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Colonialism, Sovereignty and the History of the International Refugee Regime

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Approaching the history of the international refugee regime¹

Why is it that, with a few carefully delineated exceptions, there were no non-European ‘refugees’ until the post-Second World War era?² This chapter attempts to answer this question by examining the origins and evolution of the international refugee regime from a global rather than a strictly European perspective. Refugees, we are sometimes told, are the ‘inevitable consequence of the modern system of nation-states’ that results when there is a ‘breakdown in the state-citizenship relationship.’³ Building upon recent scholarship in the history of international law, I suggest that this perspective is incomplete and, in certain key respects, ahistorical because it fails to take into account why some states were excluded from the modern international system to begin with and why some non-European nation-states, even though nominally sovereign, could not produce ‘refugees’ in the juridical sense that was reserved almost exclusively for European refugees in international law. During the twentieth century, assigning or withholding the ‘refugee’ label came to involve complex processes of inclusion and exclusion based on multiple legal, bureaucratic and political calculations. I argue that these processes of inclusion and exclusion cannot properly be understood by focusing exclusively on the evolution of refugee policies and practices, while taking concepts like the ‘modern system of nation-states’ and the ‘modern international system’ at face value as unproblematic, historical givens. Instead, as Mark Mazower has reminded us, we need to take seriously the ideological contexts in which the ‘modern international system’ and the ‘international community’ were imagined and constructed in the first place, and, especially, what their architects at the time believed they were doing.⁴ The goal of this chapter is to propose an outline for an alternative history of the international refugee regime, one in which the non-European and colonial worlds are not invisible or peripheral but rather central to the main narrative.

Let us begin with an anecdote from the early 1950s. On a hot summer evening on 24 June 1952, a crowd of more than a thousand gathered at the Municipal Sports Stadium in the southern Chinese port city of Guangzhou to denounce the persecution and

atrocities allegedly committed by British colonial troops in Malaya against members of the Malayan Communist Party (MCP) and their sympathizers. According to the rally's organizers, these included simulated drowning, electric shocks, sleep deprivation, pulling out of fingernails with iron forceps, trussing up prisoners so that they were forced to walk on all fours, and hanging prisoners up naked in public places for hours at a time. The rally was organized by the city's recently established 'Committee for Handling Returned Overseas Chinese Refugees' (归国难侨处理委员), and those attending included a large number of Malayan Chinese who had recently arrived in Guangzhou.⁵ They were among the thousands of Malayan Chinese British subjects who were 'deported' to China during the more than decade long Malayan Emergency (1948–60), when British colonial authorities attempted to crush an insurrection led by the ethnic Chinese-dominated MCP.

The anecdote just described – involving ethnic Chinese who were persecuted by a colonial state and ended up in revolutionary China – is significant because it highlights the limitation of conventional refugee narratives. During the Cold War conventional wisdom in the West held that communist states were producers of refugees, while Western states offered sanctuary to those fleeing communist persecution.⁶ Yet in this instance the roles were curiously reversed. The source of persecution was not communist totalitarianism but a European colonial state employing armed force and terror against its own subjects. Likewise, the refugees who found themselves in communist China were not moving towards 'freedom', at least not in the conventional sense in which that term is generally understood in the West. And they were welcomed not only as 'refugees' (难民) in need of succour, but also as 'patriotic overseas Chinese' (爱国华侨) who were 'returning' to their motherland – even if it was a motherland that many of them had never known or experienced, having been born and lived overseas for generations.⁷ However, if we forsake the conventional narrative for an approach in which histories of empire and colonialism figure as prominently as Cold War politics, then the anecdote just described starts to make sense.

Scholars have approached the history of the international refugee regime from several angles. Here I identify what I consider to be two main approaches emerging from recent scholarship. One approach is to view the history of the international refugee regime in terms of the origins and development of a coordinated humanitarian response to displacement. The other views the international refugee regime as an intergovernmental response to the disruptive effects that refugees pose for established modes of territorial governance. After briefly outlining each of these perspectives, I will propose an alternative approach, one which sees the international refugee regime as involving elements of both of the above, but which is also deeply informed by histories of colonialism, racial exclusion and Western constructions of non-European 'Others'.

