superfluous persons”. The very concept of “method” presupposes that a theory can remain detached from its “object”, but Arendt’s political thinking regards these events not as objects but as *phenomena* which, by definition, include those to whom they appear – the theorist as well as others – along with the space in which they occur. Since phenomena always occur within the web of human relationships from which the theorist cannot extricate herself, the “objectivity” of method can only be achieved at the expense of the understanding of the phenomena itself (Vollrath, 1977: 163-4; Arendt, 1953). Totalitarianism, for Arendt, as an event wholly unprecedented, was one such phenomenon that could not be understood by traditional political theory, and required instead a new narrative to comprehend it. For Arendt, the events of the twentieth century created such a gap between past and future that her exercises in “story-telling” can be seen as instances to attempt to bridge this gap (which traditional historiography with its focus on chronology and determinism could not do), since the chief task of story-telling is to recover the “pearls” of past experience to frame a story which can orient the mind to the future (Benhabib, 1990: 171). Arendt’s understanding of her own way of “doing history”, so to speak, is very similar to what Foucault would call genealogy some twenty years later, which we can see particularly in *The Origins of Totalitarianism*. They both gravitate to similar types of sources, giving an important place to literature and other less obviously “relevant” sources; and in her clarification of the method she employed in writing *Origins* we can see a similar eschewing of the search for origins, or pure essence – despite the unfortunate choice of title. She takes issue with Voegelin’s characterisation of her enterprise and states that she did not describe

a ‘gradual revelation of the essence of totalitarianism from its inchoate forms in the eighteenth century to the fully developed’ because this essence, in my opinion, did not exist before it had not come into being. I therefore talk only of ‘elements,’ which eventually crystallise into totalitarianism, some of which are traceable to the eighteenth century, some perhaps even farther back. (Arendt, 1953: 81)

In addition, then, to their theoretical similarities, Arendt and Foucault seem to be engaged in very similar historical enterprises, despite their different choice of subject matter. Both seek to

unpack the notion of history/historiography as a positivist/objectivist cataloguing of causal factors, and see writing history, instead, as a mode of story-telling – of reconstructing how we have arrived at a particular discourse of political events; how particular events are made *possible*, and thus how it might be possible to change them moving forward.

This thesis does not search for the ultimate “cause” of population displacement, or for the “origin” of the “refugee problem”. Rather, this thesis seeks to understand the development of a distinct “refugee problem” as a political concern, how it has become possible to “know” anything about it, and what the consequences of this particular conceptualisation of the “problem” and our drive to know it are, asking, ultimately, if understanding this process allows us to rethink the problem in need of a solution; asking if it presents us with the opportunity to tell a different story of the “refugee problem” and, therefore, to conceptualise different solutions. Genealogy, or story-telling, as ways of “doing history” are ideally suited to this enterprise because they are modes of historical investigation which eschew the search for “origins” or “causes” and seek to understand the historical conditions (social, economic, political, philosophical, epistemological and discursive) which *make possible* the emergence and development of particular problems, the discourses they produce and which we produce about them, and which reveal how these discourses already circumscribe particular solutions, thereby rendering others as irrational/impractical/unthinkable/unworkable. As decidedly undeterministic approaches to historical investigation, genealogy and story-telling reveal – through the operation of the relationship between power, subjectivity and agency – the radically contingent nature of our socio-political and epistemic structures. Recognising this contingency, by revealing the ways in which power, subjectivity and agency interact, opens up the possibility of conceiving of this relationship in different, and potentially less constraining, ways.

### iii. Why Foucault *and* Arendt?

These discussions might give the impression that Arendt and Foucault are so similar as to render the use of both theorists, rather than one or the other, a redundant enterprise. While the initial characterisation of the differences between the two thinkers mentioned above (the micro/macro difference in focus, and the pessimistic/optimistic approaches to the potentials of politics) might be premature, it is not entirely inaccurate, and it is these two initial differences which make both thinkers helpful for this project. In other words, their similarities make them compatible enough to be used together, while their differences make it *necessary* to do so.

Foucault's genealogies aim to reconstruct how we arrived at a particular discourse of political events, to help us understand the ways in which power has informed the construction of a particular *discursive knowledge*. The development and operation of a knowledge-power nexus is where Foucault is the most helpful to this enterprise. Applying this mode of inquiry to the refugee problem – particularly to the history of the refugee problem – enables a “recovery” (so to speak) of the “refugee” as a subject created by a particular narrative enterprise. Approaching sources from the formative years of the refugee regime as affirming of a particular discursive reality which are themselves products of a particular regime of power-knowledge (developing for considerably longer than the regime itself), can more meaningfully demonstrate how a discourse has developed over time which has governed the ways in which the refugee can meaningfully be spoken of and reasoned about, which discourse much academic work on refugees has relied upon as a conceptual framework. As Foucault explains, the purpose of history, guided by genealogy, is not to discover the roots of our identity, but to commit itself to its dissipation. “Antiquarian history”, for Nietzsche, seeks the continuities of the soil, language, and urban life in which our present is rooted, and, “by cultivating in a delicate manner that which existed for all time, it tries to conserve for posterity the conditions under which we were born” (Foucault, 1971b: 162). I contend that our present conditions are untenable for increasing and alarming numbers of the world's population, and so by approaching the “refugee problem” not from the perspective of a search for continuity, but as a problem affirming a particular discursive reality itself the product of a particular regime of power-knowledge, the history of the refugee and the refugee phenomenon becomes one in which it no longer appears as a matter of course that the citizen is the unproblematic, natural subject of political life, that all peoples “naturally” belong to a particular physical place, and that the best solutions for states *and* refugees are the three durable solutions of the refugee regime.

But we are then left with the problem of where to go from here. We can problematise the emergence of the refugee as a particular kind of subject within a particular regime of power-knowledge, and reveal the contingent nature of how we conceive of a distinct refugee *problem*, but we are still faced with a situation in which millions of people find themselves unwelcome where they came from and at the mercy of the charity begrudgingly offered by the international system. While Foucault's work can reveal the inner workings of power, knowledge and subjectivity in the refugee regime, and reveal the necessity to reconceptualise both the subject of the “refugee” and the “problem”, his insights into how this might be accomplished prove less relevant and useful than those of Arendt.

Foucault and Arendt tell remarkably similar stories of the rise of the modern state and state system, but where Foucault's examination illuminates the inner workings of the governmental rationality by which they function, Arendt's examination puts the consequences and meaning of this rationality for the refugee (and others) at the forefront. With Arendt's work we can begin to shift our perspective from an understanding of the "problem" from that of the state – the refugee *as* problem – to that of the refugee – worldlessness and superfluity. Supplementing her story of the rise of the modern state (system) with the theoretical and philosophical reflections in her other works, reveals, first, why being cut off from the system – being made superfluous and, thus, worldless – is so problematic for the refugee, and, second, why the three durable solutions of the refugee regime are unable to solve the refugee problem when understood in this way. In using her insights to reframe the problem itself, we can also begin to reframe the search for solutions. One way in which we can begin to do this is by utilising Arendt's insights on the nature of political action, which can also enable the re-subjectification of the refugee – which Foucault's work reveals that we need but cannot itself provide – from the humanitarian victim to be acted *upon*, of the refugee regime, to the political actor to be engaged *with*. Utilising Arendt's work can, thus, help us to recast the "durability" of solutions we may seek in a way that more closely addresses problems for refugees rather than the problem the refugee poses for the state.

## **Outline of the study**

This thesis unpacks, or critically examines, "the refugee problem" in the hope that reconceptualising both the "refugee" and the "problem" will enable a rethinking of the "solutions" which have, thus far, proven unable to address the problems that being a refugee poses for refugees. By revealing how both the "refugee" and "refugee problem" are the products of the particular configuration of power-knowledge relations which form the foundation of modern political rationality, upon which the international state system is built and operates (and within which scholars and practitioners seek to know and/or to manage populations on the move), this thesis makes a historically-grounded theoretical contribution to a growing body of scholarship which seeks to challenge the abjection and powerlessness into which refugees and irregular migrants are cast.

This study is divided into two parts. The first three chapters will unpack "the refugee problem" from a historical perspective, revealing its contingent nature, the socio-political conditions and rationality (power-knowledge relations) upon which it rests, and the ways in which the "refugee" is created and continually re-inscribed as a particular kind of subject by

and in this conceptualisation. The final two chapters will seek to reframe what we understand the “refugee problem” to be, shifting the focus from the problems that refugees pose for the state and international system to the problems that worldlessness and superfluity cause for the refugee, and to use this reframing of the problem to conceptualise solutions which seek to address the problems that refugees face, rather than the problems that refugees pose.

Chapter One examines the practices and practicalities of exile in four historic periods and places which have caught the attention of refugee studies scholars as paradigmatic examples of the timeless nature of the refugee and refugee problem: classical Greece, Republican Rome, the patristic period of early Christianity, and the formative years of Islam. I dissect the claims made by these scholars who have attempted to proffer evidence for the first of the truisms highlighted above, and problematise their conclusions by digging further beneath the surface of these societies to reveal what I argue are more valuable differences in the experience and formalities of exile than the surface level similarities of the simple occurrence of displacement and existence of sanctuary practices. I discuss the limitations facing such an investigation in the scarcity of both primary and secondary source material, but posit that an overview, while limited, can still offer insights and questions that can serve as useful foundations for the study moving forward.

Chapter Two will fast forward in time, so to speak, to the first half of the twentieth century to examine the formative years of the refugee regime, addressing the second of the truisms highlighted above. I will chart the development of the “refugee”, “refugee problem” and the “solutions” to it by examining primary source material from the League of Nations and first years of the United Nations, up until 1951. It is my contention that these documents are revelatory of, and themselves form an integral part of, a discourse which developed over the period in question which governs how the refugee is characterised (and not simply in a legal sense), how the refugee problem is understood, and what came to be seen as the appropriate and acceptable solutions – conceptions that remain at the heart of the international refugee regime today, despite certain developments in the intervening six decades. A similar enterprise has been undertaken by Nevzat Soguk (1999). While the foreigner/refugee and practices of statecraft are, he argues, two sides of the same coin, by focusing on the idea of statecraft, Soguk places the emphasis of his investigation more on the state side of the coin. My treatment of the source material focuses more on the refugee side, to move beyond the image of the “refugee” as “lack” (lacking the status of citizenship) to reveal the less formal aspects of the refugee identity, or subjectivity, constructed by the discourse, and how this influences the “solutions” sought, and who – or perhaps more accurately, what – we understand a refugee to be.

Chapter Three utilises Foucault's work to explore why the "problem" revealed in Chapter Two emerges when it did, how it has become possible to "know" anything about this "problem", and what the consequences are of this will to knowledge. The chapter thus also offers a tentative explanation for the apparent absence of a "refugee problem" in the periods discussed in Chapter One, despite the existence of displacement and persecution. I employ Foucault's analysis of the emergence of modern political rationality from the sixteenth century, the bodies of knowledge upon which this process relied, and the types of subjects it created to argue that the "refugee" is a distinctly modern subject borne of the marriage of the process of assigning specific groups of people to specific territories, *and* of the emergence of a political rationality which takes the management of population as its *raison d'être*, such that migrants of all types become anomalies to be managed. The drive to more accurately "know" the causes and consequences of migration results in the emergence of the refugee as a specific category of person, differentiated not only from the "norm" of the territorially-bound citizen but also from other categories of migrants. This analysis also demonstrates that the refugee regime itself is a political technology intimately bound up with the power and knowledge structures that characterise modern society. The political economy of truth according to which it functions depends upon, entrenches, and continually reproduces the refugee as a voiceless, apolitical victim, and denies to her both legitimate choice and agency. The chapter concludes by highlighting the potential of Foucault's understanding of the historically-contingent, rather than necessary, formation of different subjectivities for the possibility of constructing subjectivity in different and potentially less constraining ways, but posits that, because of the turn away from the political to within the self that Foucault's work takes, this potential is best taken up by utilising Hannah Arendt's work.

Chapter Four shifts the focus/understanding of the refugee problem and the search for solutions from the problems refugees pose to states, to the problems faced by refugees. Arendt's well-known analysis of the structural causes of the refugee problem is revisited within the context of her philosophical and political reflections on the "world" and "world alienation" to bring to light what makes this structural problem such a personal problem for those produced by it, positing that this is best understood, in Arendtian terms, as "worldlessness" and "superfluity." Further, I utilise these reflections to reveal why the three durable solutions, focused as they are on formal remedies to structural problems, are insufficient to address the problems that *being* a refugee presents for those ejected from the state-citizen-territory trinity. This analysis therefore turns to Arendt's famous conception of the right to have rights but argues that it must be understood, as few have done, within her broader philosophical reflections on the "world" and "being at home in the world with others", and thus as more than

simply citizenship within the nation-state. This close-reading of her work around the idea of “world” forms a theoretical base from which to begin to conceptualise “solutions” to this reframed understanding of the refugee problem – solutions which place the experiences of refugees and their potential as political agents at the centre.

Chapter Five builds on Arendt’s insight that to become displaced is to lose one’s place in the world, and that this refers to the existential level of lived experience and our sense of belonging to a particular community, to examine the potential of refugee and asylum seeker protest, and the UK City of Sanctuary movement, as ways in which to address this problem. Analysing refugee protest as instances of performative rights claiming not only reveals the refugee as a political actor but also begins the work of building new “worlds” to which to belong with others, through the mutual recognition of rights between those engaged in the protests. Rather than focusing solely on the formal status of rights holder/duty bearer, an Arendtian interpretation of refugee protest adds a consideration of world building as an *effect* of performing rights. But, it will be argued, due to the dynamic nature of power relations and efforts by the state to reclaim the political ground from the refugee, these actions stand in need of greater support if they are to mount an effective challenge to their exclusion. City of Sanctuary is therefore presented as one such avenue of support. An examination of its activities, the role that refugees and asylum seekers play within it, and its focus on re-fashioning the city as a place of belonging for all those resident within it, reveals the potential the movement possesses to alter the horizons of practical engagement of citizens so as to enable them, and perhaps prompt them, to act in solidarity with those claiming rights and inclusion, and thus take an important step toward transfiguring, or modifying, the games of truth and power in which refugees and others find themselves governed. The chapter concludes with a discussion of the “durability” of such “solutions”, and argues that while they may not offer the “permanence” that the refugee regime’s durable solutions purport to offer, the continued maintenance they require actually renders them more faithful to the kind of politics, belonging, and inclusion, that lie at the heart of Arendt’s call for a right to have rights.

The thesis concludes by summarising the key arguments made, and assessing their implications and the questions and challenges they give rise to. Potential areas for future research are outlined, and the wider implications for the study of forced/irregular migration, rights discourse, and political action of citizens and non-citizens presented by the choices I made in designing and carrying out this study are sketched.

# CHAPTER ONE

## REFUGEES IN THE ANCIENT WORLD

### Introduction

This chapter will examine the practice and practicalities of exile in four historic periods and places: classical Greece, Republican Rome and the early Empire, the Patristic period of Christianity, and the formative years of Islam, covering a period of roughly 1,000 years, in order to address the first of the historical truisms about refugees which have served as substitutes for historical investigation into the realities of past migration and displacement. While the “timeless nature” of the refugee tends to be implied (Agha, 2008; Grahl-Madsen, 1966; Gray, 2015; Heather, 2015; UNHCR)<sup>1</sup> more often than it is explicitly stated (Feller, 2006; Gorman 1992, 1993, 1994; Smyser, 1985)<sup>2</sup> and more focus is placed by the majority of refugee studies scholars on the twentieth and twenty-first centuries, the claim itself is worthy of critique, as this critique can provide us with important insights into the particular nature of the “refugee problem” today.

Little historical evidence tends to be offered for the existence of the refugee throughout human history, and on the rare occasions when it is forthcoming (occasions which will form the focus of this chapter) the perceived *similarities* of the past – the occurrence of displacement, (religious) persecution, and the existence of asylum – are considered the most profitable insights to illuminate our present conditions, with any differences minimised or brushed aside. In what follows, I contend that the differences revealed by probing beneath these surface-level similarities are of greater value for understanding the refugee problem today. Specifically, the differences indicate that while it may indeed be true that persecution and displacement are constant features of human communal life, the specific character and consequences of

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<sup>1</sup> An old reference, Atle Grahl-Madsen is considered by many international legal scholars to be the father of international refugee law, and his works are still central to scholarship on this area. Peter Heather and Benjamin Gray were both invited by the Refugee Studies Centre in Oxford to deliver seminars on *The History of Refuge*, on the subject of “Refugees and the Roman Empire” (Heather) and “Exile, refuge and the Greek Polis” (Gray). Podcasts available at: <http://www.rsc.ox.ac.uk/news/the-history-of-refuge-public-seminar-series-hilary-term-2015> (last accessed 22 July 2015). On UNHCR’s homepage, under the heading “Who We Help – Refugees” it is stated: “the practice of granting asylum to people fleeing persecution in foreign lands is one of the earliest hallmarks of civilization. References to it have been found in texts written 3,500 years ago.”

<sup>2</sup> Interestingly, both Feller and Snyder, at the times they made this claim, were both working with UNHCR – Feller as Assistant High Commissioner for Protection, and Smyser as UN Deputy High Commissioner for Refugees.

displacement in any given historical period emerges through the distinctive socio-political conditions of that period. If this is the case, then, it would be inaccurate and perhaps unhelpful to posit such displacements and displaced as the same phenomenon and subjects appearing as constants within a universal history, and require us, instead, to focus our attention on the centrality of the structural conditions producing displacement, and governing responses to it,<sup>3</sup> rather than insulating them from responsibility by focusing on the supposedly enduring nature of human suffering when forced to flee one's home. The purpose of this chapter is not to give a comprehensive overview of the history of human migration, nor is it to present an authoritative picture of the realities of migration in those places and periods to be addressed. In fact, this chapter will raise more questions than it can itself answer, but these questions will provide a lens through which to view, or a primer upon which to build, the following two chapters as we re-engage with history and begin to unpack who the refugee figure is, how she came to be, and what exactly the "refugee problem" that we seek to solve is.

The periods and places that form the focus of this chapter are those that have been isolated by other refugee studies scholars as being particularly useful for understanding the enduring nature of human suffering caused by exile, the ever-present realities of persecution, and highlighting the "perennial" questions and issues of politics and humanitarianism that we still share with our political ancestors, despite the passing of millennia. Not only do the roots of the modern state system and our modern conceptions of citizenship have their origins in the classical Greek *polis* and the Roman Republic and Empire, but the very word "asylum" is derived from the Greek word and practice of *asylon*, rendering this period a rich resource for understanding the challenges we face today with regard to interdependence, sovereignty, citizenship and the treatment of aliens (Gorman, 1992: 5). Of all the displaced people in human history it is arguably those persecuted for religious reasons who would have the least trouble fulfilling the requirements of Article 1 of the Refugee Convention, and persecution of religious groups remains with us today. The writings on exile of the early Church fathers of the Patristic period also represent models for human rights activists and sanctuary workers today (Gorman, 1993: 54) in their efforts on behalf of those "persecuted for righteousness' sake" (Matthew 5:10). Refugees, for Agha, are central figures in Islam and pose special responsibilities for individual Muslims and their governments, since the religion was itself founded by refugees fleeing religious persecution. Understanding how the Prophet addressed this issue and founded the new community can and should offer moral and political guidance to policy-makers in the Muslim world today (Agha, 2008). In deciding to focus on these select

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<sup>3</sup> As the this study progresses, and particularly in Chapter Three, I will outline the importance of the more fundamental structures of power and knowledge upon which the structure of the state and international state system is built to the development of the "refugee problem", but for now the focus will be on the more visible of these structures – the state and global system.

episodes I am aware of the wealth of other experiences and periods that remain obscured, and the selection of these is not a comment on the potential utility of any other period, place, or group to the project undertaken in the following pages and chapters, but is rather the reality of such limited space. The upheavals of the medieval world with the fall of the Roman Empire would indeed have provided interesting examples of displacement, as would the nature of migration under the system of feudal lords and vassals of Europe until the development of the absolute monarchies of the fifteenth and sixteenth centuries. The experiences of the Jews, for many the paradigmatic example of an exiled and displaced people, and, comparatively more recently, the Roma, could also offer insights into the relationship between displacements and the socio-political conditions within which they occur. But for reasons of space, in order to control the breadth of the investigation and analysis undertaken, and because they have been the specific subject of scholarship which claims that the refugee is a constant figure of human history, I will focus on the four periods highlighted above.

When endeavouring to engage in a historical inquiry in a field which has largely shunned historical analysis, one is necessarily limited in the resources available in this same field. There are only a handful of works within refugee studies which address the pre-nineteenth and twentieth century history of displacement, refugees, and the refugee problem, and so it is necessary to search for resources in other fields. However, while I have drawn on works of ancient history, classics and architecture, biblical studies, Roman legal history, and Middle Eastern history, in carrying out the research for this chapter I have found myself confronted with the situation Marfleet highlighted: that refugees and exile have not been a significant concern of historians (either of modern or ancient history), and so the sources available to me have been limited, and thus limiting to my analysis. Nevertheless, an overview is still possible, and will still bear fruit in the form of important questions and insights which can orient the study as it moves forward. For each of the periods/places under discussion I shall begin by outlining the examples and evidence that each scholar has offered, and will then follow with an analysis of the claims made and evidence provided. The chapter will then conclude with an outline of a series of issues and questions which I feel have been raised by these discussions, and which warrant further investigation within a historical framework.

## **Exile in Greece and Rome**

- i. Citizenship and exile

The work of Robert Gorman “harkens to the ancients” in the belief that we can better understand the challenges we face today with regard to the treatment of aliens within an interdependent world if we better understand how our political ancestors addressed this same problem. While there are differences between the modern conception of citizenship and the state, and the conceptions of the Greeks and Romans, there are important similarities, and they highlight the “perennial questions” that have endured down the centuries, and what we still share with our political forbears (Gorman, 1992: 5). It is the links between these questions/issues and the existence of exiles throughout the ancient world that hold the key, in Gorman’s eyes, for our understanding of the refugee as a timeless figure, and the enduring nature of human suffering experienced by those in exile (Gorman, 1994).

Greek citizenship was a status reserved for the few on the basis of age, gender, and blood ties, and was intimately bound up with the government of the city (Gorman, 1992: 6-10). While there were hundreds of Greek city states, or *poleis*, we have the most information about Athens, and many of Gorman’s claims about Greek citizenship and government are about the situation prevailing at Athens. Greek citizenship was a jealously guarded status, but many cities had resident alien populations. The degree of hospitality and openness that a traveller or foreigner might expect from another city varied – with Sparta generally recognised to be the least hospitable, and Athens the most open. Importantly, however, in no city did foreigners enjoy full citizenship (Gorman, 1992: 7). In such a system, in which the citizen was so intimately tied to the life of the city, exile, Gorman claims, was “akin to excommunication.” Practically speaking, exile was used as a punishment for violations of law, and was considered a “potentially useful tool of the criminal justice system and as a means of preserving the integrity of the state from violent upheaval” (Gorman, 1992: 15). Some of the most recognisable names from ancient Greek history were exiles, including Themistocles, Thucydides, Cimon, Alcibiades, and Demosthenes. Exile could be temporary or permanent but was prevalent. The principle of asylum – the practice of granting protection to anyone who sought it in a religious sanctuary – was widely accepted throughout the Greek world, but its application varied with time. The Greeks believed that a refusal to honour the obligation to protect so-called “supplicants” could bring down the wrath of the gods upon the city, and so offenders of the laws of asylum would face legal punishment (Gorman, 1992: 16). Over time, however, political expediency took over, and the principle of providing asylum to exiles waned with the desire to improve inter-state relations (Gorman, 1992: 17).

The Roman conception of citizenship was less exclusivist and duty-oriented than its Greek counterpart. For the Roman, politics was a part-time vocation, and a citizen’s two obligations to Rome were to pay his taxes and to serve in the army. In return, the state had the duty to protect

the rights of its citizens, with these rights varying over time and with social class (Gorman, 1992: 13). The most precious of a Roman's rights was his freedom, and its loss meant the loss of his citizenship. A Roman's other rights were codified in an extensive body of law, the *jus civitas*, with the laws concerning Rome's large resident alien population codified in the *jus gentes* (Gorman, 1992: 7). As Rome's sphere of influence and control expanded and it became an empire, Roman law evolved to handle new imperial requirements, and Roman citizenship was gradually expanded and, Gorman argues, diluted (1992: 14). The further removed from the city its citizens became, the less emphasis was placed on political participation, and citizenship became a matter of the possession of rights, with fewer corresponding duties, than in Greece. Exile from Rome could be a result of a criminal offense or a political one, and the exile could flee voluntarily or on official order. The practice of asylum was less developed in Rome than in Greece, as only a few temples offered recognised sanctuary, but offenders against sanctuary faced severe punishments. Gorman claims, however, that a tendency grew in Rome for asylum to be abused by its own citizens or by foreign criminals fleeing punishment, and this led to restrictions being placed on the practice of asylum and the emergence of extradition procedures (1992: 17). As the institution of extradition evolved, asylum rights, as in Greece, were gradually modified to the detriment of political offenders.

Exile not only played a role in the political and legal life of the city, but was also a prevalent theme in the literature of both Greece and Rome. According to Gorman, this prevalence was due not only to the fact that exile was a worldly political reality, but also because "the psychological pathos surrounding the condition presented attractive subject matter for the poet or playwright" (Gorman, 1994: 403). Cut-off from home, the exile was forced to survive without rights as a foreigner beyond the boundaries of his city. He had to rely on the mercy or hospitable instincts of the rulers of others cities, and there was the ever-present danger that he may be tracked down by enemies and killed (Gorman, 1994: 411). These feelings of fear and uncertainty are evident in the plays of Sophocles and Euripides, whose exiles often express a sense of insecurity, and a realisation that their safety is tied entirely to the good will or piety of potential patrons. For the ancient playwrights, the outcast, whether exiled for a crime committed, or a slight offered to the emperor or city, is forced to live a "rootless" existence, haunted by dreams and memories of home. The fate of the exile is to be "torn between two worlds" (Gorman, 1994: 412), longing to return home but compelled to flee, alienated both from where he came from and where he finds himself. The Chorus from Euripides' *Medea* give the following lament:

O country and home,  
Never, may I be without you,

Living a hopeless life,  
Hard to pass through and painful,  
Most pitiable of all. [...]  
There is no sorrow above  
The loss of a native land.  
(quoted in Gorman, 1994: 402)

Gorman highlights these aspects of being in exile, in addition to the fact that the granting of asylum came to take a back seat to political expediency, in order to highlight similarities with the position of refugees today. Our ancestors struggled with balancing the requirements of humanitarianism with political expediency just as we do, with the suffering of the refugee, already acute from being far from home, exacerbated as a result. In Gorman's view, "very little seems to have changed in human affairs over the past two millennia" (1994: 423). The ancient world was marked by refugee movements, as ours is today, and, as our ancestors did before us, we debate the question of asylum while "literature plumbs the psychological and motivational waters of exile" (Gorman, 1994: 423). We ignore the ancient roots of our modern day issues, he cautions, at our peril.

ii. A closer look at exile in Greece and Rome

Michael Dillon highlights in his essay "The Scandal of the Refugee" that mass expulsion and forceful displacement of peoples are not modern phenomena, and nor are exile and diaspora. However, accepting that "other times and other forms of life have treated strangers badly, or manufactured strangers of themselves, does not deny that modern estrangement happens in its own modern way and for its own modern reasons" (Dillon, 1999: 104). The logic underlying Gorman's examination of exile in Greece and Rome is that there is an essential sameness in the human dimension of exile. However, a closer look at the phenomenon of exile in the ancient world reveals that the mere occurrence of expulsion and displacement does not render these ancient displaced the same as today's refugee. While it may be true that to be torn from the fabric of one's familiar life will cause suffering to those who experience it, I think we should guard against relying upon, or potentially overstating,<sup>4</sup> this similarity and discounting by default the important societal and structural differences at play, which perhaps disclose

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<sup>4</sup> The evidence Gorman offers for the "enduring nature of human suffering" is largely derived from the poetry and tragic plays of the period. The nature of the source material presents interesting questions on how to interpret and understand the portrayal of longing for the city of one's birth, which makes drawing direct parallels with refugee experience today less straightforward than it may at first appear. The ideological role of tragedies, particularly those performed at the Festival of Dionysus, has been the subject of intense debate among scholars of Greek literature, as has the genre of "exilic writing" at Rome – including the role of letter writing on the part of exiles to developing a "myth of exile" to serve their own political or commercial purposes. For more on these see, for example, Claasen, 1999; Gaertner, 2007; Rabinowitz, 2008.

something fundamental about the particular character of displacements old and new. That both the modern and ancient worlds are organised on the basis of complex practices of inclusion and exclusion does not render those practices the same (Dillon, 1999: 109), and it is these differences, rather than similarities, that hold the key to our historical understanding of displacement. Gorman's own work, in fact, mentions some important features of exile in the Greek and Roman worlds which are worthy of examination – but which Gorman does not himself provide. Three main features are revealed by a closer look at the institution of exile: it is the result of a legal process and thus bound by specific rules; it could be, and often was, a time-limited practice; and the exile appears to have had relative ease finding a new domicile. These points are also linked to wider issues of belonging in the Greek and Roman worlds, to which I shall return later, as well as providing more information about the institution of asylum and the sanctuary.

*a. Exile as a rule-governed, legal practice*

Classicist Sara Forsdyke is one of the few scholars in her field to have examined in any detail the institution of exile in classical Greece – a mammoth task in itself due to the scarcity of discussion of exile in the extant sources. She develops a thesis called the “aristocratic politics of exile” to describe the political situation in Greece in the archaic (i.e. pre-classical/pre-democratic) period. By the seventh century BCE the Greek *poleis* were ruled by coalitions of aristocrats, and status depended on majority control of land in the community, with the non-aristocratic population attending occasional assembly meetings. Expulsion of groups of aristocrats from the *polis* by rival groups became the “best” way of eliminating the influence and position of political and economic rivals (Forsdyke, 2000: 234-5). However, this led to massive and semi-permanent instability, since the exile imposed was not often accepted by those who were banished, and they would call on aristocratic allies still in the *polis* to aid them in forcefully returning. If successful, the returning faction would drive its rivals from the community, and the cycle would begin again (Forsdyke, 2000: 235). In 508/7 BCE, Cleisthenes came to power at Athens during one such episode, but he is credited with the institutionalisation of *popular* power at Athens. A significant part of this process, Forsdyke claims, was the creation of a new mechanism, *ostracism*, by which the Athenian demos was given the means to exile a citizen by democratic vote (2000: 253). This process could, but often did not, take place once each year, with a vote being held to determine, in the first instance, whether an ostracism would be held, and a second vote held in which each citizen was entitled to submit the name of his preferred candidate for ostracism. If a quorum of 6,000 citizens voted, the individual receiving the most votes was ostracised (Gray, 2011: 570). The individual exiled

by the ostracism vote was not regarded as a criminal, and he could return to the city after ten years, and his property, rights, and citizenship remained intact for the entirety of his exile.

Beyond the institution of ostracism, exile took on other forms in classical Greece. There was a distinction operative in Greek law between “outlawry” and “exile”, with each being imposed as punishment for different, but severe, crimes – for example, ruling as a tyrant or conspiring with tyrants, in the case of outlawry, and corruption, unintentional homicide of a citizen, and intentional homicide of a metic (resident non-citizen) or slave, in the case of exile (Gray, 2011: 569). A sentenced outlaw could be killed by any member of the community with impunity whether he remained in the city or not, rendering this arguably the most dangerous sentence short of a formal death sentence, but an *exile* was safe from harm once outside the city (Gray, 2011: 569). Thucydides and Cimon, given by Gorman as examples of famous Greek exiles, were both in fact ostracised and not exiled. The shift evident in the sources from exiling groups *en masse*, characteristic of the aristocratic politics of exile of the archaic period, to the exile or ostracism of individuals for specific offenses of the classical period, was, Forsdyke explains, an important one for Greeks of the classical period and their understanding of the legality and legitimacy of expulsion. The expulsion of large groups was considered typical of the arbitrary behaviour of tyrants and oligarchs in the maintenance of power. The banishment of individuals by judicial sentence, on the other hand, was considered characteristic of democratic regimes that followed the rule of law (Forsdyke, 2005: 11).

Roman historian Gordon Kelly develops a theory of Roman exile similar to that of Forsdyke above. Kelly faced the same problems of availability of primary documents addressing exile in Rome, but he hypothesises that the practice of exile developed as a “safety valve” to prevent public disputes among elites turning into armed conflict (Kelly, 2006: 13). Only exiled men of senatorial and equestrian status are mentioned in the extant sources – which in and of itself may prove significant, but we cannot know whether sources once existed that did discuss whether or not exile was an ordeal faced by the common man or by the masses (Kelly, 2006: 2). When charged with a crime in Republican Rome, elite Romans could either remain in Rome and face possible conviction and punishment – which could include a death penalty – or go into voluntary exile and avoid legal sentence (Kelly, 2006: 1). However, this flight had to happen at a certain point in the judicial process in order to be considered legitimate. According to Polybius, from whom we have the earliest description of voluntary exile, the accused could leave at any time before the last tribal votes had been cast to convict, but if the trial was before a jury court then the accused could wait until after conviction before deciding on flight (Kelly, 2006: 18). According to Bauman, the institution of voluntary exile began as a convention developed in response to a desire on the part both of legislators and the

public to reduce the incidence of death sentences, and was only codified into criminal law in the first century BCE (1996: 6). When the accused chose voluntary exile the *concilium plebis* would generally then pass a decree of *acquae et ignis interdictio*, prohibiting the fugitive from returning to Rome. Without the obstacle of this decree, an exile who had fled prior to official condemnation could, theoretically, return to Rome after the legal issues of his trial had faded from memory (Kelly, 2006: 27).

As in Greece, there was more than one kind of exile at Rome. *Relegatio*, or “relegation”, allowed for the expulsion of a citizen from Rome by magisterial decree. All examples of relegation in the Republican period, Kelly claims, were accomplished by magistrates with *imperium* – a specific type of power held only by select magistrates – and lesser magistrates probably did not possess this power (2006, 65). What we see here is a legal distinction of who possesses the power to approve different kinds of exile at Rome: the plebeian tribunes in the case of *exilium*, and magistrates with *imperium* in the case of relegation. Relegation, as opposed to *exilium* did not appear to involve a decree of *acquae et ignis interdictio*, and so while the person relegated had to leave Rome, his property was not confiscated. An exile fleeing conviction was formally deprived of his property by Roman law, but in practice it was possible to circumvent this by liquidating his personal property prior to quitting Rome (Kelly, 2006: 137).

We can see from this brief examination that exile in Greece and Rome followed specific legal processes, and there is no indication in the source material, according to Forsdyke and Kelly, to indicate that these processes were considered illegitimate – morally or politically – by those exiled. Indeed, Gorman highlights the example of Ovid, a victim of relegation, who, while arguing with certain conditions of his exile, accepted the authority of Rome to relegate him (1994: 419).

#### *b. Exile as a time-limited practice*

The international refugee regime exists ostensibly to provide relief and safe haven to refugees until such time as it is deemed “safe” for the refugee to return home. Being a refugee can thus be seen as an open-ended state – it may take days, months, years, or even a life-time for the conditions from which she fled to change. Can the same be said of exile from Greece and Rome? If we look to the institution of ostracism, then the answer would be “No”. An individual sent away from the city as a result of the democratic vote of the populous was only banished for a period of ten years, after which he was welcomed back to the city with no loss of

status, rights, or property. Moreover, just as it was within the power of the demos to expel an individual, so too was it in their power to recall them at any point during their ten year absence.

Just as there was a chance that an ostracised Athenian may be recalled to Athens without having spent ten years in exile, so too at Rome did the practice of recall develop with regard to exile and relegation. In 120 BCE, P. Popillius Lænas became the first certain case we know of in which a man exiled from Rome was recalled (Kelly, 2006: 14). Gorman himself offers Seneca as an example of this time-limited practice of exile when he mentions that Seneca was banished to Sardinia in 41 CE, but spent just eight years in exile, being recalled in 49 CE (1994: 407). Such a return was accomplished by an official vote of the Roman people or plebeians in one of the voting assemblies. As the Republic declined and a Principate developed, the scope of recall from exile greatly increased, and took on a group dimension as both Pompey and Julius Caesar recognised the benefits to be gained by the political support of groups recalled from exile. This mechanism remained and was widely used until Julius Caesar established his dictatorship and began to curb the power of the people's assemblies, allowing the return of only select individuals on his orders (Kelly, 2006: 15). Nevertheless, this power of recall now residing in just one man, the families of those exiled had one person on whom to focus their efforts for a recall, which could, perhaps, make recall to Rome more likely. As regards relegation, particularly during the empire, it could take the form of a life sentence, but more often than not was inflicted only for a specific period of time (Kelly, 2006: 68).

### *c. Relative ease of relocation*

Our examination of exile so far has revealed that it was a rule-governed and time limited practice. We have also seen that in practice an exile faced one of two possible situations: he was either banished *to* a particular place, or merely *from* one particular place. When exiled or relegated from Rome, one was of course proscribed from Roman territory. For most of the Republican period this simply meant Rome and its environs, but after the Social War in the early first century BCE, all of mainland Italy became proscribed (Kelly, 2006: 70). One could, as Ovid was, be banished to a specific place (Gorman, 1994: 406). However dreary this specified place may be – as Ovid seemed to think of his destination – one was at least assured of having somewhere to go, and did not have to wander aimlessly in search of shelter. If there was no designated place of exile, however, an exile was free to choose where to live, and, according to Kelly, he seems able to have exercised quite a degree of choice. The extract from Polybius, which details the process of exile, states that exiles were safe in certain cities, namely Naples, Praeneste and Tibur (Bauman, 1996: 14). Remembering that exile in Rome did not come into existence by legislation but was an entirely *de facto* creation, the idea may have

grown out of treaties that Rome had established with federate allies – including the three cities named by Polybius. These “treaties on an equal footing”, the *foedus aequum*, provided for the mutual recognition and acquisition of citizenship, and it is likely that people began using these treaties as a means of escape from trial and conviction (Bauman, 1996: 14). Many Romans would go to these free cities outside of Roman jurisdiction, where one likely had family, friends, or business links. Another common choice was for them to return to provinces where they had once held their magistracies (and so once again already had networks in place to ease a transition) (Kelly, 2006: 69). If one was not too concerned with recall to Rome, then residing further afield was also possible and the cities of the Greek world were popular destinations. Wherever the exile was sent or chose to go, it also appears that they rarely travelled there alone. The exiled Roman was permitted to take slaves and free companions with him, and many Roman exiles went abroad with a retinue of companions (Kelly, 2006: 133). The immediate family would often remain behind so as not to prevent any children from having the chance to develop political careers, but the exile was far from the solitary figure painted by Gorman.

The prevalence throughout the Greek world of resident alien populations suggests that Greek exiles may have had a similar degree of choice when facing exile from their own *polis*. The most obvious difficulty may have been securing a citizen patron, as was certainly a requirement for becoming a resident alien at Athens (Gorman, 1992: 7), but the examples we have of exiles from classical Greece, like their Roman counterparts, appear to have been men of means and influence. This did not mean that it was an easy matter for an exiled Greek or Roman to obtain citizenship in a new city. But one did not need to be a citizen of a city in order to live there, and from the information available, ancient exiles faced fewer obstacles to finding safe-haven than Gorman leads us to believe.

#### *d. Asylum in Greece*<sup>5</sup>

Before moving on to situate these practices of exile within their social context, the institution of asylum merits attention. Sanctuaries in the Greek world served numerous functions, could be found within the walls of the city, outside the walls but within the near vicinity, or in more remote rural areas, and varied greatly in size. Much more appears to be known about the structure and general function of the sanctuaries themselves than the particular practices of protection that the sanctuaries offered (Sinn, 1993: 88). But refugee studies

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<sup>5</sup> Comparatively less is known about the institution of asylum in Rome during the earliest years of the foundation of the city and the earliest years of the Republic. When Rome expanded to incorporate the Greek world it adopted many of the Greek practices. Given the comparative dearth of information available for Rome I will focus on the Greek experience here. Marfleet offers a brief (two sentence) description of what is known about Roman practice (2011: 444).

scholars such as Marfleet (2011) and Gorman (1992) consider the offering of asylum, or protection from harm in the inviolable space of the sanctuary, as a common practice and a practice from which the institution of asylum today is derived. For some scholars of ancient Greek sanctuaries, however, asylum is not a suitable term for the sort of protection the sanctuaries offered (Sinn, 1993: 90; Schumacher, 1993: 68). The institution of asylum (*asylia*) in ancient Greece was a kind of compensation for the lack of a universal law code, and it guaranteed safe conduct for all those who, acting in the interest of their hometowns, crossed city-state boundaries and were therefore beyond the jurisdiction of their cities. The beneficiaries of *asylia*, then, were envoys and negotiators, but also artists and athletes who travelled round to games and festivals. The sanctuaries were involved with *asylia* only insofar as the agreements of safe-passage were displayed in them, granting them greater (i.e. divine) authority (Sinn, 1993: 90). The sanctuaries themselves were also protected by *asylia*, and were known as *asylon hieron*. The inviolability of the sanctuaries lent them well to becoming banks and trading centres as well as places of worship, as they were secure places to store wealth. If a fugitive entered a sanctuary he would thus automatically be protected by *asylia*, but since he could not remain in the sanctuary indefinitely, he would lose protection as soon as he stepped beyond the boundaries of the sanctuary again.

What Marfleet and Gorman appear to have in mind is actually the rite of *hiketeia* (supplication), whereby a person wishing to avail himself of the protection of a sanctuary sat down on the altar or at the image of a god, holding a certain symbol identifying himself as a suppliant. At this point he became a *hiketes/hiketis*, and the priest of the sanctuary became a legal advisor, who was now obliged to work with the suppliant's pursuers for a resolution of the dispute. All criminals, including convicted murderers, had the right to perform *hiketeia*, and becoming a *hiketes/is* did not provide protection from prosecution or punishment – the suppliant could not avoid paying for his crime. The connection between the practice of Greek exile and these practices of protection is, therefore, unclear. It would not appear that an ostracised, or a formally exiled, Greek would have needed *hiketeia*, not being a criminal in the first instance, and being safe from harm once outside the city in the second.

There are two other aspects of *asylia* that are worth mentioning. *Asylia* (inviolability) could also be accorded to a community. Effected by a treaty between two states, it assured the discontinuance between them of the right of reprisal – the right, in the case of a dispute, of a wronged party to seize property, citizens and metics of the offending state (Schumacher, 1993: 69). A number of documents have been preserved which speak of *asylia* between states and of coastal cities and the territory being proclaimed sacred and inviolable. Piracy was often the driving force behind these agreements. Schumacher cites the example of a treaty of reciprocal

*asylia* between two notorious pirate communities, the Cretans and the Aetolians, protecting certain of their own territories from the pillage of the other (1993: 69). But in these cases, *asylia* is primarily in the interest of the resident community, not of individuals or outsiders. In a similar vein, the larger, rural and more isolated sanctuaries appear, from archaeological excavations to have also served the purpose of secure retreats to which inhabitants of the city could escape during a plague outbreak, or during the war season (warfare in Greece was seasonal), or as a place to store valuable livestock and food supplies if the inhabitants of the city feared crop failure, or a siege. Xenophon, for example, reports that in times of danger the inhabitants of Perachora would retreat to their sanctuary at the cape (Sinn, 1993: 103). The existence of extensive sanctuary complexes indicates that the Greek city-states may have had the means available to protect their inhabitants during war, rather than them having to flee abroad in search of refuge.

### iii. A closer look at exile and belonging

Finding safe haven is one thing, but in a world with such restrictive citizenship practices, and where travel was often long and arduous, how could one “belong” elsewhere? Gorman sees the feelings of loss, longing for home, and feeling a stranger in unknown lands of the ancient exile enduring through the ages in refugees today. But to what extent can what it means to “belong” today and in the ancient world be said to be the same? The “national order of things” behind much scholarship in refugee studies understands an individual to belong to a particular physically bounded place – a state – by virtue of nationality. An individual can of course identify with other modes of belonging – religion, ethnicity, social group, and so on – but the legal reality of the international system assigns to each of us a primary identity as a member of a national group. The world of ancient Greece and Rome did not consist of nation-states, but city-states and empires, based not on nationality but on citizenship.

The picture which materialises from Gorman’s examination of exile is one in which belonging is focused on citizenship. Given the relationship in Athens between citizenship and government of the city, exile was akin to excommunication. The exile felt a stranger everywhere when banished from his native city, and was forced to try to belong in a foreign land – a land in which he could by definition not possibly belong. Greek society, however, was somewhat more complex than simply the division between citizens and non-citizens. Paul Cartledge (2002) examines the different dualities that ordered the ancient Greek world: Greeks|Barbarians, men|women, citizens|aliens, free|slave, and Gods|mortals. What is striking is the picture this paints of the inherently hierarchic nature of Greek society. The Greeks had no conception of “humanity”, in the sense that we understand it today. In the Greek understanding,

all of existence was naturally ordered in a hierarchy, and each group had their own specific place and role relative to others. Women, children, foreigners, and male non-citizens, while not enjoying the full range of rights as male citizens, certainly belonged to the city. What it meant to belong simply varied with status. Holding citizenship up as the standard of belonging, as Gorman certainly appears to do, given that citizens were the only ones to enjoy the full range of rights and privileges, is to misrepresent Greek society and their understanding of their place in the world. It is also, incidentally, to portray all city-states as similar to Athens. Gray highlights that in oligarchies, there was a division *within* the body of citizens, such that they had to satisfy certain property qualifications in order to fulfil some, or all, of the major functions of citizenship (2011: 567). Moreover, not all city-states had the same system of citizen participation in the government of the *polis*. At Athens, the holders of public office were drawn, by lot, from the whole body of citizens, but this was not a system employed by all or even a majority of the *poleis*. We thus need to be wary not only of generalising the Athenian experience to the whole of the Greek world, but also of projecting back onto earlier times our own understandings of what it means to belong. Women in twenty-first century Britain may look back at life for women in Athens and bemoan their lack of political participation, but that does not mean that Athenian women felt that way. They belonged in Greek society, but had a different role to play than men – and in some cases, namely religion, an extremely important role in the life of the city (Cartledge, 2002: 78-104). If we have such an understanding of the varying modes of belonging to the *polis* then it becomes less obvious that an exile could not feel welcome, at ease, or like he belonged anywhere other than the city of his birth. Indeed, the fact that the Greeks were fond of travel and the majority of cities had very large alien populations points to the fact that Greeks were more than able to carve out new places for themselves outside of “their own” *polis*.<sup>6</sup> Further, having the status of citizen did not automatically mean that one felt deeply attached to the *polis*. While Aristotle stated that citizenship meant, above all else, participation in the life of the city, not all citizens did take on this responsibility (Rhodes, 2009: 63-65). If one did not participate in the governance of the *polis*, and found oneself exiled and resident in another *polis*, lacking citizenship, then perhaps the feeling of loss of the native land would be minimised.

Citizenship at Rome was less exclusivist than its Greek counterpart, and being more a matter of rights and privileges than active participation, the Roman citizen could live a great distance from Rome and still enjoy his status as citizen. Being exiled did not automatically strip a Roman of his citizenship, although a decree of *acquae et ignis interdictio* did render his

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<sup>6</sup> Many *poleis* also had colonies in the Greek world. While the city-states would frequently clash, the relations between the hundreds of city-states was also one of trade, cultural and religious links, and mobile populations, rather than isolated, insular entities. For more on this see Purcell, 1990.

citizenship less useful. In these circumstances, if the exile did not concern himself much with the possibility of recall to Rome then he could take up citizenship of a free state and thereby forfeit his Roman citizenship. Remembering that Roman exiles, if free to choose their own residence, often chose states where they already had connections and interests, obtaining new citizenship does not appear to have been as difficult as for a Greek exile. Rome was certainly no stranger to hierarchy, and Roman citizenship was actually more hierarchic than the Greek, containing distinctions between aristocrats and plebeians, with different offices and responsibilities open to each (Rhodes, 2009: 67). As Rome's sphere of influence expanded, and citizenship extended to greater numbers of people, it became less central to citizenship and Roman identity to be physically present in Rome itself. In fact, Walter Scheidel's article on human mobility in Roman Italy details the Roman policy of transferring bodies of its citizens to newly conquered areas in order to ease its transition to the Roman way of life (Scheidel, 2004: 1). In order to "belong" to Rome, to be "a Roman", one did not need to be physically present in, or even visit, Rome. Even in the Greek world the opinion certainly existed that one did not have to be physically present in one's *polis* in order to belong to it, and one could still belong to the *polis* in exile and live elsewhere. Plutarch's *On Exile* is addressed to an exile from Sardis, and while we do not know the reason for the man's exile, this piece contains an interesting take on the relation of the individual to his state:

That you do not live in Sardis is nothing; neither do all Athenians live in Collytus, all Corinthians in Craneion, all Laconians in Pitanê. Are those Athenians foreigners and men without a country who removed from Melitê to the region of Diomeia [...] accepting this change of neighbours in a serene and joyful spirit, and remaining content with their condition?  
(Plutarch, *On Exile*: 533)

He goes on to state, tellingly, that, "for you, to whom one solitary spot is not appointed, but forbidden, the exclusion from one city is the freedom to choose from all" (Plutarch, *On Exile*, 533).

## **Persecution and Exile in the Patristic Period**

### **i. Religious persecution, exile, and human rights activism**

It is once again Robert Gorman who offers the experiences of persecution and exile of the fathers of the early Christian Church as an example of the "timeless nature of the subject we in refugee studies pursue" (Gorman, 1993: 40). He foregrounds the theme of religious persecution – a phenomenon which plays an important role in refugee movements today – as seen through

the writings of two of the fathers of the Christian church, Athanasius and Augustine. The “Patristic period” runs from circa 100 CE (the close of the New Testament writings) to 451 CE and the Council of Chalcedon. It was during this time that Christians faced a series of persecutions at the hand of the Roman Empire, ending only in 313 CE when Christianity became the official Imperial religion. However, while persecution at the hands of a state with a different religion ceased, sectarian strife developed, exacerbated by the death of Constantine and the division of the Empire between his three sons. It was in the context of the cycles of banishment of rival factions of bishops that Athanasius wrote his “Apology in Vindication of Flight.” Augustine’s *City of God* was written at the time of the disintegration of the Western Empire following the sack of Rome in 410 CE. The Patristic writers, for Gorman, shed light on the root cause of religious exile – persecution – and on the complex nature of refugee psychology while in flight (1993: 40).

In its earliest decades Christianity was seen as a Jewish sect, whose existence the Roman authorities tolerated, while seeing its suppression as an internal Jewish matter. Gorman claims that from 64 CE until 250 CE, Roman authorities carried out episodic imperial persecutions and tolerated more general social persecutions of Christians, as Christianity spread through the empire (1993: 41). The persecutions involved the destruction of churches, imprisonment and execution of professed believers, and banishment of leading church figures (bishops and theologians). Involuntary exile took two forms: banishment by government edict, or flight in the face of actual or potential persecution, with little doubt, according to Gorman, that both classes of exile would qualify as refugees under modern legal norms (1993: 41-2). Exile could, however, also take a voluntary form, unrelated to actual or threatened persecution. The Christian ascetics saw exile as a good to be embraced with enthusiasm. They considered it a high and pure calling to leave one’s domestic comforts and commune with God in the emptiness of the desert (Gorman, 1993: 42). Even though most Christians sought to practice their religion in their homes, with their families and communities, the very notion of voluntary exile underscored how little loyalty the Christian, at least in theory, should attach to a place (Gorman, 1993: 43). Gorman unfortunately devotes no more space to this phenomenon of voluntary exile, turning instead to Augustine and Athanasius.

Athanasius (c.296-373), a bishop, was banished three times by imperial edict, and on another two occasions he fled sectarian persecution. Written during his third exile, the “Apology” is a powerful argument in defence of the persecuted and a “clarion call to Christian endurance in faith” (Gorman, 1993: 49). In fleeing the persecution of the Arian sect he is able to tell of his persecutors’ evil-doing abroad to “awaken the conscience of the world”, in much the same way as organisations such as Amnesty International seek to do today (Gorman, 1993:

50). In addition to this “political” justification for going into exile, Athanasius offers a host of scriptural evidence that flight from persecution is acceptable, and even at times necessary for the persecuted Christian. The “enduring relevance” of his writings lies in the way in which it speaks to contemporary refugees, exhorting them to resist persecution; and he serves as a model for the Christian activist, sanctuary worker and human rights advocate. Religious persecution is, after all, still with us today, and therefore we can consult the works of the Church fathers with profit. Augustine (354-430) was Bishop of Hippo, in North Africa, but, unlike Athanasius, never suffered banishment or exile. By the time he wrote *City of God* Christianity was firmly established as the favoured religion throughout the Roman world. Augustine advanced two theses on the subject of exile: it was a matter-of-fact practice found in history, and the human condition itself is a form of exile. He understood exile as a historical method of punishment that mimics eternal damnation in an earthly fashion (Gorman, 1993: 51). When Adam and Eve ate from the Tree of Knowledge, in violation of God’s command, they were ejected from paradise and their “original sin” stained the whole of humanity, and as their children we follow in their footsteps. We thus live in a state of exile in the earthly City of Man, in which the frailty of human institutions is readily apparent (Gorman, 1993: 52). For Augustine, it makes no real difference whether one lived out one’s days “firmly and stably lodged on one’s native soil,” or whether one was forced to flee or was banished (Gorman, 1993: 53) – we are all exiles from the City of God, to which the faithful will return. In the meantime, we have a duty to preserve peace in our communities, and to follow in the footsteps of Jesus’ ministry of love and concern for others. The work of Augustine, then, lends support to contemporary Christian efforts to improve their own lot in life and that of those around them, and his work thus offers an enduring perspective on our contemporary concern with human rights, persecution, and exile (Gorman, 1993: 55).

ii. A closer look at persecution in the Patristic period

While taking no issue with the utility to contemporary Christians of the writings of early theologians for spiritual support in activities to improve the lot of refugees and the persecuted, the insights that these writings give into the “psychology of the refugee in flight” seem more questionable once one puts these writings in their socio-political and religious context. It is worth, therefore, examining the role of religion at Rome, and the religious persecutions prior to the triumph of Christianity, as these form the backdrop for the theological debates on martyrdom and exile which, Gorman recognises, had profound influence not only on the Church fathers, but also on the Christian community that found itself faced with the choice of fleeing from, or offering oneself up to, persecutors.

As the Empire grew it adopted by decree or by popular verdict a vast pantheon of gods – those of the Italian states such as Juno and Diana, Greek gods such as Apollo and Athena, and also Oriental deities the Great Mother and the worship of Mithra. Rome had bestowed the freedom of the city on all the gods of mankind but, for some reason, Christianity proved an exception (Workman, 1980: 29). To understand why, a distinction needs to be made between liberty of thought and liberty of worship – the former being complete, as far as the Romans were concerned, but the latter depending chiefly on political and local considerations (Workman, 1980: 30). The Romans have been described as opportunists in religio-political matters, welcoming all the deities of Rome’s subject nations, under certain restrictions. Religious toleration was essentially a local matter, if only because polytheism was essentially local – each god had its rights within certain areas (geographic and spiritual), but each god must also respect the rights of its neighbour. Religion was chiefly a matter of patriotism and this involved showing due honour to the national gods, making belief or unbelief – the correspondence between act and conviction – irrelevant to the Roman; the gods could defend themselves on the matter of belief (Workman, 1980: 36). The religion of the empire was thus built upon the foundation of liberty for local cults, so that a stranger might carry his worship and ritual with him when he moved to another part of the empire, but he must be willing to live and let live, and to abstain, if needs be, from proselytising zeal (Workman, 1980: 39). In religious matters, then, members of the empire could hold whatever personal beliefs they chose, and their religious practices would be respected so long as they paid due homage to the national gods as well.

So why, then, were the Christians persecuted? Throughout the period of the persecutions (c.64 CE-313 CE) there were several local persecutions but also long periods of time when the Christians enjoyed peace throughout the empire, and their churches were allowed to acquire property (de Ste. Croix, 1963: 7). Since the overwhelming majority of the evidence for the persecutions comes from Christian sources more interested in martyrdom, we do not know much about the legal realities of the various periods of persecution. However, it is possible to state that from c.112 CE onward, the general rule regarding the trial of Christians seemed to be that they were not to be sought out, but only tried if accused in due form (i.e. not anonymously), and the accused would be spared if he denied being a Christian and provided proof by sacrificing to the gods (de Ste. Croix, 1963: 9-10). That this became the test of whether one was a Christian holds the key for many scholars to the reason why Christians were persecuted. Given the polytheism of the empire, it made no difference to the Roman whether one worshipped one god or many, and it was thus of no concern to a Roman governor what creed a Christian happened personally to believe in, provided that he would take his part as a citizen in discharging the dues of the national gods, or at least allow others to do so without his

interference (Workman, 1980: 37), and sacrifice was the ritual by which this was done. In contrast to the Christian monotheists, the Jews, while also refusing to sacrifice to the emperor or his gods, were quite willing to sacrifice to their own god for the well-being of the emperor (de Ste. Croix, 1963: 25). The special place of sacrifice in the Roman civic religion is highlighted by the “Decree of Decius”, issued in 249 CE, that is also widely believed to have sparked the first empire-wide persecution of the Christians (Rives, 1999: 135). The Decree required all inhabitants of the empire to sacrifice to the gods, and this is believed to be the first time that such a decree was issued. To the Christian at the time it is understandable that the order to sacrifice was tantamount to an order to apostatise, and also understandable that they interpreted the pressure put upon them to comply as a persecution, but as a rule the persecution did not affect the average member of the church since many did indeed perform the sacrifice and repent afterwards (Rives, 1999: 135). A significant enough number of ordinary Christians performed these sacrifices to spark a debate among the clergy over what to do with such “apostates” (Gorman, 1993: 41-2). The punishment for refusing to perform the sacrifice fell hardest on the higher clergy and the “die-hards”, for want of a better word (Rives, 1999: 142). But would Gorman not be right, therefore, in his equation of these early Christian exiles with refugees fleeing religious persecution today? The actions and beliefs of those who did suffer punishment for their refusal to honour the Roman national gods paints a slightly more complicated picture.

### iii. A closer look at exile and martyrdom

In his article on exile in the Patristic period, Gorman highlighted the justifications for exile offered by Athanasius and Augustine. One of the key arguments of Athanasius in defence of flight is that when the time is right for one’s martyrdom for the faith, it will become apparent. Exile, in allowing the persecuted to voice the evil of the persecutor abroad, can be seen as an interim step toward eventual martyrdom. This view occupies a middle ground, of sorts, between the two dominant but opposing theological views on martyrdom and exile of his time, written during the experience of persecution prior to the Establishment of the Christian church. Studies of the persecutions and the deaths of Christian martyrs increasingly recognise that a great many Christians actively sought arrest and persecution, in solidarity with their executed leaders, to gain a public audience for their professions of faith and thus to proselytise, and for a chance to enter the kingdom of God, to which many believed martyrdom to be the key (see, for example, Bowerstock, 1995; Frend, 1965; and Salisbury, 2004). It seems to be the case that, in fact, “more people were martyred because they volunteered than because they were arrested” (Salisbury, 2004: 117). Salisbury highlights an incident in 185 CE when a large group of Christians approached the Proconsul of Asia demanding execution. The Proconsul, incidentally,

refused telling them that if they wanted to kill themselves they could find a cliff to jump from (2004: 117). So-called “voluntary martyrdom” was not only widespread, but also widely celebrated by the leaders of the Christian church as following in the footsteps of Jesus. Tertullian, perhaps the most influential of theologians in the second century, argued that God was the author of persecution, using it as a way to create His beloved martyrs (Salisbury, 2004: 118). Clement, another prominent theologian, took the opposite view and argued that a Christian has a duty to flee so as not to become complicit in persecution, especially not by willingly offering oneself up for death at the hands of the persecutor (Salisbury, 2004: 119). When persecutions broke out in 250 CE, and again in 303 CE, many Christians left cities seeking safety and spirituality in the desert. These “exiles” formed the beginnings of the ascetic movement, which grew in influence and importance as voluntary martyrdom as a practice waned. Athanasius’ “Apology” occupies a middle ground in that it counsels that eventual martyrdom should be willingly embraced, but not actively sought, and so exile is a way to avoid such voluntary martyrdom.

Augustine, we recall, saw the whole of earthly existence as an exile from God’s kingdom as punishment for original sin. We are, thus, all exiles in this world, doomed to wander in uncertainty until called to the heavenly City. This seems to have been the view shared by the Christian ascetics, who saw exile as a good to be embraced and an opportunity to focus all of one’s attention on God by eschewing affairs of the flesh. The Christian owes no loyalty to a place, but to God and the brotherhood of believers. Further, since the earth is God’s creation, one can be at “home” anywhere in it, so long as one communes with God. Ascetic practices became a mark of particularly devout Christians during the third century, and gained strength through the fourth when Christianity became the official religion of the empire. Jestic claims that the numbers of Christians exiling themselves to the desert to purify their soul and commune with God increased as the number of “superficial” conversions following the adoption of Christianity as the official religion increased – being a Christian was “no longer enough to mark oneself out as especially holy”, and asceticism became a surrogate for martyrdom (2004: 182) that had characterised Christian society during the height of the Roman persecutions.

What this brief discussion of the context of the Roman persecutions of the Christians which preceded the sectarian persecution during which Athanasius wrote, and the reactions of Christians to these persecutions reveal is that to belong to the world as a Christian in the first centuries after the death of Christ differs, perhaps quite fundamentally, from belonging to the modern world as a Christian. This difference does not simply lie in the lack of persecution in many areas of the world on the scale of that of the Roman Empire. It lies, rather, in what

appears to have been the sincere belief that to die for one's faith was the highest calling of a true Christian, and that, if one does not actively seek it, one should nevertheless embrace martyrdom when it comes. To exist in the earthly City of Man is to be exiled from God, and so it makes little difference where on this earth one lives or moves. It may even be that to live a truly Christian life one *must* remove oneself from all worldly pleasures, and live a solitary and rootless existence. When faced with the choice of renouncing their faith, to die for it, or to flee into exile many Christians did choose to martyr themselves or to flee, and this suggests that to many early Christians these arguments about their existence, purpose and place in the world carried significant weight. Even more so when we consider that in the earliest years of Christianity many Christians believed in and preached the doctrine that the world was soon coming to an end with the return of Jesus (Workman, 1980: 62), perhaps giving attachment to a physical place on earth even less importance. It is far from clear that this is the prevailing attitude among ordinary Christians today. If indeed it is not, then perhaps we should be more cautious before equating the "psychology of refugees today" with the psychology of these early Christian exiles.

## **Exile and Asylum in Islam**

### **i. The first (refugee) Muslims**

In 2008, Sharifah Nazneen Agha contributed an article to a special edition of *Refugee Survey Quarterly*, examining the historical events related to asylum for Muslim refugees in the formative years of Islam and its impact on the development of the first Muslim community at Medina. She argues that revealing the historical dimension of Islamic approaches to refugee protection would be an invaluable guide for present-day policy-makers in helping them to craft responses to refugee issues while respecting established Islamic principles and practices (2008: 30). While the article focuses on the religious basis for asylum practices, it is nevertheless framed as a historical piece and Agha does see the first Muslim society at Medina as being founded by refugees, clearly seeing some trans-historical element to the condition.

Persecution, asylum, and migration were central features in the advent of the Islamic faith. An event known as the *hijrah*, or "migration", in 622 CE saw the flight of the first Muslim refugees, *muhajirun*, from the threat of religious persecution at Mecca to the safety of Yathrib (now Medina), and is year zero of the Islamic calendar (Agha, 2008: 30). Prior to the *hijrah*, the converts to the new monotheist religion in Mecca faced persecution by the ruling Quraysh tribe, polytheists and controllers of Mecca's lucrative bazars and shrines. The Prophet

Mohammed advised a group of Muslims from Mecca to leave and seek protection from the Christian king Negus in Abyssinia. The Quraysh considered the fleeing Muslims to be fugitives from justice and appealed to the king for their extradition. In what Agha refers to as a striking example of the principle of *non-refoulement*, the king refused to hand over the Muslims (Agha, 2008: 34). In 621 CE Mohammed began negotiations with a group of twelve converts from Yathrib to secure the oasis city as a safe haven, and in 622 CE the secret treaty known as the Covenant of Aqaba was concluded. Yathrib at the time was a divided community and the non-Muslim community agreed to provide a safe haven for Mohammed and his followers if he agreed to act as arbiter to resolve the issues plaguing the fractious Arab tribes. With a pact secured on favourable terms, the Muslims fled from Mecca and reached the safety of Yathrib, thus ensuring their survival and the potential of the nascent religion to grow (Agha, 2008: 35).

In addition to the foundation of the religion by refugees, early Islamic practice also contains important insights into the practice and principles of asylum. The Quran commands the Muslim to flee his home if persecuted and unable to resist such persecution through struggle, admonishing those who do nothing to change their condition. “Surah al-Nisa” contains reassuring words for those who flee persecution and seek a place of safety: “He who forsakes his home in the cause of Allah, will find in the earth many a refuge, wide and spacious...” (quoted in Agha, 2008: 32). The achievement of Mohammed in securing safe haven at Medina serves also as an example to be followed in providing asylum to those who, under the command of God, flee from persecution. The refugee, for Agha, thus occupies a special status in Muslim history and tradition. Institutions which support their rights should therefore be carefully safe-guarded, and it is Agha’s hope that historical investigation into early Muslim asylum practices can provide contemporary Islamic governments with the tools to legitimise their positions by situating their policies within an Islamic framework.

To derive spiritual (or political) guidance from past experiences – particularly when the life of Mohammed is intended to serve as such a guide for spiritual and political action – is one thing, and certainly a potentially beneficial enterprise given the more developed nature of rules and laws governing hospitality and providing protection in Islamic law in comparison to refugee law (for more on this see Elmadmad, 2008). To equate, on the basis of these principles, groups of people or situations of displacement is, however, another. While not denying that the first Muslims fled the persecution of the Quraysh at Mecca, to what extent can this act on the part of these new converts be said, or implied, to be the same as the experience of refugees today, ejected from their state, with no right of entry into another, and considered a burden to be handled by the international community?

ii. Pre-Islamic Arabian Society

Robert Hoyland's recent book, *Arabia and the Arabs*, is the only book (to my knowledge) to address in detail the history of pre-Islamic Arabia. While hampered by restricted primary source material, he offers some important insights on the structure and traditions of the peoples of the Arabian peninsula prior to the coming of Islam. The geography of Arabia gave rise to different types of communities. The coastal areas saw the rise of towns and cities as trading hubs, in which certain tribes established permanent residence. The vaster desert areas were populated with nomadic and semi-nomadic tribes, such as the camel-herders of the inner desert (Hoyland, 2001: 116). Very little information on these non-sedentary groups is available, but it seems that the degree of their nomadism, and the areas within which they moved depended on whether they were, for example, seasonal agriculturalists, animal herders, or itinerant craftsmen. Some groups concentrated their movements along certain trade routes, while others travelled more widely between areas where their animals could graze (Hoyland, 2001: 89-91). The existence of these nomadic groups highlights an important question for those studying displacement in all ages: does the concept of displacement have any resonance within the context of a nomadic society? To what extent is the existence of a territorially-bound society always already implied in the concept of displacement? How might experience differ between displacement from a city or a state to which one "belongs" to displacement from a larger undefined area within which one has no fixed abode? These are questions which I cannot answer here. But the presence of nomadic, semi-nomadic, and sedentary communities indicates that the peoples of Arabia were not necessarily organised primarily in relation to, or considered themselves as "belonging" to, a specific territory.

The main organising unit of the communities of Arabia were tribes, which Hoyland defines as mutual aid groups tied together by a notion of kinship (2001: 113). Tribes, unlike city-states or empires, had no specialised institutions of law and order, and so a person's life, goods, and honour were protected by his relatives, who were obliged to assist him in times of hardship and to avenge or seek compensation for him should he be wronged, and failure to do this was considered the worst of crimes (Hoyland, 2001: 113). The make-up of tribal society is best conceptualised as a set of Russian dolls: the smallest units, such as households, are pieces of more inclusive units, such as lineages, which in turn make up larger groups of a confederation, and so on. Each level had its own specific responsibilities and competencies (Hoyland, 2001: 114). The most basic "operating unit" of the tribe was the independent local community, usually comprising less than a few hundred people, and the ties between these individuals were usually blood ties. Members might be concentrated in small villages, or one or a few encampments in the desert. Cohesion at the higher levels of the tribal structure might be based

on one or more of a range of ties such as the worship of a deity, loyalty to a king, and so on, but at these higher levels many of the members of the tribe will only be distantly related, or will only rarely have met each other, if they have met at all (Hoyland, 2001: 115). The principle social distinction in tribal society was between “full” members and “affiliated” members or dependants. These could be allies (*hulafa'*), protégés (*jiran*), individuals or groups escaping vengeance, impoverishment, or in need of support for some other reason, or slaves (*'abid*) who were usually prisoners of war. If already members of other tribes, these “affiliated” members could be incorporated fully into the host tribe, by marriage, payment, or some other ceremony, but most preferred to remain part of the tribe of their birth (Hoyland, 2001: 118).

Each tribe appears to have had a *Sunna* an established customary practice derived from, and validated by adherence to, tradition, and an *imam*, a kind of tribal “hero” whose actions enshrine and articulate the law – a figure whose example is one to be followed by other members down the generations (Hoyland, 2001: 122). Tribal law was thus customary and inherently conservative, and decision-making was achieved by consensus at community meetings of full members of the tribe (Hoyland, 2001: 123). Retribution seems to have been the operative mechanism of punishment for offences against a person or the community, but compensation payments were also a possibility. In the case of resolving disputes or disagreements within the tribe or between tribes, the services of an arbiter could be employed. These were individuals known for their integrity, trustworthiness, nobility and experience (Hoyland, 2001: 123). They lacked the means to enforce their judgments, but their virtue added weight to their decisions, and the principle of honour bound those involved to abide by them. If a person committed a crime within his own group, or his actions posed a threat to the safety or stability of the tribe, then they may decide to banish him from their presence and protection. Among the wealthier sedentary polities of Arabia – many of the (coastal) cities – more elaborate and institutionalised legal systems appear to have existed. These included fine payments for infractions, and the possibility to sue a person who caused one harm, loss or trauma. Banishment from the tribe was also a penalty in some areas, but it was often possible to regain favour by making an “expiatory offering” (Hoyland, 2001: 124-5).

Pre-Islamic Arabian society, then, consisted of sedentary, semi-nomadic, and nomadic tribes, tied together at the most local level by blood, but with these ties diluting as the constituent units get larger. Honour appears to operate as the binding principle in tribal relations, with a system of protection and hospitality allowing non-members the protection, comfort and company of different tribes. Returning to Agha’s account of the *hijrah* we can see many of these pre-Islamic principles and practices in operation which paved a potentially

smoother road for the *muhajirun* than that travelled by many refugees today, and which gave their displacement a potentially different character.

iii. Re-situating the *Hijrah*

The *hijrah* from Mecca to Yathrib was the result of a negotiation process between Mohammed and the leaders of the various quarrelling tribes established in the oasis town. Yathrib was home to the Arab tribes of the *Aws* and the *Khazraj*, who competed with each other for tribal dominance, and self-governing Jewish tribes who paid an annual tribute to the Arab tribes for security (Agha, 2008: 36). The Covenant of Aqaba offered Yathrib as a safe-haven *in exchange* for Mohammed fulfilling the role of arbiter, the use of which, as we saw above, was a common tactic for solving inter-tribal disputes, between the competing tribes. Not only, then, does it appear that the Muslim converts of Mecca had a pre-arranged safe haven to which to travel (a situation which the overwhelming majority of refugees today do not enjoy) but also that the “migration” appears from Agha’s picture as a *quid pro quo* arrangement, whereby safety is exchanged for, or bought by, arbitration of a dispute. The exchange of security for some other “commodity” is evident in the relationship between the Jews of Yathrib and the Arab tribes, and seems to follow tribal practice in Arabia in general. Mohammed fulfils his promise to act as arbiter and reach a consensus between the pagan Arab tribes and the Jewish tribes of Yathrib, once he reached safety, and he does so by creating a constitution for the city: the Constitution of Medina. The constitution established a distinct body politic – a nascent Islamic state – representative of the ethnic and religious demography of Medina, whereby each group agreed to be governed by the terms of the constitution. Its 52 sections detail the rules affecting relations between Muslims, between Muslims and pagan Arabs, and between both and the Jewish tribes (Agha, 2008: 39). Mohammed became the political leader of Medina in addition to being the spiritual leader of the Muslim community.

Whereas tribal relations tended to be governed by blood ties in the first instance, and then less distinct ties as the constituent units of the tribe got larger, the new community established at Medina was bound together by faith, whereby one’s blood relationships became irrelevant if one embraced the religion, and establishes a potentially more open and inclusive community structure. The operation of protection by which the new community functioned was similar to the system of the pagan tribes which had proven beneficial to them. In the pagan Arab tribes, protection could be granted by any individual member, and was not the sole purview of the leader of the community, but once such protection was offered all were bound by it for fear of bringing dishonour on the tribe. This way of providing protection makes sense in the context of nomadic and semi-nomadic societies, sometimes travelling vast distances with no fixed

territory, and thus with no particular place or person to which requests for protection could or should be directed. While the names of the individual converts to Islam with whom Mohammed negotiated the Covenant of Aqaba are known, the names and positions of the representatives of the pagan tribes of Yathrib with whom the arbitration agreement was made, do not appear to be. It is likely that they were considered leaders of their tribes, but the customs of the pagan Arab tribes did not make this a requirement. Islamic law as it developed out of the experiences and Constitution of Medina retains this ability of, and requirement on, the individual to grant protection to anyone seeking it, and the person seeking protection is not obliged to demonstrate a need for such protection (Elmadmad, 2008: 54). The same, sadly, cannot be said of the rules of the refugee regime today. Refugees may request protection from a *state*, but have no right to expect that it will be granted, and in order for asylum to be offered, the asylum seeker is required to offer proof that their particular situation renders them entitled to the protection being sought.

## **Conclusion**

The purpose of this chapter has been to examine in more detail those few concrete examples given of a commonly held, but rarely examined, opinion of the timeless nature of the refugee problem and refugee experience. The premise of the works examined is that our world, the reality of persecution, and the existence of people fleeing persecution and the suffering they feel have little changed over the intervening millennia, and we can thus mine profitably the ancient world for contemporary wisdom on the basis of ancient similarity. The historical task I have begun in this chapter, and will continue over the next two, also sees profit in mining the past, but where my enterprise differs from those discussed above is in its (Foucaultian) view that these episodes and practices of the past contain value not as ambassadors of historical continuity, but as bearers of difference. As Dillon has stated, different identity politics determine different things to be alien to them, and how this alien appears changes according to different times and philosophical systems (1998: 32). The fundamental contention of the historical half of this thesis is that there was no such thing as the “refugee” or “refugee problem” prior to the late nineteenth/early twentieth centuries, and thus that the refugee is not simply anyone throughout human history who has been “displaced” from their home. Rather, I contend that the refugee is a specific kind of subject created by a specific configuration of power-knowledge relationships, giving rise to a very particular kind of political rationality, which functions as the governing logic for the modern international system. What the admittedly brief examination of four different historical examples of displacement/exile above have shown is that the specific character and consequences of each practice of exile or displacement

experience is determined by the particular socio-political (including religious) structure of the society or world within which these displacements occurred. This suggests that there are *qualitative* as well as quantitative differences between the exiles of the ancient world and the refugees of the modern world. It does not appear to me, on the basis of this investigation, to be a coincidence that in none of the four periods or places examined, despite the apparent prevalence of exile and persecution, do the societies in question understand themselves as faced with a “refugee problem.” The following two chapters will examine in more detail why this might be.

# CHAPTER TWO

## REFUGEES, PROBLEMS AND SOLUTIONS: THE DEVELOPMENT OF THE REFUGEE REGIME, 1921-1951<sup>7</sup>

### Introduction

The previous chapter planted the seed of a historical sensibility about the refugee and her relations to the social, political and historical factors conditioning both her existence and predicaments. This chapter will fast forward in time, so to speak, to the twentieth century, often referred to as “the century of the refugee”. This chapter examines the formative years of the international refugee regime, 1921-1951, to understand not simply how we have formally *defined* the “refugee”, “refugee problem” and the “solutions” to it, but to examine the characterisations and assumptions upon which these definitions and understandings rest, and how, together, they form a distinct *discourse* of the refugee, refugee problem, and solutions. A discourse can be understood as

a group of statements which provide a language for talking about – i.e. a way of representing – a particular kind of knowledge about a topic [...] the discourse makes it possible to construct the topic in a certain way [and] it also limits the other ways in which the topic can be constructed. (Hall, 2007: 56)

The development of a distinct “refugee discourse” or “refugee problem discourse” can be found in the archival materials of the League of Nations and United Nations as the states involved attempted to create an international regime to address the increasing numbers of displaced people appearing throughout Europe in the wake of the First World War. It is the contention of this chapter that these documents are revelatory of, and form an integral part of, a certain discourse that developed over the period in question which governed, and still governs today, how the refugee is characterised, how the refugee problem is understood, and what the appropriate and acceptable solutions to this problem are.

In comparison to the immediate post-Second World War period, and the development of the Refugee Convention of 1951, there has been relatively little attention paid to the period following the First World War. The Refugee Convention and the establishment of UNHCR are considered the watershed moments in the international protection of refugees, with the inter-

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<sup>7</sup> Parts of this chapter have been adapted and published: (Saunders, 2014)

war period side-lined as a series of unsuccessful ad-hoc, piecemeal efforts. The few exceptions to this have laid important foundations for countering the more marked ahistorical tendencies of refugee studies, a field intricately bound-up with the requirements and impacts of policy and assistance. Hathaway (1984) has outlined the legal development during the League of Nations period of the definition of the refugee in the Refugee Convention; Marrus (1985) was one of the first to offer a comprehensive overview of European refugee movements from the late nineteenth century; and Skran (1995) was the first to engage the wider League of Nations archive in real depth and demonstrate that these supposedly ad-hoc and piecemeal League efforts can be understood as a distinct international regime in its own right. She further argues that examining the inter-war period reveals that the refugee movements of the present day – the “masses” from the developing world fleeing not individual persecution but general instability – are not in fact so different to refugee movements in Europe prior to the Cold War. Soguk (1999) was the first (to my knowledge) to take a more analytical approach to the development of the refugee regime in the inter-war period and reframes Skran’s largely descriptive study, to highlight how the refugee and the refugee regime are tools of “statecraft” – practices that posit the state’s existence as something “already there”, while working through problematisations in various fields of activity to effect statist identities and images (Soguk, 1999: 40). The specifics of the refugee regime and of the “refugee” as a particular type of subject are of less importance to Soguk than their existence and use as tools of statecraft. It is, however, these specifics that are the focus of concern in this chapter.

In order to show, through an analysis of these League of Nations and United Nations documents, how a discourse has developed governing the refugee and refugee problem, this chapter is structured around three inter-related questions: 1. How is the “refugee” characterised? 2. How is the “problem” understood? 3. What “solutions” are conceived? In answering each question I shall first address the formal definitions as given in the conventions, agreements and statutes of the period, which so often form the starting point of discussions of the refugee problem, and then widen the focus to address the assumptions and characterisations upon which these formal definitions and understandings rest. In short, this chapter will address the *what* and *how* of refugee (problem) discourse. The following chapter will then address *why* this discourse came to be in the way it came to be and *when* it came to be.

### **Who/what is a “refugee”?**

- i. The refugee as a legal subject

The most common place to begin when seeking to discover how the refugee has been characterised by international institutions is with the international legal accords of the period in question. The most commonly accepted definition of the refugee, and that upon which the international regime of refugee protection functions is that of Article 1 of the Refugee Convention as any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation;
- (2) [As a result of events occurring before 1 January 1951 and]<sup>8</sup> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations, 1951k)

By this definition, a refugee is a person who has fled her country of origin and is unwilling or unable to return to it for fear of being persecuted should she do so. However, the first subsection of Article 1 references a number of previous international agreements by which refugees had been defined, and a brief examination of these instruments reveals that the refugee has not always been understood in such individualistic terms.<sup>9</sup>

The earliest definitions of refugees were in fact group-based. The refugee was a member of a particular national group, and outside the country of her origin. The *Arrangement [of 12 May 1926] Relating to the Issue of Identity Certificates to Russian and Armenian Refugees* defines a refugee as:

Any person of Russian [or Armenian] origin [formerly a subject of the Ottoman Empire] who does not enjoy or who no longer enjoys the protection of the Government of the Union Soviet Socialist Republics [Turkish Republic] and who has not acquired another nationality. (League of Nations, 1926a: 49)

This definition was expanded in 1928 when the decision was taken to extend the system of League of Nations protection, which at that time consisted primarily of the provision of identity certificates, to Assyrians, Assyro-Chaldeans, and a small group of denationalised Turks. The *Arrangement [of 30 June 1928] Concerning the Extension to Other Categories of Refugees of*

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<sup>8</sup> This temporal qualification was removed from the definition by the 1967 Protocol.

<sup>9</sup> For a more detailed treatment of the evolution of refugee status, see Hathaway (1984)

*Certain Measures Taken in Favour of Russian and Armenian Refugees* defines these refugees in similar group terms (League of Nations, 1928b: 65). The refugee, then, is characterised by (a) her nationality, and (b) lacking the protection of her country of origin. This lack of protection was evidenced by the fact that the refugee had no valid identity documents issued, or recognised, by the country of origin (League of Nations, 1921d: 900), and was therefore a *de jure* status.

The League of Nations once again added to the definition of the refugee in the mid-1930s, but rather than placing juridical status as the limit-condition, under the new round of definitions the refugee was seen as a victim of broad-based social and political upheaval (Hathaway, 1984: 361), a victim of events beyond her control. The *Plan [of 24 May 1935] for the Issue of a Certificate of Identity to Refugees from the Saar* is the first of these and extends the League protection system to those persons who “having previously had the status of inhabitant of the Saar, have left the territory on the occasion of the plebiscite and are not in the possession of national passports” (League of Nations, 1935c: 1681). The *Provisional Arrangement Concerning the Status of Refugees Coming from Germany*, of 4 July 1936, and the *Convention Concerning the Status of Refugees Coming from Germany*, of 10 February 1938, similarly incorporate the idea of being a victim of social or political events into the definition of the refugee with their recognition of *de facto* loss of government protection, in addition to the previously defined *de jure* status, by defining the refugee as: “any person who was settled in that country [Germany] [...] and in respect of whom it is established that in law *or in fact* he or she does not enjoy the protection of the Government of the Reich” (League of Nations, 1936: 77; emphasis added). This subtle but fundamental shift, by which *de facto* loss of protection became recognised alongside *de jure* loss of status, and therefore protection, meant that a person could still legally have retained her nationality, but nevertheless not enjoy the protection of her government, and therefore be entitled to international protection. Refugees had fled the Saar after the plebiscite of 1935 resulted in re-unification with Germany because they were either politically opposed to the regime or concerned that religious freedoms would be curtailed (Hathaway, 1984: 362). Moreover, the racial policies of the Nazi regime had resulted in a steady stream of people leaving the Reich in search of safe haven elsewhere throughout the 1930s. Further indication of the recognition of the role played by social and political events in the refugee’s decision to leave her country of origin is contained in the provision of the 1938 Convention excluding from refugee status those persons leaving Germany “for reasons of purely personal convenience” (League of Nations, 1938a: 62).

It is not until the establishment of the International Refugee Organisation (IRO) in 1946 that the core of refugee status became the fundamental incompatibility between an individual

and her country of origin, rather than membership of a particular national group, as had been the case in the 1920s and early 1930s. The definitions of the *Constitution of the International Refugee Organisation* leave behind the criteria of belonging to a specific national group – except in the case of those persons automatically denied the protection of the IRO, namely persons of German origin – and cement the idea that the refugee is a *victim of persecution*, in need of international protection because she finds herself outside of her country of origin or habitual residence as a direct result of such persecution (United Nations, 1946: 18-20).

These definitions and the progression from a group-based conception of the refugee to the individual-oriented one of today are important, not least because they have very real consequences for a person denied refugee status, but they only tell part of the story. The definitions tell us who a refugee is in legal terms – they give a formal title/status to the physical and legal realities in which certain persons or groups of persons have found themselves – but the discourse about the refugee was, and still is, larger than simply legal definition; indeed, the first legal definition of the refugee came five years after the League of Nations first devoted its attention to the plight of those who would come to be defined as such. If we widen our focus and look beyond the formal international legal accords of the period, it quickly becomes evident that the refugee is not simply conceived of and spoken about in legal terms. The discourse of the formative years of the refugee regime constructs the refugee less as a subject to be engaged with (a “who”) and more as an object of intervention (a “what”) – a burden and potential danger to the society in which she finds herself, and an apolitical, helpless figure in need of humanitarian consideration.

ii. The refugee as a humanitarian object and burden

From the very earliest days of League concern with the displaced, the refugee was constructed as a problem figure. The first formal discussion we see in the League of Nations regarding refugees was in response to a letter sent to the Secretary General by Gustave Ador, then President of the International Committee of the Red Cross (ICRC), of February 20<sup>th</sup>, 1921, requesting the assistance of the League in relief efforts on behalf of almost one million Russians who had fled the Russian civil war and congregated in the countries bordering the former Russian empire. The memorandum warns that if no effort is made by the international community, then the refugees are “in danger of becoming useless and harmful elements in the Europe of tomorrow” (League of Nations, 1921a: 228). This view of refugees as a pool of potential social unrest and general “uselessness” was shared by the governments invited to provide information for a conference on the Russian refugee question on the numbers and

conditions of refugees in their territories, and these discussions are rich in refugee problematisations, among the strongest from the Finnish representative:

One of the disadvantages due to the presence of the refugees is the demoralising influence exercised on the neighbouring Finnish population by these multitudes, composed, for the greater part, of persons unaccustomed to discipline and order and used to idleness. (League of Nations, 1921e: 1010)

The Finnish government, along with many others, had felt it necessary to hold the refugees in concentration camps for “military and political reasons”, and placed restrictions on their freedom of movement (League of Nations, 1921e: 1009). The refugees are frequently described as a “burden” on their countries of refuge, and the discussions quickly turn to the concept of “burden sharing”. Later that year the League appoints Fridtjof Nansen, the famed Norwegian scientist and explorer who had served as the League’s High Commissioner for the Repatriation of Prisoners of War, as the first League of Nations High Commissioner for [Russian] Refugees, and his reports to the League contain similar conceptions of refugees. He is often critical, for example, of some states that, in his opinion, had not “shouldered any share of the burden” (League of Nations, 1922f: 1137).

This manner of referring to refugees was not confined to the initial discussions in the months preceding the first formal League actions on their behalf – with efforts made to solve the problem of their juridical status – but continued throughout the period in question. Nansen continued to speak of the “danger of social and political unrest” engendered by the presence of large numbers of refugees throughout Europe (League of Nations, 1927a: 1337), and the interested governments were at times reluctant to make potentially meaningful reforms to League efforts because of these fears. One notable example comes again from a Finnish representative in a discussion regarding the liberalising of the bureaucracy involved in granting and extending entry and transit visas for refugees:

With regard to the granting of visas, the Finnish Government finds it difficult to concede much greater facilities than those already granted, since the refugees in question often turn out to be politically and socially undesirable persons. (League of Nations, 1931b: 1009)

Racial and ethnic desirability were also important factors in discussions of refugees, as demonstrated by an Italian representative to the League, Count Tosti di Valminuta:

History will one day recount the effects of the influx of this new blood upon the advancement of the races and their vitality. The time-honoured balance of our social classes is disturbed and the ancient order changed by millions of

Russians, Greeks and Turks, and the hundreds of thousands of Armenians and Macedonians, who are sowing [...] the dangerous seeds of strife and unrest. (quoted in Soguk, 1999: 113)

This concern with racial and ethnic homogeneity is evident even in the formal legal accords of the period, if perhaps stated in less stark terms than those of the Italian Count. The 1938 conference in Évians-les-Bains, called by US President Roosevelt and resulting in the establishment of the Intergovernmental Committee on Refugees (IGCR) (outside the machinery of the League but including League members), worked from an awareness that

The involuntary emigration of large numbers of people, of different creeds [...] is disturbing to the general economy [...] [and] that the involuntary emigration of people in large numbers has become so great that it renders racial and religious problems more acute [...] (League of Nations, 1938b: 676-677)

A concern with refugees as a potential pool of strife and unrest is also evident in the negotiations surrounding the establishment of international organs to address the refugee problem, with the draft constitution of the IRO of 1946 stressing that refugees should be put to work in order to “avoid the evil and anti-social consequences of continued idleness” (United Nations, 1946a).

In addition to being seen as a burden and a source of potential social danger, refugees are also constructed through this discourse as apolitical, strictly humanitarian subjects. One does not have to read through many volumes of the League of Nations Official Journal before the words “unfortunate people” come to appear as a synonym for the term “refugee”. The information provided by members of the Conference of Enquiry into the Question of Russian Refugees held at Geneva in August of 1921 are littered with such references (League of Nations, 1921e: 1006-1028), and the following are a mere handful of examples from the earliest years of League concern alone:

[...] it was impossible for the French Government to ignore the distress of these unfortunate people [...] (League of Nations, 1921e: 1010)

[...] Great as is its [the Council of the League] sympathy for the sufferings of these unfortunate people [...] (League of Nations, 1921a: 226)

[...] the Government of the Kingdom of the Serbs, Croats and Slovenes has, on many occasions [...] signified its willingness to receive still more of these unfortunate people [...] (League of Nations, 1923a: 390)

It is not necessary for me to emphasise the deplorable situation of these unfortunate people and the great claim they have on the sympathy of the relief organisations. [...] I received assurances that everything possible was being

done [...] to improve the situation of these unfortunate people. (League of Nations, 1923b: 1041)

If the work which the League is doing for these unfortunate people is to continue [...] (League of Nations, 1924b: 963)

Often found alongside these references to “unfortunate people” is an emphasis on the great humanitarian task to be undertaken in providing them with relief. The Council of the League is at first reluctant to coordinate any intergovernmental action on behalf of refugees, taking the opinion that the powerful international voluntary organisations, such as the ICRC, Save the Children, Near East Relief and so forth, are best placed to take on such a task (League of Nations, 1921a: 226). That the League does indeed take action does not negate this earlier concern, as is demonstrated both by the organisation and characterisation of such action. In addition to developing an identity certificate to remedy the refugees’ lack of legal status, the High Commissioner also had as one of his primary tasks to give “general directions to relief institutions [...] and coordinate their work; and collecting and distributing with the help of other bodies, the resources placed at its disposal with a view to the improvement of the lot of refugees” (League of Nations, 1931a: 309). The majority of resources for such relief came from charitable donations in Europe and North America, rather than from the governments themselves, and when states did take action – even the issuance of identity certificates – such action was always characterised as, in the words of the French representative, “a humanitarian and charitable effort” and “in obedience to purely humanitarian motives” (League of Nations, 1921e: 1010-1012). Each incarnation of the High Commission had its task set out in similar terms, and a central role was consistently given to the great charitable organisations of the time. The discussion of refugees after the Second World War took a similar course, encapsulated cleanly by a Mr de Alba of Mexico, a delegate to the 257<sup>th</sup> Meeting of the United Nations General Assembly in 1949, when he pointed out that

the problem under discussion was one which called for the sympathy and interest of all who were concerned with the welfare of mankind. The natural reaction of all truly civilised nations was to give sympathetic consideration to the lot of refugees, displaced persons and stateless. Moreover, the notion of a refugee is intimately linked with that of hospitality. The General Assembly therefore, should approach the problem in a high humanitarian spirit. (United Nations, 1949d: §37)

Refugees were seen as victims in need of humanitarian aid, not as politically able subjects worthy of recognition as anything other than hapless victims. There is no starker manifestation of this than the exclusion of refugees from any significant role in the solution to their own problems. The international conferences called throughout the period to discuss the refugee

problem and to develop solutions were attended by governments and in some cases by charities such as the International Union of the “Save the Children” Fund, or Near East Relief, in a strictly advisory capacity. On the very rare occasions in the sources where any reference is made to consultation with refugees themselves, such consultation is for the purpose of ascertaining their professions and employment status (League of Nations, 1921d: 900). Where they are included at all in the governance structures of the international organisations created to “help” them, their role was minimal – it is only in the 1930s that two of the 12 places on the Governing Body of the Nansen International Office (NIO) were reserved for refugees (Skran, 1995: 84). The political nature of the decision to restrict the input of refugees themselves into the search for solutions is particularly obvious in the case of Russian refugees: Nansen had employed, at a minimal salary, a handful of Russian refugees as delegates in host countries who would communicate information back to Geneva on local conditions, but these were all dismissed when the Soviet Union joined the League (Skran, 1988: 280). In discussing the future of the High Commission in 1929 (prior to the establishment of the NIO), the question of the inclusion/employment of refugees was addressed under a section entitled “External Agents”, stating that

refugees should not be employed in the services of the High Commissariat. The High Commissioner and certain members of the Commission pointed out, however, that, in certain exceptional circumstances, recourse by the High Commissariat to the technical collaboration of refugees in his external services would present important advantages. (League of Nations, 1929: 1080)

The inclusion of the refugees on the Governing Body of the NIO was an example of this technical collaboration and was agreed upon primarily because the funds for the humanitarian work of the League were provided mainly by the sale of stamps affixed to the refugees’ identity documents – and was thus a kind of tax paid by refugees (Hope-Simpson, 1939: 210). Even this minimal inclusion was not taken in the best grace by governments. When the NIO was to be disbanded, and its responsibilities combined with those of the separate League of Nations High Commissioner for Refugees Coming from Germany into a single High Commissioner for Refugees, it was written into the Statute of the office that “neither members of the High Commissioner’s staff nor the aforesaid representatives or their assistants may be refugees or former refugees” (Hope-Simpson, 1939: 596-597).