Early histories of the international refugee regime tended to approach the subject in terms of an unfolding intergovernmental response driven by humanitarian and legal considerations.⁸ Emphasizing the role of humanitarian crisis as a key driver of the creation and maintenance of an international refugee regime is a perspective that emerges readily from the sources produced by refugee agencies themselves and their implementing partners 'on the ground'. Observing the sixtieth anniversary of the establishment of the United Nations High Commissioner of Refugees (UNHCR)

on 14 December 2010, UNHCR's website emphasized that the organization was not about to wind up operations anytime soon because 'humanitarian needs are unlikely to disappear'.⁹ Viewed from this perspective, the history of coordinated international action on behalf of refugees is almost invariably framed in terms of a narrative of gradual, if halting, progress and improvement. The first such coordinated action involved the creation in 1921 of the League of Nations High Commissioner for Refugees (LNHCR) as a temporary agency whose mandate was restricted to assisting Russian refugees. This was followed by a succession of reluctant and too-little-too-late international responses to racial persecution and the escalating refugee crises of the Second World War in Europe. The year 1950 saw the establishment of UNHCR as yet another temporary agency with a three-year mandate to mop up the remnants of Europe's wartime refugee problem. Since then UNHCR has evolved into the world's 'rapid response unit' for people displaced by conflict with an annual budget in 2012 of \$3.59 billion – the largest of any UN agency – and a scale of operations that is genuinely global in scope.

The role of humanitarian action in refugee history is indeed a central one. Recently, however, Nevzat Soguk has challenged the view that the international refugee regime was borne out of the objective necessity of interstate collaboration to assist refugees. Rather than arising out of the need for coordinated international assistance for refugees, Soguk sees the international refugee regime as a 'statist' response to the disruptive effects that refugees posed for territorial governance. The international refugee regime, he maintains, is best understood as a politico-legal response to the social and political dangers represented by forcibly uprooted populations who have become 'detached' from the structures of the sovereign state. The sudden appearance of millions of displaced and stateless people across central and eastern Europe in the years following the First World War signalled a crisis in 'sovereign territorial governance', one which threatened to undermine the 'all encompassing hierarchy of citizen/nation/state'. In Soguk's view, the creation in 1921 of the LNHCR was intended, not only to provide assistance to refugees, but more importantly to 'produce, stabilize, and empower contingent images, identities, subjectivities, relations, and institutions of sovereign statehood'.¹⁰ The international refugee regime under LNHCR was the means by which refugee movements and the people who populated them were to be brought under control through a series of legal manoeuvres in the form of international conventions, protocols and procedures agreed by sovereign states and overseen by the world's first genuinely *international* organization, the League of Nations. Thus, the regime was focused on such statist concerns as the legal definition and protection of refugees; their registration and documentation; their confinement within certain prescribed sites and spaces (the institution of the 'refugee camp'); their relief and 'rehabilitation'; and their eventual return to the 'normal' status of citizens of a sovereign state – whether the previous sovereign (through repatriation) or a new one (through local integration or third country resettlement).

Soguk's view of the international refugee regime as a statist response to the politically disruptive effects of human displacement complicates our understanding and represents a significant challenge to approaches that view the evolution of the international refugee regime in terms of a gradually widening realm of humanitarian

intervention or which see the international refugee regime as a politically neutral institution dictated by the practical necessities of interstate collaboration to assist refugees. However, one weakness of Soguk's approach is that it offers little basis for conceiving a history of displacement that takes account of the world beyond Europe. Indeed, to the extent that Soguk's work can be read as a history of the international refugee regime writ large, rather than simply a series of events in interwar Europe, its underlying telos is the gradual spread of sovereignty and its corollary, the nation-state system, from Europe to the rest of the world. That is to say, as formerly colonized countries acquire sovereignty and join the 'family of nations', they become eligible for membership in the institutions created to maintain order among sovereign states – including, among other things, the international refugee regime. To be fair, Soguk himself is quite aware of the Eurocentric limitations of his approach. He is careful to note that his study 'focuses on Euro-Mediterranean experiences in history', and that the book 'should therefore be taken as to be a study of statecraft in European histories'. Observing that 'no substantial body of literature exists on early human displacement in non-European spaces' and that 'most of the studies on refugees in non-European, non-Western spaces ... deal with contemporary histories', he admits to an 'insurmountable difficulty in incorporating [the non-west] into this study without diffusing the study's core interest in the instrumentality of human displacement in statecraft'.¹¹ Most studies of refugee history remain profoundly Eurocentric. Typically, studies begin with the religious persecution and expulsion of the Huguenots from France in 1685 (when the English language term 'refugees' was first popularized) and then proceed to the French Revolution before focusing on the implications of the rise of nationalism and of the nation-state system in Europe.¹² With few exceptions, before 1945 the world beyond Europe is, quite literally, outside of history. Is an alternative approach possible? Is there a way to bring the non-Western world into the history of the international refugee regime other than through the telos of a globalizing humanitarian response or of the nation-state system? What would a genuinely global history of human displacement and refugees look like?

Colonialism, sovereignty and the origins of international law

In attempting to think through these issues, I have found especially helpful the work of scholars such as Antony Anghie and Edward Keene. Their work is concerned not with refugee history as such, but rather with the broader historical question of the relations between colonialism, international law and the construction of the modern world order. Building on the works of these and other scholars on colonialism and the origins of international law, my argument can be summarized as follows. From the early decades of the nineteenth century until the end of the Second World War, the world was understood by the self-proclaimed members of 'international society' to be composed of two distinct international realms, underpinned by different visions of the nature of the legal and political order. One realm was reserved for Europe and

what were frequently described as 'white man's countries' (i.e. current and former settler colonies including Canada, Australia, New Zealand and the United States).¹³ The second realm was understood to encompass the colonial and semi-colonial world that lay beyond Europe and its settler outposts. Importantly, this bifurcation was not only ideational (rooted in racial and culturalist claims) but was also 'hard-wired' into international political and legal institutions and structures. As Keene explains, one realm of international legal and political order was organized around 'the pursuit of peaceful coexistence between equal and mutually independent sovereigns, which developed within the Westphalian system and the European society of states', while the other was concerned not with relations among European states but with the entirely different question of the nature of relations between Europeans and non-Europeans.¹⁴ As is well known, the treaties of Westphalia that were concluded in the 1640s territorialized political power and established the principle that states have the sovereign right to exclude external forms of authority.¹⁵ However, the 'Westphalian system' was established in an age of European imperial expansion. This meant that the principle of a state's sovereign right to exclude external authority had to be reconciled with European colonization of overseas lands. The contradiction between the two was resolved in the nineteenth century by the elaboration by international jurists of a distinction between 'civilized' and 'uncivilized' states and peoples. The two realms of international legal and political order that developed and claimed legitimacy on the basis of this distinction were not only coincident in time; the same international jurists also provided the legal framework and jurisprudence for both.¹⁶ Moreover, this vision of a world made up of a European-based 'International Family' of civilized nations, on the one hand, and an uncivilized world beyond Europe, on the other, persisted well into the twentieth century, and was even enshrined in the founding covenant of the League of Nations.

In order to understand how the binary categories of civilized versus uncivilized influenced conceptions of the modern 'refugee', we need to look more closely at the origins of this dichotomy and its implications for the development of international law. According to conventional wisdom, the field of international law – of which refugee law is a central component – originated in response to the problem of how to maintain order among sovereign states. Proponents of this view have traditionally pointed to the Westphalian treaties, which called for the relations among sovereign states to be regulated by a system of international laws, treaties and diplomatic exchange. However, the legal scholar Antony Anghie questions this view of the intra-European origins of international law. As Anghie points out, 'A focus on the problem of order among sovereign states cannot illuminate the prior question of how certain states were excluded from sovereignty in the first place.'¹⁷ The answer, according to him, lies in 'the colonial origins of international law'. Colonialism, according to Anghie, played a central role in the development of the norms and practices of sovereignty. From its inception in the seventeenth century, international law was concerned not only with relations among states but also with the imperial project of governing non-European peoples. Thus, sovereignty doctrine was not something that was developed in Europe and then simply transferred to the non-West at some point in the mid-twentieth century as a consequence of decolonization. Rather, the concept of sovereignty was

forged in the context of colonial confrontation: in the legal, political, intellectual and military project of extending domination over non-European peoples.¹⁸

Beginning in the mid-nineteenth century, European juridical discussions, shaped by the rising influence of legal positivism, coalesced around the notion of a ‘standard of civilization’ as the basis for an international society made up exclusively of European states that had deemed themselves to be ‘civilized’.¹⁹ In the absence of a supranational sovereign authority, nineteenth-century legal positivists turned instead to the notion of a ‘family’, a ‘community’ or a ‘society’ as the legitimating basis for international law. This marked a crucial shift away from earlier natural law principles because ‘implicit in the idea of society is membership’. What were the criteria for admission? As Anghie notes, the concept of an international ‘society’ and the range of ideas associated with it enabled jurists to link legal status with cultural distinctions. The key distinction drawn by legal positivists was between ‘civilized’ and ‘uncivilized’ states. Once such a distinction was drawn, ‘completely different standards could be applied to the two categories of people’. Anghie quotes Henry Wheaton, whose 1866 book, *Elements of International Law*, would become one of the foundational texts of modern international law: ‘Is there a uniform law of nations? There certainly is not the same one for all the nations and states of the world. The public law, with slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or to those of European origin.’²⁰ In this way, a particular sociological vision rooted in notions of cultural difference and the binary categories of ‘civilized’ versus ‘uncivilized’ became the foundation for international law, rather than sovereignty per se. By positing a gap, understood primarily in cultural terms, between ‘civilized’ Europe and the ‘uncivilized’ world beyond it, nineteenth-century legal theorists established a basis both for excluding the non-European world from the realms of sovereignty and international law – including, as we shall see, refugee law – and for legitimizing the ‘grand redeeming project’ of bridging that divided by civilizing the uncivilized.²¹ As Edward Keene puts it, the concept of civilization ‘performed two roles in international legal thought: it defined the border between the two patterns of modern international order, and it described the ultimate purposes that the extra-European order was for’.²²