Finally, the technocratic language often used to describe what needs to be done about the presence of refugees in Europe paints a picture of the refugee as an object of intervention – a problem to be solved by being acted upon rather than a person in any meaningful agentic sense. Words and phrases which one does not expect to encounter when discussing human beings,

such as “liquidation”, “equitable distribution”, “allocation”, and “disposal” are employed throughout the earliest years of League involvement in the refugee question, and not only by government representatives but by the High Commissioner and his deputies in their reports and recommendations. One notable example of this is in reference to a group of 1,000 Russian refugees who also happened to be invalids, describing them as “the most difficult category of refugees to dispose of” (League of Nations, 1922e: 924). This kind of instrumental language, when combined with representations of refugees as “unfortunate people” who are a “burden” to those countries in which they seek refuge, who pose a “danger of social and political unrest” and a threat to ethnic harmony, and who require the assistance of a “great humanitarian effort”, constructs the refugee as far more (or less, depending on one’s point of view) than an individual lacking legal status and outside of her country of origin – the “lack” that the state needs for the citizen (Soguk, 1999). A closer look at a wider range of sources allows us to see a construction of this figure of the refugee as a victim in need of humanitarian relief, but also a potential source of strife and unrest, and a figure whose proper place is as a recipient of charity, rather than a political subject to be engaged with in the search for solutions to the problems she faces.

### **What is the “problem” to be solved?**

#### i. The “problem” as lack of international protection

As with the question of what a refugee is, the international agreements and conventions of the period seem to be the most logical places to begin the search for an understanding of how the “refugee problem” has been conceived. These international accords formed the basis for League of Nations and United Nations activity on behalf of refugees, which activity was dependent upon a particular understanding of the problem, and this is how many conventional studies of the refugee problem begin. In its simplest terms, the conventional wisdom surrounding the refugee problem is that it is one of the international protection of displaced persons. As Hathaway highlights, customary international law does not recognise the individual as a subject of international rights and obligations. Individuals are protected in such rights by the state of which they are citizens, and the state assumes responsibility internationally for the actions of individuals (1984: 358). It is for this reason, Hathaway claims, that when the bond of protection between a citizen and her state is severed – as in the case of the refugee – other states are reluctant to admit to their territory an individual who is no longer the legal responsibility of another state (1984: 358).

When the attention of the League of Nations was first brought to the issue of Russian refugees, the obstacle of their legal status was immediately highlighted. In his letter to the Secretary General of the League, Gustave Ador characterises as an obligation of international justice the necessity of addressing the “eight hundred thousand Russian refugees scattered throughout Europe without legal protection or representation” (League of Nations, 1921a: 227). The memorandum drafted by the ICRC attached to the same letter calls upon the Council of the League to establish a High Commissioner’s office whose primary task would be to

define the legal position of the Russian refugees, wherever they may be [...] because it is impossible that, in the twentieth century there could be 800,000 men in Europe unprotected by *any legal organisation recognised by international law*. (League of Nations, 1921a: 228; emphasis in original)

This concern with international legal status formed the centrepiece, along with the distribution of relief by private organisations and coordinated by the High Commissioner, of early League action on behalf of refugees. The vast majority of the Russian refugees had been denationalised by the 1921 decree of the All Russian Central Executive Committee and the Council of People’s Commissars (Hathaway, 1984: 351), and the Conference on the Question of the Russian Refugees – which established the first High Commission – examined the problems that this lack of status, and corresponding lack of valid identity documents, posed:

The Conference has considered the difficulties which now exist with reference to passports for Russian refugees. These difficulties clearly require special measures which can only be arranged by the High Commissioner with the various interested Governments. (League of Nations, 1921d: 900)

After consultation with these governments, Nansen developed an identity certificate for Russian refugees, certifying that the bearer was a former Russian national in possession of no other nationality, containing a description and photograph of the bearer, and personal details such as occupation, and date and place of birth, and a space for the issuing government to place a visa, and other governments to place transit visas (League of Nations, 1922d: 241). This was the basic form of identity certificate that was extended to all other groups of refugees who became the concern of the League, and was the template for the identity documents developed by the IGCR during the Second World War (United Nations, 1946b: 74-105), those used by the IRO in the aftermath of the war, and the identity certificate issued under the auspices of UNHCR today. The concern with the international status of refugees as integral to the refugee problem facing Europe was further evidenced in the late 1920s when, in addition to extending the identity certificate system to other categories of refugees, it was also felt necessary by some states to conclude an agreement providing consular services to refugees. The *Agreement [of 30*

June 1928] concerning the function of the Representatives of the League of Nations' High Commissioner for Refugees allows for representatives of the High Commissioner, with the consent of the government concerned, to render the following services to refugees:

- (a) Certify the identity and position of the refugees [...]
- (b) Testify to the regularity, validity, and conformity with the previous law of their country of origin, of documents issued in such country;
- (c) Certifying the signature of refugees and copies and translations of documents drawn up in their own language [...]. (League of Nations, 1928c: 379)

These are all services for which an individual's consulate ordinarily would be responsible, which consulates refugees by definition had no access to. The agreement was concluded because there was still seen to exist the "necessity to define more clearly the legal status" of refugees (League of Nations, 1928a: 55).

At the same time as we see a shift in the conception (in international legal terms) of the refugee from a purely juridical subject – or perhaps more accurately a "de-juridical" subject in need of formal status – to an individual fleeing persecution, we see also a shift in the surface conception of the refugee problem. The League no longer considers the problem to be purely one of legal status, but also of ensuring the protection of certain rights for those granted the legal status of "refugee". The 1933 *Convention Relating to the International Status of Refugees* is the first international protocol to list the rights and privileges to which refugees will be entitled, and it states that those governments Party to the convention have concluded it in part because they were

[...] desirous that refugees shall be ensured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions, of industry and commerce, and in regard to the movement of persons, admission to schools and universities [...] (League of Nations, 1933c: §6)

This concern is strengthened by the experiences of the Second World War, and the development of the *Universal Declaration of Human Rights*, and is carried through to the Refugee Convention in 1951:

[...] considering that the United Nations has [...] manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of [these] fundamental rights and freedoms; Considering that, in the light of experience, the adoption of an international convention would appear to be one of the most effective ways of guaranteeing the exercise of such rights [...] (United Nations, 1951a)

At first glance, then, the various agreements and conventions of the period would appear to provide a clear and unproblematic understanding of what the refugee problem is. The refugee problem was originally one of legal status – the lack of legal protection of the government of the refugee’s country of origin, as evidenced by a lack of identity documents, thus inhibiting freedom of movement. As the definition of the refugee expanded, and conditions other than her *de jure* lack of status were taken into consideration, so too did the scope of the problem grow. The problem to be solved became the consequences of persecution and the relationship of the individual to her state as regards the rights to which she would ordinarily be entitled. The concern then becomes establishing a system by which these rights can be guaranteed to the refugee in the country to which she has fled.

This somewhat superficial reading of the sources has been sufficient for many scholars researching the refugee problem. However, as with the question of what the refugee is, as soon as we widen our focus a more nuanced picture emerges; a picture in which the actual problem is not the refugee’s lack of status or protection (problems *for* refugees), but the burden – primarily economic but with potential racial and ethnic side-effects – that their presence puts on the state (the problem *of* the refugee).

ii. The refugee as “problem”

From the very beginning, League concern was expressed in economic terms. French statesman Gabriel Hanotaux submitted one of the first reports on the Russian refugee question, oriented by the consideration required by the League Council of the Member States on the establishment of a High Commissioner for Russian Refugees, stating that

The Russian refugee question is not merely a political, social and humanitarian question, it is mainly a financial problem. [...] The fugitives, unemployed through no fault of their own, constitute a very heavy charge upon several governments, either because they have taken refuge on their territory, or because they are still in receipt of assistance in the form of food subsidies. (League of Nations, 1921c: 757)

Concerted action on the part of the League was necessary “in order to relieve the countries concerned of their responsibilities in regard to these refugees” (League of Nations, 1921c: 757). This concern with the financial realities of the existence of large groups of displaced persons in a Europe struggling to recover from a devastating four years of total war, and the need to relieve countries of the burdens they faced in providing for them, underpins League concern with rectifying the anomaly of the refugee’s legal status. Recalling the concern surrounding the

difficulties faced by refugees due to their lack of identification papers highlighted above, the decision to appoint a High Commissioner who would develop such a valid form of identity certificate takes on a slightly altered dimension when we consider the concern expressed from the beginning by the same Conference of enquiry into the economic nature of the problem: “the Conference considered that, in order to prepare for the eventual establishment of refugees in countries where they can find employment [...]” (League of Nations, 1921d: 899). Many of the memoranda submitted by the states to the conference highlight the economic burdens placed on them by hosting large numbers of unemployed refugees. The French government spoke of the “very heavy burden of their food supply, their support and their housing” borne out of “obedience to purely humanitarian motives” (League of Nations, 1921e: 1010), while the British government included an extensive summary of the monies spent in various territories in caring for the refugees (League of Nations, 1921e: 1015-1018) noting that “the Russian refugees at present being maintained by His Majesty’s Government originally became *a charge on the public funds* at the beginning of 1920” (League of Nations, 1921e: 1012; emphasis added). The Finnish memorandum drew attention to the potential social problems presented by situations of unemployment in their territories on account of the presence of refugees:

[...] the Ministry of Home Affairs has organised either State or private employment for them. This measure has, however, the disadvantage of increasing the number of out-of-work Finns and has created discontent among them. (League of Nations, 1921e: 1009)

This concern on the part of governments to relieve themselves of the financial burden of caring for destitute refugees is carried through into the functions of the High Commissioner’s office. Nansen saw his primary object as High Commissioner as “the dispersal of the refugees [...] to places where they could obtain employment” (League of Nations, 1922a: 386) and recognised that “the number for whom inter-governmental action is necessary, with a view to securing them employment, is still very large” (League of Nations, 1922a: 393). It had quickly become evident to Nansen that the most significant obstacle in the way of achieving this “dispersal” was the fact that the refugees had no valid identity documents which would allow them to travel in search of employment:

A great many of the Russian refugees in Europe have suffered considerably for the sole reason that they have been unprovided with any legal paper of identity, without which they were unable to travel from the countries in which they found themselves, to other countries [...] where they might have had greater opportunities of obtaining productive employment. (League of Nations, 1922b: 396)

In his request to the governments of the Members of the League to help him develop a solution to this problem he was keen to frame it in state-centric terms, highlighting the “importance [...] of securing the movement of refugees to countries where they will not be a charge on the public funds [...]” (League of Nations, 1922b: 398).

We can thus see from this brief survey that the decision to develop an identity document for Russian refugees was not taken for “purely humanitarian” reasons, and out of profound concern with the refugee’s lack of legal status in and of itself. It appears, rather, that the concern on the part of the League to remedy this lack of status was based primarily on their desire to relieve themselves of an economic burden that the presence of refugees placed on their public funds. Not possessing valid identity documents was indeed difficult for the refugee, but state concern with this issue was due to the fact that without valid papers the refugees had no freedom of movement, which meant that they had to remain where they were, and without work they became charges on the public funds. It was *this problem* that the Members of the League were keen to address. Further evidence in support of this interpretation can be found in the process of reforming the identity certificates to allow for the placing of “return visas”. Prior to 1924 the “Nansen certificates” (as the refugee identity certificates were called) contained no authorisation for the refugee to return to the issuing country. In his report to the League in June 1924, Nansen suggested that in addition to extending the Nansen certificate system to Armenian refugees, governments also grant return authorisation to the refugees who are issued these documents. He did so, however, because

it has been found that if the refugee certificate authorises return to the issuing country the economic position of the holder is improved by the facilities which he thus obtains for visiting temporarily other countries which may offer him opportunities for employment or business, and his definitive emigration to another country is, in fact, encouraged. (League of Nations, 1924c: 968)

The *Arrangement of 12 May 1926* which affirmed the principle of affixing return visas to Nansen certificates would not only confer benefits upon refugees, but “also on the countries for whom the unemployed refugees represent a heavy expense, and on the immigration countries anxious to increase their productive populations” (League of Nations, 1926b: 984).

These countries of immigration – Canada, Australia, the United States, and the countries of South America – play an important role throughout the 1920s and into the 1930s, and highlight another important episode which demonstrates the fundamentally economic nature of the refugee problem. In the first three years of League action on behalf of refugees, only France acted as a country of immigration. Having lost a significant proportion of the male working

population during the First World War, French industry was in need of workers, and the French government turned to, among others, the Russian refugees (Skran, 1995: 24). However, by 1924, Nansen reported to the League that “no other country in Europe is capable of absorbing foreign labour, and efforts must be redirected towards the large immigration countries” (League of Nations, 1924b: 962). When the Council met to discuss the issue, it was decided that “as the question was mainly one of employment, it could usefully be dealt with by the International Labour Office” (League of Nations, 1924a: 905). This expression of concern with the employment opportunities for refugees was also oriented toward the states: such efforts should be made “to secure substantial relief *for the countries overburdened with refugees*” (League of Nations, 1924a: 905; emphasis added). From the beginning of 1925 to the end of 1929, the ILO took over a substantial amount of the work of the refugee problem. The High Commissioner’s office would still coordinate relief and provide consular services, but these measures were understood to be temporary expedients which would continue until such time as the primary problem, that of the dispersal of the refugees in countries of immigration, could be accomplished by the ILO.

Even though the ILO returned its work to the High Commissioner in 1929, the League still understood the refugee problem in economic terms. As Europe and North America plunged into depression as a result of the Stock Market Crash of 1929, governments adopted even more protectionist attitudes towards labour markets, making even the possibility of overseas emigration for refugees difficult, and so renewed focus was placed on addressing the problems faced in Europe. The first convention to list the rights and privileges of the so-called “Nansen” refugees in their countries of refuge was concluded in 1938. Despite the enumeration of specific rights and privileges (many of which are economic in focus), the way in which these measures are discussed demonstrate clearly not only an economic side of the problem that needs to be addressed, but that “the problem” is the refugee herself:

[...] considering that *their presence* in those countries *constitutes an economic, financial and social problem* which can only be solved by international collaboration [...] (League of Nations, 1933b: 1617; emphasis added)

Appreciating the *difficulty experienced by Governments* in continuing to support the direct and indirect *charges imposed upon them by the presence* of large numbers of unemployed refugees in their territories [...] (League of Nations, 1935b: 657; emphasis added)

[...] involuntary emigration [...] is *disturbing to the general economy*, since these persons are obliged to seek refuge [...] in other countries at a time when there is serious unemployment; that, in consequence, *countries of refuge and settlement are faced with problems*, not only of an economic and social nature,

but also of public order [...] (League of Nations, 1938b: 676-677; emphasis added)

For a five-year period during the 1920s the relief functions and the search for durable solutions in the form of employment programs were separated between two organisations – the ILO and the High Commissioner – but in the aftermath of the Second World War they were combined in the IRO. It was the opinion of the states that drew up the Constitution of the IRO that refugees needed to be “put to useful employment in order to avoid the evil and anti-social consequences of continued idleness” (United Nations, 1946a). Perhaps the most telling expression of the economic/employment aspect of the “refugee problem” in the immediate post-war period, however, is to be found in the first annual report of the IRO to the United Nations. The report gives an overview of repatriation and resettlement efforts undertaken and details the difficulties faced by the IRO in regard to the following groups of people:

- (1) Unemployable individuals and families without a wage-earner;
- (2) Individuals in families who have been rejected by country selection missions because of social or health problems;
- (3) Unaccompanied children; and
- (4) Families with a seriously ill member. (United Nations, 1949a: 23)

Each of these groups of refugees would be considered “charges on the public funds”, and it was precisely these groups who came to make up the “hard core” of the remaining refugees who could not be repatriated or resettled by the IRO – because there were deemed too undesirable for other countries – and who the UNHCR was created to assist (Marrus, 1985: 345).

The purpose of the preceding discussion has not been to suggest that the refugee problem was solely one of economics. Rather, what is made very clear by the recognition of the role of economics in the construction of a distinct refugee “problem” is that the problem is understood to be the refugee herself. Her presence in the country of refuge places an economic burden on the state, for which a solution needs to be found. Regularising her legal status, negotiating the retention of her property when she flees her home – as the IGCR attempted to do – and providing some measure of employment rights, all appear to be much less humanitarian and much more self-interested on the part of states when we examine a wider selection of sources a little more closely. It is true that the League of Nations, and the United Nations in the period in question, were concerned with the problem of legal status and international protection of refugees. But while these were problems *for* the refugee, they needed to be solved because without some sort of solution the refugee would continue to be a burden on her country of refuge. This problem *of* the refugee is what the “refugee problem” was understood to be.

## What are the “solutions”?

### i. The three “durable solutions”

International action to “solve” the refugee problem revolves around three so-called “durable solutions”: voluntary repatriation of refugees to their home countries, resettlement in safe third countries, or assimilation/local integration in the countries of refuge. These three solutions are outlined in the Statute of the UNHCR (United Nations, 1950c). While UNHCR organises much of its work around these durable solutions, there are many millions of refugees for whom none of these solutions are anywhere in sight. And so in addition to working toward these durable solutions, UNHCR also works toward what we might call interim solutions: the safe-guarding of refugee rights as laid down in the Refugee Convention, and providing refugees with assistance in their search for resettlement, repatriation or assimilation. As with our understanding of the refugee and the nature of the refugee problem, these solutions have their roots in the period under consideration.

From the very earliest days of international action on the refugee problem, repatriation of the refugees to their country of origin was seen as the best and most durable solution, but the lack of diplomatic relations and the presence of political animosity between the Members of the League of Nations and the newly formed USSR, made repatriation the least practical of options.<sup>10</sup> The Members of the League therefore felt that a High Commissioner would also need to facilitate the movement of refugees to other countries where they might obtain employment should they not wish to return to Russia:

The Commissioner thus appointed would have a two-fold duty to perform. In the first place he would have to secure the repatriation of refugees desiring to return to Russia [...] In the second place it would be the duty of the Commissioner of the League to find work for the refugees who do not desire to return to their country. (League of Nations, 1921b: 488)

Sir Samuel Hoare, one of Nansen’s deputies stationed in Constantinople, offered one of the first expressions of the principle now known as “non-refoulement” – one of the cornerstones of the international refugee regime – in March of 1922, when he stated in his report to the League that it should be constantly exploring the possibilities of repatriation, but that no Russian will be compelled to return against his will (League of Nations, 1922c: 403).

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<sup>10</sup> For a more detailed discussion of efforts to repatriate Russian refugees, see Long, 2009.

If recognition that many Russian refugees did not desire to return to Russia while the Bolshevik regime remained in power made repatriation efforts difficult, repatriation of Armenian refugees would prove to be an even greater problem given the lack of an Armenian national home and the rejection of the Armenians as citizens by the Turkish Republic that replaced the Ottoman Empire. Resettlement was deemed the best option for Armenian refugees and Nansen devoted significant time and effort on numerous schemes for Armenian resettlement, involving the establishment of an Armenian national home rather than the “distribution” of Armenians to other states, all of which ultimately failed primarily due to lack of adequate financing and political will on the part of other states (Skran, 1995: 147-184). Despite the failure of these grand resettlement plans the League still placed great emphasis on the desirability of resettlement as a solution where repatriation was deemed impossible, as demonstrated by the decision in 1924 to transfer “technical services” – understood to be all issues involved in the search for employment and resettlement opportunities – to the ILO, a body deemed to possess the necessary expertise to carry out this work successfully.

Agreement that refugees should not be compelled to return to their countries of origin is present in the sources from the beginning of League concern with refugees, but prohibitions on the expulsion of refugees came a little later to the game. The first formal recommendations, not yet prohibitions, against expulsion are found in the *Arrangement [of June 1928] Relating to the Legal Status of Russian and Armenian Refugees*:

It is recommended that measures for expelling foreigners or for taking other such action against them be avoided or suspended in regard to Russian and Armenian refugees in cases where the person concerned is not in a position to enter a neighbouring country in a regular manner. (League of Nations, 1928a: 57)

The first legal prohibition does not appear until five years later with the 1933 *Convention Relating to the International Status of Refugees*, in Article 3 (League of Nations, 1933c). This is also the first document to list the rights and privileges to which refugees are entitled for as long as they retain refugee status. Many of these rights, such as access to courts, reduced restrictions (subject to certain conditions) in accessing labour markets, access to welfare and relief, and access to education, are also present in the Refugee Convention of 1951.

The final durable solution, assimilation/local integration in the host country, does not appear to have been considered until the late 1920s, and was quickly deemed to be an unrealistic solution given the ever increasing number of refugees for whom the League was

taking responsibility. One of the earliest documents mentioning assimilation as a possible solution is an Assembly resolution issued during its ninth ordinary session, and quoted in one of Dr Nansen's reports to the League on December 14<sup>th</sup>, 1928:

[...] a complete solution to the problem can only be provided by the return of the refugees to their country of origin or their assimilation by the countries at present giving them shelter. (League of Nations, 1928d: 175)

But no less than six months later when the Advisory Commission issued their report on the possible ways and means of securing a definite solution of the problem within the shortest possible time, the “radical solution” of naturalisation was deemed impractical given that naturalisation is a privilege that “cannot be granted without distinction to every person who requests it” (League of Nations, 1929: 1078). It was recommended that the High Commission be maintained along with the Nansen certificate system, and the High Commissioner should continue to pursue resettlement (League of Nations, 1929: 1079). By the time of the establishment of the IRO in 1947, naturalisation of the refugee in her country of refuge was seen as “the only radical solution to the problem of the refugee who cannot be repatriated” (United Nations, 1949a: 65), and can thus be seen as occupying the lowest position in the hierarchy of durable solutions. Assimilation in the country of refuge was the last remaining option after repatriation and resettlement prove impossible.

ii. What lies beneath: calculating the cost of profound concern

When we delve deeper into the sources once more we do not find different solutions per se. What does come into relief are the calculations, the assumptions, the concerns, and the logics at work that frame how these solutions would be understood and implemented. To do justice to a proper examination of these frames of references would take more space than I have available to devote to them, but by organising them into the following categories – burden limiting, political humanitarianism, and self-interest – I hope to provide a sufficiently detailed exposition.

*a. Burden Limiting*

The over-riding concern when it came to developing the solutions and measures to implement them highlighted above was not humanitarianism, as is often supposed, but rather to limit the burden placed by refugees on sovereign states. We can see this principle of burden limiting most clearly in the abdication of financial responsibility evident in the funding (or lack thereof) of the various High Commissioners, and through the constant invocation of “national security.”

Studies of UNHCR often highlight the fact that the funds granted it by the budget of the United Nations are for purely administrative purposes, and cannot be used for the direct assistance or relief of refugees. This practice began under the League with the very first High Commissioner (for Russian refugees). In creating the High Commission it was stipulated that the High Commissioner could not make himself in any way directly responsible for the relief of refugees, but would instead coordinate relief efforts undertaken by voluntary organisations (League of Nations, 1922a: 385). In March of 1922, Nansen delivered a report to the Council of the League in which he made multiple references to a lack of adequate funds, and how this had hindered his ability to “solve the problem” as quickly as he might otherwise have been able to (League of Nations, 1922a: 385-386; 1922e: 923-928). This was a recurring refrain throughout the League of Nations years, and private voluntary organisations frequently stepped in to close vital funding gaps. In this same report, Nansen spoke of the “invaluable” services the charities composing the Advisory Committee of Private Organisations attached the High Commissioner’s office had rendered, most notably in the case of raising the necessary funds to continue to feed 25,000 starving Russian refugees in Constantinople after the French government announced that it would no longer take on the responsibility of their maintenance (League of Nations, 1922a: 387-388). In another report of the same year, Nansen highlighted the role played by the Russian Red Cross in striking an agreement with the Bulgarian government for the evacuation of 1,000 invalids and their families to Bulgaria. Under the arrangement, the Bulgarian government would be relieved of financial responsibility of caring for the refugees, and this burden would be taken on by the Red Cross – which would, in fact, not only pay for the upkeep of the refugees, but also pay the Bulgarian government for allowing them access to its territory in the first place (League of Nations, 1922g: 1226).

In 1929, in its report on the re-organisation of the work of the League, the Advisory Commission to the High Commissioner for Refugees recommended a prolongation of the High Commission, but stipulated once again that the League would be responsible only for funding the administrative expenses of the office. They further stated that the cost of relief for refugees unable to work should come from the sale (to refugees) of the stamps validating their identity certificates, and any private donations made by charitable organisations (League of Nations, 1929: 1079). This recommendation was formalised in the statute of the Nansen International Office. Using money obtained through the compulsory purchase of stamps by refugees for relief purposes – thereby relieving the states of any formal responsibility for financing the work undertaken internationally – was first suggested formally in 1926, when the money was put into a revolving fund to provide for the cost of transportation and settlement of refugees (League of Nations, 1926a) – another expense for which states refused to be liable. We encounter the same

abdication of formal financial responsibility by states with each incarnation of the High Commissioner's office in 1931, 1933, 1938, and, finally, 1950.

Even the comparatively well-financed IRO had state-imposed restrictions placed on its resources. The IRO was mandated to, among other things, facilitate resettlement and repatriation, and this could include large-scale resettlement projects. Its constitution, however, stated that "the members undertake to contribute to the large-scale resettlement expenditures on a voluntary basis and subject to the requirements of their constitutional procedure" (United Nations, 1946c: Art. 2.2i). This stipulation was added by the States Members to the draft constitution prepared by committee, which had originally stipulated that *all* expenditure, including resettlement projects, would be financed by *mandatory* contributions from Member Governments (United Nations, 1946a: Art. 10.4). The general attitude governing the financing of the search for and implementation of solutions, particularly by the High Commissioner's office, can best be summarised in the following statement from the Minutes of a League of Nations Council meeting in October 1927:

Every member of the Council was filled with the most humanitarian feelings, and, if it were in the Council's power to help all those who stood in need, he would be the first to propose that such assistance be given. After a decision had been taken, however, the states were called upon to pay the bill. When that moment came, the general attitude became somewhat more stringent. (League of Nations, 1927b: 1138)

Just as the term "unfortunate people" could easily be taken as a synonym for "refugee" by even the most cursory examination of the sources, so too does "national security" appear as the supreme burden-limiter, built-in to international agreements and conventions. The very first international agreement regarding League action for refugees, the *Arrangement of 5 July 1922* was, by comparison with later accords, severely limited in its actions, providing simply for the issue of a certificate of identity to Russian refugees. However, it was still subject to reservations on the grounds of national security. The Spanish signature contained the following reservation:

Granting of the certificate and visa in no way infringes on the right of the Government, where national interest requires, to expel the refugee; and that the Government from whence the refugee came is obliged to readmit him to their territory. (League of Nations, 1922d: 240; translated from the French original)

Throughout the League of Nations period we see qualifications attached to the issuance of the identity certificate intended to enable the refugees to travel in search of work, that such issue shall in no way infringe the right of the state "to supervise and control foreigners" (League of

Nations, 1935c: 1681). The exact phrasing of these qualifications implies that this supervision and control extended not simply to the *entry* of other nationals but also to their movement *within* the state once admitted. The states were clearly not willing to relax their policies even for those most in need.

This reluctance is further evidenced by the practice of expulsion of refugees. In spite of the efforts made by the voluntary organisations and the High Commissioner to develop a travel document allowing refugees to enter other states legally, these organisations and the High Commissioner had noted on several occasions throughout the late 1920s and early 1930s that states were making increased use of their powers of expulsion of foreigners, particularly in regard to refugees (League of Nations, 1933a: 855). A report of the Inter-Governmental Advisory Commission for Refugees in 1933 noted that despite its repeated recommendations, state practice of expelling refugees continued, and while recognising that states had the right to regulate entry and expulsion, the Commission recommended the use of “internal measures” of a security nature to deal with refugees who had unlawfully entered a state’s territory (League of Nations, 1933a: 855). The Commission further noted that states had been attempting to circumvent their obligations under previous arrangements to allow for the return (subject to the appropriate visa) of a refugee to the country which issued the certificate and where the refugee was thus deemed lawfully to reside. In many cases, states had been submitting such applications for return on the part of refugees to lengthy bureaucratic and administrative procedures, “depriving the [re-entry] clause of all value” (League of Nations, 1933a: 855). Jacques Rubinstein, a prominent legal figure and Russian refugee, noted that the Assembly of the League still had to issue repeated resolutions – in 1933, 1934, and 1935 – condemning the practice of expelling refugees, indicating that state practice was not becoming more liberal in this area but in actual fact more and more restrictive (Rubinstein, 1936: 724).

Even the Refugee Convention of 1951, generally considered to be the most comprehensive expression of humanitarian sentiment and protection of refugee rights, is qualified by the state’s concern for national security. The Ad Hoc Committee on Statelessness and Related Problems established by the UN General Assembly to prepare a draft convention discussed the issue of expulsion, and came to the conclusion that the “sovereign right of a State to remove or keep from its territory foreigners regarded as undesirable cannot be challenged”, but that expulsion should be dictated by reasons of national security or public order (United Nations, 1950a: 22). The discussion of a national security qualification to the prohibition of expulsion of refugees continued throughout the 1951 Conference of Plenipotentiaries, by way of amendments submitted by the United Kingdom (United Nations, 1951i) and Sweden (United Nations, 1951j). A new paragraph was inserted into Article 33 stating that “the benefit of the

present provision may not, however, be claimed by a refugee who there are reasonable grounds for regarding as a danger to the security of the country in which he is” (United Nations, 1951k: Art. 33.2). Article 32 of the Convention, on expulsion (the practice rather than its prohibition) contains a similar national security qualifier, but goes so far as to insert it into the subsection allowing the refugee to appeal an expulsion order. The Italian representative had submitted an amendment calling for the removal of any right to appeal by the refugee (United Nations, 1951f), and by way of a compromise with the Belgian (United Nations, 1951h) and French (United Nations, 1951g) amendments, the right to appeal was retained, but the ability of the refugee to submit evidence to clear her name would be subject to the exigencies of national security. The individual state in question would, of course, be the party to decide whether or not a refugee represents such a threat to national security and can therefore be expelled – thereby relieving themselves of the responsibility of guaranteeing to the refugee all the other rights enumerated in the Convention.

*b. Political Humanitarianism*

The term “political humanitarianism” may appear at first to be a misnomer, but I use the term to highlight the inherently political nature of the decisions to treat the refugee as a humanitarian subject, and to prohibit the international organisations created to help implement solutions to the refugee problem from engaging in political activities. We have already seen how the refugee was constructed as a humanitarian subject in need of charity and not as a political subject to be engaged *with* in any meaningful way. The search for and implementation of solutions takes this one step further in its express denial of any political life for the refugee in her country of refuge. This denial is governed by the assumption that citizens are the only subjects who have a political existence within the state.

The rights and benefits of refugees enumerated by the Refugee Convention, to be respected by states, and promoted by UNHCR, are, broadly speaking, social and economic rights. Rights concerning moveable and immoveable property, access to courts, education, housing and social welfare, and access to wage-earning employment are all undoubtedly important rights which enable the refugee to rebuild some semblance of a “normal” life in her country of refuge, but the Refugee Convention is marked by its absence of protection for civil and political rights, and in fact by its express denial of such rights to refugees. This is exemplified in Article 15 (Right of Association):

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their

territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances. (United Nations, 1951k)

The words “non-political” were not in the draft convention when it came before the Conference. During the discussions in the Ad Hoc Committee, the French representative had wanted to amend the wording of a potential article on rights of association permitting Contracting States to restrict the political activity of refugees (United Nations, 1950b: 41). The Committee felt it unnecessary to include such a paragraph because “every sovereign government retains the right to regulate any activities on the part of an alien which it considers objectionable” (United Nations, 1950b: 41). Despite this assurance, the issue was again broached during the Conference, this time by the Swiss representative, with the support of the Egyptians. The Swiss delegate explained that one of the conditions of granting asylum, as his government understood it, was that the person granted asylum should not engage in any political activity. Therefore, the Convention should contain such an express stipulation, which would serve the additional purpose of providing Contracting States with a measure of “security” when it came to granting asylum (United Nations, 1951d: 9). The Swiss amendment (United Nations, 1951c) recommended the inclusion of the words “as regards non-political and non-profit-making associations” that we see in the final Convention. Both the Egyptian and Yugoslav delegates were vocally in favour of denying rights of political association to refugees as such political activity could endanger friendly relations between states (United Nations, 1951b: 7). It was never made clear, however, why as a matter of course any and all political activity on the part of refugees would necessarily be hostile activity that would endanger relations between states.

The rationale behind this denial of political life to the refugee, despite the formal recognition inherent in refugee status of the political and social forces dictating her flight, is found in the discussions on naturalisation and asylum. The primary documents used by the Ad Hoc Committee which drafted the Refugee Convention, were two memoranda written by the Secretary General. The first of these highlights, regarding naturalisation, the fact that

decisions of the State granting naturalisation is absolute. It cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalisation confers on the naturalised citizen a series of privileges, including political rights. (United Nations, 1950a: 24)

The Secretary General was not proposing any new ideas in the realm of naturalisation and political rights, but the concern that states so frequently expressed throughout the process of drawing up a new convention in relation to naturalisation and the right of asylum indicates that this issue was an important one to clarify. In the wake of a devastating war which had seen wilful murder on an industrialised scale aided by the denationalisation of millions by the Nazi

regime, had led to the development of the UDHR in 1948, which declared the right of every person to a nationality (United Nations, 1948: Art.15). This had led to quite intense debate over the meaning of this for the refugee regime, and was the subject of discussion during a session of the 263<sup>rd</sup> Meeting of the General Assembly in the Committee on Refugees and Stateless Persons, when the French representative summarised his government's understanding of the right to nationality:

The 'right to nationality' did not mean that receiving countries were to be required to grant their nationality to the refugees. It was rather directed to those States which deprived their subjects of their nationality, or placed them in such a difficult position that they were obliged to leave their country of origin. (United Nations, 1949e: 3)

The question was never addressed of what meaning a right to nationality would have to refugees and the stateless if states had no obligation to grant it. Access to naturalisation, and thus to political life, for a refugee is dependent in the first place on her securing asylum, and the asylum seeking process is not addressed in the Refugee Convention or any previous agreement, beyond the mere recommendation that governments continue to receive refugees in their territories. The governments involved in the Conference were at pains to stress and to confirm that the Convention made no provision regarding the grant of asylum, and contained no obligations to admit refugees to their territories (see, for example: United Nations, 1951: 7-8). This understanding of the right of asylum as a right belonging to the state to grant or refuse, rather than to the refugee to insist upon is embodied in the change from the draft convention's "right of asylum" to the final Convention's "grant of asylum".

In addition to denying any political role to the refugee, the international organisations created to help implement solutions to the refugee problem are similarly denied any political role. The earliest incarnations of the High Commission were conceived as humanitarian helpers of refugees. This was also the case with the later High Commissions, but as the political situation in Europe became more precarious with the rise of fascism in Italy, Spain and Germany, the non-political nature of the High Commissioner's task was enumerated in clearer terms. The High Commissioner for Refugees Coming from Germany, created in 1933, was made completely autonomous from the League of Nations, as part of an attempted compromise with the German government (Zolberg et al., 1989: 20). When James McDonald resigned his post as High Commissioner he cited this separation from the machinery and authority of the League as one of the major obstacles to his being able to achieve anything of value for those fleeing Nazi oppression (League of Nations, 1935a: 160). His office was combined with the High Commissioner for the so-called "Nansen refugees" into a single High Commission in

1938, and by its statute it was expressly forbidden from entering into any legal commitment whatsoever on behalf of the League (Hope-Simpson, 1939: 596). Early discussions of the creation of a United Nations High Commissioner for Refugees to replace the IRO saw the UNHCR as playing an “advisory-role” – it would be the task of the High Commissioner simply to “draw attention of governments to any circumstances which called for definite action” (United Nations, 1949d: §32). The UNHCR statute gives the office of the High Commissioner a somewhat greater role than this, giving it the task of promoting international agreements and supervising their implementation. However, this supervision should not be mistaken for any legal power to enforce the Convention – there are no enforcement mechanisms built in either to the Convention or to the Statute. UNHCR is bound by its statute to do work of an entirely non-political character.

*c. Self-Interest*

The concept of self-interest is intimately linked with each of the above considerations, but there is a sense in which economic considerations dictated not only the limiting of state responsibility, but also their offers of sanctuary. As detailed above, the League of Nations addressed the refugee problem from an economic perspective from its earliest days. This led to a system whereby refugees were “selected” for resettlement to fill the labour needs of states. One early example of this is, in the years immediately following the First World War, the French policy of relying on Russian refugees to replace a proportion of the labour force that perished in the fighting, and then promptly reversing this policy and embracing protectionism in the latter half of the 1920s (Skran, 1995: 24). Indeed, the economic depression caused by the Stock Market Crash of 1929 saw increased protectionism on the part of states in regard to access to employment opportunities for non-nationals, but also in regard to their borders. Gaining lawful entry became increasingly difficult for refugees throughout the 1930s, and this is nowhere more evident than, as Long highlights, in policies toward Jewish refugees from Germany who had been stripped of their property by the Nazis. Visa restrictions were redoubled to prevent arrivals at the border, and Jews were often turned away when they did arrive (Long, 2013: 11-12).

The policies pursued by the IRO during its three years of operations after the end of the Second World War are further examples of this logic of economic self-interest. The IRO was empowered to enter into bilateral agreements with governments, by which the IRO would determine the eligibility of those applying for its assistance for refugee status, and governments could then send “selection missions” to the refugee camps administered by the IRO in order to select refugees with the required skills to fill labour shortages. Once the refugees had been

through the “selection process”, the IRO would arrange for their travel to the country in question, where the refugee would be required to work in the pre-determined industry for a pre-determined period of time (United Nations, 1949a: 9; see also Long, 2013: 14-14). The following excerpt is from the *Agreement [of 21 July 1947] between the Government of the Commonwealth of Australia and the Preparatory Commission of the International Refugee Organisation (PCIRO)*:

The Commonwealth will submit [...] to the PCIRO [...] particulars of the numbers and qualifications of desired immigrants. [...] The Commonwealth estimates that during the balance of 1947 the number of workers and dependents desired will approximate a total of 4000 persons. The Commonwealth shall have the full right of selection by officers of the Department for Immigration [...] The PCIRO will be responsible for instituting such preliminary selection as may be required by the Commonwealth [...] (Holborn, 1956: 676)

The IRO resettled over one million refugees under such arrangements in just five years (Holborn, 1956: 365), but it drew sharp, often politically motivated criticism from the Communist countries. They had refused, as a bloc, to be Parties to the IRO, and accused the Western states of using it as an employment agency, and further, that by so doing, they had politicised what was an inherently humanitarian issue. There is no doubt some degree of political posturing involved in these accusations, which take up a significant proportion of the contributions by the Communist countries to the discussions of how best to replace the IRO when its mandate expired (see, for example: United Nations, 1949b and 1949c), but there also appears to be some degree of truth in this characterisation of the IRO. Refugees were not only resettled via employment programs in Australia, Canada and the United States, but also in other European countries, including the UK. The UK instituted a European Voluntary Workers program (the EVW) and recruited workers from the displaced persons camps run by the IRO. Under this scheme the workers (refugees) were refused access to a London Travel Document (the successor document to the Nansen certificate) during their first year of residency, for fear that the best recruits might travel to the land of their choice (Long, 2013: 14). The bargain of the EVW was explicit, claims Long: refugees were to work for their eventual right to settlement, and where they could no longer work – for medical reasons, including pregnancy – they were returned to the camps in Germany (Long, 2013: 15).

The IRO had perhaps the largest budget of any intergovernmental organisation created to assist refugees, but therein lay the roots of its demise. As its initial three-year mandate drew to a close, plans were drawn up for a replacement organisation. The United States had been the primary funder of the IRO and refugee relief work, and as disagreements and divisions between

the US and its wartime ally, the USSR, grew, political and economic considerations in the US took over, manifesting in Congressional refusal to fund any organisation whose membership included Communist countries (Karatani, 2005), and in the insistence that the new organisation have a greatly reduced budget and mandate, leaving the ultimate power to negotiate and facilitate the resettlement of refugees with governments; the control of the cost of refugee relief activities had to remain with the states themselves (Loescher and Scanlan, 1986: 40-42). UNHCR, with a greatly reduced budget and severely limited mandate, was thus founded to address the problem posed by the continued displacement of refugees who could not be repatriated or resettled because they were too old, too young, invalids, or in some other way incapable of skilled or unskilled labour. They were of no value to country selection commissions and so were left behind, still languishing in refugee camps in a Europe struggling to recover from the ravages of war.

## **Conclusion**

It was not lost on the voluntary organisations observing the 1951 Conference of Plenipotentiaries that perhaps they were engaged in a different battle to that of the states charged with writing the Refugee Convention and finding “solutions” to the “refugee problem.” Mr Rees, Chairman of the Standing Committee of Voluntary Agencies, represented 23 international and nine national organisations engaged in relief work, and was present at the deliberations throughout the Conference. When given the chance to speak he offered this observation:

It [the Conference] had [...] to use the popular expression, thrown the baby out with the bath water. Its decisions had at times given the impression that it was a conference for the protection of the helpless sovereign states against the wicked refugee. The draft Convention had been in danger of appearing to the refugee like the menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances [...] he would appeal to the Conference to ensure, at long last, that its deliberations sounded a note of generosity and liberalism, not one of fear and niggardliness. (United Nations, 1951e: 4-5)

His exhortations fell on deaf ears, as very few substantive changes were made to the remainder of the draft convention. Since 1951 the Refugee Convention and UNHCR have remained the two central pillars of the international refugee regime. The 1967 Protocol removed the temporal qualification of the Convention definition of the refugee; UNHCR has gradually expanded its remit to assist the stateless and the internally displaced; regional treaties in the America’s – the *Cartagena Declaration* – and Africa – *The OAU Convention Governing the Specific Aspects of*

*Refugee Problems in Africa* – have expanded the definition of the refugee to include those who flee “generalised violence”, foreign domination, or events seriously disturbing public order, extending protection to larger groups of the displaced. The international refugee regime functions alongside, and often overlaps with, other international regimes such as those governing human rights and migration – both regular and irregular – leading Alexander Betts to rename it the “refugee regime complex”. But despite these expansions and developments, in their fundamentals the “refugee,” the “refugee problem” and the “solutions” to this problem remain the same. The “refugee” is a helpless, apolitical burden in need of humanitarian relief but not to be engaged with in any meaningful way; the refugee, her very existence and presence in a country other than “her own”, is “the problem” for which the international community needs to find a solution; and the “solutions” of repatriation, resettlement and, if all else fails, integration are framed and conditioned by the concern of states to limit the burdens they are prepared to undertake, to debar the refugee from any kind of political existence traditionally reserved for citizens, and to undertake, as a formal responsibility, only those obligations which may be beneficial to themselves. This chapter has charted the development of these three central concepts of the refugee regime from the moment that the international community first took notice, as a community, of a displacement problem in 1921, to the development of the central pillars of the regime that still governs refugees to this day. In short, this chapter has addressed the *how* of refugee discourse. The next chapter will turn to French philosopher Michel Foucault, and his work on power, knowledge, and the subject, to offer an explanation of *why* this came to be the prominent discourse and understanding of “the problem” to be solved, and why this came to be *when* it came to be.

# CHAPTER THREE

## FOUCAULT AND THE REFUGEE AS PROBLEM: THE CREATION, MANAGEMENT, AND “KNOWING” OF PROBLEMS AND SUBJECTS

### Introduction

This chapter turns to the work of French philosopher Michel Foucault in an attempt to understand why the “refugee problem” – the refugee *as* problem – emerged at the beginning of the twentieth century, examine the operation of academic knowledge and the refugee regime in perpetuating this particular understanding of the problem, and to problematise the image of the refugee as an apolitical subject lacking agency. This is not a search for the “origins” of the refugee problem, or its fundamental cause, *per se*. Rather, this chapter seeks to understand how the development of political rationality in, and its effect on the structure of, the modern international state system, created the conditions which made possible the problematisation of migration in general, and the further problematisation of specific types of migration more specifically, such that a distinct “refugee problem” emerges out of a seemingly common and timeless phenomenon – the movement of people and escape from persecution.