What do the colonial origins of international law mean for writing a global history of human displacement? Anghie argues that the civilized-uncivilized binary ‘animated the development of many of the central institutions of international law’.²³ Did it also influence the development – or non-development – of international refugee law and the understanding and representation of human displacement in non-Western contexts? A first observation is that instances of forced migration and displacement, including what would otherwise be regarded as refugee-producing events, are often hidden in the colonial archive. In some cases they have been erased entirely; in many cases, however, they are registered under different signs: as instances of mutiny, rebellion, hiding, absconding, banishment, deportation, unauthorized flight and various forms of illicit residence and unauthorized movement.²⁴ A second observation is that most international jurists emphatically believed that the treatment of colonial subjects was quite simply beyond the pale of law. By the end of the nineteenth century, it had been widely held that ‘international law has no place for rules protecting the rights of

backward peoples.' Rather, the prevailing view was that any 'such international rights as backward peoples have been recognized to possess' were 'moral and not legal'.²⁵ Thus, John Westlake's seminal 1894 book, *Chapters on the Principles of International Law*, devotes a separate section to 'The Position of Uncivilised Natives with regard to International Law.' In it Westlake explicitly rules out the possibility that international law might have any role to play in protecting the legal 'rights' of uncivilized natives. 'Even those who, in accordance with the modern tendency, make rights instead of law their starting point, can hardly avoid admitting that the rights which are common to civilized and uncivilized humanity are not among those which it is the special functional of international right to develop and protect.' But if that were the case, what protection did the colonized have against the arbitrary use of political power? In western Europe, the question of how to guard the individual and society against despotism had animated the evolution of legal and constitutional thought for centuries. For Westlake, however, when it came to 'backward peoples', it was sufficient to rely on the paternal benevolence of the colonizer. 'Becoming subjects of the power which possesses the international title to the country in which they live,' Westlake wrote, 'natives have on their governors more than the common claim of the governed, they have the claim of the ignorant and helpless on the enlightened and strong; and that claim is the more likely to receive justice, the freer is the position of the governors from insecurity and vexation.' 'International law,' Westlake asserted, 'has to treat natives as uncivilized' and therefore 'leaves the treatment of the natives to the conscience of the state to which the sovereignty is awarded'.²⁶

What this meant in practice was that colonial states were prepared to sanction – in the name of 'civilization' – the use of political violence and compulsion in their colonies in ways and to the extent that would have been considered unthinkable – and illegal – at home. Thus, for example, when the 'civilized' members of the nascent 'international society' met at The Hague in 1899 to establish international laws of warfare, the signatories agreed to outlaw the dropping of bombs from airborne balloons – but only among themselves. In subsequent years, bombing from the air became an accepted and 'low-cost' means for colonial powers to suppress native resistance. Three decades later the practice was defended by the American 'counter-insurgency specialist', Eldridge Colby, on the grounds that, whereas to a European the bombing of a cathedral would be regarded as a 'lawless act of the enemy' arousing international wrath, 'to the fanatical savage, a bomb dropped out of the sky ... is a sign and a symbol that God has withdrawn his favour' and an 'indication of the relentless energy and superior skill of the well-equipped civilized foe'. 'Was there not some mysterious alchemy at work,' asks Mark Mazower, 'in a set of arguments that turned the civilized soldier into a substitute for God – yoking together omnipotence and virtue, and sowing death from the heavens – and all this in the name of progress and international law?'²⁷ What this also meant was that colonial states, whatever they did, could not produce refugees in international law. There was, it seems, a widely held assumption that colonial states could do as they wished with the people under their control. So if what colonial powers do is inherently permissible, then the uncivilized are inherently incapable of being 'refugees'.

The International Labour Organization and the question of universality

The League of Nations, established in 1919 as the world's first international governing body, in retrospect had a double-edged effect in both reinforcing and revising the principle that sovereignty and international law were reserved for the European 'family of nations'. On the one hand, the League's founding covenant affirmed the concept of a world divided into 'civilized' and 'backward' nations and people. But through its pronouncements, its institutions, and in the forms of expertise embodied by its technical personnel the gulf separating the two was gradually redefined in increasingly economic rather than racial and culturalist terms, as a problem of 'development'.²⁸ This change did not in itself spell the end of colonialism; on the contrary, as Frederick Cooper and others have shown, in the short term it provided colonialism with the discursive means to defend and redefine itself as a progressive, globally minded enterprise necessary for achieving the economic uplift of the 'backward' portions of humanity. This was a twentieth-century reincarnation of the civilizing mission, recast in scientific terms as a global challenge of 'modernization' and 'development'.²⁹ What persisted, in other words, was the notion of European guardianship. The notion received its fullest expression in the institution of 'mandated territories' (former German and Ottoman possessions governed after the First World War by an international regime created and supervised by the League of Nations), which the League defined as a 'sacred trust of civilization' exercised over territories 'inhabited by peoples not yet able to stand by themselves'.³⁰ On the other hand, however, the mandate system also introduced the principle of international oversight for the first time, and compelled the mandatory powers (mainly Britain and France) to submit annual 'progress' reports to the League on their efforts to prepare the inhabitants of their territories to 'stand on their own'.³¹

The International Labour Organization (ILO) performed a similarly significant role in focusing international light on colonial labour practices and making them, for the first time, subject to a limited form of regular international scrutiny. The ILO drew its authority to scrutinize colonial practices from Article 421 of the Treaty of Versailles, which required member states to extend the application of international labour conventions that they had ratified at home 'to their colonies, protectorates and possessions'. However, Article 421 also sanctioned the right of colonial powers not to extend such conventions to their colonies when 'local conditions' rendered them inapplicable, and to make their extension to colonial jurisdictions 'subject to such modifications as may be necessary'.³² It was the tension between these two provisions that formed the basis for the ILO debate over forced and indentured labour.

In 1926 the League instructed the ILO to formally take up the question of forced labour and 'conditions analogous to slavery' in colonial territories.³³ The reaction of the colonial powers was said to be 'hostile'.³⁴ Forced labour was defended on the grounds that it was both economically necessary, in the public interest, and furthermore in accordance with 'local custom'. The question was considered by an ILO-established 'Committee of Experts on Native Labour' to which were appointed – in an effort to legitimize the process by including in it representatives of the colonial powers –

experienced colonial administrators from various countries, and at the ILO's Annual Labour Conference which, according to the ILO's unique organizational structure, included delegates representing governments, employers and workers. On one occasion, the Dutch delegate proclaimed that the 'ruling motive in the mind of every member' was a 'desire to secure an amelioration in the lot of peoples subject to the burden of forced labour, and particularly of those whose progress towards civilization is as yet little advanced'.³⁵ However, progress in this regard could never be achieved by extending metropolitan laws to the colonies, whose people were 'not ready for it'. A Belgian employers' delegate demanded a measure of 'elasticity' in efforts to restrict the use of forced labour, in order to permit 'compulsory cultivation' for the purpose of producing export crops, which, it was claimed, was intended to reduce the risk of famine.³⁶ In the end, Britain and France, as the major colonial powers, played the leading role in drafting the 1930 Geneva Convention on Forced Labour. Although the Convention pledged to 'suppress the use of forced labour in all its forms within the shortest possible period', its immediate aim was to 'regulate' its use in colonial territories. The convention acknowledged the acceptability of forced labour in the colonial world when it was used 'in the public interest'.³⁷