Since the early 2000s when Foucault’s lecture series at the Collège de France first appeared in English translation there has been a growing interest in the applicability of his work to International Relations, but the majority of this work has been confined to critical security studies (for example, Bigo, 2002; Dauphinée and Masters, 2007; Dillon and Neal, 2008; Dillon and Reid, 2001; Neal, 2006). His insights have been used somewhat restrictively in reference to the refugee problem – a problem that Foucault did not himself analyse – with most work focusing on his conception of biopolitics as “corrected” by Giorgio Agamben (Darling, 2009; Diken, 2004; Edkins, 2000; Edkins and Pin-Fat, 2005; Jenkins, 2004; Rajaram and Grundy-Warr, 2009). Comparatively little attention has been paid to the fundamental relationship between power, knowledge, and the creation of the subject, which was in fact the focus of each of Foucault’s investigations. In the following pages I will employ Foucault’s analysis of the emergence of modern political rationality, the bodies of knowledge and ways of knowing upon which this process relied, and the types of subjects it created to demonstrate that the “refugee” is a distinctly modern subject borne of the emergence of “population” as a natural entity in need of regulation, such that migrants of all types become anomalies to be managed. Since a problem can only be managed by being known, and the more “accurately” it is known the more effectively it can be managed, the “refugee” emerges as a specific category of

(problem) person, differentiated from the “norm” of the territorially-bound citizen, but also from other categories of migrants.<sup>11</sup> This analysis will also demonstrate that the refugee regime is neither an exception to, nor a tool to counter, this rationality. It is, rather, a political technology intimately bound up with the power-knowledge structures that characterise modern society. The political economy of truth according to which it functions depends upon, entrenches, and continually aims to reproduce the refugee as a voiceless, apolitical victim, and deny to her both legitimate choice and agency.

To this end, this chapter will first outline Foucault’s reflections on the development of the modern state as a problematic of government and, more importantly, the bodies of knowledge and ways of knowing which enabled the modern state to develop from the sixteenth century, to demonstrate that it is only with the emergence of “population” as a distinct entity that migration as such appears in need of regulation, enabling the conception of a distinct “refugee problem” to develop. The second section will outline the links in Foucault’s work between power, knowledge, and the subject, in order to frame the discussion in the third section on the emergence of the “refugee” as a distinct subject of intervention for (international) politics from this newly problematised body of people on the move. This third section will demonstrate the utility of Foucault’s insights on the power-knowledge-subject nexus to understanding the refugee problem through an analysis of refugee status determination (RSD) as a process of subjectification, to show how the refugee regime functions as a political technology which aims to reproduce the refugee as a voiceless subject, and restrict the agency of the subjects it creates. The chapter concludes by highlighting the potential of Foucault’s understanding of the historically-contingent, rather than necessary, formation of different subjectivities for the possibility of constructing subjectivity in different and potentially less oppressive ways, but posits that, due to the turn away from the political to within the self that Foucault’s work takes, this potential is best taken up by utilising Hannah Arendt’s work.

### **Governmentality: the modern state as a problematic of government, and the migration anomaly**

Studies of Foucault, and applications of his thought, tend to divide his major works into two periods or approaches. His first three books – *Madness and Civilisation*, *The Birth of the Clinic*, and *The Order of Things* – are labelled “archaeologies”, while his later works – *Discipline and Punish*, and his three-volume *History of Sexuality* – are dubbed “genealogies”. These categories are primarily retrospective and usually idealised descriptions of Foucault’s

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<sup>11</sup> By extension, of course, this same system also differentiates each of these other categories of migrants from each other, from the refugee, and from the citizen.

work (Gutting, 2006: 7), but Foucault himself did recognise a shift in emphasis in his work as he expanded the areas of investigation from a focus on knowledge as the outcome of linguistic practices (archaeology) to the integration of non-discursive practices and the circular relation of power to the production of discursive knowledge (genealogy). It is with this shift to the examination of power relations that the state makes an appearance in Foucault's work.

The lectures Foucault delivered between 1975 and 1979 at the Collège de France contain his most sustained reflections on the state, but he did not consider the state to be an institution, but a practice. To treat the state as an institution, he argues, is a fundamental mischaracterisation:

We cannot speak of the state-thing as if it was a being developing on the basis of itself and imposing itself on individuals as if by a spontaneous, automatic mechanism. The state is a practice. The state is inseparable from the set of practices by which the state actually became a way of governing, a way of doing things, and a way too of relating to government. (Foucault, 2009: 277)

Unlike state theory, which attempts to deduce the modern activities of government from the essential properties and propensities of the state, for Foucault the key to understanding the state is to approach it from the other way around (Gordon, 1991: 4): we should focus our attention not on the state "itself" but, rather, on practices of "government". Approaching the state from the perspective of the problematic of government sheds light not only on the emergence of forms of national government, administration, and its techniques, but also on the emergence of "forms of rational knowledge taking the direction of public policy as their objective – principally, political economy, political arithmetic, vital and social statistics, and the social sciences and economics" (Dean, 2003: 179).

i. Political rationality and the emergence of "population"

In his lecture series *Security, Territory, Population*, Foucault explores what he considers to be a fundamental shift in political thought and practice evident in political reflection from the sixteenth century onwards: a shift in emphasis in the practice of governing from exercising sovereignty over a territory, to the regulation of populations. In the medieval tradition, Foucault claims, a good government, a well-ordered kingdom, was part of a worldly order willed by God (2009: 349). Good government was inscribed in a great cosmological-theological framework, or *episteme*, whereby the things of the world were made for man – a being made to pass into an eternal world rather than live in this one – and in which two kinds of truth existed: the truth as revealed to man by Scriptures and through signs given by God, interpreted by the clergy, and a

hidden truth – hidden within the soul – to be discovered through confession in order to aid the transition to the next world (Foucault, 2009: 235). This world, or world-view, governed by a type of power which took the guidance and salvation of souls as its objective (pastoral power), begins to crumble in the sixteenth century, at the confluence of two great events – the formation of the territorial monarchies from the fragmentation of feudal estates, and the Reformation and Counter-Reformation. The duty of the sovereign shifts as the episteme shifts, and the sovereign must now do more than exercise sovereignty over a territory to ensure God’s order on earth – he must, now, *govern*. This shift in the *episteme* is evidenced, for Foucault, by the development of a new form of political reflection related to the government of *men* (outside of ecclesiastical authority), rather than territory. Foucault calls this new type of political writing reflections on the “art of government.” Advice to the prince was, of course, an ancient tradition of political reflection and writing, with Machiavelli’s *The Prince* a prime example, but the treatises to emerge from the sixteenth to eighteenth centuries do not present themselves as advice to the prince, which concern the ways in which the sovereign can maintain control over his territory and rule in accordance with natural or divine laws, or with due regard to the vagaries of fortune (Foucault, 2009: 91-2). In the treatises on the “art of government”, to govern is not to exercise sovereignty over a territory, and only consequently over the subjects who inhabit it, but is to “arrange” men in their relationships, bonds, and complex involvements with “things” like wealth, resources, means of subsistence, and territory: its borders, qualities, climate, and so on (Foucault, 2009: 96). The word “arrange” has special significance for Foucault. What enabled *sovereignty* to achieve its aim of obedience to the laws was the law itself, but with *government* what we have is the employing of tactics, or of employing laws as tactics: arranging things so that a certain end may be achieved through a certain number of means. The wisdom required of one who governs is no longer derived from the traditional virtues such as justice and respect for divine laws, or from skills such as prudence, and care in surrounding oneself with the best advisors. The wisdom required is, rather, the knowledge of the “things” to be governed, of the objectives that can and must be attained, and the approach to governing that one must employ in order to attain them (Foucault, 2009: 99). The theorists of the art of government try to develop a model for governing based not on the extension of divine sovereignty over a territory, nor wisdom derived from the knowledge of God’s laws and their reflection in divine nature. They find it, at first, Foucault claims, in the state. It is at this point, the late sixteenth century, that “the state” becomes an object of thought that enters into reflected governmental practice (Cadman, 2010: 544).

*Raison d’état*, rather than simply an arbitrariness or violence of government as we consider it today, was the name given to the rationality specific to governing states, which develops from the late sixteenth through the eighteenth centuries. At the end of the sixteenth century,

Italian jurist Giovanni Botero defined *raison d'état* as “a perfect knowledge of the means through which states form, strengthen themselves, endure and grow” (Foucault, 1988: 406). In 1606, Palazzo, another Italian theorist, wrote that “a reason of state is a rule or an art enabling us to discover how to establish peace and order within the republic”; and in 1647, Philipp von Chemnitz defined *raison d'état* as “a certain political consideration required for all public matters, councils and projects, whose only aim is the state’s preservation, expansion and felicity; to which end, the easiest and promptest means are to be employed” (Foucault, 1988: 406). These definitions all regard *raison d'état* as an “art”, a technique conforming to certain rules. These rules pertain to a certain rational knowledge, and not simply to the customs and traditions of the state in question: the art of governing the state is “rational” if it observes the *nature* of what is governed, that is, the state itself (Foucault, 1988: 406). Three important ideas are implied, Foucault claims, in this rationality of government. First is a new relationship between political practice and knowledge. The state, under *raison d'état*, is something that exists *per se* – it is a kind of natural object, an order of things – and political knowledge deals with the nature of the state to be governed. Government is only possible when the strength of the state is known, because it is only by this knowledge that the strength of the state can be sustained. Concrete, precise, measured knowledge of the forces and resources of the state – and of rival states – is, therefore, necessary for effective government. This political knowledge went by the name of political “arithmetic” or “statistics” (Foucault, 1988: 408). The true nature of the state is thus conceived as a set of forces and strengths that could be increased or weakened by the politics adopted by governments. This is connected with the second idea implied in *raison d'état* as a rationality of government: a new relationship between politics and history. The forces of the state, which can be known through the collection of concrete and precise knowledge, have to be increased, since each state is in a permanent competition with other states (Foucault, 1988: 408). What we see here is the erosion and eventual disappearance of the idea, predominant in the Middle Ages, of the coming of the *respublica Christiana* – the last empire before the return of Christ – and its replacement with the idea of politics as concerned with the struggle and competition between a multiplicity of states in an unlimited history (Foucault, 1988: 409). Finally, a new relationship between the individual and the state is implied in this new understanding of the nature of politics, history and government. If government must have as its exclusive aim the permanent reinforcement and development of the state’s strengths, which, given the permanent competition with other states in which one’s own state is engaged, it must, the government need not worry about individuals as individuals, except in their ability to introduce even minimal changes in the strength of the state (Foucault, 1988: 409). The individual is an important part of the state, but only insofar as his continued existence is *productive* for the state. The collection of the knowledge necessary to effect this “marginalistic integration” of the individual to the state’s utility raised a great number of

technical difficulties, particularly in larger states such as France, and so an administrative apparatus was needed to enable the collection of the knowledge necessary to govern (Foucault, 2009: 274). This apparatus was known as “police” or *Polizei*, and its development is, for Foucault, integral to the development of the concept of “population” from the purely productive force for the strength of the state characteristic of *raison d'état*, to the late eighteenth and nineteenth century understanding of population as “human species” which comes to characterise biopower and biopolitics (Foucault, 2009: 69-77; 278).

In the seventeenth and eighteenth centuries *police/Polizei* was both a technology of government and an academic discipline. As a technology of government, the police intervene in the behaviour of individuals in specific, permanent and positive ways, in order to preserve and enhance the lives of individuals *so that they may be of most use to the state* (Foucault, 1988: 413). In essence, and according to various compendiums or manuals of police throughout continental Europe at the time, the purview of police was everything concerning the resources, potentialities, and administration of the state except for the army, the judiciary, and the collection of taxes (Foucault, 1988: 412). De Lamare’s *Traité de la police*, of 1705, details, for French civil servants, the areas of operation and concern of police, including: religion and morals, public health, roads, highways, public safety, trade, factory workers, liberal arts and the poor:

The police deal with religion, not, of course, from the viewpoint of dogmatic orthodoxy but from the viewpoint of the moral quality of life. In seeing to health and supplies, the police deal with the preservation of life. Concerning trade, factories, workers, the poor, and public order, the police deal with the conveniences of life. In short, life is the object of the police [...] That people survive, that people live, that people do even better than just survive or live: that is exactly what the police have to ensure. (Foucault, 1988: 413)

What De Lamare’s work points to, for Foucault, is that the state has to deal not only with men, or with many men living together, but with *society*. Individuals and their social relations, and how the structure and functioning of these relations impacts the strength of the state, is the object of the police.

In addition to an administrative practice by which knowledge of the factors contributing to the state’s strength could be known, *police/Polizei* was also an academic discipline. It was taught under the name *Polizeiwissenschaft* in various universities throughout continental Europe, most notably at Göttingen, where Prussian, Austrian and Russian civil servants were trained. One of the central texts of this study of state administration (or cameral studies) was written by von Justi and published in 1756. One of the central concepts of von Justi’s work is

“population”, under the name of which he takes into account what demographers were discovering at the same moment: that the physical and economic elements of the state constitute an *environment* on which population depends and which, conversely, depends on population (Foucault, 1988: 415). The population and the environment are, in other words, in perpetual living inter-relation, and it is the responsibility of the state to manage these relations between living beings. We can see, then, that *raison d'état* developed in correlation with the formation of a new understanding of political-historical relations between states and sovereigns, and took shape through assemblages of political knowledge and technology: the securing and development of the state's forces through a system of alliances and the organisation of large armies, and through the police as a set of means for bringing about the internal growth of the state's forces (Foucault, 2009: 365). At the intersection of these two technologies lies their common instrument: commerce and monetary circulation.

Mercantilism was not simply an economic ideology, and the dominant one between the sixteenth and eighteenth centuries, but an effort to rationalise the exercise of power in terms of the knowledge acquired through statistics, and simultaneously, a set of doctrinal principles concerning how to increase the power and wealth of the state (Foucault, 2009: 101). For the mercantilists of the late sixteenth and seventeenth centuries, it was expected that the population, or man-power, production and export, and the equipment of large armies, would be increased by enrichment through commerce. This came to be known as the “population-wealth” problem. The population is the source of the strength of the state and sovereign in that it provides man-power for production and keeps wages low. But, importantly, the population can only be the basis of the state's wealth in this way if it is framed by a regulatory apparatus that prevents emigration, or keeps it to a minimum, encourages immigration and promotes the birth rate. Provided that the state continues to maintain such policies, the wealth of the state would continue to grow (Foucault, 2009: 68-9). From the eighteenth century, however, there is a shift in this understanding of population and its relation to the economy. In collecting the knowledge necessary to discover the limits of allowable or desirable emigration, and policies to promote birth rates, infinite growth comes to be understood as impossible, and population comes to be seen as a set of processes to be managed at the level of, and on the basis of, what is natural in these very processes. Reflection on the *nature* of these processes is the purview of what comes to be known as “political economy.”

The development of political economy as a field of study distinct from the analysis of wealth is accompanied by a shift in governmental rationality away from *raison d'état*. The characterisation of population as dependent on processes – both natural and artificial – brings about the problem of the proper management of such an entity. Can the relationship between

population and resources be managed through the exhaustive regulatory and coercive system of police and *raison d'état*, which strive to increase the population by increasing resources? Or, more accurately, can this relationship be managed *effectively* by such a system? The problem of population is being posed here in a slightly different way: rather than population as the simple sum of subjects inhabiting a territory and who must be steered toward increasing the productive force and strength of the state for the sake of the state itself, population is in fact a *variable* dependent upon a number of factors (Foucault, 2009: 365). While not all of these factors are natural – the tax system, the distribution of profit, the circulation of men and goods – this dependence can be rationally analysed in such a way that the population appears as “naturally” dependent on multiple and artificially modifiable factors (Foucault, 2009: 365). This is the domain of study of political economy. Thus the political problem of population begins to emerge, splitting off from the technology of police and in correlation with the birth of economic reflection as distinguished from the analysis of wealth. A new problematic opens up in the art of government, on the basis of the development of political economy as the body of knowledge upon which it depends, and in relation to the re-emergence of the problem of “naturalness” in political reflection: the problem of how “not to govern too much” – the problem of biopolitics most completely expressed in liberalism and neoliberal economics. From the first treatises on the art of government in the sixteenth century through to the eighteenth and beginning of the nineteenth century, the fundamental question of government has evolved from whether one was governing in proper conformity to moral, divine or natural laws, to whether one was governing with sufficient intensity, depth, and attention to detail so as to bring the state to its maximum strength, to, finally, whether one governs between the maximum and minimum fixed by the nature of things (Foucault, 2010: 18-19). The nature of this “thing” called population has become the focus of a new rationality of government: biopolitics.

Biopower and biopolitics make their first appearance in the final chapter of volume one of *The History of Sexuality*, and in the final lecture of his contemporaneous lecture series *Society Must Be Defended*. Biopolitics is a political rationality concerning the administration of *life*, particularly as it appears at the level of populations. In the mid-eighteenth century, methods of power and knowledge assume responsibility for the life processes of human beings and undertook to control and modify them, bringing about what Foucault calls the “entry of life into history” (Foucault, 1998: 142).<sup>12</sup> The characterisation of population as dependent on natural

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<sup>12</sup> Blencowe clarifies that this refers to the entrance of *biological* life into history. This is an important clarification, especially in relation to Agamben’s conception of biopolitics. Biological life as an entity, Blencowe explains, is contingent upon historically-situated capabilities, such as the development of statistical analysis. Without such technologies, biological life does not, in fact, exist. Contra Agamben, biological life is not “any old bare life, animal or physical or natural life. It is the specific type of life to

and artificial processes presents governmental practice with a series of problems to be rationalised. The phenomena characteristic of a group of living beings constituted as a population – health, sanitation, longevity, birth rates, and so on – make matters of life and death, birth and propagation, health and illness, and the processes that sustain or retard the optimisation of the life of the population matters of governmental concern (Dean, 1999: 99). Government must then also be concerned with the social, cultural, environmental, economic and geographic conditions under which such populations exist. Because these are understood as “natural” phenomena and processes, either in the sense that they derive from the natural world, or in the sense that they have an intrinsic “nature” that must be respected, the kind of knowledge required in order to intervene successfully and manage them efficiently must be “scientific” in its procedures. While such knowledge is external to the art of government, government cannot do without the consequences, results, and insights of such science (Foucault, 2009: 85). This framework of biopolitics, supported by developments in scientific knowledge, enables the “division of the population into sub-groups that contribute to or retard the general welfare of the population and lead to attempts to prevent, contain or eliminate them” (Dean, 1999: 100). What is developing over this period with the growth of statistics, and the rise of demography and economics (and biology), is a quite particular relationship between power and knowledge, of government and science.

This form of social government concerned with the management of the life and welfare of the population might be characterised as the internal side of biopolitics. There is, Dean (1999) claims, also an external side, a kind of international biopolitics that governs the movements, transitions, settlement, and repatriation of various populations. This international biopolitics is in fact a condition of the assignation of populations to specific states and thus of social government of any form. It is here, at this point in time, that racism becomes central to the functioning of biopolitics, and migration itself first appears as a problem to be managed.

## ii. International biopolitics and migration

The French Revolution occupies a central position in most analyses of the development of the modern state and state system, constituting the birth of the *nation-state*. Foucault also gives a central role to the French Revolution but focuses, as with his discussion of the birth of the art of government, on political reflection of the time. The Revolution brought about a recodification of a discourse that Foucault chronicles extensively in *Society Must Be Defended*

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which species and population are party, which, if not exactly discovered or invented by modern knowledge-production techniques, was at last brought into view [...] for the first time in the 18<sup>th</sup> and 19<sup>th</sup> centuries” (Blencowe, 2010: 117). Foucault charts the demise of natural history and its replacement by biology as fields of study addressing the “natural world” in *The Order of Things*.

of “politics as war by other means.” This discourse had taken the form of a “counter-history”, in the centuries preceding the Revolution, of race struggle between aristocrats and the bourgeoisie, whereby society was characterised by a basic struggle between the sovereign and one or more opposing groups calling themselves “nations” or “races”. The Revolution, Foucault claims, is the turning point whereby the subversive discourse of race struggle mutates, with the triumph of the “race” or “nation” of the bourgeoisie, from the idea that the functioning of society is based upon a struggle between opposing forces/races, to the idea that *society itself* is caught in a struggle with its enemies *both within and without* (Kelly, 2004: 59). But it is not until the nineteenth century, with the development of new paradigms in biology and evolutionary theory that these ideas of race become “biological”, and it is *this* transformation that makes it the operative principle mediating between sovereign- and biopower. Under biopower, racism is more than a simple hatred of other races, and is primarily “a way of introducing a break into the domain of life that is under power’s control: the break between what must live and what must die” (Foucault, 2004b: 256). The enemies identified in this process, who must be disposed of, are not “adversaries in the political sense of the term” – such as Protestant spies in the service of a heretic King with designs on one’s throne. They are “*threats*, either external or internal, to the population and for the population” (Foucault, 2004b: 256). The disposal of such threats can, but does not have to, take the form of killing or murder, and is just as likely to take the form of exposing someone to death, increasing the risk of death for some people, or political death – expulsion, rejection, isolation, quarantine, and so on (Foucault, 2004b: 256). In addition, then, to the positive aspects of biopower – fostering conditions of life to increase the health and longevity of the population through positive interventions in the form of public health and sanitation programs, for example – biopower also fosters these conditions by identifying threats to the population, such as unhygienic living conditions, grain shortages, disease, dangerous social elements such as criminals, the sexually perverse, the mentally ill, and so on, and acting upon them so as to remove the dangers that they pose. Race is what allows biopower to function internationally: if the primary concern of government is to foster the conditions of life of “its” population, this necessarily involves a determination of those who do not form a part of this body. Race is the mechanism by which the presence or existence of these other groups becomes understood as a *threat*, or a *problem* to be dealt with.

The changing relationship of the state (or government) to, and its understanding of, population throughout the period from the late sixteenth century is reflected in changes to the regulation of the movement of people, both within and between states in the same period. This has not been the subject of systematic study (to my knowledge), but Soguk (1999), Torpey (2000) and Zolberg et al. (1989) have all highlighted this period as one of the development and

intensification of nationality and immigration legislation, and it is my contention that this is no mere coincidence. As we saw above, mercantilism, the dominant school of economic thought and favoured policy throughout Europe from the late Middle Ages through to the mid-eighteenth century, saw population as a productive source of strength for the state. The conviction that “fewness of people, is real poverty” gave rise to proposals for various policies that might promote multiplication of the population including tax incentives, social services, and immigration (McCormick, 2014: 25). Growth of population in and of itself, however, was no guarantee of wealth creation. The population had to be productive, capable of work, and skilled in order to produce the products that the state needed to build its trading power. Internal regulations on labour thus could also include policies of population (re)distribution to maximise the potential of the resources and geography of the state as a whole (McCormick, 2014). Overseas colonisation was also encouraged by the mercantilists, with the raw materials of the colonies produced and exploited for the benefit of the motherland. It is perhaps no surprise then, that this period saw massive migrations of people from Europe to newly established colonies in the Americas and Australia, and southern Africa. During the mercantilist period, then, movement, or migration, was generally *desirable* since new populations endowed the state with welcome resources for development (Soguk, 1999: 62). The Huguenots, for example, for some scholars of the refugee problem an important group given their designation at the time as “*refugiés*” or “refugees”, who fled France following the revocation of the Edict of Nantes in 1685, filled the ranks of the Dutch and English armies, and were often skilled, educated and of reasonable means. These positive economic attributes, combined with being of the “correct” religion made them attractive potential immigrants, and other states were keen to welcome them. The Great Elector of Prussia, Frederick William, issued the Edict of Potsdam inviting the Huguenots to Brandenburg, within four days of the revocation of the Edict of Nantes; and in 1709 the British Parliament passed an act naturalising the expelled French Protestants (Soguk, 1999: 90). Naturalisation, rather than simply welcoming them as friendly foreign nationals, was proposed since the Parliament believed that

Many strangers of the Protestant or reformed religion who out of due consideration of the happy constitution of the government of this realm, *would be induced to transport themselves and their estates to this kingdom, if they might be made partakers of the advantages and privileges which the natural-born subjects thereof do enjoy.* (Soguk, 1999: 90, emphasis added)

An almost identical declaration was passed in the Netherlands in the same year. Neither migration in general, nor displacement in particular, appear, from what information is available, to have removed those people on the move dramatically from civil society or a productive existence.

With the decline of mercantilism, *raison d'état* and the Absolute Monarchies, and the rise of “political economy”, biopolitics and its different understanding of population, a discernible shift occurs in legislation related to migration throughout Europe. Torpey (2000) locates the birth of the passport with the documentation controls developed by the French Revolutionary government to control movement between towns and rural areas, manage the *levée en masse* (conscription), and prevent the return of exiled monarchists. The political and military turmoil that the Revolution unleashed throughout Europe saw other states react with legislation controlling the entry of foreign nationals. The 1793 Aliens Act was the UK’s first immigration legislation and it gave authorities the power to deny entry to foreign nationals and to expel any threatening national of a foreign government, although in practice such expulsions were extremely rare (Soguk, 1999: 92). Prior to the French Revolution, European states did not have nationality laws, but following the Napoleonic Wars these proliferated: with Prussia in 1842, the Netherlands in 1848, Italy, Russia and Austria in the 1860s, Switzerland in 1874 and Britain in 1870 (Grahl-Madsen, 1966 in Soguk, 1999: 97). The latter half of the nineteenth century saw the spread of restrictive immigration policies beyond Europe. In 1875 the US first imposed severe restrictions on immigration from Asia, and in 1876 legislation was proposed to introduce literacy tests for all migrants, including Europeans. These measures failed to pass Congress, but “lesser” restrictions including entry fees, health tests and other “moral” qualifications were passed (Zolberg, 1989: 18-9). Documentation of one’s national identity became a general requirement for foreign travel, and, as indicated above, in times of war these controls became more strictly enforced. The 800,000 Russians who fled the Russian civil war during and after the First World War, denationalised by the new Bolshevik government, and who, as we saw in Chapter Two, first triggered international concern with displacement, lacked these very documents, rendering their migration from initial places of refuge such a problem.

Torpey characterises this explosion of legislation and documentation to manage migration as the appropriation by modern states of a “monopoly over the legitimate means of movement” (2000: 4). That these measures appeared when they did does seem to indicate that migration, as such, was not a problem, or, at the very least, not a phenomenon in need of the *sustained and focused attention* of governments prior to the mid-eighteenth century. Foucault’s discussion of the political rationality that underpinned the development of the state, and its symbiotic relationship with the fields of economics and science offers an explanation for why this is the case. The political reflections on the art of government and *raison d'état*, the establishment of an exhaustive administrative apparatus to collect information on the population to serve the economic growth of the state, the development of statistics and the rise of political economy which problematise the population-wealth nexus, all alter the way the state, or government,

understands the body of subjects under its control, and the way it governs them. Population as a living body, subject to natural and artificial processes, which it is the state's responsibility to modify, preserve, enhance, and protect, is an idea and a reality that is "absolutely modern in relation to the functioning of political power, but also in relation to knowledge and political theory prior to the eighteenth century" (Foucault, 2009: 11). It is only with the development of the idea of population itself that the composition of that population comes to stand in need of regulation, and migration becomes a phenomenon in need of management. It is in this context that the "refugee" and "refugee problem" emerge from this newly problematised body of people on the move: unable to conform to the new demands of migration regulations, individuals lacking nationality or lacking formal documentation attesting to their nationality became anomalies in need of special attention. To understand the form that the management of these new subjects and problem takes we need to examine the foundations of Foucault's thought: the connections between power, knowledge and the subject.

### **Foucault on the Subject, Knowledge, and Power**

#### i. The subject, knowledge and power

Foucault wrote on a range of topics including medicine, mental illness, sexuality, prisons and punishment, and the history of the social and human sciences. Diverse as this range of topics may at first appear, Foucault's consistent project running through each of these works is to discover the relations of specific disciplines and particular social practices. This concern emerged out of his early studies of mental illness. His first monograph, *Maladie mentale et personnalité*, was an investigation of mental illness – a category he accepted from psychology. But while he accepted it as a category, he was distrustful of the prevailing wisdom categorising mental illness as the psychological correlate of organic pathology (a sort of mental virus, so to speak). Foucault hypothesised that mental illness had its own distinct structure, nature and causes and set out to discover them (Gutting, 1989: 55-6). When his first major work, *Madness and Civilisation* was published in 1960, a second edition of this earlier work was published as well. In this new edition he argued that "mental illness" was in fact a construction of modern psychology and psychiatry, disciplines in the service of modern society's attempts to control behaviours that do not conform to its norms (Gutting, 1989: 56). *Madness and Civilisation* was an investigation into the historical origins of these disciplines, designed to show that there have been alternative understandings of madness and that, rather than these being "false" conceptions refuted by the "truth" of modern psychiatry, each conception is a social construction, intelligible and compelling in its own period (Gutting, 2006: 11). For Foucault,

the emergence of modern psychiatry was not an “inevitable triumph of compassion based on scientific objectivity,” but the product of forces peculiar to the social and intellectual structures of the nineteenth and twentieth centuries (Gutting, 2006: 11). It is out of these structures, Foucault claims, that knowledge is produced, and this is the case not just for psychology and psychiatry, but all academic disciplines. Foucault is not interested in the truth or falsity of any specific claims made by the disciplines he examines. His focus is, rather, on the “effective operation of these disciplines – how and around what concepts they were formed, how they were used, where they were developed” (Rabinow, 1984: 12). In other words, rather than focusing on the epistemological question of how we know that what we know is true, Foucault focuses on the problem of the effects of our will to truth, the effects of our drive for “knowledge” (Simons, 1995: 5). The most profound effect of, and the central concern driving all of Foucault’s work on, this will to truth is “the subject”.

Individuals are made into specific types of subject by what Foucault calls “modes of objectification”, including the “modes of inquiry that try to give themselves the status of sciences” – that is, academic disciplines such as the “human sciences” of economics, biology, psychology and so on – and “dividing practices” – those processes of social objectification and categorisation that give individuals both a social and a personal identity, and render them objects of such knowledge (Foucault, 1982a: 326). At any given period there are substantial constraints, beyond those of grammar and logic, on how people are able to think and speak. Foucault argued that particular investigations were structured by

Which concepts and statements were intelligible together, how those statements were organised thematically, which of those statements counted as ‘serious’, who was authorised to speak seriously, and what questions and procedures were relevant to assess the credibility of those statements (Rousse, 2006: 96)

A discourse – such as medicine or psychology – has within it, and by its own rules reproduces, certain subject positions: subjects who are authorised to speak, and other subjects, or objects of discourse, about whom knowledge is produced. We will see later how the study of refugees functions in the same way. Foucault’s archaeologies focus on the production of this discursive knowledge.

In *The Archaeology of Knowledge* Foucault explains that the speaking subject is characterised by his/her position in relation to the rules governing the production of any particular discourse. In making a statement a speaker takes up a position that has already been defined, quite apart from his/her mental activity, by the rules of the relevant discursive

formation (Foucault, 2004a: 56). For example, it is clear that statements recognised as “medical” cannot come from just anybody. The status of “doctor” involves certain criteria of competence and knowledge, institutions, norms, and legal conditions that give one the right to practice and extend one’s knowledge. It also involves a system of differentiation from, and relations to, other individuals or groups, each possessing their own status (Foucault, 2004a: 56). The value, efficacy and therapeutic powers, and more generally their very existence as statements belonging to a medical discourse, cannot be dissociated from those subjects with the “right” to make them. Importantly for Foucault, this status is not static, but changes in different historical periods. It is also necessary for such discourse to emerge from the “correct” institutional sites: the hospital, private practice, a laboratory, books and treatises recognised as “valid”, case histories, statistics supplied by “recognised” individuals or organisations, and so on (Foucault, 2004a: 58).

The objects of discourse – the sick person, the criminal, the homosexual – are not subjects already existing and awaiting the advent of “scientific” investigation to discover them in their “true form”, but are, rather, the result of the interplay of rules governing what Foucault calls “surfaces of emergence”, “authorities of delimitation” and “grids of specification.” Those rules governing “surfaces of emergence” derive from the social norms which separate objects characterised in a certain way from a social context and transfer them to the domain of the relevant discourse. For example, the family, one’s immediate social group, and the religious community all had thresholds of acceptable behaviour beyond which the term “madness” would have applied, confinement of the “mad person” been demanded, and responsibility for explanation and treatment placed on the medical profession (Sheridan, 2005: 96). Those to whom society gives the authority of deciding what objects belong to a specific discourse are the “authorities of delimitation”. In the nineteenth century, medicine, as an institution possessing its own rules, a body of knowledge and practice, and a group of individuals constituting the medical profession, became the major authority in society that delimited, designated, named and established madness as an object of examination (Foucault, 2004a: 49). “Grids of specification” are systems according to which different kinds of objects are divided, contrasted, related, regrouped, and classified as objects of discourse. Entirely apart from social customs and authoritative judgment, a person may merit classification as “mad” in virtue of where he/she stands in relation the behaviour of others – where one stands in relation to a “norm” (Gutting, 1989: 234). What we “know”, then – about mental illness and the “insane”, or about recidivism and the “delinquent”, or, as we shall see, about migration and “the refugee” – is a function of practices, sites from which statements emerge, and concepts and their modes of integration, rather than a collection of things judged to be “true”. Or, to put it another way,

these things are judged to be “true” because they are a function of these practices, sites and concepts.

Foucault’s archaeologies revealed that there were important shifts in what counted as serious discussion of madness, disease, wealth, and so on, and that these shifts were evident in the historical archive, but he came to the realisation that the rules of discourse alone could not explain the occurrence of these shifts. Foucault’s genealogical works supplement this archaeological analysis of discourse with a complementary analysis of the relation of discursive knowledge to the power structures of society (Gutting, 1998: 260). As we saw in the introduction to this thesis, Foucault understands power as a relation, rather than an institution, a structure, or a strength we are endowed with. Unlike more traditional political theories of power, which assume that power resides in the hands of the sovereign, is wielded over individuals in and through the sovereign’s commands, rendering such subjects free from power wherever they are out of reach of the sovereign, Foucault argues not only that power relations exist throughout social relations of all kinds, but that power is a productive as well as repressive force; power forms knowledge and produces discourse (Foucault, 1977: 120). We should, therefore, abandon a whole tradition that allows us to imagine that knowledge can only exist where power relations are suspended and that knowledge can only develop outside its injunctions, demands and interests (Foucault, 1977: 127). For Foucault, power relations and discourses (or knowledge) mutually constitute one another by rendering the social world into a form that is both knowable and governable, each dependent on the other (Simons, 1995: 27). As Hall explains, knowledge linked to power not only assumes the authority of “the truth” but has the power to *make itself true*: all knowledge, once applied in the real world, has real effects, and in that sense at least, “becomes true.” Further, knowledge, once used to regulate the conduct of others, entails restraint, regulation and the disciplining of practices (Hall, 1997: 49). Thus, Foucault states, “there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time, power relations” (Foucault, 1995: 27). This led Foucault to speak not of the “Truth” of knowledge in an absolute sense – a truth which remained so for all time regardless of context – but of discourse sustaining a “regime of truth.” This relation between knowledge, power, and the constitution of the subject, is perhaps best illustrated by looking in more detail at Foucault’s examination of disciplinary power and disciplinary techniques.

ii. Disciplinary techniques and the constitution of the subject

*Discipline and Punish* begins with illustrations of two different modalities of power: the execution, in 1757, of the regicide Damiens, representing the manifestation of sovereign power

on the body of the condemned man; and a timetable for the House of Young Prisoners in Paris, from the 1830s. These illustrations represent, for Foucault, a profound shift in the relationship of the body to power. Throughout the eighteenth century the body is no longer simply the site upon which the power of the sovereign is manifested, but becomes a site of a meticulous observation of detail, a site of “discipline” through which docile and “useful” bodies might be created (Foucault, 1995: 138-9). In various sites, such as schools and factories, a corpus of “methods and knowledge, descriptions, plans and data” were developed, at first in response to particular needs, but which converge, overlap, and gradually produce the blueprint of a general method of domination which made individuals into specific subjects (Foucault, 1995: 141). This new technique of power – disciplinary power – creates a subject who is self-monitoring, developmental, and productive, and it operates according to three techniques/mechanisms: hierarchical observation, normalising judgment, and the examination.

Disciplinary power can function merely through observation, but the important point is not simply to “see” individuals, but to transform them. For example, tiered seating in a football stadium enables security guards and cameras to see each individual, but this functions as a disciplinary mechanism because each individual knows that he/she is potentially being watched and so will modify his/her behaviour accordingly. The ideal such space would enable all to be observed by one individual, but since this is often not possible, disciplinary power needs “relays” – levels of observation through which information is passed to those in authority.

At the heart of disciplinary systems functions a small penal mechanism different in its focus from those of judicial and sovereign power. The disciplines were concerned not with violations of law, but with “non-observance”. The sites of the disciplines – workshops, schools, the army – were subject to a “micro-penalty” of time (lateness, absences, interruptions), activity (negligence, inattention), behaviour (impoliteness, disobedience), the body (irregular gestures, lack of cleanliness), and so on (Foucault, 1995: 178). The whole domain of *non-conforming* becomes punishable. However, unlike the punishment of the law characteristic of sovereign power, disciplinary punishment is corrective rather than retaliatory: the goal of disciplinary punishment is to reform. To this end, punishment is only one element of a double system – gratification-punishment – and it is this system that operates in the process of training and correction. This mechanism makes possible the definition of behaviour and performance on the basis of two opposed values of good and bad: “instead of the simple division of the prohibition as practised in penal justice, we have a distribution between a positive and negative pole” (Foucault, 1995: 180). All behaviour falls somewhere within this field. What is differentiated under this system is, therefore, not acts, but individuals themselves – their nature, potential, level or value. In short, disciplinary punishment:

refers individual actions to a whole that is at once a field of comparison, a space of differentiation and the principle of a rule to be followed. It differentiates individuals from one another [...] it introduces, through this value-giving measure, the constraint of conformity that must be achieved. Lastly, it traces the limit that will define difference in relation to all other differences, the external frontier of the abnormal. In short, it normalises. (Foucault, 1995: 183)

This “norm” – of behaviour, ability, activity, achievement – as the measure according to which the disciplines function is a measure which the disciplines themselves create. As Ransom explains, one way of training individuals to do something is to establish standards to act as performance goals. Each individual will display a certain aptitude in learning or executing such tasks, and this allows a ranking to be traced around a norm of performance (Ransom, 1997: 47-8). From the accumulation of distinctions and valuations in reference to this “norm” a particular conception of the “truth” about human beings emerges: “the ‘natural’ body is capable of repeating exercises for specific periods of time; the mind, ‘on average’, is capable of absorbing only so much instruction” (Ransom, 1997: 48). These “natural” traits are only natural in relation to the tasks set by the disciplines, and while these truths are not “false” they do lack foundational ontological status (Ransom, 1997: 50). They are, nevertheless, used as standards against which the behaviour and abilities of individuals are measured, and the normalising judgments they produce can, and do, facilitate and justify exclusions from the human community – such as of the mad, the sick, and the sexually “abnormal.”

The principles and practices of hierarchical observation and normalising judgment are joined in the final key technique of the disciplines: the examination. A prime example of power-knowledge, the examination combines the deployment of force and the establishment of truth. It places the individual within a field of surveillance and situates them in a network of writing. The procedures of examination as they developed in hospitals, armies and schools were accompanied by a system of registration and documentary accumulation to enable the efficient transmission of information along the hierarchy of observation. Related to this placing of the individual into a field of documentation, which enables knowledge to be efficiently collected and transmitted, the examination makes each individual a “case”, but a case which, at one and the same time, constitutes an object for a branch of knowledge and a hold for a branch of power. As Foucault explains, the case is “the individual as he may be described, judged, measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalised, excluded” (1995: 191). The examination, thus, fixes – in both a ritual and “scientific” way – the individual to his own particularity. But this individuality is not some internal essence that makes one person different from another, but

individuality in comparison to others and effectuated by relation to a “norm” (Foucault, 1995: 192).

While each possessed their own history, through the eighteenth century these techniques were combined, generalised and attained a level at which the formation of knowledge and the increase of power regularly reinforce one another in a circular process (Foucault, 1995: 224). The growth and consolidation of these techniques in their specific sites, and their proliferation to others constituted one of the armatures of power-knowledge that made the human sciences historically possible. “Knowable man” is the object-effect of disciplinary power and the techniques through which it functions.

Foucault’s examination of the disciplines, and their development alongside that of modern political rationality, reveals that modern power disguises itself by presenting the truths of the human sciences as advances in objective knowledge about human beings (Simons, 1995: 43). Power, knowledge and truth are in fact linked in circular relation with each other, by rendering the social world into a form that is knowable and governable. By focusing on the effective *operation* of power rather than its “source”, Foucault reveals how knowledge is *used in the operation of power*, and how this opens up new fields of knowledge and new objects for knowledge to be about. Methods of government render phenomena – such as the expanding number of people – into objects – such as population – amenable to scientific study. Simultaneously, scientific methodologies provide knowledge of these objects that render them amenable to government. Foucault’s various examinations, and his lectures investigating governmental rationality, all form part of the same project:

To show how the coupling of a set of practices and a regime of truth form an apparatus of knowledge-power that effectively marks out in reality that which does not exist and legitimately subsumes it to the division between true and false. (Foucault, 2010: 19)

It is my contention that the refugee regime is best understood as such an apparatus of knowledge-power, as both a regime of truth and a regime of subjectivity. The academic and policy discourses surrounding the “refugee problem” constitute a domain of truth and knowledge – a “regime of truth” – which depends upon the particular subjectivity of “the refugee”, as both the object and effect of that discourse. In the remaining sections I will demonstrate, by approaching the refugee regime as a form of political technology fixated on “the norm”, how the effective operation of the refugee regime depends upon a particular conception of the refugee subject, and how the knowledge-power nexus through which it operates further entrenches this subjectification.

## **The Refugee Regime as Political Technology: the function of the “norm” and the question of agency**

The previous chapter focused on the development of the non-legal refugee subjectivity of an apolitical, humanitarian victim, upon which the formal legal status of refugee rests. Access to (some or all of) the protections and benefits of the refugee regime depends upon recognition as one of these subjects. The majority of refugees are concentrated throughout the developing world, usually just over the borders of the state from which they have fled, and live in refugee camps administered by UNHCR or other aid organisations. Protection in these sites is often provided on the basis of *prima facie* refugee status – a group status based on nationality and/or state of origin, rather than on individualised review (Johnson, 2014: 94) and can be seen to correspond to the non-legal victim subjectivity. There has been a great deal of detailed work in recent years on existence within these camps, the denial of voice and agency to refugees that they foster through an economy of truth which renders their discourse “suspect”, and the culture of dependency that they create (e.g. Agier, 2011; Hyndman, 2000; Malkki, 1996). Access to protection beyond these sites, in the states of the “global north”, for example, is premised upon recognition as a refugee in the formal, legal sense, and it is to this process that I turn below, to examine the practice of Refugee Status Determination as a political technology safe-guarding access to protection by discovering and assigning to individual claimants their “true identity”. The asylum determination process in the UK is used here as an illustrative example of the political economy of truth operative in the refugee regime.

### i. Establishing the “truth” in asylum claims: “objective” evidence and the “norm”

It has become almost axiomatic to state, first, that refugee status is declarative – the granting of refugee status does not *make* one a refugee, but recognises that one *is* a refugee; and second, that the legal definition of a refugee contains both subjective and objective elements. Fear of persecution is a subjective condition, but it is qualified by the requirement that it be “well-founded” – this frame of mind must be supported by an “objective” situation (UNHCR, 2011: 11). The assessment of to whom this definition applies, and therefore to whom to grant protection, is the responsibility of the state in whose territory the refugee applies for recognition. With the shift from the group-based definition of the refugee of the inter-war period to the individualised definition of today, a new kind of subject is created: the asylum seeker. The process of granting asylum, not covered by the Refugee Convention, is left in its entirety to states, although Refugee Status Determination (RSD) can be carried out by UNHCR with the permission of the relevant government (Storey, 2013: 116).

The United Kingdom Home Office is responsible for administering claims to asylum made by individuals in the UK. Immediately following making a claim for asylum, the applicant is taken to a screening interview to establish her identity and collect fingerprints, basic personal details and information on her travel route to the UK. At this point the applicant's details are checked against a centralised European identity database, EURODAC (European Dactyloscopy), to see if she has made an asylum claim in another EU state or if she has any criminal proceedings in another EU state. A few weeks later a formal interview is conducted, lasting several hours and following a rigid question and answer format, with the focus placed on establishing the basic chronology of her story and testing its internal and external credibility (Gibb and Good, 2013: 293). Following the interview, the "case-owner" has to make a decision about whether or not to grant asylum.

The formal status of "refugee" is predicated not just upon movement across an international border, but that such movement be a result of a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (United Nations, 1951k). The UNHCR handbook on the procedures and criteria for determining refugee status states that the basic requirement for an asylum seeker's account to have credibility is that it should be "coherent and plausible" and "not run counter to generally known facts" (UNHCR, 2011: 39). Credibility is central to an asylum claim because asylum applicants cannot generally be expected to produce documentary corroboration of their ill-treatment to the standard that might be required for adjudication in, for example, criminal or civil courts. Asylum judgments, therefore, rest in large part on determinations of the credibility of the applicant and her story, and as such, the relationship between the subjective element of fear and the objective element of such fear being well-founded is at the heart of the "economy of truth" inherent in the RSD system. The claimant must tell her story, impart her experiences and her fears, to the case-owner, who must then judge the validity of these claims against what is known about a particular country or situation.