Moreover, the question of indentured labour was deliberately avoided during the negotiations leading to the 1930 Convention, on the grounds that such labour was, according to the colonial powers which relied upon it, voluntary and 'free'.³⁸ A Dutch East Indies employer's delegate claimed that since 'every care [was] taken' to ensure those who signed long-term contracts were aware of the terms before signing, there could be no analogy to 'forced labour'.³⁹ The transnational use of indentured labour had been a prominent feature of colonial economic strategy since the abolition of the slave trade. As early as 1842, a British Commission of Inquiry recommended the introduction of measures to promote the migration of 'native labour', subject to controls designed to distinguish such 'free' labour from slavery. Other colonial powers soon followed suit, and by the late nineteenth century there was a vast global movement of indentured labourers, primarily from China and India, to the Caribbean, Pacific Islands, Africa and Southeast Asia.⁴⁰ The period from 1900 to 1930 witnessed the rapid development of economic infrastructure across the colonial world, in the form of railways, roads, dams, bridges, as well as the large-scale cultivation and extraction of raw materials – all of which required an expanding supply of labour. While many of these development schemes were privately run, colonial governments played a critical role in furnishing the labour for such projects; China and India were major sources of recruitment. In 1935 the Indian workers' delegate to the 19th Session of the International Labour Conference, Ramaswamy Mudaliar, proposed an amendment that migrant indentured labourers be accorded property rights and basic civil and political rights in their (often long-term and permanent) countries of residence, including equal status in courts of law. Mudaliar's defeated amendment was met with unabashed hostility from government and employer delegates, who dismissed it as a 'political amendment'. Mr Moeller, the Belgium employers' delegate, declared that the colonial powers had a 'mission of guiding their subject peoples through the difficult conditions of modern life', including the 'duty of protecting the natives from influences which are all the more dangerous because the people in question are primitive and

easily led'; amendments such as the one proposed by Mudaliar 'would only create disorder in the minds of people unable to assimilate such ideas'.⁴¹ A few years earlier, in 1929, the Chinese delegate to the League of Nations conference on minority rights called on the League to extend the twenty-four minority rights treaties that had been created for countries in central and eastern Europe after the First World War globally, in order that minority rights would become 'essentially international and world-wide, and the laws of each country ... provide effective and equal protection for all its citizens without distinction of language, race, or religion'.⁴²

Histories of labour migration and racial exclusion are critical for understanding the ways in which individual states and the 'international community' viewed Chinese refugees. Prior to 1945, Chinese (as well as Indian) migration took place primarily within the global circuits of European empires, for the purpose of supplying cheap labour for the rapidly expanding extractive and plantation economies in non-settler colonies in Asia, Africa and the Pacific, and for the 'opening up' of the western frontier of North America.⁴³ By the turn of the twentieth century, white settler nations around the Pacific Rim had erected what amounted to a gigantic administrative cordon excluding Chinese from their borders on racial grounds.⁴⁴ As a result of these experiences, Chinese migrants had become deeply familiar with experiences of mass expulsion, legalized discrimination and persecution on racial grounds, even organized pogroms. Instances of '*paihua*' (排华) or 'Chinese exclusion' – a term that referred to both border exclusions and forced expulsions – were reported on regularly by Chinese newspapers and periodicals.⁴⁵ However, these events took place beyond the realm of international refugee law. The latter simply could not prevail against the powerful alternative identities ascribed to Chinese migrants during this period. The real driving identity ascribed to the migrant Chinese (and the indentured Indians) throughout the first half of the twentieth century was that of economic actor-labourer (hence the histories of indentured labour migration) and security threat (hence expulsions and exclusion).

Let us return, finally, to the example with which we began this chapter. The British practice of deporting ethnic Chinese troublemakers had a long history in Malaya. The first Banishment Act was introduced as early as 1864. Up until the 1930s, banishment, in combination with various labour ordinances, had functioned as a kind of 'makeshift immigration control' for deporting persons whom colonial authorities labelled as political agitators, criminals and secret society members.⁴⁶ The practice of banishing political 'subversives' to China increased in the 1920s with the rise of Chinese Nationalist and Chinese Communist Party activities in Malaya. It grew exponentially during the 'Emergency', when more than 10,000 ethnic Chinese were deported to China in 1950–51 alone, according to Chinese sources.⁴⁷ Upon their arrival in China the 'banishees' (as Malayan colonial authorities described them) were welcomed by the communist government as 'overseas Chinese refugees' (难侨) who had 'returned' to their ancestral motherland. Their plight was completely overlooked by the newly established UNHCR, despite the fact that the latter had taken an avid interest in the contemporaneous problem of the Chinese refugees from communist China who had sought asylum in British-ruled Hong Kong. British expulsion of the Chinese from Malaya could not be taken into account by the international refugee regime because

in the early 1950s the dominant view of Chinese migrants was still that of economic actors-labourers and/or security threat, and because underlying this view was the continued assumption and acceptance of British authority to simply add and subtract migrants to their colonial possessions based on economic and security calculations.