One of the central bodies of knowledge used in the determination process is "Country of Origin Information" (COI), contained in reports produced by the Home Office Country of Origin Information Service (COIS) (Gibb and Good, 2013: 298). These reports contain no analysis or explanation and can most accurately be described as collections of quotes from "reputable" sources such as government departments, foreign embassies, "reliable" media sources, NGOs, and so on. A study by the Immigration Advisory Service in 2010 found that 97% of all UK asylum case-owners used COI in all or the majority of their cases, but only 36% of these case-owners *analysed* the information contained therein (Tsangarides, 2010: 18).

These numbers appear to be reflective of a certain level of trust in the accuracy and objectivity of the information. The UK Home Office Asylum Policy Instructions (API) guidance notes on considering asylum claims and assessing credibility list COI and Operational Guidance Notes (also produced by COIS) as the only references under a heading of “Objective Evidence”, and these sources of information are nearly always preceded by the word “objective” in the guidance notes for case-owners. The importance of the correlation of the asylum seeker’s account of her reasons for fleeing her country of origin, and fearing to return to it, with this “objective country information” are explained in numerous places in the guidance notes, of which these are simply a selection:

The claimant’s testimony and other evidence should be consistent with information (COI) about events in the country of persecution and with any other available information or expert evidence [...] the greater the correlation between aspects of the account and external evidence, the greater the weight caseworkers should attribute to those aspects. (Home Office API, 2015a: 15)

Where COI supports the claimant’s account of a past or present event, and the account is internally consistent [...] sufficient in detail and/or plausibility, the material fact should be accepted. (Home Office API, 2015a: 15)

Where COI significantly and reliably contradicts the claimant’s account [...] the material fact should be rejected [...]. (Home Office API, 2015a: 16)

A negative credibility finding can have a serious detrimental effect on the possibility of the success of an asylum claim. A case-owner evaluation of whether an asylum seeker is in need of international protection often requires decision makers to decide whether they *believe* the applicant’s evidence about these past and present events and how much weight to attach to that evidence. If information contained in the COI report contradicts an asylum seeker’s case as presented to the case-owner, the COI is considered authoritative and the claim may well be denied and deportation may result. This process of determining “external” credibility functions according to, and entrenches, a hierarchy of knowledge according to the provenance of such knowledge: the subjective knowledge of the asylum seeker occupies the lowest rank and can be discounted when it fails to match the higher ranked, “objective”, knowledge produced by the government, NGOs, or established media sources. The “internal” credibility of the asylum seeker’s story is equally important to the RSD process, and it is here that Foucault’s concept of the “norm” is most clearly at work.

UK asylum policy guidance states, regarding the assessment of the credibility of the applicant’s own evidence that:

It is reasonable to expect, subject to mitigating circumstances, that an applicant relating an experience that occurred to them will be more expressive and include sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience. [...] it is a reasonable expectation for an applicant to recount an event to the level of detail that can be reasonably expected of an individual who has experienced the claimed event. (UKBA, 2013a: 13)

A 2010 study of the assumptions in judgements made by UK immigration judges found that decisions on the veracity of an asylum seeker's account were often based upon the assumption that a true account is more detailed than a false one, a "rich" account would be "in line with empirical knowledge about autobiographical memory", and that traumatic material is always clearly remembered (Herlihy et al., 2010: 361; Kagan, 2003). One judge is quoted as saying:

Given that rape is such a serious thing to happen to any woman, I would have expected a raped person to know when they were raped. This is not the type of event I would expect a person to forget about or confuse. (Herlihy et al., 2010: 358)

All of the determinations in the study contained assumptions concerning what judges considered "rational people" would have done in the situations described.

The paradigmatic example of the function of the "norm" in RSD is in the case of asylum seekers claiming refugee status on the basis of sexual orientation.<sup>13</sup> UNHCR and UK guidance both state that the appearance or demeanour of an applicant – such as "effeminate demeanour in gay men or a masculine appearance in lesbians (or the absence of such features)" – should not influence the assessment of credibility (UKBA, 2013b: 10). However, no guidance is given as to what factors should influence credibility in the place of stereotypes. The updated guidance states:

Evidence of existing or former heterosexual relationships or parenthood (both of which may need to be explored at interview) must not be automatically taken as evidence of a lack of credibility. (Home Office API, 2015b: 17)

At first glance these appear to be highly reasonable guidelines and yet the fact that heterosexual relationships need to be explained at interview, and that a lack of previous homosexual relationships *could* mean that an applicant does not have the sexual identity s/he claims to have betrays the latent role of homosexual and heterosexual "norms" in the RSD process. Studies of RSD in Europe, Australia, Canada and the USA have revealed that in the case of claims for refugee status on the basis of sexual orientation, national authorities tend to rely on generalised

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<sup>13</sup> While sexual orientation is not a category defined in the Convention, UNHCR has nevertheless recognized it as a class of "particular social group".

assumptions of “traditional/normal/expected” homosexual behaviour. Berg and Millbank’s study of RSD between 1994 and 2007 in North America, Australia and the UK revealed numerous instances of decision-makers drawing conclusions about the claimants’ sexuality based on the idea of sexual identity development following a linear process of self-knowledge, moving from denial or confusion, to “coming out” as a self-actualised lesbian or gay man. Such assumptions evident in the asylum determinations included the idea that it is “typical” for homosexuals to become aware of their sexual orientation in adolescence, and of negative decisions being upheld on appeal on the basis of a lack of such self-awareness (Berg and Millbank, 2009: 206-8; Millbank, 2009: 391-414). Even in cases when cultural relativity of sexual identity was acknowledged in the RSD process, this was often done in such a way as to deprive the applicant of the power to categorise his/her own experiences. For example, applicants claiming to be homosexual whose only same-sex experiences were early in life, and related to cultural norms of sexual segregation prior to marriage, were readily characterised as having a “youthful transient phase” or engaging in “sexual play” regardless of the applicant’s proclaimed self-identity (Berg and Millbank, 2009: 208). In addition to this “norm” of a linear progression of sexual self-awareness, decision-makers also expected that members of sexual minorities would, as a matter of course, form a sense of group identity and either join or demonstrate knowledge of lesbian or gay groups in their home countries and countries of asylum. Where this could not be demonstrated, negative credibility findings were often the result (Berg and Millbank, 2009: 210).

Psychiatric examinations have been used in order to establish whether or not an applicant is a homosexual or bisexual person in various European countries, most notably in Austria, Bulgaria, the Czech Republic, Germany, Poland and Romania. It has also been used in the UK asylum determination process, and McGhee explores the Foucaultian implications of such a practice in his examination of the case of Romanian asylum seeker Ioan Vraciu. Vraciu arrived in the UK via Calais in September 1992 and claimed asylum on the basis of his political activity in Romania. His initial claim was denied and at his appeal he revealed, for the first time, that he feared return to Romania on account of his homosexuality. His only homosexual partner had been arrested and imprisoned in Romania and Vraciu refused to give his name to UK authorities, and he could not produce any witnesses to corroborate his claim as he had not “come out” to anyone (McGhee, 2000: 31). These circumstances were taken as too damaging to his credibility to overturn the original decision, and Vraciu then re-appealed. At his second appeal hearing the representative for the Home Office requested that he undergo a medical examination. This suggested production of homosexual identity “from the signs of sexual acts and [...] hallmarks of [...] (mis)use of the body” was a way to bring to light the sign of an “authentic” or “inauthentic” homosexual identity through medical practices of truth (McGhee,

2000: 39). The requested medical examination was avoided by the suggestion by Vraciu's lawyer that Vraciu undergo a psychiatric evaluation instead. His lawyer believed that declaring one's homosexuality should be sufficient, but since it proved not in fact to be sufficient to convince the tribunal, the only other option was to obtain a psychiatrist's report as a means of "authenticating" his identity. In doing so, Vraciu's lawyer discovered the "key to the game of truth at work within 'the law'; that is, there is an order of discourse, an economy and hierarchy of discursive value before the law when it comes to knowledge of sexual identity" (McGhee, 2000: 42). In the absence of the actual report, one can assume that in order to "diagnose" Vraciu's homosexuality the psychiatrist made use of prior knowledge of "characteristic homosexuality" – a range of factors, a typology of details, which are considered to denote a homosexual propensity (McGhee, 2000: 44-5). What is important here is that Vraciu's mode of giving evidence had not significantly altered, but, crucially, *who* he had told these details to, had. As Foucault explains in *The History of Sexuality*:

If one had to confess, this was not merely because the person to whom one confessed had the power to forgive [...] but because the work of producing the truth was obliged to pass through this relationship if it was to be scientifically validated. The truth did not reside solely in the subject who, by confessing, would reveal it wholly formed. (1998: 66)

In Vraciu's case, then, the psychiatrist became the authorised hearer, and then the authorised speaker, who was to exchange Vraciu's confessed secrets for a psychiatric interpretation of their "truth". This brings to light not only the fundamental issue of who has the authority to "know" sexuality and how sexuality itself is to be "knowable", but also, fundamentally, who has the authority to *speak* this "truth". Vraciu's assertion that he was homosexual was not enough:

What the Vraciu case opens to academic scrutiny is the realisation that the person who is alleging to be a homosexual cannot be the author of his own subjectivity before the law; he remains an object, whose legal subjectivity must be made for him by an authorised knower and speaker of it. (McGhee, 2000: 43)

We can see from this brief discussion of the operation of the "norm" in the RSD process that the voicelessness of the refugee or the asylum seeker is not only a function of lacking the status of "citizen". Voicelessness in the refugee regime runs much deeper than this. As studies of voicelessness and abjection in refugee camps have shown in relation to *prima facie* refugees, refugees going through the status determination process are not in charge of the truth of their own experiences, identities, fears and status. Even when they are required to speak, their words

must be exchanged for the words of an authorised speaker – an “authority of delimitation” – in order for what they know to count as “credible knowledge”.

ii. Academic knowledge-production, subjectivity and the economy of “truth”

The arguably subjective nature of such judgments of “credible homosexuality” related to the norm of the “real” or “typical” homosexual, and the inconsistency that can and does arise in status determination as a result, is behind the drive in academic psychiatry, sociology and medicine to provide more “objective” guidance for decision makers, and not solely in relation to sexual orientation (Berg and Millbank, 2009). Herlihy, Gleeson and Turner qualify their study on the common assumptions which underpin asylum judgments in the UK with the following:

What these findings do not tell us is which of these assumptions are consistent with current knowledge on human behaviour, particularly during and following situations of danger, and the process of remembering and presenting an account of possibly traumatic situations in the context of a legal process. Empirical knowledge is deemed to be the best knowledge available in medical and many other settings. (2010: 365)

They conclude by stating that further research efforts are needed to identify which of these assumptions can be said to well-founded – i.e. consistent with empirical findings – and which are not, and that cross-disciplinary research is needed where answers are not readily available. There is, they argue, a need for a broader evidence base concerning memory and the asylum process, and the impact of traumatic experiences, depression, and forced migration, in order to help produce a “more robust system (with fewer false positives as well as false negatives), one better able to achieve fair decisions for all” (Herlihy and Turner, 2007: 4).

This drive to produce asylum guidance more grounded in empirical knowledge of the impact of traumatic experiences on memory recall has begun to bear fruit. The Istanbul Protocol, prepared in line with developments in medicine and psychiatry, sets out accepted standards on the investigation and documentation of torture and ill treatment, that, if followed, should result in the production of evidence appropriate for use in asylum claims. The Protocol contains a scale according to which physical scarring and/or injuries can be judged from “not consistent” to “diagnostic of” the trauma described. In the case where no immediate physical scarring or injuries are present, the Protocol’s instruction is to consider whether psychological findings are “consistent with” or “expected and typical reactions to” the alleged report of torture (Wallace and Wylie, 2013: 756). The Protocol recommendations have been incorporated into guidelines produced by the International Association of Refugee Law Judges

(IARLJ) in the attempt to deliver some measure of uniformity to RSD processes. The IARLJ guidelines are an interesting example of the rules governing the production of discursive knowledge that Foucault outlined in *The Archaeology of Knowledge*. The guidelines include the qualifications relating to the provenance of expert medical reports – the “authorities of delimitation” empowered to make authoritative statements – including the requirement of stating the medical education and training of the author of, or anyone substantiating, a report, any psychological or psychiatric training, membership of any professional bodies, and a current Curriculum Vitae with a list of relevant publications (Wallace and Wylie, 2013: 759). While increased knowledge of the physical and psychological manifestations of torture and ill treatment, the effects of traumatic experiences on the ability to impart a narrative, and of differing cultural experiences of sexual identity would certainly contribute to mitigating the “lottery” of the RSD system – surely a noble cause in and of itself – this drive for knowledge is revelatory of an unfortunate, but not necessarily intended, consequence.

What drives these (social) scientific investigations into cultural experiences of sexual identity and behaviour, the impact of trauma on memory and communication, and the physical and psychological manifestations of torture, is not to better know the individual but to better know the phenomena under investigation – to better construct the continuum of behaviour, activity, ability, reaction, and so on, along which to place and categorise individuals – to paint a clearer picture of the grids of specification, and the “norm” according to which individuals can be separated and classified. While the “norm” originated from the micro-penalty of punishment in schools, factories and the military, they have proliferated outside of disciplinary institutions as man became entrenched as “an object of knowledge for a discourse with a scientific status” and population became the focus of governmental rationality. Rather than the operation of the gratification-punishment nexus serving to lead individuals to alter their behaviour in pursuit of the “norm”, in RSD and the bodies of knowledge upon which it relies, the central importance of Foucault’s conception is in the referral of “individual actions to a whole that is at once a field of comparison and a space of differentiation” (Foucault, 1995: 183). For example, the Istanbul Protocol questions for expert medical reports require the physical and psychological attributes of the asylum applicant to be judged in relation to a whole field of norms, which we can see by focusing on just one of the questions:

(iii.) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to torture events? Where is the individual in the course of recovery? (Wallace and Wylie, 2013: 756)

The norms evident here include mental “health” against which mental “disorder” is measured and characterised; the “normal” trajectory of any given mental disorder against which the

development of a particular individual's diagnosed disorder is measured; and the "normal/average/optimum" time frame of recovery post-torture event against which the individual in question is located. A similar variety of "norms" could also be isolated in the psychiatric discourse on the impact of traumatic events to memory recall, and a continuum laid out along which particular individual's abilities could be placed. The singular homosexuality which has so permeated popular culture and the RSD process becomes fractured into a proliferation of culturally specific *homosexualities*, allowing for more "accurate" knowledge of a particular individual's homosexuality in relation to his/her culture's "typical" experience. Such "refined" knowledge could indeed result in a "fairer" asylum determination system, and rein in the subjective elements of the decision-making process by making asylum judgements more "accurate", and it is not my intention to claim that this is an ignoble enterprise, but it does not challenge – it reinforces – the fundamental economy of truth at work in determining refugee status: the refugee still cannot escape the hierarchy of truth within which her discourse is discounted or rendered suspicious, and stands in need of translation and verification by others.

As McGhee's study of the Vraciu case so ably demonstrated, asylum seekers are not in charge of the "truth" of their own experiences and identities. At every stage of the determination process their subjective knowledge must be validated by the objective knowledge produced by others. The "truth" of Vraciu's homosexuality could only, in the opinion of the Home Office and the tribunal, be produced by medical or psychiatric examination. Similarly, allegations of torture are often subject to validation by physical or psychiatric evidence by a suitably qualified and recognised medical professional. The asylum seeker's story of past persecution or fear of future persecution must accord with the "objective" knowledge on his/her country of origin, and perceived or actual discrepancies must be explained to the satisfaction of the decision-maker. The asylum seeker's story must fit at every stage the expectations of decision-makers, and the "norms" or "grids of specification" according to which they make their decisions, and where it cannot or does not, her credibility is damaged and her request for asylum may be denied. There is, thus, a regime of truth at work here, which masks relations of power. Few would deny that asylum seekers are caught up in power relations, but for the scholarship examined above, the way to mitigate the potential negative effects of this is through more "accurate", "refined" knowledge. My point here, drawing on Foucault, is that knowledge itself cannot be extricated from relations of power: if something is constituted as an area of investigation, this is because relations of power have established it as a possible object, and power can only be exercised over something that techniques of knowledge and procedures of discourse are capable of investing in (Simons, 1995: 27). Power, in producing certain kinds of subjects, necessitates certain ways of knowing

them so that they may be better governed. Thus, in this (refugee) regime of truth, academic knowledge serves to enable decision-makers to more accurately assign the asylum seeker to her “real” identity<sup>14</sup> – “genuine refugee” or “failed asylum seeker”, a.k.a. “economic/irregular migrant” – so that she may be more effectively managed. Such knowledge is no less subjectivising in its accuracy, as we shall see below.

### iii. Regime subjectivities and the question of agency

Refugee status determination ties an individual to her “true” identity and can thus be understood as a “dividing practice” – a process whereby “the subject is either divided inside himself or divided from others [...] giving the individual both a social and personal identity” (Foucault, 1982a: 326). The “refugee” is divided from the “citizen”, and the status determination process divides the “asylum seeker” from the “refugee”. As soon as the status determination process begins, the individual becomes a “case” and is situated within a field of documentation. Fingerprints, photographs and personal information are collected and transmitted to the EURODAC identity database for cross-checking to flag-up “asylum shoppers” – individuals who make asylum claims in more than one state. Asylum seekers in the UK are then issued with biometric identity cards containing their personal details and fingerprints. While the claim is investigated, the asylum seeker must live at a specified address and report to police stations or other authorities on a regular basis. The biometric identity card must be presented in a number of situations and everyday transactions, including the reporting procedure, claiming support, and accessing healthcare (Ajana, 2013: 589-90). The identity of “asylum seeker” allows access to certain benefits and entails rejection from others. When the status determination process, as it often does, denies refugee status to an applicant, she becomes a “failed asylum seeker”. In this event she now faces deportation either to her country

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<sup>14</sup> Beyond the confines of RSD, academic knowledge production and academic debates serve a similar normalizing function. The debate, for example, over the continued utility of refugee studies versus forced migration studies, and whether or not the Refugee Convention definition of the refugee accurately or adequately addresses all the reasons for refugee flight is illustrative here. The debate between refugee and forced migration studies has its origins in a debate in refugee law on the utility of Article 1 of the Convention, bolstered by the extension of UNHCR’s “good offices” to assist displaced persons who had not crossed an international border – people we now refer to as Internally Displaced People (IDPs). The disciplinary debate turns on the disjuncture between the non-legal and legal refugee subjectivities, and seems to revolve around the question of whether there is an “essential” refugee identity or condition, and if the Convention definition adequately captures it. In other words, are “refugees” different from “IDPs” and from the “stateless”, or is this distinction purely an arbitrary one based on the act of crossing international borders? Either answer to this question is equally as subjectivising, tying the individuals in question to either the non-legal or the legal subjectivity. Such debates place individuals along a continuum of migration categories, in reference to the norm of the citizen, distributed according to the “push” and “pull” factors governing their movement and affording varying degrees of choice and legitimate agency. Such normalizing judgment collapses the “acceptable” practices of migration – following the legal rules of movement – into the “natural”, which allows for categorization of certain kinds of migration as “irregular”. For more on irregularity and how the forced migration debates feed into this process, see Johnson, 2014: 58-63.

of origin or to a “safe third country”, but her biometric data remains in the EURODAC database for ten years. In addition to remaining tied to a biometric field of documentation and being followed by the identity of “failed asylum seeker” should she try to move around Europe, the very idea of a failed asylum seeker means that the reasons for migration and/or the manner in which such migration occurred are judged to have been “illegitimate.” Rendering individuals as certain kinds of subjects on the basis of the legitimacy/regularity of their movement across borders or their reasons for doing so, gets to the very heart of the assumptions of legitimate agency and choice built into the subjectivity of the refugee, in both the formal legal sense, and the broader non-legal subjectivity of the humanitarian victim.

The legitimacy, or regularity, of the cross-border movements of refugees has become an area of increased academic and policy focus in recent years. “Mixed migration flows” are deemed to pose problems for UNHCR in “sorting” through the mass of individuals using the same migration routes and methods (which can involve traffickers or smugglers), and sharing many of the same motivations for migrating, to identify genuine refugees (see for example, Betts, 2010). Johnson (2014) argues that there has been a shift in the refugee regime from a forced/voluntary migration dichotomy to one of regular/irregular migration. While political rhetoric certainly seems to focus much more overtly on the avenues and methods of migration of potential immigrants of all types, I would characterise this more as a shift in *emphasis*, as regularity/irregularity is intrinsic to the forced/voluntary dichotomy operative in the definition of the refugee. We can see this in the concept of “irregular secondary movements”, and what this implies about the types of agency and choices that are allowed to refugees.

UNHCR defines irregular secondary movements as those that occur from initial areas of safety to newer destinations for the purpose of claiming asylum, irrespective of whether the individuals moving in this way have been officially recognised as refugees, and in the absence of authorisation or sufficient documentation for travel (Zimmermann, 2009: 74-5). Such movements are, certainly in the eyes of states in the “global north”, which also happen to be the main donor states of UNHCR, assumed to be voluntary and thus not deemed warranted or acceptable under the refugee regime. Indeed, UNHCR recognises such movements as a “growing concern” (UNHCR, 2000: 6). Susan Zimmermann discusses the concept of “irregular secondary movements” in the context of a group of Somali asylum seekers who found their way to Europe after initially fleeing to countries bordering Somalia. In these areas that have “for the most part provided a means of escape from the dangers at home, but little more besides”, risk and uncertainty often prevail (Zimmermann, 2009: 76). However, due to the focus on the need for safety in the definition of a refugee, movements from these areas to newer ones have tended to appear less “genuine”. For the Somali refugees interviewed in

Zimmermann's study, being a refugee "meant more than having to leave a home because of safety fears due to wider effects of insecurity, and beyond escaping from those threats, being a refugee meant escaping to other more viable conditions" (2009: 83). It meant needing to achieve something in exile that had been lost in the process of gaining safety.

Foucault is often criticised for an essentialist notion of the subject – he is either committed to its death, or is accused of having such a restrictive notion of subjectivity that one can only be a criminal, or mental patient or homosexual. Foucault's notion of subjectivity is not, in reality, so restrictive: we can be many subjects at once, but some may be more constraining than others. In the case of the refugee regime, it is a matter of fact that individual refugees are more than simply refugees, but for the functioning of the refugee regime and international system, the only identity that matters, the only subjectivity that matters, is that of "refugee". Rather than recognising the fact that those who flee their homes may seek more than the charity begrudgingly provided by the international community, any such desires that they may entertain are almost instantly and universally dismissed as illegitimate. The Somali asylum seekers interviewed in Zimmermann's study revealed a combination of "push" and "pull" factors involved in their decisions to leave the immediate safety of nearby countries and travel to Europe to claim asylum. These included being unable to return to Somalia (a "legitimate" reason), conditions for refugees in nearby areas (only "legitimate" if such conditions amount to persecution), and what was held to exist for them in Europe (an "illegitimate" reason rendering their migration "irregular" by default) (Zimmermann, 2009: 84). Nearby countries offered short-term solutions, and greatly restricted what could be achieved in terms of settlement once outside Somalia. All perceived that Europe would be safe and would offer work, education, homes and stability that they needed. In deciding to head to Europe, all sought to achieve a long-term solution to the situations that they found themselves to be in, and to have a "life" rather than just be alive and living with difficulty (Zimmermann, 2009: 84). However, rather than accepting these interests as rightly belonging to refugees, host states have increasingly used them to justify attempts to prevent or deter asylum seeking.<sup>15</sup> The implication of this is that the refugee should simply accept the lower standards of protection and life prospects available elsewhere, where physical safety can be achieved but where insecurities of different forms are still present and cannot be countered while remaining there. To do anything else makes one an "irregular migrant", a "bogus asylum seeker", economic migrant in disguise, with the restrictions and barriers accompanying such a status, because a "genuine" refugee seeks safety from persecution, not "economic gain." It is perhaps worth noting, here, that even official recognition of refugee status – the assigning of the individual to the legal identity of

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<sup>15</sup> Thinking back to Chapter Two and the disqualification of "reasons of purely personal convenience" for migration written into the 1938 Convention, we can see that this is not a new position.

“refugee” – and the entitlement to the rights and protections afforded by the 1951 Convention does not provide an escape from such constraining subjectivity. The “durable solutions” of the international refugee regime are as equally premised on the denial of agency and choice to the refugee as the RSD process is to the asylum seeker, despite protestations that it is up to the refugee herself to choose which of the three durable solutions is best for her. The cessation clauses in the Refugee Convention reinforce the idea that being a refugee is a temporary condition, and, as we saw in the previous chapter, repatriation is considered the “best” or “optimal” solution for refugees – both by the states and by UNHCR – with resettlement coming a distant second and assimilation in the country of asylum an even more distant third. As Hayden highlights: “refugees have the right to repatriate; they do not have the internationally sanctioned right never to do so” (2006: 474).

## **Conclusion**

These first three chapters have sought to unpack the “refugee problem” from a historical perspective. Together, they have argued that the refugee, rather than being a constant figure of human communal life, is a distinctly modern subject. While people have always moved between communities and attempted to escape violence and persecution, it was only with the development of the political rationality underpinning the modern state and state system that the “refugee” and “refugee problem” emerge from this seemingly constant feature of human existence as distinct subjects and problems in need of sustained attention. With the emergence of population as a distinct entity, the management of which becomes the responsibility of government, migration becomes a phenomenon in need of regulation, and migrants themselves become anomalies to be managed. According to this rationality, since a problem can only be managed by being known, and the more “accurately” it is known the more effectively and efficiently it can be managed, migrants become differentiated into categories, and the “refugee” emerges as a distinct type of person – a victim, an apolitical, humanitarian subject, to be acted *upon* but not engaged *with*. The international refugee regime is a political technology designed to manage these subjects and solve the problems that their existence poses to individual states and to the international order of sedentary, territorially-bound citizens. The solutions to this problem of the refugee – repatriation, resettlement, or, if all else fails, assimilation – are structural solutions to the problems *posed* by this legal anomaly rather than the problems *faced* by becoming such an anomaly. Since the refugee regime functions according to the same economy of truth as the state system that created it and within which it operates, and exists primarily to solve the problem *of* the refugee, it continually reproduces the refugee as a voiceless, powerless victim, and denies to her both legitimate choice and agency. It is, therefore,

not to the refugee regime itself that we should turn (as it currently stands) to address the problems faced by refugees. But where, then, should we turn?

While Foucault's work can reveal the inner workings of power, knowledge and subjectivity operative in the development and entrenchment of the "refugee problem" and refugee regime, and reveal the necessity to develop and enable new or different forms of subjectivity and open up new possibilities for agency, his insights into how this might be accomplished prove less relevant and useful for such an overtly political problem as our understanding of and responses to the problems that refugees face. It is common among political theorists who study Foucault to note that implicit in his understanding of power, as the capacity to act upon the actions of others, is the possibility of resistance. Power, Foucault states, can only function between subjects so long as they are free, so long as they are capable of acting differently. Resistance as a practice is, however, drastically under-theorised in his work (Simon, 1995: 83). In the final years of his life Foucault immersed himself in the ancient Greek concept of "care of the self" to develop an "aesthetics of existence" as a way of seeking to "get free of ourselves" outside of knowledge and power – i.e. to develop new subjectivities. However, as some commentators have highlighted, this highly individualistic enterprise of "creating ourselves as a work of art" would seem to preclude any possibility for political engagement or the development of more liberating *political* subjectivities (Simons, 1995: 101-4; Grumley, 1998: 65; Hofmeyr, 2006).

In Classical Greek thought and practice, the "ethical substance" of one's life was related to pleasures that were liable to excess and deemed to be inappropriate to one's social status. The "care of the self" as an ethical practice therefore took the form of self-mastery in the face of such pleasures to be moderated. Through intentional and voluntary actions men set themselves rules of conduct in relation to these pleasures to be mastered, in order to transform themselves through these actions (Simons, 1995: 73). This indicated, Simons explains, attempts to make life into an *oeuvre* that carries certain aesthetic values – such as beauty or goodness – in contrast to our modern psycho-technologies of the self, which Foucault felt were evident in many forms of "identity politics", including the gay rights movement (1995: 73). These movements are oriented, Foucault claims, by a "hermeneutics of the self" – a practice in which one delves deep inside one's psyche to locate the truth of one's identity and then fashions one's conduct or politics around it. Foucault resisted being bound to an identity that was defined in the nineteenth century according to a supposedly sexual "nature", and, further, he is suspicious and critical of a "gay politics" which grounds itself in such "natural facts" of homosexuality (Simons, 1995: 97). Through certain "transgressive practices of the self", such as S&M, one could *become* gay: one could *create* one's sexuality on the basis of behaviours *chosen* rather

than discovered within oneself as *tendencies* of a homosexual “nature”. Fundamentally, for Foucault, given that there is no essential subject, that “the self is not given to us, [...] there is only one practical consequence: we have to create ourselves as a work of art.” An aesthetics of existence, then, is a mode of *ethical* self-formation.

In Greek understanding, there was an intimate connection between such care, and mastery, of the self and political life, in that one could not legitimately exercise hierarchical rule over others without first practicing the care of the self. But in Foucault’s discussion of the practices of the care of the self there does not appear to be such a direct link. He also took moral opposition toward the forms of subjugation that these hierarchic Greek societies were built upon. The political implications of Foucault’s concern for, and arts of, the self are, therefore, only implicit in his theory. When asked in an interview in 1984, just a few months before his death, if his conception of the care of the self could be at the heart of a new way of thinking about politics, he replied that he had “not got very far in this direction” and that it seemed to him that “contemporary political thought allows very little room for the question of the ethical subject” (Foucault, 1984a: 294). At any rate, this political question was not one that he had yet studied, and he elsewhere denied any potential political ramifications of his new personal ethics by suggesting that it could be pursued without affecting economic or political structures (Simons, 1995: 103). The care of the self is, for Foucault, fundamentally an ethical project, with *potential* political effects, rather than a political practice in itself.

Hannah Arendt shares Foucault’s concern with the restrictive, normalising, and thus potentially oppressive tendencies of modern society. But whereas Foucault is more suspicious of the political field, Arendt believed that there was something to be redeemed in a distinct political realm, and that it need not be the monolithic, prescriptive, normalising and totalising realm that Foucault’s genealogies open to critique. Arendt’s work on the refugee problem, when situated within her wider body of work on politics and the “world” can build on the insights that Foucault’s work offers regarding the contingent nature of the “refugee problem”, to shift our understanding of the problem to be addressed from the problem that refugees pose, to the problems that refugees face. Such a reframed understanding of the problem has the potential to open up different avenues by which to imagine solutions.

# CHAPTER FOUR

## HANNAH ARENDT AND THE REFUGEE PROBLEM: WORLDLESSNESS AND SUPERFLUITY

### Introduction

This thesis is driven by the observation that how one conceives of solving a problem, and measuring the success of those solutions, is inseparable from what one understands that problem to be. It is my contention that the “refugee problem” needs to be unpacked in order to begin to reconceive of solutions to a phenomenon that shows no sign of abating or diminishing in magnitude or misery in the near future. Reflection on the *nature* of the problem to be solved has been limited among refugee studies scholars, to the extent that there is, in much of the scholarly and policy literature on the refugee problem and the difficulties of conceiving of solutions, a conflation of two very different problems: the problem *of* the refugee, and problems *for* refugees. In the first half of this thesis I argued that the “refugee problem”, as commonly understood and as the subject of intervention, is the first of these, the refugee *as* problem, and that it is this problem that the international refugee regime and its three durable solutions was instituted to solve. In failing to adequately differentiate between the problems that refugees pose to the international system and the problems that *being* a refugee poses for those who are forced to flee their homes, the three durable solutions come to be seen as equally able to solve whatever problems of belonging refugees face by solving the problems of order that refugees pose. While it is true that the breakdown of the state-citizen relationship poses a problem for the state system and for the refugee, it is my contention that the nature of these problems is fundamentally different and requires a different approach to “solutions”. It is to the task of exploring this problem, and the possibilities for different solutions that the thesis now turns.

Hannah Arendt was one of the first political theorists to link the existence of refugees and the stateless to the internal structures of the nation-state, and her insights have influenced more critically-minded refugee studies scholars ever since (e.g. Agier, 2008 and 2011; Haddad, 2008; Malkki, 1995 and 1996; Marfleet, 2006; Nyers, 2006). Much of the work that specifically builds upon Arendt’s insights is characterised by a focus on human rights (Benhabib, 2004; Gündoğdu, 2015; Hayden, 2008 and 2009; Isaac, 1996; Oudejans, 2014; Owens, 2010; Parekh, 2004). While these works rightly highlight the problems inherent in a

rights-based approach to refugee protection – that solutions supposedly based on human rights frameworks leave the structural roots of the refugee problem unchanged, forming, at best, stop-gap measures – there are other facets of Arendt’s broader body of work that can fruitfully be brought to bear upon our understanding of, and approaches to, the refugee problem, but which have remained comparatively under-examined.

This chapter begins the shift in focus/understanding of the refugee problem and the search for solutions from the problem that refugees pose to states, to the problems faced by refugees. To this end I will revisit Arendt’s well-known analysis of the structural causes of displacement within the context of her philosophical and political reflections on the “world” and “world alienation” to bring to light what makes this structural problem such a personal problem for those produced by it, positing that this is best understood, in Arendtian terms, as “worldlessness” and “superfluity”. The chapter will then utilise these reflections to reveal why the three durable solutions, focused as they are on formal remedies to structural problems, are insufficient to address the problems that *being* a refugee presents for those ejected from the state-citizen-territory trinity. This close-reading of her work around the idea of “world” forms a theoretical base from which to begin, in the next chapter, to conceptualise “solutions” to this reframed understanding of the refugee problem – solutions which place the experience of refugees and their potential as political agents at the centre, rather than the exigencies of the sovereign state (system).

### **Arendt on Refugees: “We Refugees” and *The Origins of Totalitarianism***

In 1943, in an essay published in *The Menorah Journal*, Arendt recounts the story of “Mr Cohen”, the Jewish refugee who, newly arrived in France and desperate to appear as anything other than a Jew, organises “one of those societies of adjustment in which German Jews asserted to each other that they were already Frenchmen” (Arendt, 1943: 272). This polemical essay graphically describes what happens when one loses home, occupation, family, and the everyday life-world of one’s language. She closes the short piece with the following observation:

Before you cast the first stone at us, remember that being a Jew does not give any legal status in this world. If we should start telling the truth that we are nothing but Jews, it would mean that we expose ourselves to the fate of human beings who, unprotected by any specific law or political convention, are nothing but human beings. I can hardly imagine an attitude more dangerous, since we actually live in a world in which human beings as such have ceased to exist for quite a while; since society has discovered discrimination as the great social weapon by which one may kill men without any bloodshed; since

passports or birth certificates, and sometimes income tax receipts, are no longer formal papers but matters of social distinction. (273)

The optimism of the hyper-assimilation of “Mr Cohen” and the despair evident by the suicides that plagued Jewish society during and after the Second World War formed two sides of the same coin for Arendt, and hold a deep political significance that cannot be grasped by talking of the experience of the Jewish refugees in terms of individual psychological adjustment or personal success in social assimilation. Rather, this problem should be understood in political terms, as the result of the exclusion of Jews *as Jews* from the public sphere of the European nation-state (Bilsky, 2008: 72), and it is to this political problem that she turns her attention in the concluding chapter of part two of *The Origins of Totalitarianism*.

Arendt begins her examination of the refugee problem with the aftermath of the First World War and the attempts to create functional, ethnically homogenous successor states out of the collapse of the Russian and Austro-Hungarian empires. The Peace Treaties divided the territories, and Minority Treaties managed the ethnic composition of the new states. These agreements attempted to import the nation-state model into the “belt of mixed populations” by lumping together many peoples in single states, designating some of them “state people” and entrusting them with government, assuming that others were equal partners in government even though they were not – such as the Slovaks in Czechoslovakia, or the Croats and Slovenes in Yugoslavia – and creating out of the remnant a third group of nationalities called “minorities” who were to be governed by special regulations, would not share in government, and whose rights were to be guaranteed not by the state in which they resided but by the League of Nations (Arendt, 1973: 270). The fact that an external guarantor of the rights of those who did not enjoy full and equal status within the new states was required and built into the post-war settlements was highly significant for Arendt. Minorities, she writes, had existed before but

The minority as a permanent institution, the recognition that millions of people lived outside normal legal protection and needed an additional guarantee of their elementary rights from an outside body, and the assumption that this state of affairs was not temporary [...] all this was something new, certainly on such a scale, in European history. (1973: 275).

By openly stating that persons of different nationality needed a law of exception until or unless they were completely assimilated, the Minority Treaties stated what until then had only been implied in the nation-state system: that only nationals could be citizens and enjoy the full protection of legal institutions. The minorities themselves, and those denied minority status, came to understand their own struggles not as struggles for equal rights within the state, but as national struggles for states of their own (Arendt, 1973: 273-4). This tacit admission of the

conquering of the state by the nation would be confirmed not just by these successor states intent on repressing, oppressing, and eventually expelling their minorities, but also by the established nation-states of Western Europe with the appearance of the stateless.<sup>16</sup> It was the appearance of this group that would shatter the illusion that this was only a problem in the “belt of mixed populations”, and reveal that the rights of man, which supposedly grounded such established states, were in reality simply an illusion, which had lasted only as long as the comity of European nations had lasted.

The minorities, Arendt writes, were only half stateless; *de jure* they belonged to some political community, even though they needed additional protection from an external institution. The stateless, however, occupied a legal black hole in that they belonged nowhere *as a matter of law* (Arendt, 1973 276). In theory, a number of mechanisms existed to deal with such legal anomalies – asylum, repatriation, and naturalisation – all of which proved impotent in the face of the sheer number of stateless persons. The right of asylum was never intended to deal with anything other than the individual forced to become an outlaw through circumstances beyond his control, and so proved unworkable on the scale of hundreds of thousands or millions of people forced to become outlaws because they belonged to the “wrong” ethnic group or nationality. Repatriation measures failed when there was no country to which these people could be returned as their countries of origin simply refused to claim them. Naturalisation similarly proved a failure when states responded to the influx of stateless persons by cancelling earlier naturalisations, which only compounded the problem. Since legal deportation of stateless persons was not an option because no other state would lay claim to them, the whole matter was swiftly transferred to the police and a system of reciprocal illegal deportations was triggered all over mainland Europe (Arendt, 1973: 280-7). The paradoxical result of which was that it was in the one sphere in which, theoretically, state sovereignty is absolute – the control of entry of foreign nationals – that states violated each other’s sovereignty as an expression of, and attempt to regain control of, their own. The exhortations of non-governmental societies for the protection of human rights fell on deaf ears and were unable to understand what to Arendt seemed obvious: that protection abroad, in practice, is based upon one’s status as a member of a foreign friendly nation and not, as natural rights or human rights theories claim, on account of one’s status as a rights-bearing individual (Oudejans, 2014: 10). The fact that states either would not or could not protect the rights of those who had lost nationally-guaranteed rights revealed a paradox at the heart of the system of rights upon which the modern state was supposed to be founded; and the stateless became the living, breathing embodiment of this paradox.

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<sup>16</sup> It should be noted that Arendt uses the terms “stateless” and “refugee” as synonyms, since she considered the core of refugee status to be identical with statelessness (Arendt, 1973: 279 and 281)

Arendt's examination of this paradox of rights goes back to the "Declaration of the Rights of Man and of the Citizen" of the French Revolution. Until the upheaval of the revolution, rights and privileges had been derived from one's position in society – the estate into which one was born – and had been guaranteed by social, spiritual and religious forces, rather than by government and constitution (Arendt, 1973: 291). The revolution turned this system on its head, and the rights of man were proclaimed as the foundation of all law, with Man himself (not one's station, nor God, or the customs of history) as their source. The context of such declarations is vital for Arendt: "Man appeared as the only sovereign in matters of law *as the people was proclaimed the only sovereign in matters of government*" (1973: 291; emphasis added). The sovereignty of the people, established by the revolution, was proclaimed in the name of Man, and thus, Arendt argues, "it seemed only natural that the 'inalienable' rights of man would find their guarantee and became an inalienable part of the right of the people to sovereign self-government" (1973: 291). What is significant here is that the human being of the declarations of rights – Man – was an abstract being who seemed to exist nowhere, for all people appeared to live in some kind of social order. The whole question of human rights, therefore, was blended from the beginning with the question of national emancipation (Arendt, 1973: 293).

This identification of the rights of man with the rights of peoples in the European nation-state system remained relatively unproblematic while all people were considered to belong to a state. Throughout the nineteenth century, Arendt argues, these rights had been invoked in a rather perfunctory way, to defend individuals against the increasing power of the state. She explains:

Civil rights [...] were supposed to embody and spell out in the form of tangible laws the eternal Rights of Man, which by themselves were supposed to be independent of citizenship and nationality. All human beings were citizens of some kind of community; if the laws of their country did not live up to the demands of the Rights of Man, they were expected to change them, by legislation in democratic countries or through revolutionary action in despotisms. (1973: 293)

However, as Gündoğdu highlights, the precarious balance established by the French Revolution between "nation" and "state" – the latter being the supreme legal institution charged with the protection of inhabitants in a territory, and the former the community composed of those who belong by right of origin and fact of birth – became imperilled with the rise of nationalism which turned the nation into a new absolute (2011: 11-12). The state gradually lost its representative function and became an instrument of the nation, transforming the "citizen" into

the “national”. With the conquering of the state by the nation it became ever more obvious that not all people in Europe did *belong* to a state, despite their physical presence within one state or another, and the millions forced to wander the European continent became the walking embodiments of the reality that “the moment human beings lacked their own government and had to fall back upon their minimum rights [their supposedly inalienable human rights], no authority was left to protect them and no institution was willing to guarantee them” (Arendt, 1973: 292).

The peculiar situation of the stateless was not that their rights had been violated, but that they were completely *rightless*. In losing their homes – “the entire social texture into which they were born and in which they established for themselves a distinct place in the world” (Arendt, 1973: 293) – and government protection – equivalent to the loss of legal status in *all* countries – what the stateless lost was not the right to freedom of movement, or right to opinion, or of equality before the law. The soldier, Arendt explains, can be denied his right to life, and the criminal his right to freedom, but in neither case has a loss of human rights taken place. The calamity of the rightless is that they are no longer part of any community whatsoever: their plight is not that they are not equal before the law, but that no law exists for them. She continues:

Neither physical safety – being fed by some private welfare agency – nor freedom of opinion changes in the least their fundamental situation of rightlessness. The prolongation of their lives is due to charity and not to right, for no law exists which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool’s freedom, for nothing they think matters anyhow. (1973: 295-6)

It was for this reason that Arendt considered League of Nations and the early United Nations efforts at “solving the problem of the stateless” and enumerating new declarations of rights to be hopelessly inadequate. What the various declarations of rights failed to grasp was that “it was not the loss of specific rights but the loss of a community willing and able to guarantee any rights whatsoever that had been the calamity of ever-increasing numbers of people” (Arendt, 1973: 297). It was this fundamental deprivation of rights that had remained unaddressed, and this was a problem not of geographic space but of political organisation. The fundamental deprivation of human rights is manifested “first and above all in the deprivation of a place in the world which makes opinions significant and actions effective” (Arendt, 1973: 296). In other words, the stateless lost their “right to have rights”.

Arendt does not explicitly add much flesh to the bones of this now famous conception of a “right to have rights”. A veritable cottage industry of scholarship has emerged which sets itself the task of explicating exactly what she meant by the language she chose – a *right to have rights* – and on what she grounds this right given her scepticism of naturalistic fallacies (for example, Cohen, 1996; Gündoğdu, 2011; Ingram, 2008; Kesby, 2012; Michelman, 1996; Näsström, 2014; Rancière, 2004; Schaap, 2011). In many of these works the right to have rights is understood as, and abbreviated to, the right to citizenship within the state. I contend, however, that examining her broader body of work reveals that this approach to the right to have rights, and of addressing the problems of rightlessness faced by refugees, is to ignore the profound problems that Arendt had with citizenship and politics in modernity for all, not just the stateless. It was these problems that animated her call to reimagine the very nature of the communities to which such a right to have rights would correspond, and is the context within which we need to understand her reflections on refugees, and the problems that refugees face. It is necessary, therefore, to take a detour away from refugees and the refugee problem to examine these broader reflections.

### **Politics and Modernity: the role of “world”**

In an interview on German television in 1964, Arendt recalled the reaction of herself and her husband in 1943 to the news from Europe of the fate of the Jews:

At first we didn't believe it [...] because militarily it was unnecessary and uncalled for. [...] and then a half-year later we believed it after all, because we had the proof. That was the real shock. Before that we said: Well, one has enemies. [...] But this was different. It was really as if an abyss had opened. Because we had the idea that amends could somehow be made for everything else, as amends can be made for just about everything at some point in politics. But not for this. *This ought not to have happened.* (Arendt, 1964: 13-14; emphasis in original)

If one thread can be said to unite the diverse aspects of Arendt's work it would be her professed need to understand how what “ought not to have happened” could have happened at all. To this end she examined how these events are rooted in long-standing ways of thinking and being, with the hope of reconstructing a political vision that might help secure human dignity and freedom (Isaac, 1993: 535). The “world” plays a central role in this enterprise.

- i. Totalitarianism and the “world”

The concentration and extermination camps of the Nazi regime were, for Arendt, the central institutions of totalitarianism, and the horrors committed within these “holes of oblivion” hold the key to understanding what she considered to be a unique form of government. *The Origins of Totalitarianism* is dedicated to tracing back certain elements in the development of modernity that “crystallised” into totalitarianism – not that directly *caused* it, but that made it possible.

The camps, Arendt claims, are intended not only to exterminate people and to degrade human beings, but also to “serve the ghastly experiment of eliminating, under scientifically controlled conditions, spontaneity itself as an expression of human behaviour and of transforming the human personality into a mere thing, into something that even animals are not” (Arendt, 1973: 438). Under normal circumstances human spontaneity can never be fully eliminated; it is only in the camps that such an experiment is at all possible. But the experiment of total domination within the camp is only possible by “sealing [it] off against the world of all the others, the world of the living in general” (Arendt, 1973: 438). The absurd unreality of existence within the camps can be explained in part by this isolation from the “world of the living” but also, in large part, by the failure or inapplicability of utilitarian categories of thought to understand them. Man’s inhumanity to man was hardly invented in Nazi Germany, but what differentiates other modes of oppression and institutionalised subjection, such as slavery, is that, as morally reprehensible as they are, they can at least in part be explained with traditional categories of thought. Slavery, as an institution, served some humanly comprehensible purpose, and the slaves, while no doubt leading a miserable existence, were not completely isolated from their fellow men – they had a price and a value; they served a purpose which could be understood both in the grotesque terms of monetary value, but also in more human terms of fulfilling certain roles in society. What makes the existence of the living corpses consigned to the camps unique is that it served no such utilitarian, or other comprehensible purpose. Arendt reminds us that the camps kept running even though it would have made military and economic sense to shut them down, and, crucially, that the population of the camps increased as opposition to the regime decreased (1973: 450). Arendt captures the senseless nature of life in the camps in the following passage:

The world of the dying, in which men are taught they are superfluous through a way of life in which punishment is meted out without connection with crime, in which exploitation is practiced without profit, and where work is performed without product, is a place where senselessness is daily produced anew. (1973: 457)

But Arendt's point, of course, is that the camps were not in fact senseless at all. They were the concrete sites in which the totalitarian experiment in eliminating human spontaneity was carried out. That such a place or such an experiment would even be necessary to totalitarian domination lies in ideology.

Arendt states, counter-intuitively, that the ideal subject of totalitarian rule is not the convinced Nazi, but "people for whom the distinction between fact and fiction (i.e., the reality of experience) and the distinction between true and false (i.e., the standards of thought) no longer exist" (1973: 474). Ideology, "-isms which, to the satisfaction of their adherents, can explain everything and every occurrence by deducing it from a single premise" (Arendt, 1973: 468) prepares such subjects. While ideologies – such as the laws of racial inferiority and superiority, or the law of history as class struggle – pre-date totalitarianism, they proved "so disturbingly useful" for the regime not because of the idea of the ideology – the struggle of races and the care for Germanic peoples – but because of the logical process which could be developed from it: from the initial premise that the law of history is a struggle between races and the law of nature is that races unfit to live will die, the logical conclusion can be drawn that it is the obligation of the movement/party/individual to carry out the death sentence that nature has already imposed on "inferior" races (Arendt, 1973: 471-3). The key point for Arendt is that the totalitarian *application* of such ideologies requires a constant supply of enemies/victims/inferior peoples: "if it is the law of nature to eliminate everything that is harmful and unfit to live, it would mean the end of nature itself if new categories of the harmful and unfit to live could not be found" (Arendt, 1973: 464). Such designation as an enemy is completely arbitrary from the perspective of the link between action and consequence, and it is precisely because totalitarian domination attempts to destroy this link through the use of terror unconnected with anything the victim said or did, that the links between man and the reality of experience and between man and the standards of thought are the target for totalitarian terror and ideology. And, further, it is why Arendt can claim that it is the person who can no longer distinguish the reality of experience and true from false that is the ideal subject of totalitarian rule: the individual must be prepared to adequately fulfil the role of executioner *and* victim, and which he will turn out to be will be determined by the ideology, interpreted by the Party. What totalitarian ideologies aim at is not the transformation of the outside world as such, but the transformation of human nature itself. But the transformation of human nature – of which the concentration camp inmate is the concrete embodiment – requires preparation in the form of transforming the world and man's relationship to it. In *Origins* Arendt shows how totalitarianism did not itself begin or accomplish this transformation, but rather was made possible by it and took advantage of it.

Life, or existence, under totalitarianism is characterised by isolation and loneliness. Isolation is “that impasse into which men are driven when the political sphere of their lives, where they act together in the pursuit of a common concern is destroyed” (Arendt, 1973: 474). Yet isolation is not unique to existence under totalitarianism – it is, Arendt claims, necessary for all those activities of men which do not *require* the presence and joint effort of others to come to fruition. In isolation, man remains in contact with the world as human artifice. Where man is no longer recognised as *homo faber*, the man who produces, but is treated as *animal laborans*, merely an example of the animal species “man” and as such is deserted by the world of things as well, isolation becomes loneliness (Arendt, 1973: 475). It is loneliness – the experience of not belonging to the world at all – and not just isolation, upon which totalitarianism bases itself. This loneliness is closely connected with uprootedness and superfluosity, which “have been the curse of the modern masses since the beginning of the industrial revolution and have become acute with the rise of imperialism at the end of the last century and the breakdown of political institutions and social traditions in our own time” (Arendt, 1973: 475). In other words, totalitarianism was able to occur because of certain developments over the preceding centuries, which rendered ever-greater numbers of people superfluous and increasingly uprooted from the world, and the majority of *Origins* examines these very conditions. To be uprooted means “to have no place in the world recognised and guaranteed by others; to be superfluous means not to belong to the world at all” (Arendt, 1973: 475).

ii. “World” and “world alienation”

It is in *The Human Condition* that Arendt expounds in the most detail what it means to belong to, or to be at home in, the world. She distinguishes between the earth/nature – “as the limited space for the movement of men and the general condition of organic life” – and the world – as the condition under which, and realm within which, specifically *human* life can be at home on earth (Arendt, 1998: 52 and 134). Whereas mankind shares the earth with all living things and his *earthly* existence is guaranteed as a matter of course by the existence of the earth, not itself dependent upon the existence of the human species,<sup>17</sup> the continued existence of the world and man’s ability to be at home in it, is not a matter of course. Individuals are born into the world as strangers and we need to engage in various activities in order to create a home for ourselves in it. The *vita activa* is the name Arendt gives to human life in so far as it is engaged

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<sup>17</sup> Arendt wrote *The Human Condition* at the advent of the nuclear age when, for the first time in history, man possessed both the knowledge and the capability to destroy all life on earth, and this was not a circumstance lost on Arendt.

in these activities, and it consists, primarily, of labour, work and action.<sup>18</sup> Labour is the activity which corresponds to the biological process of the human body, and is conditioned by life itself; work corresponds to the “unnaturalness of human existence” and provides an artificial world of things, distinctly different from all natural surroundings; action is “the only activity which goes on directly between men without the intermediary of things or matter” and is conditioned by plurality: “the fact that men, not Man, live on the earth and inhabit the world” (Arendt, 1998: 7). This world, for Arendt, is both material and immaterial; quasi-objective and inter-subjective. The material world, the world as human artifice, is created by human beings in their capacity as *homo faber* – man the creator – and consists mostly, but not exclusively, of objects for use. This man-made world gives a stability and solidity to human life and provides a degree of protection against nature (Arendt, 1998: 136). It possesses a permanency that the individual life does not, and yet, through being inhabited and used, it decays and thus requires maintenance to remain fit to house human life. The human artifice, while consisting of things, is only quasi-objective because these objects derive their meaning and utility from the relation they hold to human beings.

The material world is overlain by the immaterial, phenomenal, inter-subjective world, as both a *public space* and a *common world* (Arendt, 1998: 182-3; Borren, 2010: 91). The world as “space of appearance” is the locus wherein, through speech and action, men appear to each other *qua* men – as the distinct individuals that they are. Recalling that the human condition of action is plurality, Arendt states that “if men were not distinct, each human being distinguished from any other who is, was, or ever will be, they would need neither speech nor action to make themselves understood” (1998: 175-6). While all species on earth are distinguished from each other, only humans can *express* this distinction and communicate *themselves*: “in acting and speaking, men show who they are, reveal actively their unique personal identities and thus *make their appearance in the human world*” (Arendt, 1998: 179; emphasis added). This appearance, however, is only possible when one is with others, as one cannot appear to nobody. The space of appearance, “the space where I appear to others as others appear to me”, is therefore public by definition. And yet, it does not always exist, does not exist outside, or independently, of the individuals who constitute it, but nor can it be reduced to such individuals (Arendt, 1959: 4). It is, rather, an inter-subjective “in-between”: a realm which arises through the actions of men and women and which, through their continued action and speech when oriented toward it, relates and separates them as a table unites and separates those who sit around it (Arendt, 1998: 52). This common world is what we enter at birth and leave behind in

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<sup>18</sup> Understanding is also a central activity in which people are, or ought to be, engaged in order to be at home in the world, but the *vita contemplativa* – human life in so far as we think, understand, and judge – is not the subject of *The Human Condition*. I will, however, return to it in Chapter Five.

death, and as such it transcends our lifespan into the past and future alike. It is “what we have in common not only with those who live with us, but also with those who were here before and who will come after us” (Arendt, 1998: 55). But, importantly, the common world can only survive the coming and going of the generations to the extent that it appears as public. This is because, as distinct from the reality of life (which can be confirmed on one’s own through the operation of the senses), the reality of the world is only guaranteed by the presence of others: the reality of the “products” of human action and speech – the human world – depends entirely “upon human plurality, upon the constant presence of others who can see and hear and therefore testify to its existence” (Arendt, 1998: 95).

In tandem with her examination of the general human capacities of the *vita activa*, Arendt engages in a historical and philosophical analysis of modern “world alienation” – a process which made totalitarianism historically possible – by which she means the “twofold flight from the earth into the universe and from the world into the self” (Arendt, 1998: 6). The innermost story of the modern age, for Arendt, concerns the destruction of the common world and public reality, a story at the threshold of which stand three great events: the so-called “discovery” of the New World, the Reformation, and the invention of the telescope. These events mark a fundamental transformation in Western man’s relation to his surroundings, his “being-in-the-world” (Villa, 1996: 190). Each event represents a different form of retreat from the worldly dimension of our lived experience, and each is significant because, in “the ways of knowing and form of life it instantiates, reality is neither verified nor engendered through the presence of others” (Curtis, 1999: 77). The “discovery” of the Americas begins the process of shrinkage by which the earth itself becomes a representable object, and the Reformation began the process of expropriation through which millions ultimately lost their property, their “place in the world”, and thus became subject to an unlimited, socialised accumulation of wealth (Villa, 1996: 190). The expropriation of the peasantry which accompanied the Reformation was “the first stage” of a process whereby society becomes the subject of the new life process and membership in a social class comes to replace the protection previously offered by membership in a family, and society as a whole comes to be identified with a “tangible, albeit collectively ‘owned’ piece of property, the territory of the nation-state” (Arendt, 1998: 256). The invention of the telescope and Galileo’s observation of the heavens “confirmed” the Copernican theory that the earth orbits the sun, and delivered the secrets of the universe to “human cognition ‘with the certainty of sense-perception’; that is, he put within the grasp of an earth-bound creature and its body-bound senses what had seemed forever beyond his reach” (Arendt, 1998: 260). The abolition of “the old dichotomy between the earth and the sky” and the unification of the universe effected by Galileo’s discoveries meant that from then on nothing occurring in earthly nature was viewed as a merely earthly happening (Arendt, 1998: 262-3). As Curtis explains, with each of

these processes, the self was required to habitually rip itself, or be ripped, from its embeddedness in the world of things and others in its local and immediate world (1999: 78). Earth alienation became the hallmark of modern science, but this flight from the earth is intimately connected with the withdrawal from the world into the self.

The confirmation of the Copernican theory of the universe demonstrated that man had been deceived by his senses, and this initiated an assault on the adequacy of our body-bound senses to reveal truth. The nightmare of the human mind on the edge of the modern age was that reality is only a dream (Curtis, 1999: 78).<sup>19</sup> The response to this nightmare, expressed most clearly, perhaps, in Descartes' *cogito*, is to save reality by shifting inwards, by making representations, rather than appearance, the benchmark of the real. In making this move, Descartes explicitly articulates what Arendt calls "the most obvious conclusion to be drawn from the new philosophy of science: though one cannot know truth as something given and disclosed, man can at least know what he makes himself, namely, the clear and distinct ideas of mathematical science" (Villa, 1996: 193). This Cartesian subjectification of the real is, for Arendt, a sign of common sense in retreat in the sense that men no longer have the world in common – the appearance of which had proven to be "deceptive" – but the structure of their minds (Villa, 1996: 194). By giving primacy to the experiences of an isolated subject, thought as the essence of the human mind has been endowed with the power to determine reality. This represents a kind of hyper world alienation in which "truth depends on the absolute abolition of relations to the appearing world" (Curtis, 1999: 78). The cost of this new approach to reality, in making it a purely private affair, is the loss of its inter-subjective meaningfulness.

After being and appearance parted company there arose, Arendt claims, a "veritable necessity to hunt for the truth behind deceptive appearances [...] in order to know one had to do" (Arendt, 1998: 290). If, Villa explains, man can know or be certain only of that which he, as representing subject, produces and arranges, then it follows that *fabrication* provides the new paradigm for securing truth (1996: 196). The implication of this for our attitude toward the world is that it comes to be thought of in terms of means and ends: the common world ceases to be characterised by *meaning* and comes instead to be characterised in terms of *utility*. This is not the inevitable outcome of the process of fabrication itself, but rather the generalisation of the fabrication experience in which usefulness and utility are established as the ultimate standards for life and the world of men (Villa, 1996: 199). The knowledge obtained by the evolution of modern science organised by the fabrication process was, Arendt claims, no longer concerned (or at least not primarily) with the *why* or the *what* of the phenomena under study,

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<sup>19</sup> Foucault charts the disappearance of the *episteme* of this period, as it gave way to the Classical *episteme* in *The Order of Things*.

but with the *how*, with the process of generation and development of that knowledge (Passerin d'Entrèves, 1994: 43). By shifting emphasis to the process over the end product, concern with stability, permanence and durability is gradually eroded, and this erosion is further enabled by the rise of the historical sciences – which understand history as well as nature to be subject to process – whereby man becomes alienated as much from the world as human artifice as he does from the world as the inter-subjective in-between dealt such a decisive blow by the rise of Cartesian doubt (Passerin d'Entrèves, 1994: 44). Arendt sees in Bentham and the rise of the philosophy of the greatest good for the greatest number, an example of this loss:

In the principle of the greatest happiness all worldly values are replaced by the subjective sensations of pleasure and pain, which are geared exclusively to the promotion of life and the survival of the species. *Life*, then, and not the world, became the highest good of man, and all activities previously directed at the construction of a human world and at the establishment of public spaces where speech and action could flourish were reduced to the single monotonous activity of labour. (Passerin d'Entrèves, 1994: 44-5)

The values characteristic of the world as human artifice – permanence, stability, durability – as well as those characteristic of the inter-subjective world of action and speech, are sacrificed in favour of the values of life, productivity and abundance. And it is in the light of these concerns – of the radical consequences for the *meaning* of human experience in the separation of being and appearance, and in the retreat from the world into the self – that Arendt's conception of politics and action need to be understood.

### iii. Politics and the world: action, plurality and natality

In a short essay – a book review – entitled “The Nation”, Arendt writes that “there is little doubt that civilisation will be lost if after destroying the first forms of totalitarianism we do not succeed in solving the basic problems of our political structures” (1946: 210). It is to this task that she turns after completing *Origins*, and the central working hypothesis of her rethinking of politics is that the entire tradition of Western political thought has ignored the most basic aspect of human existence – the fact that men, in the plural, not Man in the singular, inhabit the world – and has attempted to theorise politics from the identity of all human beings *qua* specimens of the same species, rather than from their “original differentiation” (Vatter, 2006: 141; Arendt, 2005: 93-95). It is this fact of plurality, the lived reality of heterogeneous men and the different perspectives they have upon the world, that must be the starting point for any understanding of politics, forming, as it does, the condition which makes political life as such possible (Arendt, 1998: 7).

As we saw above, human life on earth consists of a number of activities, each of which correspond to certain aspects of the human condition, and need to be understood, or judged, by reference to different criteria. Labour is governed by the condition of life itself, and must be judged by its ability to sustain human life by catering to our biological needs; work is judged by its ability to build and maintain a world fit for human habitation; and action is judged by its ability to disclose the identity of the agent, to affirm the reality of the world, and to endow our existence with meaning (Passerin d'Entrèves, 1994: 65-6). If men were endlessly reproducible repetitions of the same model then they would need neither speech nor action to make themselves understood. It is precisely because we “are all the same, that is human, in such a way that nobody is ever the same as anyone else who ever lived, lives, or will live” that plurality is the condition of human action (Arendt, 1998: 8). Through acting and speaking “we insert ourselves into the human world, and this insertion is like a second birth, in which we confirm and take upon ourselves the naked fact of our original physical appearance” (Arendt, 1998: 177). To act, then, means in its most general sense to take an initiative, to begin, but this beginning is not the beginning of something but someone. Action thus discloses the identity of the *who* in contradistinction to *what* somebody is, and this disclosure is implicit in everything somebody says or does (Arendt, 1998: 179). However, this does not mean that action merely expresses a pre-existing identity, nor that the identity of the actor is purely performative. Rather, the identity of the actor is in part constituted through the action itself.

While action is conditioned by the fact of human plurality, it is “ontologically rooted” in another of life’s conditions: natality – the fact that each birth represents a new beginning and the introduction of novelty into the world. She writes:

Because they are *initium*, newcomers and beginners by virtue of birth, men take initiative, are prompted into action. *Initio ergo ut esset, creatus est homo, ante quem nullus fuit* (‘that there be a beginning, man was created before whom there was nobody’), said Augustine in his political philosophy [...] with the creation of man, the principle of beginning came into the world itself. (Arendt, 1998: 177)

Natality is one of Arendt’s least developed concepts but one of the most vital to her project to rethink politics after totalitarianism.<sup>20</sup> The first references to natality, in fact, come in reference

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<sup>20</sup> While plurality is often given pride of place in examinations of Arendt’s conception of politics, natality is almost always overlooked, especially in critiques of her approach to political action and rights. Rancière, for example, in his examination of the right to have rights and Arendtian politics seems to ignore natality as the potential for action that human beings possess by virtue of being themselves ‘beginnings’, leading him to posit that Arendtian politics is confined to a narrow public sphere to which one must *already* have admittance, and that exclusion from that sphere renders one incapable, by definition, of acting politically (Rancière, 2004; Schaap, 2011).

to totalitarianism, in the publication in 1953 of what would become the final section to the second edition of *Origins*, where she uses the quote from Augustine above for the first time:

Beginning [...] is the supreme capacity of man; politically, it is identical with man's freedom. *Initium ut esset homo creatus est* – ‘that a beginning be made man was created’ said Augustine. This beginning is guaranteed by each new birth; it is indeed every man. (Arendt, 1973: 479)

This surprisingly optimistic end to a work analysing such horror is indicative of Arendt's understanding of natality as the “miracle which saves the world”: that man is a mortal being and that, although the artificial world that he creates is more durable than his own individual life, everything human would inevitably be carried by man's mortality to “ruin and destruction if it were not for the faculty of interrupting it and beginning something new, a faculty inherent in action like an ever-present reminder that men, although they must die, are not born in order to die but in order to begin” (Arendt, 1998: 246). Without action to bring into play the new beginning of which each man is capable “there is no new thing under the sun” (Arendt, 1998: 204).

To begin to see exactly how action relates to, or constitutes, politics we need to understand its relational nature, and its relation to the world. Action and speech are always directed towards others since we cannot speak with nobody. Most speech and action is in reference to the material world in which men move and out of which arise their specific, worldly, interests. Since these interests lie *between* people – and note that this is not necessarily the same thing as being shared or agreed upon – they relate and bind people together in their difference (Arendt, 1998: 182). Further, since action and speech occur between beings themselves capable of their own actions, reaction, apart from being a response, is always a new action that strikes out on its own and affects others. In this way, by constantly creating new circles of action and reaction that can never be reliably confined to just two partners, action always establishes relationships (Arendt, 1998: 190). But it is important to remember that these relationships are of a different sort to family or kinship relations. All humans are born into pre-existing communities, the most basic of which is the family. This kind of relationship is characterised by similarity and is established quite outside of anything that an individual might say or do. The relationships established by action are specifically *worldly* relationships because they arise from the “original differentiation” of plurality, are based on interests derived from the common world, and are characterised by chains of reciprocal action and speech. Since action and speech are inherently revelatory, and establish relationships, it follows that they are only possible when one is with others. But this presupposes a space where people *can* act and speak. While, as stated above, the space of appearance comes into being whenever individuals come together in

the manner of speech and action, this space does not always exist and disappears the moment they disperse. The *polis* of ancient Greece forms, for Arendt, an example of the institutionalisation of the space of appearance into a formal public realm – a physical space in which speech and action are able to appear and which can safeguard the potential for such appearance. However, it is also with the Greeks that the tradition of Western political thought began its turn away from understanding politics as action in concert grounded in plurality, toward the theorisation of politics as rule and administration.

The other side of action's capacity for establishing relationships is its "boundlessness." In acting into a pre-existing web of relationships, our actions set off chains of reactions over which we, as the initiator of an action, have no control. It is this inherent boundlessness and the unpredictability of action to which the Greek philosophers beginning with Plato sought a solution, and their solutions formed the ground from which our political tradition has grown ever since (Arendt, 1998: 220). Such solutions amount to "seeking shelter from action's calamities in an activity where one man, isolated from all others, remains master of his doings from beginning to end" (Arendt, 1998: 220), or what Arendt calls the substitution of making for acting, and the introduction of the concept of rule from the private realm of necessity to the public realm of action. Arendt makes reference to Plato's *Statesman* in which he opens a gulf between two modes of action, *archein* and *prattein* ("beginning" and "achieving"), which in Greek understanding were connected, and this gulf is significant for political theory. The problem, as Plato saw it, was

To make sure that the beginner would remain the complete master of what he had begun, not needing the help of others to carry it through. In the realm of action, this isolated mastership can be achieved only if others are no longer needed to join the enterprise of their own accord, with their own motives and aims, but are used to execute orders, and if, on the other hand, the beginner who took the initiative does not permit himself to get involved with the action itself. To begin (*archein*) and to act (*prattein*) thus can become two altogether different activities, and the beginner has become a ruler [...] 'who does not have to act at all (*prattein*), but rules (*archein*) over those who are capable of execution'. (Arendt, 1998: 222)

Under these circumstances, Arendt explains, the essence of politics ceases to be action in concert, and becomes to know how to begin and to rule. These are the chief characteristics of the private realm of the household, where the head of the family ruled over slaves, women and children, and where the necessities of life were secured. The importation of this model of rule into the public realm no longer required citizens to act in concert with each other in pursuit of their own goals, but rather to follow the order of the ruler. The attraction of Plato's scheme is that it offers the chance of greater order in human affairs – although each citizen would retain

some part in the handling of public affairs, they would “act” like one man; through rule the many become one in every respect except bodily appearance (Arendt, 1998: 224). Historically, this concept of rule has played a decisive part in the organisation of public matters and for us is invariably connected with politics. The important point for Arendt is that this way of conceptualising politics is tantamount to a denial, at least on the theoretical level, of human plurality, and it structures public life according to the conditions of the private realm.

While for the Greeks the public and the private realms were distinct and governed by their own principles – necessity and sameness for the private, and action and plurality for the public – modernity and modern political life is characterised, for Arendt, by an entirely new realm which is neither properly one or the other: the social. The social realm develops from the eighteenth century onwards and is defined by the fact that it is directed toward the necessities of life, but is nevertheless public (Walsh, 2014: 129). Arendt writes:

The emergence of society – the rise of housekeeping, its activities, problems and organisational devices, [...] into the light of the public sphere, has not only blurred the old borderline between private and political, it has also changed beyond recognition the meaning of the two terms and their significance for the life of the individual and citizen. (1998: 38)

Arendt’s understanding and interpretation of the circumstances behind the rise of the social and modern mass society are very similar to Foucault’s analyses of the rise of the modern state and the development of government as a nationwide administration of housekeeping outlined in the previous chapter. The meaning of this process is exemplified, for Arendt, in the distinctly modern form of governing: bureaucracy, or what Arendt calls the “rule of nobody”. Mass society is a novel form of communal life characterised by the fact that individuals are united only by their common membership in the human species, that is, by the common biological needs of life, and not by the common world of action and speech (Passerin d’Entrèves, 1994: 47). Since the biological needs of life are secured by production and consumption, government is organised to securing and maximising the benefits of these processes for all by dedicating itself to the “rational”, bureaucratic management characteristic of the social sciences (Hill, 1979: 282). Action in the social realm is not really action at all but behaviour, which can be predicted, moulded, and channelled – as, once again, we saw in Foucault’s analyses. As behaviour replaces action, and bureaucratic management replaces government by public participation, individuals become increasingly dependent on administrative organisations to govern the world, and, by focusing on their private interests, become increasingly alienated from each other and from the reality of the world. The upshot of which is that individuals become identifiable only by their function in society, rather than by their innate individuality

(Passerin d'Entrèves, 1994: 47). The members of mass society are superfluous in the sense that their active participation becomes increasingly dispensable in economic and political life. The concentration of political power within bureaucratic structures, and processes of capital accumulation produce and reaffirm this dispensability (Isaac, 1996: 62). The kind of "political" activity open to most individuals in modernity is restricted to voting, an infrequent act based for most on private interests in which an individual can only consent or refuse to ratify a choice made without him (Isaac, 1994: 157). The development of politics under modernity, by consigning individuals to living a "publicly private" existence in which they relate to each other only as private individuals with private interests, sharing only their common membership in the human species mediated through national or ethnic affiliation, can thus be said to contribute to the world alienation that characterises modernity. At this point, we will return to the refugee problem to tease out what it is about the structural causes of mass displacement already highlighted that make being a refugee so problematic for those forced to flee their homes.

### **Refugees and rightlessness: the deprivations of obscurity and the right to have rights**

In explaining what exactly it was that the refugees had lost in becoming stateless, Arendt states that, first, they lost their homes, by which she means "the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world" (Arendt, 1973: 293). What was unprecedented about this situation was not the *loss* of a home, but the impossibility of finding a new one. There was no empty or "uncivilised" spot on earth where the stateless could go and create new homes for themselves, but this reality was not a problem of geographical but political space:

Nobody had been aware that mankind, for so long a time considered under the image of a family of nations, had reached the stage where whoever was thrown out of one of these tightly organised closed communities found himself outside of the family of nations altogether. (Arendt, 1973: 294)

She returns to this realisation when she first mentions the right to have rights: "only with a completely organised humanity could the loss of home and political status become identical with expulsion from humanity altogether" (297). It is important that humanity as a whole had come to be organised in this way. As Nicholas Xenos explains, the nation-state is an organised "community" – to the extent that all citizens belong to it as a matter of birth – which requires the loss of home in order to find it in the *homeland* (Xenos, 1993: 425). By way of explanation he refers to Simone Weil's interpretation of French history in *The Need for Roots*:

The process of nation-building over a period extending from the thirteenth century through the French Revolution gradually supplanted complex, fragmented, sometimes overlapping local identities in favour of a single, undifferentiated national identity. This is a history of struggle, of conquest and assimilation of Corsicans, Bretons, Burgundians, Basques, Alsatians, and so on. It culminated in the doctrine of the sovereign nation in 1789, a doctrine that paradoxically predicated national identity upon a radical break with the past. (Xenos, 1993: 426)

The result of this process is that the nation-state, by supplanting all other communities, stands alone as the one unifying identity, object of allegiance, and place of belonging in the modern era. We can perhaps see some parallels here with Arendt's story of the rise of modern society as a process beginning with the expropriation of the peasantry – their loss of a privately owned place in the world and tie with their ancestral communities – and, through a process in which the communities of belonging grow ever larger from family to class to society, culminates in the nation-state and ideas of One World. Importantly, for Arendt, as the communities of belonging grew ever larger the ability of individuals to belong to the world with others diminished. Whether this process took place by assimilation or expulsion, “the home is exchanged for the homeland, which *exists as an imagined necessity rather than as a lived or historical contingency*” (Xenos, 1993: 424; emphasis added). The extent to which Arendt considered nationality to have conquered any other form of meaningful identification with others, or ways of belonging to the world, can be seen in her descriptions of the reactions of the stateless to their condition. Stripped of their rights, ejected from their states, and welcomed nowhere, the refugees were reduced to the “abstract nakedness of being nothing but human” (Arendt, 1973: 300). They understood that this

was their greatest danger. Because of it they were regarded as savages and, afraid that they might end up being considered beasts, they insisted on their nationality, the last sign of their former citizenship, as their only remaining and recognised tie with humanity. (Arendt, 1973: 300)

Liisa Malkki identified a similar phenomenon in her ethnographic research among two groups of Hutu refugees who had fled Burundi in 1972. One group lived in a rigorously organised, isolated refugee camp in rural Western Tanzania and the other had lived outside of the camp system, in and around the township of Kigoma, dispersed in non-refugee neighbourhoods. Malkki found that the refugees living in the camp were engaged in “an impassioned construction and reconstruction of their history ‘as a people’” (Malkki, 1992: 36). Insisting on their identity gave the refugees, on their own self-understanding, a legitimate claim to the attention of international opinion and to international assistance. In contrast to the camp refugees, the Hutus who had managed to settle and integrate with non-refugee communities did

not exhibit the same valorisation of national identity. Malkki describes the identities they constructed as “changing and situational rather than essential and moral” (1992: 36). While just an isolated example it does reflect to a significant degree the phenomenon of clinging to one’s national identity as the only identity one has left when ejected from a humanity organised along national lines.

This ejection from the nation-state entails the second of the losses suffered by the refugees: loss of government protection, and, therefore, of legal status in all countries. Once again, Arendt is keen to stress that it is not the loss of protection itself that was novel or unprecedented – there would have been no need for a right of, or practices of, asylum for those outlawed by their community if loss of government protection was a peculiarly twentieth century phenomenon. However, the more the number of the stateless increased, the greater became the temptation to pay less attention to the deeds of persecuting governments – i.e. the reasons for the breakdown in government protection – than to the legal status of the persecuted (Arendt, 1973: 294). We saw in Chapter Two the evolution of refugee status as a legal status intended to rectify the legal anomaly of the person no longer a national of any state. Refugee status grants specific rights – mostly, as we have seen already, socio-economic rights – but, as Arendt highlighted, the plight of the stateless was not that they had lost specific rights – the right to freedom of movement, of speech, and so on – but that they had lost a political community willing to guarantee any rights whatsoever:

Neither physical safety – being fed by some private welfare agency – nor freedom of opinion changes in the least their fundamental situation of rightlessness. The prolongation of their lives is due to charity and not to right, for no law exists which could force the nations to feed them. (Arendt, 1973: 296)

Refugees today, as in Arendt’s time, still have no *right* to asylum, no *right* of residence in any state other than “their own”. The Refugee Convention – which grants legal status and, therefore, some measure of protection – *recommends* that states *offer* asylum to those who seek it, but there is no requirement for them to do so. Moreover, as we saw in Chapter Two, the states were very sure to make abundantly clear to the refugees, to each other, and to the charitable organisations working to relieve the plight of the displaced, that the offer of protection of select rights was not an offer of membership in the community.

The kind of existence open to refugees, to those ejected from the state-citizen-territory trinity is, therefore, one of obscurity, or being rendered invisible. To lose a place in the world which makes opinions significant and actions effective is to lose the relevance of speech and

action and, therefore, to lose all *human* relationships (Arendt, 1973: 297). It is to lose, in other words, some of the most essential characteristics of a human life lived *in-the-world-with-others*: it is to be *worldless*, and, since “nothing that they think matters anyhow,” it is to be superfluous to the human community. We can understand the plight of the refugee, then, in similar terms to how Arendt understood the political (rather than social) plight of the poor: that of enforced oblivion. The “continual toil” under which the poor must live to secure the necessities of life automatically excludes them from *active* participation in government – though not, of course, from representation. The *political* predicament of poverty is that after the representation of the poor has been assured their lives remain without consequence, and they remain excluded from the light of the public realm (Arendt, 1963: 69). While they may be “free” to choose their representatives, politically relevant freedom, for Arendt, is “a mode of being whose specific virtuosity shows itself in how well we [...] act to answer the world’s demanding, often urgent call” (Curtis, 1999: 71). Those too burdened by private need or interest are poorly capable of such responsiveness. The insult of obscurity, or oblivion, is to be denied the full capacity for participating in humanising the world with others (Curtis, 1999: 73).

The similarities of this with the worldless existence of the refugee comes into relief most clearly in the refugee camp, which Arendt referred to as “the only practical substitute for a non-existent homeland [...] the only ‘country’ the world has to offer the stateless” (Arendt, 1973: 284). According to UNHCR, more than half of the global refugee population live in a camp, and just over half of all refugees live in Protracted Refugee Situations – a situation in which 25,000 or more refugees of the same nationality have been in exile for five years or longer (UNHCR, 2013: 12). Camps remain the primary domicile for refugees on the basis of the assumption that their condition is temporary (Gündoğdu, 2015: 140). Those kept within them are not permitted to work outside of the camp, are limited in the jobs they can perform within the camp, and are almost completely reliant on humanitarian organisations for food, water, and other basics to fulfil human needs (Agier, 2011). Many camps are isolated from population centres, and refugees are not permitted to be outside of the camp after certain hours, making it almost impossible for them to interact with non-refugees, or even to have contact with the hustle and bustle of everyday life of a nearby village or town (Gündoğdu, 2015: 143). The “logic of temporariness” is reflected in the material construction of the camp – plastic tarpaulins for tents, and rudimentary shacks for “feeding centres”. The shelters that refugees live in are ill-suited to be transformed into homes, built instead for providing shelter from the elements. UNHCR and other aid agencies do seek to provide more than physical protection and the basics of human survival (Johnson, 2012: 112), but the camp is designed as a temporary space – even if in reality it becomes the opposite – and is subject to an administrative logic which leaves little room for the establishment of private, social and public lives for refugees

warehoused within them. To live an entirely private life – to live a life governed entirely by the necessities of survival – means above all

to be deprived of the reality that comes from being seen and heard by others, to be deprived of an ‘objective’ relationship with them that comes from being related to and separated from them through the intermediary of a common world of things, and to be deprived of the possibility of achieving something more permanent than life itself. (Arendt, 1998: 58)

As Arendt states of refugee camps: “the human masses sealed off within them are treated as if they no longer existed, as if what happened to them were no longer of any interest to anybody” (1973: 445). The camps, in Gündoğdu’s words:

undermine the possibilities of engaging in the familiar routines of life (labour), establishing a reliable and durable dwelling place (work), and creating public spaces where one can act and speak in the presence of others (action). (2015: 141)

In other words, life within the camp is a way of life which prevents refugees from engaging in those very human activities which create a human home, or world, on earth.

But has Arendt not provided us with the solution to this predicament herself, in the form of the right to have rights – the “right to belong to some kind of organised community”? If refugees could be repatriated to their home state, could be resettled in another state or be assimilated in a country of asylum, would they not then re-enter the human world and cease to live in a state of public invisibility and obscurity? In other words, do the three durable solutions of the refugee regime, focused as they are on re-establishing the state-citizen relationship, not correspond to the “right to have rights”? The final section of this chapter will demonstrate why this would be too hasty a conclusion to draw. It is perhaps revelatory that Arendt did not specifically define the right to have rights as the right to citizenship within the nation-state. While Arendt considers citizenship – i.e. recognised legal membership in a political community – to be essential to one’s ability to create a home in the world with one’s equals, her broader body of work reveals the quite profound problems she had with the nature of modern citizenship and politics, such that it would be a mistake to conflate government protection, or formal membership of the nation-state, with the establishment of a home. The fact that she indicted humanitarian organisations and states for their focus purely on the question of legal status rather than the breakdown of political life, which resulted in the production of superfluous persons, who became refugees when ejected from their states, is perhaps further evidence of this. That the right to have rights – and, therefore, the way to address the plight of refugees – should be understood as *more* than a right to citizenship within the nation-state, even

if citizenship itself is of supreme political value, we need to understand the problems that Arendt had with the specific character of citizenship and politics within the nation-state.

### **The shortcomings of modern politics and citizenship**

It might seem odd that after so prescient an analysis of refugeehood Arendt does not return to the topic again on its own terms. After completing *Origins* she moves on to re-examining our political structures, and, I would argue, this was quite deliberate. Not because she no longer cared about the plight of refugees, but because she did not see their plight as separable from the modern political condition: the alienation suffered by refugees is a more acute form of the alienation that citizens under modernity suffer, and so the problem cannot be solved simply by extending membership in the nation-state – not only because the nation-state system will continue to produce refugees – if such membership does not provide the space in which to appear to others and join with others in speech and action. The *whole political tradition*, therefore, needs to be rethought. I would argue that she does, in much of the rest of her work, flesh out the specifics of the right to have rights; she just does not do so in terms explicitly referring to refugees.

Arendt's political theory is an effort to restore an almost completely eclipsed public world, motivated by distinctively modern problems of displacement and degradation – worldlessness brought about by alienation from the common world (Isaac, 1996: 61; Hill, 1979: 284). We saw above that the paradox of rights of which refugees became the embodiment, was established by the conquest of the state – as the guarantor of rights – by the nation – to which one needed to belong in order to enjoy such rights. Arendt explains in “The Nation” that this conquest of the state was made possible through the liberal individualism of the nineteenth century. She explains that the state – as an institution in theory – was supposed to rule over mere individuals. The state as it was actually developing in the nineteenth century (as we saw in Foucault's analyses in the previous chapter) was engaged in a process of centralising and monopolising the whole of political life. Theories of nationalism provided the cement with which to bridge what was becoming a growing discrepancy between a centralised state and a society of atomised individuals. As the sovereignty of the nation was shaped after the sovereignty of the individual, she explains, so the sovereignty of the state as *national* state was the representative of both (Arendt, 1946: 209). But, for Arendt it is vitally important to keep the nation and the state separate. She understands the state to be the supreme protector of the law, which “guarantees man his rights as man, his rights as citizen and his rights as a national” (Arendt, 1946: 209). This function is not, or should not be, affected by the number of nationalities

protected within the framework of the state's legal institutions "because [...] being French, Spanish or English is not a means of becoming a man, it is a manner of being a man" (Arendt, 1946: 209).

Arendt's rethinking of politics from the perspective of plurality and a right to belong to a political community thus involves a "correction" of our understanding of the link between the individual and the state – the "individualistic bent of classical liberalism" – by pointing to the group or community as a crucial component of citizenship but, unlike national or ethnic-based citizenship, this group basis of citizenship should not be thought of in essentialist, natural or pre-political terms (Bilsky, 2008: 77). It is not that she does not recognise the importance, or inevitability, of belonging to national or religious groups – indeed they can add depth and meaning to one's private and social life as a way of belonging with others – rather, such affiliations should never be made the basis of membership in a *political* community (Passerin d'Entrèves, 1994: 145). In many of her writings in the 1940s on the Jewish question in Palestine she advocated a conception of Israeli/Palestinian citizenship based not on religion, but on the formal rights of freedom and equality that would have extended to both Arabs and Jews (Passerin d'Entrèves, 1994: 145; Arendt, 1948: 388-401). Her fears for the character of any state established as a "Jewish" state came true when the establishment of the state of Israel was accompanied by the expulsion of 750,000 Arabs – an example she offers of the "curse" of refugees attaching themselves to all new states formed in the image of the nation-state (Arendt, 1973: 290).

Even though Arendt rejected nationality, ethnicity, race or religion as the basis for citizenship in the state, she did believe that citizenship, and indeed political life in general, was only possible within bounded territorial communities – although it is important to note that the exercise of one's political capacities and the extent of one's responsibilities was not restricted to the boundaries of such communities (Arendt, 1957: 81). Both in *Origins* and *Men in Dark Times* Arendt cautions against the view that such problems of displacement, and the crimes against humanity committed during the Second World War, could be avoided if we simply dispensed with the state and organised humanity along the lines of a global government. Remembering that the publicly-private realm of the social, which has come to replace a properly public realm as space of appearance and common world, is governed by the values of life, productivity and abundance, crimes – including crimes against human rights – can always be justified by

the pretext that right is equivalent to being good or useful for the whole in distinction to its parts [...] And this predicament is by no means solved if the

unit to which the 'good for' applies is as large as mankind itself. For it is quite possible that one fine day a highly organised and mechanised humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof. (Arendt, 1973: 299)

Political action and speech among one's equals is only possible, for Arendt, within bounded communities, but even this is no guarantee, without changing the character of these communities and the politics which occurs within them, that such destruction will not occur again.

Arendt's primary issue with modern political life is that, in addition to being organised along the lines of essentialised identities such as ethnicity, it is characterised by the removal of individuals from the public sphere in which their opinions would be significant and their actions effective, and confines them to the publicly private realm of the social where they attend to their private interests. Individuals are rendered anonymous, and are treated as such by the bureaucratic institutions which manage the state. Such privatised individuals participate only minimally in any kind of public discourse and "political participation" under such conditions – if it can even truly be called such, and Arendt would answer in the negative – is reduced to casting a ballot, which Arendt refers to as a decision only to "consent or refuse to ratify a choice" already made by dominant interests; a choice that is embellished by political advertising "through which the relationship between representative and elector is transformed into that of a seller and a buyer" (Arendt, 1963: 276). What we today understand as constitutional government is essentially one controlled by the governed and limited in powers and use of force, in order to limit the sphere of government as far as is possible and necessary to allow individuals to realise freedom beyond its reach. The purpose of such political arrangements, Arendt argues, is not, or at least not primarily, to make possible the freedom to act and to be politically active. These remain the prerogative of the government and professional politicians who *represent* the people's interests (Arendt, 2005: 143). Arendt argues that, once again, this is the result of a fundamental misunderstanding of the nature of politics and citizenship. Our public interests as citizens are quite different from our private (but legitimate and necessary) interests as individuals, and the public interest cannot – contra Rousseau – be automatically derived from our private interests (Passerin d'Entrèves, 1994: 149). Political action, proper, is motivated by concern for the *world*, not one's private interests. Arendt's essay on "Civil Disobedience" is instructive here. She contrasts civil disobedience with conscientious objection. The latter, she argues, is governed by individual conscience and conscience's moral obligation, and therefore can be, and often is, an action solely of the individual. The civil disobedient, on the other hand, is a member of an organised minority,

bound together by common opinion rather than common interest, and motivated by concern for the world where the wrong is being committed or the unjust action perpetrated. The civil disobedient would say, with Jefferson, “I tremble *for my country* when I reflect that God is just; that His justice cannot sleep forever”, rather than with the conscientious objector who trembles for his individual self and his moral integrity (Arendt, 1970b: 50). When asked at a conference on her work what it is that should guide political action, Arendt answered: “I would say that in the notion of wanting to be good, I actually am concerned with my own self. The moment I act politically I’m not concerned with me, but with the world. And that is the *main* distinction” (Arendt quoted in Hill, 1979: 311). She turned to Rosa Luxemburg as an example:

[she] was very much concerned with the world and not at all concerned with herself. [...] She couldn’t stand the injustice *in the world*. [...] The decisive thing is whether your own motivation is clear – for the world – or, for yourself, by which I mean for your soul. (Arendt, quoted in Hill, 1979: 311)<sup>21</sup>

In an address upon the receipt of the Lessing Prize of the Free City of Hamburg, Arendt focused her remarks on the phenomenon of withdrawal from the world – as exercising one’s freedom *from* politics – a phenomenon she saw as becoming more and more prevalent. While such a withdrawal, she states, need not necessarily harm the individual – indeed it may in fact be necessary, for man’s productive capacities for example – with each such retreat “an almost demonstrable loss to the world takes place” (Arendt, 1959: 4). What is lost, she explains, is the “specific and usually irreplaceable in-between which should have formed between this individual and his fellow men” (5). What is so pernicious about the rendering of individuals as superfluous – by ejecting them from humanity by killing or excluding them – is that, in such cases, we are no longer dealing with voluntary withdrawal from the world, but forcible ejection from it. Not only the individual but the world suffers as a result. And it is precisely because human activity has the potential for such destruction that the imperative to care for the world is necessary (Kattago, 2013: 175), and so at the centre of politics, for Arendt, lies concern for the world and not for man. If we recall above that the world is the inter-subjective in-between created by the speech and actions of individuals in their plurality, which relates and separates them as a table unites and separates those who sit around it, then the relationships established by politics between distinct individuals are only possible because these relationships are, at the same time, relationships with the world they share in common. In *The Promise of Politics*

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<sup>21</sup> This presents an interesting contrast between Arendt’s politics as oriented by care for the world, and the Foucaultian ethics of the care of the self. Foucault’s answer to the challenge of resubjectification is to turn inward, care for the self, and fashion oneself as a work of art. Arendt’s response is oriented toward care for the world as the locus within which we become subjects with greater or fewer avenues for effective agency: it is by caring for the world that we can become acting subjects, rather than in caring for the self.

Arendt elaborates on this understanding in reference to the importance of the freedom to speak with one's fellow men:

A great many human activities can proceed only at some remove from the political sphere, and this remove is indeed an essential condition for certain kinds of human productivity. But this is not at all the case with the freedom to speak with one another, which is possible only in interaction with others. The key thing is not that a person can say whatever he pleases [...] The point is, rather, that we know from experience that no one can adequately grasp the objective reality of the world on his own, because the world always shows and reveals itself to him from only one perspective, which corresponds to his standpoint in the world and is determined by it. If someone wants to see and experience the world as it 'really' is, he can do so only by understanding it as something that is shared by many people, lies between them, separates and links them, showing itself differently to each and comprehensible only to the extent that many people can talk *about* it and exchange their opinions and perspectives with one another. (Arendt, 2005: 95)

It is for this reason that Arendt defines the right to have rights as the right to belong to a community which makes opinions significant and actions effective. We can, perhaps, understand the right to have rights as the chair – a place at the table which unites and separates individuals in their difference. The state, for Arendt, should be the institution which guarantees the protection of all its members, regardless of nationality, ethnicity, or religion, and which puts the institution of the law to the task of combatting institutionalised marginalisation of individuals – not closing off, by default, access to any kind of public realm – but the worlds we create with each other, the tables we sit around and at which we discuss common interests with our equals, need not always be understood in terms of the state. Arendt believed that representative democracy, or modern constitutional government, needed to be invigorated by the opening up of political space based upon a rejection of the presumption that only a professional class can act politically and that citizenship is an identity more or less defined by the occasional act of designating those who claim to act on your behalf. In short, she believed in the *pluralisation of political space* (Isaac, 1994: 160).