Epilogue

From the late nineteenth century until the end of the Second World War, international approaches to human displacement were shaped by a series of assumptions about the nature of international society and distinctions that were drawn between states and peoples in terms of race, degree of 'civilization' and other markers of difference. These inclusions and exclusions were elaborated – and contested – in multiple realms of social, political and cultural life, and formed a kind of matrix for interpreting the nature and shape of the broader human world. As we have seen, these forms of inclusion and exclusion were also 'hard-wired' into international political and legal institutions and structures. By the late 1940s, however, such distinctions and the institutional practices associated with them were increasingly difficult to sustain. It is here that we can perhaps begin to connect the themes discussed in this chapter with the notion of the forty years' crisis and events in Europe. Throughout the interwar period, liberalism, universalism and racial particularism not only went hand in hand; they were mutually constitutive.⁴⁸ The 'European' refugee regime, in effect, functioned as a means of containing and excluding other forms of asylum seekers. However, the horrors of the Second World War in Europe – what Zara Steiner in this book calls the 'descent into barbarism and the implosion of European civilization' – changed this forever. It was not just that Hitler's policies 'gave racist ideologies and racist theories a bad name'.⁴⁹ It was also because 'the Nazi utopia of a dynamic, racially purified Germanic empire ... was also a nightmarish revelation of the destructive potential in European civilization – turning imperialism on its head and treating Europeans as Africans'.⁵⁰ Understandably, the United Nations in its early years emphasized the need to enshrine the principle of universal human rights – even if, behind the scenes, the various powers with interests at stake worked overtime to ensure that such rights were merely aspirational, and not binding.⁵¹ Nonetheless, by the late 1940s colonial administrators were finding the legal and moral justifications that had underpinned colonialism for more than a century dissolving before their eyes. A case in point involved the issue of racial discrimination in colonial possessions, which arose in the drafting of the 1948 Universal Declaration of Human Rights. The British Colonial Office was 'extremely nervous' over the possibility of colonial subjects lodging human rights complaints against a colonial power with an international body – much less the prospect of colonial subjects having an international right to asylum on account of such violations.⁵² Thus, in January 1947 the British Secretary of State for the Colonies issued an empire-wide circular, requiring colonial governments to compile and submit lists of all of their discriminatory legislation based on race. The Singapore government, to take one

example, listed examples of discriminatory legislation in labour and employment laws, policing and military legislation, penal segregation and other areas. Other departments proudly proclaimed themselves to be free of discriminatory legislation and practice, save for 'small' things like separate canteen facilities for Europeans and natives.⁵³ That the entire edifice of colonial rule rested on a set of principled distinctions based on race and that a defining feature of British rule in Malaya involved the separate treatment of Malays, Indians, Chinese and Europeans were ironies that could, for the time being, continue to be overlooked.

The first refugees from colonial rule to be viewed as such by an international refugee organization occurred in 1953. When French forces reoccupied Vietnam at the end of the Second World War, approximately 50,000 Vietnamese fled into neighbouring Thailand, where they remained in a state of legal limbo for years under the watchful eyes of the Thai government. A UNHCR official in the commission's Bangkok regional office, convinced that UNHCR could not look the other way when it came to colonial matters, described the Vietnamese stranded in Thailand as 'refugees from French rule' and told his superiors in Geneva it was 'as clear as day-light' that the Vietnamese refugees fell within UNHCR's mandate. As persons with a 'well-founded fear of persecution for reasons of ... political persecution', they were 'certainly as much open to persecution on account of their political beliefs as are anti-communists in communist countries'.⁵⁴ Comments like these would have been unthinkable in an international refugee organization only a few years earlier. By the late 1950s, when Europe's internal refugee problems were supposedly all but solved, the focus of world attention was clearly shifting towards the recognition of a global refugee problem. The shift was exemplified by the UN decision to designate 1959 as World Refugee Year (WRY). As Peter Gatrell has observed, while there had been plenty of earlier initiatives to mobilize popular and governmental support for refugees, they had always been led by diasporic groups and charitable organizations dedicated to soliciting support for particular groups of refugees. Unlike these earlier efforts, WRY was the first movement to build upon notions of a common, global citizenship.⁵⁵

But if 1959 was a turning point, there was still a long way to go. The year 1959 was also one in which a prominent UK official proposed resettling several hundred thousand Chinese refugees in Hong Kong as labourers on sugar plantations in the British Honduras – a proposal that linked emerging post-war ideas about global refugee resettlement with older, colonial understandings of the transnational deployment of Asian labour for the development of colonial export economies.⁵⁶ One of Anghie's key arguments is that non-European states can never fully realize equality of status in the international system because the 'dynamic of difference' – that which serves to distinguish the civilized from the uncivilized – is something that is constantly regenerated and reinscribed under different historical circumstances.⁵⁷ As evidence of this ongoing inscription and reinscription of difference, consider the following excerpt from a 1962 US Congressional Report on Chinese refugees in Hong Kong. After commenting on the scale and significance of the refugee problem in Hong Kong ('the single largest concentration of anti-communist refugees anywhere in the world'), the report went on to caution that 'the same standards and classifications which have been adopted for European and western refugees cannot