Arendt is often criticised for offering a view of politics which reifies the activity itself at the expense of explaining what its substance is. Moreover, she is criticised for banishing economic and social issues from the political sphere, and thereby banishes from political action all those who live a life so constrained by necessity – the poor, the disenfranchised, the marginalised of society – that they have neither the luxury nor the opportunity to engage in a life of speech and action (Benhabib, 1996; Canovan, 1974: 77-9; Kattago, 2012: 98-108; Pitkin, 1981: 327-352). But, I would argue, these criticisms are based on too narrow a reading of the chapter on “Action” in *The Human Condition* and a selective reading of *On Revolution*,

ignoring Arendt's work on the world. Arendt's politics is a matter of people sharing a common world and a common space of appearance in which public concerns can emerge and be articulated from different perspectives. It is not the "issues" or contents of debate that define politics for Arendt. It is a distinctive mode of being with others manifest in speech and action, and is marked by a concern for the public, political world itself (Owens, 2012: 306). Caring for the world may even take the form of activities associated with the social realm, and with economic concerns. I would echo this description, and add that Arendt's concern for the public character of the world and its ability to affirm the reality of our own existence and the significance and value of our opinions and actions, means that action to counter the economic and social marginalisation of the poor, the homeless, women, refugees, the disabled, would be precisely the kind of activity she would consider to be political. For such action is, in targeting the causes of marginalisation, directed toward the inclusion of these individuals and their unique perspectives in our common care for the world, and in so doing recognising them as equals in recreating the human world, and all the public spaces within it, anew.

## **Conclusion**

This chapter has, through a close reading of Hannah Arendt's work, argued that the problems that refugees face in becoming displaced, in being ejected from the state-citizen-territory trinity are best understood in terms of "worldlessness" and "superfluity". To become displaced, for Arendt, is not simply a matter of physically being where one does not "belong". Her examination of statelessness reveals that to be displaced is to be superfluous, to lose one's place in the world, and that this refers to the existential level of lived experience and our sense of belonging to a particular community, and is not simply a matter of losing formal legal status such as citizenship or nationality (Borren, 2010: 61). It follows, then, that these are the problems which need to be the focus of our attention. But in order to address these problems of worldlessness and superfluity we need to understand ourselves once again as worldly beings, and politics as a worldly activity. In seeking to challenge the subjectification of refugees as helpless, voiceless, apolitical, humanitarian victims – a subjectivity that the refugee regime needs in order to function as a regime of truth and subjectivity – we are seeking to understand the refugee in terms of political agency rather than management. By shifting our understanding of the problem to be addressed to the problems of worldlessness that refugees face, and our understanding of the right to have rights beyond citizenship in the nation-state and understanding it, instead, as a ground upon which to build a home in the world with others, we can move forward in more imaginative ways and begin to think of how we might address the problems faced by refugees beyond the confines of the state. As Passerin d'Entrèves explains:

The reactivation of the public sphere, of the sphere within which the activity of citizenship can flourish, depends upon *both* the recovery of a common, shared world, and the creation of numerous spaces of appearance in which individuals can disclose their identities and establish relations of reciprocity and solidarity. (1994: 140)

The final chapter of this thesis will turn now to this task.

# CHAPTER FIVE

## MAKING ONESELF AT HOME IN THE WORLD: RIGHTS CLAIMING, CITY OF SANCTUARY AND THE REFUGEE AS AGENT

### Introduction

Over the preceding four chapters, “the refugee problem” has been unpacked and problematised from a historical perspective. Its contingent nature, the socio-political conditions and power-knowledge relations upon which it rests, and the ways in which “the refugee” is created and continually re-inscribed as a particular kind of subject in and by this conceptualisation, have been brought to the foreground. This dominant academic and policy understanding of the refugee problem as the “refugee *as* problem” was then reframed, using the work of Hannah Arendt, to the problems of worldlessness and superfluity that refugees face in becoming displaced. This chapter will build upon these insights, and address the final two objectives of the thesis: to use Arendt’s understanding of political action and “world-building” to re-subjectify the refugee as a political agent to be engaged *with*, rather than a voiceless, powerless, apolitical object to be acted upon; and to begin a conversation about conceptualising solutions to this reframed understanding of the refugee problem.

The dual-track discussion in the previous chapter of the plight of refugees, and of “world” and “world alienation” reveals that government protection – (re)gaining legal (i.e. refugee) status or citizenship – should not be conflated as a matter of course with the establishment of a home in the world. By understanding the worldlessness and superfluity that refugees suffer as symptomatic of the world alienation – the social, economic, political, philosophical and historical phenomenon – characterising life in modernity for all, not just refugees, we came to understand the “right to have rights” as *more* than a right to citizenship within the nation-state. We came to understand it as a ground upon which to create a home in the world with others, where “home”, importantly, need not *necessarily* or *only* mean nation-state. The task that befalls us in this chapter is to examine how we might conceptualise the building of such “homes”.<sup>22</sup>

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<sup>22</sup> The concept of “home” has become a growing area of interest in anthropological approaches to refugees and forced migration, often focused on individual countries or groups of refugees. The most recent (at the time of writing) issue of *Refuge* – 31(1) – is devoted to conceptualizing “home” in the context of protracted displacement.

The “national order of things” characterising the “refugee (as) problem” understands “home” as an essentialised point on a map, a national territory to which the refugee “naturally” belongs by virtue of birth, citizenship or ethnicity. As Malkki explains, the assumption underlying such understandings is that the *homeland*, or country of origin, is “not only the normal but the ideal habitat for any person, the place where one fits in, and has an unproblematic culture and identity” (1995: 508). To speak of refugees in this context as “uprooted” is to imply that to leave a national community is automatically to lose one’s identity, traditions and culture. While it is not my intention to suggest that this is never the case, there are perhaps two important points to be borne in mind. First, that such displacement and uprooting seem to occur at precisely the time when one is either no longer welcome in one’s “own” society, or when it has become “strange and frightening” due to war or other forms of violence, meaning that it is far from clear that returning to that society can so easily be understood as “going home” (Malkki, 1995: 509; Den Boer, 2015). Second, that it is only possible to rebuild or experience an identity, culture, traditions – a “life-world” – in one’s country of origin and nowhere else (Brun, 2001; Malkki, 1992); in other words, that homes are only given, never made. This has problematic parallels with the denial of agency examined in Chapter Three regarding the exercise of choice on the part of refugees as to the destinations to which they flee. For the refugee regime, any choice of a new home by the refugee made on the basis of anything other than physical safety is illegitimate and leaves the refugee open to being defined as an “illegal immigrant”, an “economic migrant” in disguise, and thus not a “genuine” refugee. The asylum country is only supposed to be a *temporary* safe haven – as evidenced not only by the restrictions placed on asylum by states, but also by the cessation clauses of the Refugee Convention – until such time as the refugee can “return home.” The securitisation and externalisation of asylum that has come to characterise the specific policies toward refugees in many Western states, and the proliferation of camps throughout Africa and Asia, become naturalised and rendered reasonable by such functionalist visions of identity and home, and thus can in fact reinforce the worldlessness and superfluity experienced by the displaced. To (implicitly) deny that refugees can or should build new homes for themselves elsewhere than their country of origin is not only to deny agency, but is to reduce a “home” to a function of legal status expressed as some physical space. The problem for the international community and the refugee regime, therefore, is to *find places to put people* until such time as their legal status and rights have been “restored” by their country of origin – i.e., until such time as their country of origin can be recognised by the international community as “home” again, or another state can be found that is willing to act as “home”.

Understanding the plight of the refugee not in terms of “homelessness” – as loss of the state-citizen relationship and being outside of one’s “home” country – but as “worldlessness”,

this chapter seeks to employ Arendt's understanding of the "world", and how individuals come to be "at home" in it, as an alternative frame of reference to the population management approach of the refugee regime and sovereign state. Building on Arendt's insight that to become displaced is to lose one's place in the world, and that this refers to the existential level of lived experience and our sense of belonging to a particular community, this chapter will examine the potential of refugee and asylum seeker protest, and the UK City of Sanctuary movement, as ways in which to address this problem. Analysing refugee protest as instances of performative rights claiming not only reveals the refugee as a political actor but also begins the work of building new "worlds" to which to belong with others, through the mutual recognition of rights between those engaged in the protests. But, due to the dynamic nature of power relations and efforts by the state to reclaim the political ground from the refugee, these actions stand in need of greater support if they are to mount an effective challenge to their exclusion. City of Sanctuary is therefore presented as one such avenue of support. An examination of its activities, the role that refugees and asylum seekers play within it, and its focus on re-fashioning the city as a place of belonging for all those resident within it, reveals the potential the movement possesses to alter the "horizons of practical engagement" of citizens so as to enable them, and perhaps prompt them, to act in solidarity with those claiming rights and inclusion, and thus take an important step, on the "insider" side of the coin, toward transfiguring, or modifying, the games of truth and power in which refugees and others find themselves governed. The chapter concludes with a discussion of the "durability" of such "solutions", and argues that while such solutions may not offer the "permanence" implied in the refugee regime's durable solutions to the "refugee (as) problem", the continued "maintenance" they require actually renders them more faithful to the kind of politics and belonging that lie at the heart of Arendt's call for a right to have rights.

### **Refugee and Asylum Seeker Activism: the refugee as political agent**

As the asylum system in the European Union has become ever more restrictive, protests by refugees, failed asylum seekers, and EU citizens acting in solidarity have grown in frequency. The forms that such protests take, their size, duration, and focus are as varied as the individuals and groups initiating them, and the exact conditions in each state to which they are directed. Protest camps and marches have occurred in opposition to proposed legal changes, and in opposition to the deportation of specific individuals; demonstrations against detention and deportation have been a frequent occurrence outside detention and immigration removal centres, and have also been triggered as acts of solidarity with and by hunger strikes within them; and coordinated campaigns allied with NGOs working with and on behalf of refugees and asylum

seekers have been directed at ending destitution, lobbying against proposed legislation, safeguarding access to support, and many other issues. The diversity of these protest movements renders a comprehensive account impossible, and so I will highlight select examples of two of the most common forms of protest: protest camps and demonstrations. These are intended as “snapshots” of the broader phenomenon of refugee protest, rather than as in-depth case studies.

i. Snapshot one: Refugee Protest Camp, Vienna

On November 24, 2012, approximately one hundred refugees, asylum seekers, and their supporters marched the 35km from the refugee reception centre in Traiskirchen to the centre of Vienna, and erected a Refugee Protest Camp in front of the Votive Church in Sigmund Freud Park. The camp remained in the park until it was broken up by police and the inhabitants evicted on December 28, 2012, at which point the protestors were welcomed into the church itself to maintain their camp. At the beginning of March 2013, remaining protestors were invited by Cardinal Schönborn to move the camp into the Serviten Monastery, in Vienna’s ninth district, where it remained until October 30, 2013 (Grzanic, 2013: 1-2). During the eleven months of sustained camping and protesting, the refugees and their supporters held a series of press conferences, engaged in hunger strikes when ignored by the Austrian authorities, and marched, and demonstrated outside of, the Ministry of the Interior, the Parliament building, and UNHCR headquarters. The camps in the park, the church and the monastery were characterised by communal living, and featured regular workshops on human rights and collective action, talks by invited speakers, a protest song writing competition, and public demonstrations at which refugees related their experiences of persecution and detention. Deteriorating conditions of detention had provided the initial catalyst for the protests, but the refugees’ demands went beyond improved detention conditions. They had two “Urgent Demands” and a series of broader “Concretised Demands”, arrived at after a series of discussions during the first weeks of the protest. The Urgent Demands were that the refugees be granted the right to remain in Austria or, at the very least, to have their fingerprints deleted from EURODAC should Austria decide to deport them; and that, wishing to sustain themselves rather than rely on the state, they be granted permission to work (Refugee Protest Camp Vienna, 2012a). The six Concretised Demands were as follows: basic support for asylum seekers in Austria, and an end to enforced transfer; access to employment, educational institutions and social security; a halt to all deportations associated with Dublin II regulations; the establishment of an independent review and appeal authority for asylum applications; and the recognition of socio-economic motives behind refugee flight (Refugee Protest Camp Vienna, 2012b).



**Figure 1: Refugees in Vienna, November, 2012. Photo: Andreas Edler.**  
(Grzanic, 2013:2)

The marches and demonstrations that became a regular feature of the Protest Camp featured a series of chants, including “No borders! No nations! Stop Deportations!”, “We are here, we will stay, we won’t give our rights away!”, and one in particular served as a mantra of sorts for the movement: “We demand our rights!”<sup>23</sup> The Refugee Protest Camp sparked marches and demonstrations in solidarity all over Europe, especially in Germany and the Netherlands (Refugee Protest Camp Vienna, 2013b). However, while the Refugee Protest Camp was supported by Austrian citizens, NGOs and activists from elsewhere in the EU, it was organised and carried out by the refugees themselves, and this was a message they were keen to impart to their supporters:

We ourselves, the refugees, make the demonstration, and we are the ones who want it. It is our fight. We thank everybody for their help, but we don’t allow anybody to use us. This is a self-organised struggle of and by refugees, one that needs your support, your presence on the street [...]. (Grzanic, 2013: 1)

While the refugees were able to rely on Austrian citizens acting in solidarity at their marches, and in the camp, they ultimately were unable to effect the policy changes they sought. The Refugee Protest Camp no longer exists as a camp, and some of the original protestors have been deported, but self-organised refugee protest continues in Austria under the name of Refugee Protest Camp Vienna.

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<sup>23</sup> The website of the Protest Camp contains a comprehensive timeline of events with links to a number of videos of press conferences and demonstrations at which these, and other, chants can be clearly heard (2013c).

ii. Snapshot two: Mobile demonstrations, Germany

Refugee protests in Germany have many similarities with those in Austria, namely in the use of protest camps, similar slogans, and the nature of the demands, and they began in earnest at roughly the same time.<sup>24</sup> But there are a few features of the movement in Germany that warrant special attention. In September 2012, March 2013, and April/May 2015, the refugee protest camp movement based in Berlin (called Refugee Tent Action) was accompanied by Refugee Liberation Bus Tours. The broader protest movement and the Bus Tours demand the abolition of the “Residenzpflicht, Lager, and Deportation” system in Germany (Refugees Revolution, 2013). The *Residenzpflicht* is a “mandatory residence” system whereby asylum seekers in Germany may not leave the district in which they are registered with the immigration authority office without permission, for any reason. They must apply, and pay, for permits to travel outside of this area.<sup>25</sup> In practice this means that asylum seekers in Germany have little to no real freedom of movement. Asylum seekers are housed in reception centres for the first three months of their claim, and are then moved to collective accommodation centres, which the refugees refer to as “Lagers” (camps), and protests and demonstrations outside of these centres have become an ever more frequent occurrence (Linke, 2013).

The Bus Tours have mobilised hundreds of refugees and their supporters and travelled to dozens of towns and cities across Germany. When the first Bus Tour arrived back in Berlin it was met with a solidarity protest of approximately 6,000 people (Linke, 2013). At each stop on the tour, the protestors set up a camp and hold a demonstration outside the reception or accommodation centre, and hold informal gatherings of asylum seekers and refugees resident in the area, with local social and political groups, to offer information on the campaign, and establish connections between asylum seekers in the area and citizens acting in solidarity.

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<sup>24</sup> The Voice Refugee Forum is an online platform which collects information about protests, demonstrations and campaigns of refugees and asylum seekers across Germany, and links to various groups and organization, giving an indication of how large and diverse the refugee-rights movement is in Germany: <http://thevoiceforum.org/>

<sup>25</sup> The law governing this system was amended from 1 January 2015 to apply only to the first three months of an asylum claim (European Council on Refugees and Exiles, 2015).



Figure 2: Demo at Bramsche lager (Oplatz, 2015)

Beyond the placards and chants accompanying each stop of “Kein Mensch ist Illegal!” (“No One is Illegal!”), and calling for an end to deportations and detention, the Bus Tour, as a *mobile* demonstration, is both a call for, and manifestation of, the right to freedom of movement in a system in which this right has become a commodity that increasingly destitute asylum seekers must pay for. Indeed, the asylum seeker participants on the Tour are violating the *Residenzpflicht* by travelling outside of their registration area, and so risk arrest and imprisonment just for participating in the protest. The organisers and members of the Bus Tour see it as an expressly political movement, seeking to build a network of asylum seekers, refugees, and other activists within Germany, but also as a movement oriented beyond Germany to the EU as a whole:

We organised this Bus Tour because the situation of refugees in Europe has gotten worse [...] The Bus Tour wants to give self-organised refugee groups the possibility to exchange about the protest and about the situation of refugees in their area and develop a political strategy together. (Oplatz, 2015b)

The protestors on the Bus Tour and in the various camps of Refugee Tent Action link their protest of local conditions as exemplars of EU policy to the global, and colonial, policies of Western states in general, challenging the presumption that socio-economic reasons cannot be grounds for asylum. The protestors demand recognition of *all* asylum seekers as political refugees, arguing that all reasons, including the socio-economic, compelling one to flee one’s country are, ultimately, political. A message often heard at the protests is that the poverty of the countries from which the refugees have fled is due to their exploitation by the countries to which they flee (Linke, 2013). Refugee and asylum seeker activists in Germany arrested for violating the *Residenzpflicht*, or other restrictive laws, have taken to releasing statements on social media sites to draw attention to these broader socio-economic policies within which they

frame their protest.<sup>26</sup> More than merely an accusation, these messages invoke a right to remain in Germany, and other EU states, and a responsibility on the part of these states to accept them and treat them with equality and dignity, defying the simplistic distinction between “there”, where “they” belong, and “here”, where “we” belong.

iii. Protest as rights-claiming: the refugee as political agent

A number of scholars have begun to analyse protest movements by the non-status as instances of “performative rights claiming”, inspired by Judith Butler’s work on performativity, and drawing on the speech act theory of J. L. Austin. To say that rights claiming is a performative practice, Zivi explains, is to say that the act of claiming a right is itself a practice which *does* something. In making a rights claim, claimants are “doing more than accurately (or perhaps inaccurately) representing a pre-existing moral, legal or political reality” in regard to the particular right or set of rights in question (2012: 8). This is because speaking is a social practice through which we both represent and *shape*, reflect and *constitute* the world in which we live (Zivi, 2012: 8). To say, then, that refugees demanding the right to work is an act of performative rights claiming is to move beyond the question of whether or not, as a matter of legal or political fact, they do or do not possess this right, to the question of what they are *doing* in the act of claiming it. Through the act of claiming rights, the protesting refugees are gathering together to create a space of appearance, sustained by the power created through their action in concert, in pursuit of a common goal. In other words, they act *politically*, and become political actors rather than humanitarian objects, and they begin to create a “world” between them.

The protesting refugees in Austria and Germany made their demands explicitly in rights language. They demanded recognition of specific rights, and framed their demands within the language of the Universal Declaration of Human Rights. The various mantras of the movements, such as “We demand our rights!” position the rights being demanded as rights the protestors already possess: “We demand *our* rights!” Rather than being a case of linguistic confusion on the part of non-native speakers, this is what Butler refers to as a “performative contradiction.” When a disenfranchised group make a universal demand, she explains, they lay claim to something from which they have been constitutively excluded. At that moment, the limiting reach of the “universal” is divulged, and the “universal” itself is challenged (Lloyd, 2008: 36-7). By demanding Convention rights when lacking the status that would entitle them to those rights, but doing so by invoking the UDHR (rights which their human status is

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<sup>26</sup> One such site, still active at the time of writing, can be found at: <http://refugeestruggle.org/en>

supposed to guarantee), the protestors draw attention to the injustice of being denied something that is supposed to be theirs. To draw attention to the injustice of their exclusion is to reveal that the “universal” upon which these rights depend – human status – is not in fact, in its present configuration, a universal at all. The performative contradiction of demanding *their* rights draws attention to the extent to which the universal – human – rests on the particular and exclusionary – legal status – precisely in order to challenge this exclusion.

The political nature of these acts of rights claiming emerges most clearly in the physical/spatial aspect of the rights claim. The mobile demonstration of the Bus Tour in Germany can be seen as a concrete manifestation of the right to freedom of movement that the *Residenzpflicht* system denies to asylum seekers. In openly violating the laws restricting movement, the protestors are not simply violating the law, but exposing the law’s complicity in the denial of rights to those who arrived in Germany seeking the protection of those very rights, echoing Arendt’s understanding of civil disobedience. As Butler asserts, “to exercise a freedom and to assert an equality precisely in relation to an authority that would preclude both is to show how freedom and equality can and must move beyond their positive articulation” (Butler and Spivak, 2011: 67). In Arendtian terms, the protestors are enacting, or manifesting, a principle – freedom and equality – in innovative and unexpected ways, and thus transforming the principles themselves (Cane, 2014: 69). The power in this form of protest lies in understanding this public exercise as “enacting the freedom it posits, and positing what is not yet there”, thus opening a gap between the exercise of the freedom demanded, precisely so that this gap can “mobilise”, posing a challenge to those who observe it (Butler and Spivak, 2011: 67). In a similar manner, the asylum seekers protesting in public parks in Austria appropriated a public space (both physical and symbolic) in amassing together and camping, demonstrating and marching. In gathering together in the park, the refugees, asylum seekers and their supporters created a public political space out of a public recreational space, both through their presence and their activities. The space of appearance, Arendt reminds us, becomes manifest, and is sustained, whenever individuals gather together in the manner of speech and action. Collective action “reconfigures the materiality” of public space (Butler, 2011: 1) – a park ceases to be a park and becomes a protest camp in which those who lack the formal right to act politically nevertheless do so. Importantly, rather than seeking permission from the authorities to camp in the park, or to protest outside of official buildings or detention centres, the refugees *appropriated* the space. In marching to Parliament, demanding to meet with Ministers, moving around the country of their own accord, and in demanding rights, the refugees and asylum seekers were engaging in actions usually associated with citizens, and certainly actions we would usually classify as “political”. They were acting *as if* they were members of the polity of which they were making demands for rights. To make a rights claim is, thus, to engage in an

activity *with* others; is to allow previously marginalised individuals to take part in the practice of speaking and acting in public and to create new forms of political subjectivity (Zivi, 2012: 22).<sup>27</sup> As Butler explains, those who are excluded from existing polities may be “unreal” to those who seek to monopolise the forms of reality, and yet, as these brief examples have shown, even after the public sphere has been defined through their exclusion, and even after they themselves have been defined as apolitical and voiceless, they act, and they act together (Butler, 2011: 4). They appear in public and reveal their unique perspectives on the world. In Arendtian terms, in coming together and claiming rights, refugees, asylum seekers, and their supporters create a public realm sustained by power within which they act and speak with each other, a public realm in which they appear to each other. The lack of prior authorisation, the lack of formal inclusion in the wider polity, does not prevent them from acting and speaking together since action is *ontologically rooted* in the fact of natality. Foucault appears to echo this position in support of a lack of pre-requisite permission on the part of anyone to speak and act politically when he states that the right to speak of those involved in the solidarity movement in support of refugees from Vietnam is constituted precisely because those involved appoint themselves (Foucault, 1984c). Natality, the fact that human beings are themselves beginnings and thus capable of manifesting that beginning in action and speech with others – is what enables individuals to act, to insert themselves through word and deed into the human world, thereby forging relationships with others (becoming recognised as belonging to the common world), in which they reveal themselves as distinct “whos”, with unique perspectives on the world in which they act, rather than merely “whats”. In the face of a structure and regime that constructs them as apolitical, voiceless victims, or anomalies to be managed, they take the initiative and become, even if just for that brief time of protest, political subjects.

But therein, we might posit, lies the problem. Only for the time the protest lasts are they political subjects. Once the mobilisation is over, given their lack of legal status, would they not be relegated back to the condition of rightlessness from which they rose up, absent any structural change? (Gündoğdu, 2015: 201). The short answer may well be “yes”. It is by no means certain that any of these efforts, or any future protests, will be “successful”. As Butler rightly highlights in her analysis of the performativity of irregular migrants in the US, it is not that everything is accomplished by language, by the act of claiming rights: “it’s not as if ‘I can say I’m free and then my performative utterance makes me free’” (Butler and Spivak, 2011: 68). The act of claiming rights, and manifesting oneself as a political actor in doing so, is not sufficient for the enjoyment of that right – Arendt herself states as much in her critique of

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<sup>27</sup> There are hints in Foucault’s later work that he might take a similar perspective on such protests, recognizing them as “counter-conduct” or “counter-power”, and thus as exercises of freedom (Foucault, 1982b).

human rights declarations – or the recognition of the polity of your speech as political or your presence as legitimate. The performative rights claiming perspective does not claim that these acts are *sufficient*. But it does allow us to see the transformative *potential* of this kind of action, rather than focusing solely on the success or failure to achieve state recognition of the specific rights being claimed. In other words, it allows us to shift our focus away from the status-giver and onto the rights-agent and the *meaning* of her action. The rights claim presents a challenge to those who encounter it. As Arendt writes in her analysis of Kafka's *The Castle*, although K.'s quest for rights and an ordinary life within the village ultimately failed,

the very fight he has put up to obtain the few basic things which society owes to men has opened the eyes of the villagers, or at least some of them. His story, his behaviour, has taught them both that human rights are worth fighting for and that the rule of the castle is not divine law, and, consequently, can be attacked. (Arendt, 1944: 295)

But, just as the authorities at the castle frustrate K.'s attempts to officially belong to the village “using a thousand and one excuses” (Arendt, 1944: 295), so too can the state respond negatively to the challenges posed by the rights claims and concerted action and speech of refugees. States, and other regime actors such as UNHCR, have responded in a variety of ways to refugee protest, ranging from refusals to engage with protestors on the terms of their protest, employing the coercive arms of the state to break up protests, to a range of discursive tactics to shift the frame or terms of the debate and attempt to re-silence those engaging in protest (see, for example, Nyers and Moulin, 2007). In the Austrian case, for example, government officials refused to engage in direct talks with the protesting refugees and framed the problem as one of slow status determination, rather than addressing the concrete problems of exclusion from work, education, social services, and lack of free movement around Austria, created by the asylum system itself. The Austrian President, in a letter to one of the protestors, rhetorically removed the asylum system itself from focus, emphasising that the authorities are doing everything they can “within the boundaries of the prevailing law” to ameliorate the situation, which was harmful to the health of the protestors and “highly unsatisfactory to everyone involved” (Refugee Protest Camp Vienna, 2013a). These refusals to address the substantive issues of the refugee protests and attempts to shift the frame of reference to the bureaucratic procedures of RSD can be interpreted as a strategic move by the state to reclaim the grounds of legitimate action: persons without legal status in Austria may not question Austrian law itself, and the state will not even recognise challenges posed by such individuals as challenges to the law. The state refused to engage with the protestors as political subjects, emphasising instead concern for their health and a desire to ameliorate their situation – the hunger strike, rather than the politico-legal situation they find themselves in as a result of Austrian asylum procedures.

Moreover, insulating the asylum system itself from challenge, the state maintained its separation of what for the refugees is a political issue, from the political sphere, and maintained it purely as a problem of bureaucratic procedure. The eviction of the protestors from the park, removing the protesting refugees from the public eye and public space, is an additional tool – an “erasing” tactic – that the state can employ to maintain the distribution of power relations.

Rather than cause for despair, what such reactions reveal is the *dynamic nature* of the relationship between those who seize rights – the protesting refugees – and those who “grant” them, or, to use Foucault’s terms, between the governors and the governed, over the nature of the (power) relationship itself. The government of men, Foucault explains, is a practice that is not merely imposed on the governed, at least not totally and definitively, but by “action between”, by a series of conflicts, agreements, discussions, and reciprocal concessions (Foucault, 2010: 12). By acting on this “transactional field”, those engaged in “counter-conducts” – the protestors and government ministers – act on their respective positioning as governors or governed, and seek to modify the “game of truth” through which the truth of the governed subject is produced (Cadman, 2010: 549). Such counter-conducts bring into relief the regime of truth through which subjects are known and acted upon, and, concurrently, by problematizing the way in which they are governed they also problematise their subjective identities as players in these games of truth (Cadman, 2010: 550). Power relations, as we saw in Chapter Three, can never be transcended or escaped, but this does not mean that they are totalising in a negative sense. Precisely because they are *relations*, they can be modified, and this is what the actions of the protesting refugees seek to accomplish.

To make the demand on freedom is already to *begin* its exercise. To ask for its legitimation is to announce the gap between its exercise and its realisation and to put both into public discourse in a way that the gap is seen and can be mobilised (Butler and Spivak, 2011: 68). If rights, as Arendt argues, are recognised claims of agents within political communities, and to be rightless is to be deprived of such a community and so be deprived of the relations of recognition and reciprocity which guarantee the effective exercise of such rights, then rights claiming can be seen as the performative activation of a sense of shared collective responsibility, of recognition, and a re-constituted web of relationships, or world. However, the key to the guarantee of rights is mutual recognition. The act of claiming is a necessary first step, but it cannot on its own achieve the recognition of others. For this, they are reliant on the response of the community to which their claim is directed.

## **City of Sanctuary: remaking cities**

The asylum system in the UK has undergone a series of profound changes in the past two decades. The Immigration and Asylum Act 1999 introduced a dispersal system for asylum applicants in need of housing support for the duration of their claim. If, after the initial screening interview, an asylum seeker is not detained, she may apply to the Home Office for housing support. Housing is offered on a “no choice” basis in local authorities in one of a number of dispersal zones, to “spread the burden” of the housing and support of asylum seekers away from London and the south-east (Stewart, 2012; Robinson et al., 2003). In April, 2000, the government entered into contracts with local authorities to house dispersed asylum seekers in “hard-to-let” social housing and in private sub-contracted rentals. This led to the emergence of an uneven geography of asylum provision, and a political economy of dispersion across the UK (Darling, 2015). From 2011, the provision of housing has been contracted out in its entirety to private companies, including Serco and G4S. The dispersal policy has received criticism from many quarters. Many scholars see it as part of a wider range of punitive policies seeking to deter asylum seekers from the UK (Bloch and Schuster, 2005), and attention has been drawn to the negative effects of the policy on asylum seekers, such as social exclusion and harassment. Dispersal has met with opposition from host cities, fed, in large part, by an inflammatory media portrayal of asylum seekers as illegal immigrants using asylum as a means to circumvent migration controls, unworthy burdens on social services, and threats to “community cohesion” (Darling, 2015). It is in this context that, in 2005 in Sheffield, the City of Sanctuary movement began.

City of Sanctuary is an idea, a formal movement, and an informal coalition of practice. It began as a local movement oriented toward (re)creating Sheffield as a city of welcome, safety and inclusion for those seeking asylum, and has, over the past ten years, grown into a national coalition of over forty towns and cities across the UK and Ireland, each with their own local City of Sanctuary initiative. As an idea, City of Sanctuary seeks to develop and foster a “culture of welcome” in towns and cities across the country, with the hope of influencing national asylum policy through the “bottom-up” process of cultural change (Barnett and Bhogal, 2010: 86). As a formal movement, the recognition of a place as an official City of Sanctuary involves gaining resolutions of support from local groups and organisations from a variety of sectors (not only the “refugee sector”), involving local refugee communities in the movement, achieving the support of the City Council or other local authority, and producing a strategy for the greater inclusion of refugees and asylum seekers within the city (Darling and Squire, 2013: 192-3). There is a national organisation with its own board of trustees, employees and volunteers, but this organisational system was only set up four years ago, at the request of the

local groups, to facilitate greater collaboration and communication across the country.<sup>28</sup> As an informal coalition of practice, City of Sanctuary operates as an umbrella under which existing organisations, groups, and initiatives can come together to share best practice and ideas, to support each other in efforts to include refugees and asylum seekers in their activities, to provide volunteering opportunities to asylum seekers and refugees, and to intervene in local media and politics to change local attitudes to asylum as a moral and political issue.

City of Sanctuary has not, as yet, been the focus of much academic attention, but what work there is has highlighted the spatial and relational nature of the politics of the movement. Darling has characterised City of Sanctuary as being an outward-looking, place-based rather than place-bound movement (2010: 127). The focus of each City of Sanctuary initiative is the city or town in which it works, seeking to build relationships between different residents of the city in order to change the “culture” of the city toward asylum politics. But, while each movement is focused on its own city, it is also oriented outwards, toward the national framing of asylum policy, and globally, in seeking to foreground through its activities questions of responsibility for the “stranger without” as well as the “stranger within” (Darling, 2010: 131-2). The work of City of Sanctuary cannot completely escape the statist logic, as its work arises after the decisions on dispersal have taken place, but the focus on re-creating the city anew as a place of meaningful belonging for all who inhabit it, for however short a time and regardless of status, makes City of Sanctuary a potentially fruitful example of how we might *begin* to re-imagine the communities of belonging to which the right to have rights could correspond. The initiative in each city is different, but there are, I argue, three inter-related themes which unite the different groups across the network: testimony, countering isolation, and building relationships.

#### i. Testimony

Opening up spaces for a different narrative of asylum in the UK is central to City of Sanctuary’s aims, and so providing opportunities for refugees and asylum seekers to tell their stories is a key concern for the movement in each town and city. Dedicated events at which those seeking asylum can tell their stories of displacement and their experiences of coming to the UK – outside of the hierarchical “economy of truth” of the asylum interview – and for those local residents engaging with the movement to share their stories, provide opportunities for people to get to know refugees as individuals and not simply as victims, and play an equally

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<sup>28</sup> At the time of writing (summer 2015), City of Sanctuary is going through a “consultation period”, assessing the structure of the national network and its relationship to the local groups. Part of this consultation took place at the Annual General Meeting in Leicester on 20 April 2015, at which I was present as an observer.

important reflexive role in building a culture of welcome and hospitality. In February 2009, for example, Bradford held a “Stories of Sanctuary” event at which refugees from Iran, Congo, Nigeria and Pakistan told their stories of persecution, exile, and their efforts to make a new life in the UK. The event was attended by around 120 people from Bradford, including other asylum seekers, who expressed to the organisers how helpful it had been to them to hear the stories of others (Barnett and Bhogal, 2010: 59). Leeds City of Sanctuary provides training in media and public speaking for refugees and asylum seekers who would like to tell their stories and engage with the public, and encourages local businesses and organisations to contact them about including refugee speakers at sanctuary events (City of Sanctuary, 2015d). Coventry City of Sanctuary organises interactive workshops as part of the City Council’s annual Peace Month, which have included short film screenings and roundtable discussions with migrants about their experiences of coming to Coventry, and exhibitions on the impact of the arms trade on African history and on the conflicts from which many refugees have fled to the UK (Barnett and Bhogal, 2010: 73). The interactive nature of these events enables those attending to discuss what they have heard, how it affects them, and what they can do differently moving forward. Theatre productions have proven a creative and effective way to engage audiences in a more reflexive way. In 2011, a group of failed asylum seekers in Glasgow put on a play, entitled *The Roundabout*, about the frustrating and angering experience of waiting for status, and the obstacles continually put in their way while trying to navigate the legal and social maze of appealing Home Office determinations. Rather than passively watching the play, the audience were made participants in the scenes, being challenged at a series of intervals with questions such as “what do you think?” and “what are your experiences with destitution?” These questions sparked debate among the audience members, which continued with small group discussions as the play ended. Many of the audience members related during these discussions how uncomfortable they had felt at first, but how they had been drawn in as the play progressed, and made them “wonder more about these things” (Bagelman, 2013: 49-62).

ii. Countering isolation

By finding creative ways to include asylum seekers and refugees in the life of the city and the everyday activities of a wide variety of organisations, City of Sanctuary actively seeks to counter the isolation that characterises the lives of many refugees and asylum seekers in the UK. Beyond this inclusion in everyday activities, the movement also seeks to counter isolation at the physical/spatial and official levels, through the “visual production of welcome” and through Meet & Greet, and visiting initiatives at local sites at which national asylum policy manifests itself. When City of Sanctuary began in Sheffield, the organisers developed a series of visual tools to help mark the city as a welcoming place, to reassure those arriving in the city and sign-

posting places where they would find support, advice and welcome. They produced welcome signs for organisations that had pledged their support to display in their windows, and a series of coasters designed to question dominant myths about asylum, which were distributed to local pubs, and council offices (Darling, 2010: 129).



Figure 4: City of Sanctuary Welcome Sign (Swansea City of Sanctuary, 2015)

Visual markers of welcome and support can take on real significance for asylum seekers and refugees in an environment in which a threatening and fear-inducing public discourse has been accompanied by equally hostile visual markers. In 2013, for example, the Home Office trialled two new immigration enforcement advertising campaigns. The first involved a fleet of vans mounted with billboards deployed through six London boroughs “encouraging” those in the UK illegally to voluntarily self-deport or face arrest; the second involved posters featuring the statement “Is life here hard? Going home is simple” in UKBA reporting centres in Glasgow and London, centres which asylum seekers must visit on a regular basis.



Figure 5: "Go Home" van (Channel 4 News, 2013)

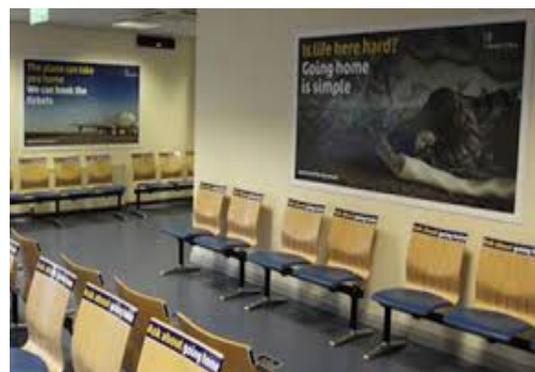


Figure 6: "Going home is simple" (The Guardian, 2013)

Nyers, in his work on the sanctuary movement in Canada, highlights the negative impact that the visual production of “unwelcome” can have on those without secure status trying to access services. Citizenship and Immigration Canada posters in agencies, hospitals and other

organisations, have acted as visual cues to memories of border experiences, discouraging individuals from accessing services, including those to which they are legally entitled (2008: 168).

Beyond the visual production of welcome, City of Sanctuary groups across the UK have instituted Meet & Greet schemes and visiting programmes to counter isolation. Loughborough is the site of the East Midlands Reporting Centre, to which asylum seekers housed in Derby, Leicester and Nottingham must report on a weekly, bi-weekly, or monthly basis. The City of Sanctuary group there has a dedicated group of volunteers who travel to the reporting centre every week and meet with those reporting and take them for coffee or lunch. The reporting process can be particularly stressful for asylum seekers as many worry that they could be arrested and detained at any time given the frequent changes in policies affecting the asylum process and the difficulties posed by language (City of Sanctuary, 2015c).<sup>29</sup> Many new arrivals have not yet had the opportunity to orient themselves in their new town and so the group offers much needed advice, friendly faces, and sympathetic ears. Leeds has an Asylum Seeker Support Service, which runs a Befriending Scheme in which trained volunteers (refugees and other local residents) are matched with asylum seekers, failed asylum seekers, and refugees who seek support from LASSS. Volunteers visit asylum seekers in their homes every week and show them where various services in Leeds are located, accompany them to appointments with lawyers and doctors, translate letters and documents, or just talk with them, go out and have fun, and just be a friend – whatever the individual feels that she needs (Leeds Asylum Seeker Support Service, 2015).

### iii. Building relationships

Such befriending schemes are not the only way in which City of Sanctuary seeks to build relationships between different residents of the city. There is great emphasis placed on providing volunteering opportunities within the organisations involved with the movement, and the formal network itself. The Terminus Initiative, in Sheffield, was started in 2002 by four churches working in a deprived area of the city called Low Edges, and is a well-established example. The Initiative includes a café and a healthy living centre, run by volunteers, and has actively sought to include asylum seekers who come to live on the estate into these activities by establishing a Conversation Club where women, of any background and status, can come and practice their English in a friendly and safe environment, and by encouraging asylum seekers to volunteer in the café. As one of the ministers involved in the project explains, in addition to

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<sup>29</sup> This was a concern that was spoken about by a number of individuals at the Leicester AGM, including asylum seekers, immigration solicitors and members of the Loughborough group.

providing work experience, the project emerged out of, and advances engagement between, “established residents” and new arrivals:

We [church members] were doing a lot of things with people in the community. Issues arose out of trying to meet people’s needs and support them. And we’d become very much – we’d become more aware of asylum seekers and refugees in particular. (Squire, 2011: 297)

Another supporting organisation in Sheffield offering volunteering opportunities is a local radio station, Sheffield Live! 93.2 FM. The station offers free training in radio journalism, making a particular effort to engage with young people with no formal education. The station manager opened up this training to asylum seekers in Sheffield, and when they have completed their training they have the opportunity to present their own radio show, and some of the initial volunteers help to train new arrivals and local young people (Barnett and Bhogal, 2010: 18). City of Sanctuary itself also seeks to incorporate asylum seekers and refugees into its organisation, both nationally and locally: five seats on the national Board of Trustees are reserved for refugees and asylum seekers, and the recently revamped website for the network was created by an asylum seeker volunteer, Nawal (City of Sanctuary, 2015a: 13). Moreover, each town or city working toward “official” City of Sanctuary status needs to incorporate refugees and asylum seekers into their local working groups (Barnett and Bhogal, 2010: 80). Not all supporting organisations are able to offer volunteering opportunities, but whatever other activities they are able to open up to refugees and asylum seekers, the important point for City of Sanctuary is that they enable those involved to establish relationships with each other and with people that they may otherwise never have met, despite living in the same city. The most effective way to achieve this is for each organisation to decide for themselves how they can best support, welcome and include those seeking asylum, rather than the City of Sanctuary group dictating this to them. Network Coordinator Tiffy Allen explains it in the following way:

It’s not a matter of going to a group of people and asking them to do something that is completely different and new. It’s a matter of going to a group of people and asking them to consider what they do anyway and what they’re into, and add the sanctuary value and the sanctuary practice into that [...] So in an ideal world, as people get to meet refugees, as the barriers begin to come down, then it gains a bit of momentum because people think ‘Well, I could open up this activity to refugees, why not?’ and then they open it up to refugees and they discover that the refugees have got a whole lot of gifting [sic] and talents and ideas and so on that really gives a greater depth to the activity or group. (Phone interview, 2015)

Examples of this have typically included local football teams, athletics clubs, theatre groups, churches, mosques, synagogues and other religious communities, and youth clubs.

iv. Cities of Sanctuary as “homes”

In “We Refugees” and *The Origins of Totalitarianism*, Arendt highlighted the two primary losses suffered by refugees in being forced to flee their state: the loss of government protection, and the loss of their homes. In losing their homes, the refugees lost the “familiarity of daily life”, the “social texture within which they established for themselves a distinct place in the world” (Arendt, 1973: 293); they lost their occupations, and with it the confidence that they were of some use in this world; and they lost their language, “the naturalness of reactions, the simplicity of gestures, the unaffected expression of feelings” (Arendt, 1943: 264). What was unprecedented, for Arendt, was not the loss of a home, but the impossibility of finding a new one. The asylum process has been characterised as one of temporal limbo, isolation and uncertainty. The Home Office endeavours to make decisions on asylum claims within six months of a claim being filed, but it has become increasingly common for applicants to wait up to nine years for a final decision and any form of legal status (Bagelman, 2013: 56). The activities of various City of Sanctuary groups surveyed above each contribute, in their own way, to the ability of asylum seekers and refugees to begin to repair the “rupture of their private lives”, and weave a new social texture within which they can carve out a distinct place for themselves in the world again.

Asylum seekers, and failed asylum seekers, are legally precluded from paid employment while their claim is processed or deportation arranged, leaving them entirely dependent on the meagre cash support from the National Asylum Support Service – currently £36.95 per week for a single adult in cash for an individual with a claim on-going, and a similar sum for failed asylum seekers, but as a payment card accepted at a restricted number of outlets (Gov.uk, 2015). By establishing links with local businesses, charities and community groups to coordinate and facilitate volunteering opportunities for asylum seekers, City of Sanctuary offers a means of reconnecting, even if only for a few hours or days a week, with a sense of regularity of life that Arendt states labour affords the individual (Gündoğdu, 2015: 135), and therefore, a means of coping with the logic of waiting built into the asylum system (Darling and Squire, 2013: 199-200), even if such opportunities cannot escape or mount a sustained challenge to the dependency on others for income. Volunteering within the community presents opportunities for asylum seekers to establish links, build relationships, and feel a part of their new community. In a study on asylum seeker perspectives of belonging in Greater Manchester, Darling and Healey highlighted the importance of volunteering on the part of the asylum seekers they interviewed. Irfan, from India, for example, volunteers with a range of different groups in the city – asylum seekers, the homeless, the LGBT community – to address issues of

exclusion, marginalisation and hate crimes. As a part of Refugee Week in 2011 he organised and chaired a “No to Cashlessness” conference at the University of Salford, attended by 250 people from the city and a variety of organisations (Darling and Healey, 2012: 24). Through his volunteer and advocacy work, and organising events such as the conference, he developed a sense of his own worth to the community. Sofia, a failed asylum seeker interviewed in the same study, also spoke of the sense of belonging she developed despite her status as a failed asylum seeker, through the support she offers in her voluntary work to other women seeking asylum (Darling and Healey, 2012: 24).

Volunteering opportunities can, thus, help to counter the isolation and inertia that asylum seekers often feel while waiting for legal status. The attempts that City of Sanctuary groups make to mark the city as a place of welcome and inclusion can also play an important role here. In a particularly poignant remark in “We Refugees”, Arendt draws attention to the role that a hostile environment can play in adding to the considerable weight that comes with lacking legal status when she explains that

[o]nce we could buy our food and ride on the subway without being told we were undesirable. We have become a little hysterical since newspapermen started detecting us and telling us publicly to stop being disagreeable when shopping for milk and bread [...] We try the best we can to fit into a world where you have to be sort of politically minded when you buy your food. (Arendt, 1943: 269)

In a social and political climate hostile to immigrants and suspicious of asylum seekers, and in which specific documents alert others to the status of an individual as an asylum seeker – biometric identity cards, and payment cards for shopping – knowing that there are places in the city where you can go and feel welcome, safe and included can have important psychological effects. For those newly arrived in the city, the signs and posters that organisations supportive of City of Sanctuary display, and the information provided by Meet & Greet groups at the reporting centres, provide the sign-posts to a welcome they may not find otherwise. This can be especially helpful given that City of Sanctuary seeks to work with groups and organisations not already focused on asylum seekers and refugees (groups where new arrivals might expect to feel welcomed anyway). The conversation clubs that have sprung up across many of the cities in the network provide opportunities to meet new people and make friends, but also enable those for whom English is not their first language to learn and develop their language skills, gradually breaking down a significant barrier to inclusion and accessing services.

Beyond these more practical areas of focus of City of Sanctuary, the “creative” aspects of its activities can be important and helpful to asylum seekers and refugees in carving out a place

for themselves in a new environment. Dedicated art exhibitions, poetry evenings, and museum exhibits enable refugees to display their work and, in Arendtian terms, make a distinct contribution to the human artifice we share with others. Museum exhibits held by Sheffield City of Sanctuary actively sought to show the links and relationships of asylum seekers and refugees past and present with the city, thereby including them in the life of the city through the pieces they created for the exhibit (Squire and Darling, 2013: 67). Theatre productions in particular have the potential not only as an outlet for creativity, but as a way for asylum seekers to work through their experiences, share them with others, be encountered as actors, interpreters, musicians and comedians, in addition to being asylum seekers, and, in McNevin's words, "become political" (McNevin, 2010). The community theatre project she examines was developed and written over the course of a series of workshops designed to build the confidence of the refugees to share their, often deeply tragic, stories with each other and with strangers (McNevin, 2010: 150-1). The production's narratives of what it means to be an asylum seeker and refugee were presented as counter-narratives to the "queue-jumper", "illegal immigrant" and "security threat" of those hostile to asylum seekers, but also to the narrative of the "damaged" or "broken" victim to be saved by well-meaning idealists and humanitarians, many of whom were in the audience (McNevin, 2010: 154-5). While focused on a project in Australia, McNevin's insights into the potential of theatre to be a public stage in the (Arendtian) political sense of the term, through the transformation from humanitarian subjects to spokespersons for themselves effected by the act of performing, are useful also for theatre projects supported by City of Sanctuary.

All of City of Sanctuary's activities are, ultimately, aimed at challenging the discourse on asylum in the UK, not only in Westminster, but also on the streets and in the pubs and workplaces of the city, by establishing relationships between asylum seekers, refugees, and ordinary residents of the city. And so encounters with refugees and asylum seekers, in many forms, and the testimony of those who have been displaced, those who have come to know the displaced, and those whose opinions have been changed through these encounters, are central to the movement. Storytelling is an activity of particular *political* significance for Arendt, and can thus help draw out the connections between the activities of City of Sanctuary, and acts of rights claiming on the part of refugees and asylum seekers, and provide a different framework, or narrative, through which to approach responding to the problems faced by the displaced. And it is to the link between storytelling, understanding, action, and the world, that I now turn.

## The Other Side of Action and Horizons of Practical Engagement

### i. Understanding, storytelling, judgment and political speech

Storytelling, or narrative, in addition to being a mode of political theorising for Arendt, is also a uniquely human experience or activity, that sits between, or straddles, the *vita contemplativa*, and the *vita activa*.<sup>30</sup> While Arendt dealt with these two realms of human existence in separate works, *The Life of the Mind* and *The Human Condition*, she never considered them to be strictly separate from each other in reality. The two realms of experience are dependent upon each other, and both, ultimately, make the earth into a world for human beings and allow us to orient, or make ourselves at home, in it. We saw in the previous chapter that, being born into the world as strangers, we need to engage in various activities to make ourselves at home in it, namely labour, work, action and speech. Further, we have seen that it is possible to be made a stranger to the world once more – to become worldless – through refusing to partake in these activities, or by being denied the possibility to partake in them. In particular, as quintessentially human activities, speaking and acting with others are crucial for a sense of reality and, hence, worldliness, dependent as these activities are on the presence of and dialogue with others. But in order to reconcile ourselves to the world in which we must carve a distinct place, and in order to be able to act and speak with others in pursuit of this, we need to engage in understanding.

Understanding, Arendt states, is “the other side of action” and is that form of cognition by which “acting men eventually can come to terms with what irrevocably happened and be reconciled to what unavoidably exists” (Arendt, 1954: 321-2). Given the boundless and unpredictable nature of action, the inability of the actor to control the consequences of her actions, and the inevitability of being the sufferer of the actions of others, understanding is the process, or mode of existence, by which we make sense of and derive meaning from what might otherwise appear as “an unbearable sequence of sheer happenings” and take our bearings in the world (Arendt, 1968: 104). Storytelling is the form such understanding takes. It is the “fundamental form of thinking about experiences”, the form of dialogue in which I think with myself about what happened, and in thinking through how the event unfolded I am presented with its story (Hill, 1979: 287-8). In the form of a story, I can derive meaning from what has happened by understanding how it came about, and storytelling thus offers us the means of reconciliation with reality. In effect, however, storytelling also makes a *common understanding of reality* possible for us in our plurality (Hill, 1979: 289). Reality, Arendt states, is “different

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<sup>30</sup> For discussions of Arendt’s narrative mode of political theory see: Benhabib, 1990; Curthoys, 2002; Disch, 1993; Kristeva, 2001; Luban, 1983; Speight, 2011; Young-Bruehl, 1977.

from, and more than, the totality of facts and events, which anyhow is unascertainable” (1967: 257), and plurality is not simply the totality of unique individuals, but the unique perspectives on the world we share in common. Reality, then, in addition to being the “factual reality” of the totality of facts and events that, regardless of anyone’s interpretation of them, irrevocably occurred, is also the way in which the world appears to each living being (Biser, 2014). But our sense of reality, our trust in the world as it appears to us (to each individual) depends upon the presence of others with whom to relate our individual perspectives on the world. Storytelling, then, is also the primary form of communicating with each other about experience (Hill, 1979: 289). The proper aim of understanding is to

confront the multiplicity of action and events in their originality and particularity, and weave them into the fabric of the common world, that is, to gauge what they mean for *us* and thus constantly engage in reinvigoration of our sense of the common world and our own selves in it. (Mrovlje, 2014: 72)

In addressing the question of how we understand what has happened, from the point of view of the present, storytelling gives us the chance to keep up with what happens in the world – the end of the story returns us to the possibility of action.

Our capacity for narrative understanding not only reconciles us to reality, and enables a common understanding of reality, but also grounds the quintessentially political art of representative thinking – political judgment – which can provide the impetus for further action, and open up space for new actions and actors.<sup>31</sup> Judgment, for Arendt, is an inter-subjective and public enterprise, intrinsically related to the essential plurality of human beings, and to our living in a common world, which is opened up by speech. The validity of judgment depends upon our ability to think “representatively”, that is, from the standpoint of everyone else, and this ability, in turn, can only be acquired and tested in a public forum where individuals can exchange opinions on particular matters and see whether they accord with those of others (Passerin d’Entrèves, 1994: 123-4). To put this another way, judging creates worldly relations that turn on the ability to see the same thing from multiple points of view, which is identical to what it means to see politically (Zerilli, 2005: 166). This “enlarged mentality” developed through judgment involves “imaginative visiting” through which we come to see the same world in very different aspects – we imaginatively seat ourselves in different seats around the table that is the common world in order to reflect on what the same world looks like from the perspective of another. The telling and hearing of stories – of other’s perspectives on any given issue or event – is vital to this process, as the Greeks of the *polis* understood only too well:

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<sup>31</sup> For more on Arendt’s account of judgment, see: Arendt, 1982; Hayden, 2014; Zerilli, 2005.

In this incessant talk the Greeks discovered that the world we have in common is usually regarded from an infinite number of different standpoints, to which correspond the most diverse points of view. In a sheer inexhaustible flow of arguments, the Greeks learned to understand – not to understand one another as individual persons, but to look upon the same world from one another’s standpoint, to see the same in very different and frequently opposing aspects. (Arendt, 1958a: 51)

If to *see* politically means to see the same thing from multiple points of view, and come to an opinion on the basis of reflecting upon these different perspectives, then to *speak* politically is to share these opinions, to attempt to persuade others of the validity of your perspective on the issue or event at hand. Politics, thus, consists of the exchange of opinions, of “it appears to me”, in the sense of opening up the world that appears to us. Opening up, Zerilli explains, creates a context within which a change in perspective may happen and things we may have known all along get counted differently (2005: 166). The ability to persuade depends upon “the capacity to elicit criteria that speak to the particular case at hand and in relation to particular interlocutors” (Zerilli, 2005: 171). Returning to the protesting refugees with which this chapter began, we can see the ways in which they sought to persuade others in just such a manner, rendering their speech and action political not simply because they “took a seat at the table”, so to speak, but because their speech consisted, fundamentally, of “saying what is”, of telling stories, relating their diverse “it appears to me”, but doing so in a way that solicits the responsiveness of others.

The framing of the protests in Germany within continental and global socio-economic processes takes on added significance here. The Refugee Convention, and European asylum policy in general, maintains a strict separation between “political” and “economic” reasons for leaving one’s country of origin, recognising only “political” reasons as valid for recognition as a refugee. This distinction, for the protesting refugees, is untenable for two reasons: first, political and socio-economic conditions cannot be so arbitrarily divided; and second, that such separation serves as a way for affluent (especially former colonial) states to absolve themselves of responsibility for the consequences of their policies. One particularly impassioned example of this view is in the statement issued by a protestor, Arash, upon his arrest in Munich in January 2014:

The reasons for flight or migration are: dictatorships, poverty, oppression and war. Those causes, forcing people to flee, have their roots in the mutual relations between countries of origin and destination [...] [and] formed in this globalised economic system and the resulting distribution struggles over resources and power. The resulting imbalance is the main reason for displacement and migration. The existence of this system is made possible by a network of neo-colonial exploitation and oppression. That circuit is formed by

both the ‘democratic’ and/or ‘liberal’ states, and maintained by dictatorial states. In countries such as [...] Iran and Pakistan, the system is protected with a visible state violence. In countries such as Germany and France, the same system is protected with 100 billion Euros of arms exports. (Refugee Struggle, 2014)

In drawing attention to the links between European social, economic, and military policies, and the situations from which refugees flee, the protestors are seeking to validate their claims for rights beyond the criteria of the Refugee Convention, by foregrounding the interconnected nature of global economics and politics. Strict separations between “there” and “here” become troubled by such accusations, and the target audience of these claims are not only those already acting in solidarity, but wider members of society, the media and the governing elites, to question the very framework within which, and the basis upon which, status determination and access to rights are made and granted.

The creative appropriation of language can be another way of seeking to persuade others and garner support for the claiming of rights. The official names for the reception and accommodation centres housing refugees in Germany are *Aufnahmeeinrichtung* (initial reception centre) and *Gemeinschaftsunterkünfte* (collective accommodation centre), but the refugees and other activists call them *Lagers*, to draw parallels with the *Konzentrationslager* (concentration camps) of the Nazi regime. Demonstrations outside of these centres are designed to raise awareness among the local population that they have such a centre in the vicinity, as well as to protest against the detention system itself. Drawing the attention of local people to the existence of this “Lager-system”, and using language reminiscent of the darkest period of German history, can be interpreted as an attempt to shine a light on the disparity between professed German support for human rights and its domestic policies curtailing or denying these very rights to those lacking formal legal status. These actions are challenges to the community, to be sure, but they are challenges which seek to elicit a response. However, since the meaning of an action is never simply what its initiator says it is but is, rather, the sum of the responses it provokes (Thiele, 2009: §12), the response provoked by these actions – or indeed if their action will provoke a response at all – depends upon those to whom the action is directed. It depends upon their ability to interpret what they hear as something to respond to, and their recognition of their own ability to respond. And so we are returned to what Arendt refers to as the “original interdependence of action.”

- ii. The interdependence of action and the horizons of practical engagement

In the existence in Greek and Latin of two different yet inter-related words with which to designate the verb “to act” lies evidence, Arendt writes, for the “original interdependence of action” – the dependence of the beginner upon others for help in bearing an enterprise to the finish, and the dependence of these others on (s)he who began for an occasion to act themselves (Arendt, 1998: 189). Our contemporary vocabulary of action obscures its interdependent nature and construes it on the model of sovereignty or mastery, which can only compound the frustration felt when our actions, as they so often do, fail to achieve or obtain the goal sought. The interdependence of action implies that the recognition of any particular action as a beginning or event to which to respond is the prerogative of the responder, rather than the initiator, and, further, that whether or not an action constitutes a beginning depends upon our attunement to it as an occasion for response (Markell, 2010: 75). For this reason, Markell claims, it might be more helpful for our understanding of action as beginning, to speak of action as

something that is, at various times and places, coming into being or passing away, as the intensity of responsiveness in a space of potential circulation waxes and wanes, but which never simply or definitively *is*. (2010: 76)

This implies that the significance of events is a matter of judgment, which, Markell claims, is undertaken within “horizons of practical engagement”. When we act, we confront patterns of engagement and response which are, in part, the effects of social and political practices and institutions, which structure and mediate people’s experiences of the world (2010: 80) – we can think, perhaps, of the world alienation discussion of Chapter Four, and also the discussion of the role of discipline, norms and power which structure our actions, of Chapter Three. What this approach to action has the potential to do is to shift our focus to the question of how to sustain, intensify and democratise the beginnings with which we are confronted. Importantly, this is a question of worldly relationships – between persons, and between persons and the happenings they encounter (or fail to encounter) (Markell, 2010: 81). Since our responsiveness to events can be enhanced or weakened by a range of practices and institutions, both formal and informal, including the environment, media, discourse, and “practices of representation and patterns of identification that make some events but not others ‘our’ business” (Markell, 2010: 81), these practices and institutions present opportunities upon which to work to broaden our horizons of practical engagement, in order to recover and enhance our attunement to events as occasions to which we *can* and should respond. City of Sanctuary – its activities, goals and the relationships it enables and fosters – has the potential to do just this, albeit in smaller, localised spaces than those of the nation-state as a whole – but therein, perhaps, lies its power.

The spatial, relational, and localised nature of City of Sanctuary contain the potential for the movement to refashion our horizons of practical engagement and make us more attuned to recognising and responding to the voices of asylum seekers and refugees. The volunteering opportunities, and the inclusion of refugees in the everyday activities of a vast range of groups and organisations creates literal space within which they can appear, speak and act with others. The importance placed on testimony and engagement with those relating their experiences also creates figurative space in enabling conversation, not just among the “converted” but with the indifferent, the sceptical, and the hostile. By actively seeking to establish relationships between organisations not already working with refugees and asylum seekers, and foster relationships between the individuals involved with them, City of Sanctuary has the potential to facilitate a move away from the idea of a distinct “refugee sector” to refocus attention on the structural sources of exclusion in our societies. This can broaden the interested, concerned, and active audience for addressing the problems faced by the displaced beyond those who we may think already have the “job” of dealing with these issues, by focusing on how what we do in our own groups and organisations may contribute to the exclusion and isolation faced by asylum seekers and refugees. The localised, grassroots nature of the movement mobilises support from the ground-up in ways that established national organisations – such as the Refugee Council – are not best suited to do: those involved with City of Sanctuary are able to reach audiences and address issues which, being local in character, are often not within the purview of nationwide charitable organisations.

The spaces created by the activities of the movement are, importantly, not only spaces for asylum seekers and refugees to re-establish lives in their new surroundings, but also spaces for more established residents of these cities and towns to forge relationships with people they may otherwise never have met, despite living in the same city, and therefore change the relationship they have with the city itself. By approaching the city not as a container for social interactions between “rightful residents” but as a dynamic space created and continually recreated by the diverse relationships established within and beyond it, not only does the space of the city become reconfigured, but the relationships of those resident within it changes (Darling, 2009). One of the more recent developments in the City of Sanctuary network is Streams of Sanctuary, covering education, healthcare, the arts, sports, and faith, in which initiatives focused around these issue areas connect across towns and cities to add another layer of cooperation and coordination between the localised City of Sanctuary groups in their attempt to influence the national framing of asylum (City of Sanctuary 2015b).

The potential of these new and diverse relationships is evident in the importance placed on testimony and the soliciting of, listening to, and reflecting upon the stories of the displaced.

This provides opportunities not only for the displaced to regain access to the inter-subjective world of stories, opinions and judgment – which we have seen presuppose the presence of others – and to make their mark within it, but can also influence the capacity for judgment – representative thinking and imaginative visiting – on the part of those who listen, leading to a broadening of the mental “space of appearance”, and, potentially, a more open attitude toward newcomers to the physical “space of appearance.” If one of the major obstacles for marginalised subjects who wish to speak publically and lay claim to a stake in the public realm is to have that speech recognised as speech (Malkki, 1996; Nyers, 2006; Rancière, 2001) – to be listened to – then the relationships forged by these activities and the various organisations involved with City of Sanctuary can provide a receptive and growing audience willing to at least listen. There is, of course, the danger of merely preaching to the converted, but the pace at which the movement has grown, the number of organisations outside of the “refugee sector” pledging their support, and the growing visibility of campaigns around refugee rights suggests that perhaps the movement does have the potential to change more sceptical and hostile minds. But, even if this is not the case, as McNevin highlights, the “already converted” can often have a view of asylum seekers and refugees as victims in need of charity, rather than as individual actors in their own right (2010: 154-5). By providing opportunities for individuals to engage with each other on the basis of shared interests, skills, and opinions, relationships can be built not on the dynamic of host and guest, or victim and protector, but on a more equal footing, where what is of primary importance is the goal or the activity itself, and the joint action in pursuit of it, rather than the immigration statuses of those involved in it (Squire and Bagelman, 2012).<sup>32</sup>

There does appear to be some (albeit anecdotal) evidence for the activities of City of Sanctuary having broadened the horizons of practical engagement and attuned those involved to events as occasions for response. When City of Sanctuary began in 2005 the organisers considered themselves expressly to be eschewing political action in favour of action directed at cultural change. While they sought the support of organisations who were involved in political campaigning they did not become directly involved in such campaigns themselves. This does appear to be changing. As the movement has grown, it has begun to involve itself more openly in political campaigns for the inclusion and rights of asylum seekers and refugees, and many of the individuals involved are also involved in these campaigns – such as Still Human, Still Here (a campaign to end enforced destitution), and the recent campaign to end asylum seeker detention in the UK. On 2 September 2014, City of Sanctuary held its first “Sanctuary in Parliament” event, which saw dozens of members of the movement spend the day at

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<sup>32</sup> For more on navigating the potentially troubling dynamics of “welcome” and “hospitality” in City of Sanctuary, see Darling and Squire, 2013; and Darling, 2013.

Westminster speaking with MPs about their experiences, the goals of the movement, and the problems with national asylum policy (City of Sanctuary, 2014a). A Sanctuary Summit was held in November 2014 in Birmingham, which brought together over 100 civil society organisations and 400 delegates to discuss the formation of a broad alliance to end destitution and detention of asylum seekers, and translate what they perceive to be the growing support of the public for a change in approach to asylum policy into practical action (City of Sanctuary, 2014b). This was also a discussion continued at the AGM in April 2015, which featured dedicated workshops on political campaigning, and in which the local groups called on the national organisation for greater communication and coordination around on-going campaigns, and the idea was floated for a mass-lobby of Parliament following the General Election.

As we have seen in the work of Foucault and Arendt, with the rise of the modern nation-state and the development of government as a nation-wide administration of housekeeping, individuals have become increasingly superfluous to the life of their communities in the sense that their *active* participation becomes increasingly dispensable in economic and political life. As the communities of belonging grew ever larger, from the family, to class, to society, and finally to the nation-state, the ability of individuals to belong to the world with others – to create worlds with others – diminished. What the development of City of Sanctuary perhaps indicates is the possibility of making the communities of belonging smaller, making the city a meaningful world for those who come to live in it, and pluralising political space within the state. This is not to escape the statist logic of the refugee regime. The state, after all, has final say over who may stay and who must leave. But to focus solely on who has the power to dictate the end result is to fall into the trap of thinking that the end result – the granting, or not, of legal status – is all that matters, and, further, that the end result is unproblematic. What I have sought to show in this chapter, and the previous chapter, is that refugees have not *only* lost legal status, and so the granting of legal status, given the political conditions under which we live (including the nature of citizenship) is insufficient in and of itself to address all of the losses that refugees have incurred in becoming displaced. City of Sanctuary is not a once-and-for-all “solution” to the refugee problem, but perhaps the logic of “solutions” – or the permanence implied in it – is precisely what stands in need of critique.

### **Conclusion: On durability and permanence**

The solution to the “refugee (as) problem” is to find places to put people who have been ejected from the state-citizen-territory trinity, until such time as their legal status and

citizenship rights have been “restored” by the state from which they fled – i.e., until the state of origin can be recognised by the international community as “home” again – or until another state can be found that is willing to provide these rights. To understand “home” in this way is to reduce it to a function of legal status expressed as some physical point on a map. An Arendtian understanding of the “refugee problem” as the problems of worldlessness and superfluity *for* the refugee lends itself to an understanding of “home” as “world”, and requires an approach to addressing the problem from an understanding of the *character* of this thing called “world”, and how what we do, or fail to do, can undermine its existence and thus, also, our human existence within it. In other words, it requires an approach oriented by the *lived experience* of being in the world, which, for Arendt, is the experience of being-in-the-world-*with-others*, and the different modes that such being takes, and is not reducible to legal status or simply having a physical space to which to “belong”.

The practices of rights claiming on the part of protesting refugees and asylum seekers, and the City of Sanctuary movement, with its goal to remake the city into a place of belonging for all who come to live within it, can be understood as attempts, on the part of those who have been ejected from the shared common world of a community willing and able to guarantee the right to have rights, to emerge from the obscurity that accompanies the loss of legal status and rights, and gain a foothold in the world. Arendt’s recognition of the need to remake the communities to which the right to have rights would correspond, given the inability of the modern nation-state to be such a community, for anyone, both in theory and practice, is not accompanied by any sustained insight into, or blueprint for, what these communities should look like. The difficult relationship that Arendt charts between the state as an institution and politics as action in concert and the manifestation of freedom, that permeates her political writings, indicates that this was not an oversight, and this has direct bearings on the question of how “durable” City of Sanctuary and practices of rights claiming might be for combatting the worldlessness and superfluity suffered by the displaced.

Responding to the hypothetical question of whether it would not be better to outline a set of concrete institutional solutions that can enforce a right to have rights instead of “finding some vain solace in the fleeting moments of political action”, Gündoğdu highlights that Arendt would reject the false choice implied in the question between action and institution, radical novelty and relative permanence (Gündoğdu, 2015: 201). For Arendt, institutions *are* vital for providing relatively stable guarantees for rights and the possibility of action in concert, but they can only provide these guarantees if they retain their character as *political* institutions. We should not, therefore, understand institutions (including those of the law and political communities) strictly, or primarily, as the products of making, governed by the means-end

logic of *homo faber*, whereby the end of the process of making comes when a “thing with enough durability to remain in the world as an independent entity has been added to the human artifice” (Arendt, 1998: 143). While we may need to *create* stable boundaries/walls/laws/rules that could give these institutions shape, the purpose, or *end*, of these institutions is not independent existence but political action, freedom and equality. In other words, the work of founding political communities or institutions for the protection and realisation of rights and action in concert is not complete once we formally establish such institutions. While the products of work possess the durability to remain within the human world independent of their use by humans, political institutions, if they are to retain their character as *political* must be continually maintained by the speech and action of men in their plurality. In “What is Freedom” Arendt writes that:

Political institutions, no matter how well or badly designed, depend for continued existence upon acting men; their conservation is achieved by the same means that brought them into being. Independent existence marks the work of art as a product of making; utter dependence upon further acts to keep it in existence marks the state as a product of action. (Arendt, 1958b: 152)

In her examination of the failure of the American Revolution, Arendt continuously returns to the failure of the Founding Fathers to carve out spaces within the new republic where freedom could appear, where the people could gather and deliberate together about matters of public concern; in short, the “Constitution had given all power to the citizens, without giving them the opportunity of *being* republicans and of *acting* as citizens” (Arendt, 1968: 253). This was the result, Arendt claims, of the triumph of the drive for stability as permanence over the durability, or preservation, of the revolutionary spirit, which ran “like a red thread through the constitutional debates” (Arendt, 1968: 231). For the practice of freedom characteristic of the revolution to become durable, and the revolutionary spirit of public happiness and the freedom to act, to be preserved, a space for the manifestation of this spirit through action needed to be created. The “little republics”, or “wards” of which Jefferson spoke toward the end of his life could have been the organs to save the republic from the lethargy which he predicted would develop among a people relegated from the public realm. These “little republics” would be

the main strength of the great one; for inasmuch as the republican government of the Union was based on the assumption that the seat of power was in the people, the very condition for its proper functioning lay in a scheme to divide government among the many, distributing to every one exactly the function he was competent to. Without this, the very *principle* of republican government could never be *actualised*, and the government of the United States would be republican *in name only*. (Arendt, 1968: 253-4; emphasis added)

What this points to, for our purposes here, is that a political community – such as a city or a state – and institutions – such as citizenship, and laws guaranteeing human rights – can become empty shells, hollow promises, without continued action which manifests the principle – of equality and freedom – which brought them into being. We are not faced, then, with a choice between establishing lasting institutions or celebrating (or deriving solace from) moments of political action; a choice between having a state, or having some other institution which could more “perfectly” guarantee rights; a choice between having citizenship within the state as a guarantee or creating a new form of membership. *All* institutions and communities – no matter how “perfectly” or in how much detail they may be “designed” – contain the risk that they may decay and cease to be “worlds” within which individuals can act and speak together, and assure themselves of the reality and meaning of their existence, if the possibility and space does not exist for such action and speech which could maintain them.<sup>33</sup>

As *practices* of action manifesting freedom and creating nascent “worlds”, City of Sanctuary and rights claiming cannot provide *guaranteed*, *fixed*, *permanent* worlds to which to belong for those involved now, or to those who may come to live in the community in the future. Since worlds come into being through concerted action among equals, they will only remain so long as such concerted action lasts. Durability, in human affairs, is, for Arendt, always a relative durability, and should individuals decide that they no longer wish to contribute to the building of these worlds through joining the endeavour, then these worlds may disappear again. City of Sanctuary and rights claiming, as ways to address the refugee problem of worldlessness and superfluity, are, therefore, risky. They cannot offer the permanence implied in the three durable solutions to the “refugee (as) problem”. But the “maintenance” and care of continued action which they require does, I posit, render them more faithful to the kind of politics and “belonging” that lie at the heart of Arendt’s call for a right to have rights – a right to live in a framework where one is judged by one’s actions and opinions, a right to a place in the world which makes opinions significant and actions effective.

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<sup>33</sup> Foucault makes a similar point in “Space, Knowledge, and Power” where he states: “There may, in fact, always be a certain number of projects whose aim is to modify some constraints, to loosen, or even to break them, but none of these projects can, simply by its nature, assure that people will have liberty automatically, that it will be established by the project itself [...] The liberty of men is never assured by the institutions and laws intended to guarantee them. This is why almost all of these laws and institutions are quite capable of being turned around – not because they are ambiguous, but simply because liberty is what must be exercised.” (Foucault, 1982c: 354-5).

# CONCLUSION

“Who says what is –λέγει τά έόυτα – always tells a story,  
and in this story the particular facts lose their contingency  
and acquire some humanly comprehensible meaning.”  
(Arendt, 1967: 262)

This thesis, a political-theoretical investigation of “the refugee problem” was inspired by a semantic slippage recurring in many scholarly works addressing the phenomenon of mass population displacement. While academics in refugee studies, international relations, law, and development are driven by a desire to alleviate and solve the problems that refugees (and other forced/irregular migrants) face in becoming displaced, the challenges these works address, the policies or approaches they propose, and conclusions they draw, in fact address the problems that refugees, or population displacement in general, present to the efficient or smooth functioning of the refugee regime and thus, by extension, to the state, and to international order. In other words, a slippage occurs from the problems *for* refugees, to the problem *of* refugees.

This slippage does not necessarily imply that, in the minds of scholars of the refugee phenomenon, there is in reality no difference between the problems that being displaced creates for refugees, and the problems of order that their presence poses. But by failing to highlight and investigate these differences, this slippage does have two unfortunate, and inter-related side effects. First, the three durable solutions of the refugee regime – the restoration of order by restoring the state-citizen relationship through repatriation, resettlement or assimilation – appear as equally able to address any problems that refugees may *face* by addressing the problems of order that refugee movements *pose*. This leads to the second consequence of the conflation of these two problems: in focusing on the problems presented to the refugee regime by economic, political and social conditions – such as mixed migration flows, problems of access to internally displaced populations, the technical difficulties of providing aid and relief to large groups of people – it becomes less and less necessary to actively engage with displaced individuals themselves, rendering them voiceless. And so, even when the expressed purpose of scholarship is to address and alleviate the plight of refugees, it is in actual fact the problems faced by international organisations, aid workers, and the state that become the primary focus and not the problems refugees themselves face. In designing this project I set out to understand *why* this is the case, and whether there was another way of approaching the study of the refugee phenomenon which could avoid this conflation of problems, and thus also avoid the trap of

presenting, and further entrenching, the refugee as a voiceless, problem figure to whom a solution needs to be found.

The objectives of this study were thus threefold and connected. First, I aimed to unpack, or problematise this deceptively unproblematic term: “the refugee problem”. Second, in so doing I sought to contribute to a growing body of critical literature within refugee studies which seeks to counter the voicelessness and abjection into which refugees and other irregular migrants are cast. And third, on the basis of this, to begin a conversation about rethinking the nature of the “solutions” we pursue to a reframed refugee problem. The works of two of the twentieth century’s most influential political theorists, Michel Foucault and Hannah Arendt, provided the theoretical and methodological bannisters guiding these investigations.

To unpack “the refugee problem” required a critical examination of both the “refugee” as a subject, and of the particular “problem” for which solutions needed to be found, and was of necessity a historical enterprise. This was the focus of Chapters One, Two and Three. Taken together, these three chapters revealed that the “refugee” and “the refugee problem” are the products of the particular configuration of knowledge-power relations which form the foundation of modern political rationality upon which the international state system is built, and within which scholars and practitioners seek to know and/or to manage populations on the move. Chapter One examined the practices and practicalities of exile in four historic periods and places that have been offered as evidence of the “timeless” nature of the “refugee” and “refugee problem.” In digging further beneath the surface-level similarities of the occurrence of displacement and persecution in Classical Greece, Republican Rome, the patristic period of Christianity, and the formative years of Islam, valuable differences in the socio-political structures of these societies were revealed, which determined these specific practices, practicalities and experiences of displacement. This examination suggested that it is perhaps inaccurate to posit, purely on the basis of the existence of exile and persecution that the exiles of the ancient world, and the problems they faced, are of the same nature as today’s refugees. Moreover, such assertions of “sameness” relieve the modern (inter)state system from assuming a sense of responsibility for the unique predicament of the displaced resulting from that system.

This historical sensibility was built upon in Chapter Two, which turned to the archives of the League of Nations and the United Nations to chart the development of a specific “refugee problem” discourse. From 1921, when mass population displacement first becomes understood as a problem requiring the concerted attention of the international community, to 1951 and the creation of UNHCR and the Refugee Convention which form the bedrock to this day of the international refugee regime, a distinct discourse arose around the “refugee” as a particular

kind of subject, the “problem” as a particular kind of problem, and of what action was necessary to “solve” this problem. The “refugee” emerges through this discourse as a burden and potential danger to the society in which she finds herself, and as an apolitical, helpless figure in need of humanitarian protection – an object of intervention (a “what”) rather than a subject to be engaged with (a “who”). This same discourse constructs the “refugee problem” in need of a solution as the very existence of the refugee herself, and the economic and social burdens she poses to the state and the state system. In order to “solve” this problem, the states created an international regime of “solutions” governed by (economic) self-interest, a drive to limit the burden of the care of refugees on the states and shift it to charitable organisations, and to portray the problem to be solved as one of humanitarian concern rather than political organisation.

Chapter Three turned to the work of Michel Foucault to explore *why* the “refugee” and “refugee problem” thus understood came to be in this form, and when they came to be, and thus brings the political rationality – the bodies of knowledge and ways of knowing – of modernity into relief, rather than focusing solely on the structural factors governing displacement of an international system of nation-states. Through a close-reading of his genealogical works, including his lectures at the Collège de France, it was argued that it was only when “population” emerged as a distinct entity in the eighteenth century, and as a “natural” entity in the nineteenth century – that it had become the responsibility of government to protect and nurture – that migration becomes a phenomenon in need of management, and it becomes possible for a distinct “refugee problem” to emerge. Turning to his archaeological works, in addition to his genealogies, it was further demonstrated that, since, according to this (scientific) rationality, a problem can only be managed by being known, and the more “accurately” it can be known the more effectively it can be managed, the “refugee” emerges as a category of migrant, differentiated from the “norm” of the territorially-bound citizen; and other “categories” of migrants – IDPs, the stateless, irregular migrants – become differentiated from the “refugee” as well as from the citizen, enabling the emergence of academic disciplines dedicated to the study of these various categories of migrants and types of migration.

The second objective of this thesis was to contribute to a growing body of critical literature on the refugee phenomenon which seeks to counter the voicelessness and abjection into which those labelled as “refugees”, “asylum seekers”, the “stateless”, or “irregular migrants” are cast. This required understanding how and why this voicelessness is produced and continually reproduced, and presenting a different picture, or narrative, of the “refugee” as a political subject. This was the task undertaken in the second half of Chapter Three and in the first half of Chapter Five. The intimate relationship that Foucault charts throughout all of his

works between the subject, power relations, and the production of knowledge enable an investigation of how it has become possible to “know” anything about the “refugee problem”, and what the consequences of this drive for knowledge are – the creation and entrenchment of the “refugee” as a particular kind of subject. These connections were examined in relation to the Refugee Status Determination process as the gate-keeper of international protection of refugees, to reveal that the refugee regime itself is an integral part of the system of power-knowledge relations that continually recreates and entrenches the refugee as a voiceless subject, by the economy of truth according to which it functions. This analysis demonstrated that the voicelessness of the “refugee” subject is not simply a function of being the flip-side of the “citizen”, but is reproduced even in those situations when she is *required* to speak – to tell of her experience and fears. Her speech cannot take on the position of “truth”, because “truth” and “knowledge” are only producible by certain kinds of subjects, according to certain kinds of (scientific) procedures, and speaking from certain positions of authority. Foucault’s understanding of the “subject” as a product of power-knowledge relations reveals the (historically-) contingent nature of the “refugee” as a subject of any kind, and specifically as a voiceless subject. In other words, the refugee as an individual is not voiceless “by nature”; the refugee *subject-position* is what renders her so. It thus becomes possible to reconfigure this subject-position in a different way, and the insights of Hannah Arendt became central to this enterprise in Chapter Five. Arendt’s understanding of political action, plurality and natality, enable a conception of the refugee as a subject capable of speech and action with others, even in the face of a system and regime which posits that she is, and needs her to be, otherwise. The phenomenon of refugee and asylum seeker protest in Europe was offered as an example of the possibility of this re-subjectification of the refugee.

The third objective of this study was to begin to rethink the nature of the “solutions” that we pursue to a reframed “refugee problem”. This required approaching the “problem” in need of a solution from the perspective of those problems that displacement poses for the refugee, rather than the problems of order the refugee poses for the state and international system, and so involved an examination of the meaning, or experience, of being ejected from the state-citizen-territory trinity that orders the international system. In other words, it involved addressing the question of what makes the structural problem of displacement such a personal problem for those who are displaced, so that we can orient our efforts around addressing these specific issues. This was the focus of Chapters Four and Five.

Hannah Arendt’s well-known analysis of the structural causes of displacement was examined in Chapter Four, situated within the context of her broader philosophical and political reflections on the “world” and “world alienation” to conceive of the problems refugees face in

terms of “worldlessness” and “superfluity”. To be displaced, on this account, is to lose one’s place in the world, at the existential level of lived experience, rather than simply in terms of the loss of formal status and the protections that accompany it. It was argued that Arendt’s famous conception of the “right to have rights” can be employed to address ways in which to mitigate these problems, but that it needs to be understood as more than simply citizenship in the nation-state – and thus as different in nature to the three durable solutions to “the refugee (as) problem”. By engaging in a close reading of her work around the concept of “world”, Chapter Four formed a theoretical base from which to begin to conceptualise different “solutions” to the refugee problem of worldlessness and superfluity.

Chapter Five analysed refugee and asylum seeker protest, and the City of Sanctuary movement in the UK as ways in which to address these problems. Approaching refugee protest as instances of performative rights claiming not only revealed the refugee as a political agent but also begins the work of building new worlds to which to belong with others, through the mutual recognition of rights between those engaged in the protests. But, due to the dynamic nature of power relations and efforts by the state to reclaim the political ground from actors not permitted to act politically, these actions were shown to stand in need of greater support if those protesting are to mount an effective challenge to their exclusion. City of Sanctuary was presented as one such avenue for support. As a grass-roots movement, City of Sanctuary enables refugees and asylum seekers to build new homes – or “worlds” – for themselves in partnership with others, through a variety of activities of the movement, thus facilitating their re-entry in the human world from which they had been ejected in becoming displaced. Further, it was argued that the focus of City of Sanctuary on re-fashioning the city as a place of meaningful belonging for all those who come to reside within it not only has the potential to begin to remake the communities of belonging to which the “right to have rights” could correspond, but also, in so doing, has the potential to answer to the existential needs of refugees, and reconfigure or modify the games of truth and power in which they and others find themselves governed.

Michel Foucault and Hannah Arendt are theorists driven by a concern with the circumscription (and restriction) of agency and voice by modern socio-political conditions – a central concern shared by this thesis. Foucault’s genealogies are each concerned to reveal the ways in which power (be it pastoral, disciplinary or bio-) and knowledge (particularly the social and human sciences) manufacture subjects, normalise behaviour, and thus tie individuals to their “identity” (as a “homosexual”, a “delinquent”, an “insane person”). The techniques or rationalities of power around and through which the modern state crystallised as a problematic

of government from the sixteenth to the twentieth centuries are forms of power that apply themselves to immediate everyday life. Together they are a form of power that

Categorises the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him that he must recognise and others have to recognise in him. It is a form of power that makes individuals subjects. (Foucault, 1982a: 331)

Through techniques of observation, examination and normalising judgment, disciplinary power normalises individuals both in their identities (subject-positions) and in their behaviour to produce docile and economically useful subjects. Simultaneously, biopower circumscribes a set of “natural” laws around the phenomena operative at the level of the population which entrench certain practices of government and require certain kinds of intervention at the level of the life processes of individuals and the social, economic and cultural practices within which these occur. Thus, certain kinds of behaviour become “acceptable” and “tolerated” and others are circumscribed as “unacceptable” and thus “punishable” or “discouraged”. Certain kinds of behaviour come to be understood as “expected” or “typical” of certain kinds of subjects and these standards of behaviour become the criteria by which such subjects are excluded, to a greater or lesser extent depending on the subject, from “normal” society; and the forms of knowledge upon which these practices rest become the “scientific” justification for such continued exclusion. Thus, while Foucault can rightly be seen as unconcerned with the scientific validity of the disciplines of power-knowledge he critiques, he is certainly not *politically neutral* about them (and others in the social sciences), as he is concerned precisely with their *effects*. Revealing the effects of subjugation and normalisation behind these practices of power-knowledge is the moral/normative imperative behind genealogy as an approach to investigating social and political practices.

In applying Foucault’s insights to a problem he never himself investigated, the creation and management – through exclusion and marginalisation – of the “refugee” and “refugee problem”, and taking a genealogical approach to the questions of voice, agency and recognition, this thesis has made a contribution to a growing body of knowledge concerned with the silencing and exclusion of refugees and other migrant subjects who do not fit the mould of “citizen”, by shining a light on the role of processes of knowledge production which reveal that it is the *subject-position* of the “refugee” within the discourse of the refugee problem that renders the individual voiceless, rather than these individuals themselves being voiceless “by nature”. In revealing how the effective operation of modalities of power and techniques of knowledge production produce such marginalising subject-positions we can focus our attention on these practices and how we might challenge them, and such challenges can be bolstered by

moving to centre stage the potential for agency of such individuals who are constructed as voiceless “by nature.” This potential is one that, for Arendt, all human beings possess, and at this point her thought took over from Foucault’s.

This point in the thesis was a turning point of sorts, and I was faced with a choice between continuing with in-depth analysis of the theorists whose work formed the backbone of the project thus far, and devoting less space than ideally I would have liked to concrete examples of voice and agency on the part of refugees and asylum seekers – running the risk of producing a work concerned with the voices and recognition of refugees but not making any space for their voices – or engaging in field work to collect such narratives, putting them at the heart of the second half of the thesis, and pulling back from the theoretical work. Neither option being particularly appealing, I attempted to strike a balance between the two. Chapter Four thus consisted of an exegesis of Arendt’s work, which foregrounded her understanding of action, plurality and natality, to demonstrate the innate capacity for speech and action that individuals labelled as “refugees” or “asylum seekers” possess, but explaining why to become displaced makes it more difficult – but, vitally, not impossible – to actualise this potential. Chapter Five then turned to a handful of concrete examples of such subjects posing a challenge to the conditions which attempt to silence them by stepping forward and speaking out. Where possible I used the words of individuals involved in these protests. In some cases these words had been collected by other scholars, and in others the protestors themselves had made their words available to others via social media. The interpretations of their words and actions are my own and are informed by the theoretical work of the previous chapters, but in interpreting their words I was conscious not to intentionally distort them for my own purposes. In researching the City of Sanctuary movement I was able to attend a series of meetings, including the AGM of the network in Leicester, as an observer, to understand the dynamics of the movement and get a more in-depth picture of the breadth and nature of the activities involved. My analysis of the movement is based on the notes I took while observing these meetings and when speaking with the network coordinator. I had hoped to be able to arrange interviews with some of the asylum seekers I met during these meetings, but time constraints made this impossible.

In attempting to strike this balance, I see two contributions to the literature on voicelessness and abjection of an Arendtian analysis of displacement and interpretation of refugee activism and movements for inclusion on the part of citizens. The first is in the theoretical support it can give to work which seeks to reveal the tendency of certain socio-political and humanitarian practices to silence subjects who do not fit the mould of “citizen”

but is concerned with reifying or over-stating the *totality* of the voicelessness and abjection into which such subjects are cast. To borrow the words of William Walters:

For all its critical thrust, such work can foster a rather one-sided and flattened conception of migrant subjects; subjects to whom all manner of things are done, often in arbitrary and violent ways, but rarely agents in their own right. (2008: 188)

Arendt's examination of the human condition reminds us that even in the most dire of political circumstances – totalitarianism being her focus – the human capacity for beginnings is “the miracle that saves the world” that all men and women possess by virtue of being themselves beginnings. Being ejected from one's home and wandering in search of a new one does not strip the refugee of her *capacity* for action and speech, but, rather, of the space within which to act and speak, which is reliant on the presence and recognition of others. This is intimately connected with the second contribution that such an engagement with Arendt's work makes: in guarding against the tendency to view citizenship, as a formal status, as the be-all and end-all of political subjectivity (which has the unfortunate consequence of further entrenching the abject nature of the non-citizen's predicament). While Arendt recognised the importance of citizenship to political life, she had profound problems with the *nature* of citizenship under modern political conditions. Her call to rethink the nature of the communities to which a right to have rights would correspond is thus also a call to rethink the very nature of citizenship as a mode of belonging. Being attentive to the degradation of political life within the state under modern political conditions can attune us as scholars to the necessity of rethinking the nature of such political life for all, to make inclusion within a political community a reality of *experience*, rather than a purely formal legal status.

A number of avenues for research have emerged from this study. The first is related to the historical investigations undertaken in the first three chapters. This investigation drew inspiration from Michael Dillon's observation that to accept that “other times and other forms of life have treated strangers badly, or manufactured strangers of themselves, does not, then, deny that modern estrangement happens in its own modern way and for its own modern reasons” (1999: 34). Rather than approaching the exiles of ages past as ambassadors of historical continuity, this thesis has posited that they perhaps shed more light on current practices as bearers of difference. For reasons of space, and to control the breadth of the study, only a handful of these periods and places were examined, leaving open the possibility of continuing this research into other times and other groups of the displaced and persecuted to shed light not only on their unique experiences, but also on our own.

A second avenue of further research relates to the possibilities for agency in an Arendtian sense on the part of those migrants warehoused in Europe's new refugee camps – detention and immigration removal centres. To what extent can the framework utilised in this study be of use to address the, arguably, greater degree of worldlessness and superfluity that these individuals face? Campaigns to dismantle the UK's "detention estate" appear to be gathering pace, and social media is becoming a platform through which the experiences and voices of those locked out of sight can emerge, raising potentially interesting questions for the degree to which speech and action in public needs to occur in a *physically* public realm or whether, under these circumstances, a *virtual* public realm could be sufficient and as powerful.

A third avenue of research relates to the concern for the voice, agency and recognition of migrants, which motivated this study, but which was not expressed in the form of actively seeking out these voices. The study undertaken here could, thus, form a robust theoretical base from which to engage in research "in the field" among protesting refugees, and among those involved in City of Sanctuary groups, to examine to what extent the potential, posited here, of these movements for making one's voice heard, gaining the recognition of others, and building new worlds to which to belong, reflects the actual experiences of these individuals. Such research could prove invaluable to the task to rethink the approach that we as scholars take to studying these issues.

A final avenue that this study has opened for my future research lies quite outside of the refugee phenomenon and concerns the relation between, and compatibility of, the thought of Hannah Arendt and Michel Foucault. In engaging with the vast bodies of work of both of these thinkers I was struck on many occasions by their similarities, and intrigued by the question of to what degree Foucault was aware of Arendt's work and if so, the extent to which it influenced the development of his own thought. This is a question I would be keen to pursue in the future, and see what other problems of modern political life can be rethought from a genealogical perspective, and what new possibilities opened by good "old-fashioned storytelling".

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