automatically be applied in the Far East'. 'Indeed,' the report continued, 'the average Chinese refugee, if approached and asked why he left Red China, would not be able in an intellectual sense to answer questions about Communist oppression. He would state that he did not like the kind of life he had been forced to live and ... the economic and personal restrictions placed upon him. But *coming for the most part from an oriental peasant background*, he would not state that he had fled in order to escape political persecution' (emphasis added).⁵⁸ In this way, the 'dynamic of difference' continued to inform official and popular understandings of the refugee well into the post-war era.

Notes

- 1 An earlier version of the first part of this chapter will appear in the journal *Modern Asian Studies*.
- 2 The exceptions included displaced Turks, Armenians and Assyrians within the League of Nations-mandated territories that had belonged to the former Ottoman Empire, as well as a small number of 'Overseas Chinese' who were resident in China at the end of the Second World War.
- 3 Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge: Cambridge University Press, 2008), 1–2, 24.
- 4 Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009).
- 5 *Nanfang ribao* (南方日报) 26 June 1952; 8 September 1952; 'Beizhu fanguo de Malaiya huaqiao kongsu yingdi baoxing' (被逐返国的马来亚华侨控诉英帝暴行) (Malayan Overseas Chinese deported to China denounce British colonial atrocities) *Xinhua yuebao* (新华月报) 3, 4 (25 December 1950), 311. Although there is no independent verification of the atrocities alleged at the rally, the use of torture by both sides during the Emergency is widely accepted. See Huw Bennett, "A Very Salutory Effect": The Counter-Terror Strategy in the Early Malayan Emergency, June 1948–December 1949, *Journal of Strategic Studies* 32, 3 (2009), 415–44.
- 6 Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), 44; also Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 – Present* (New York: The Free Press, 1986).
- 7 Glen Peterson, *Overseas Chinese in the People's Republic of China* (New York and London: Routledge, 2012).
- 8 Louise Holborn, *The International Refugee Organization: A Specialized Agency of the United Nations: Its Work and History, 1946–1952* (London and New York: Oxford University Press, 1956) and, by the same author, *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951–1972*, two vols. (Methuen, NJ: The Scarecrow Press, Inc., 1975).
- 9 <http://www.unhcr.org/pages/49c3646c1a.html> [accessed 11 September 2014].
- 10 Nevzat Soguk, *States and Strangers: Refugees and Displacements of Statecraft* (Minneapolis and London: University of Minnesota Press, 1999), esp. 102, 107, 111, 117–8.
- 11 Soguk, *States and Strangers*, 262, n. 7.

- 12 Soguk, *States and Strangers*, 67–100. Studies that seek to explain the globalization of the international refugee regime after 1945 tend to follow the same narrative trajectory. Aristide R. Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and Crisis in the Developing World*, Chapter One, 'Who is a Refugee?', 3–33 (New York and Oxford: Oxford University Press, 1989); Ruthstrom-Ruin, *The Globalization of Refugee Aid*, 15–22; and Dennis Gallagher, 'The Evolution of the International Refugee System', *International Migration Review* 23, 3 (Autumn 1989), 579–98.
- 13 Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008).
- 14 Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), 5–11.
- 15 Douglas Howland and Luise White, 'Introduction: Sovereignty and the Study of States', in Douglas Howland and Luise White (eds), *The State of Sovereignty: Territories, Laws, Populations* (Bloomington, IN: Indiana University Press, 2009), 3.
- 16 Henry Wheaton, *Elements of International Law* (Boston: Little, Brown and Co., 1866); John Westlake, *Chapters on the Principles of International Law* (Cambridge: Cambridge University Press, 1894); Thomas Lawrence, *The Principles of International Law* (Boston: D.C. Heath, 1895); Lassa Oppenheim, *International Law: A Treatise*, 2 vols. (London: Longmans, Green and Co., 1905).
- 17 Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 6.
- 18 Anghie, *Imperialism*, 3, 29–30.
- 19 Gerrit W. Gong, *The 'Standard of Civilization' in International Society* (New York: Oxford University Press, 1984).
- 20 Anghie, *Imperialism*, 48, 52, 54–5. The quote from Wheaton appears on 54.
- 21 Anghie, *Imperialism*, 30, 37.
- 22 Keene, *Beyond the Anarchical Society*, 6.
- 23 Anghie, *Imperialism*, 4
- 24 Scholars have recently begun to document such events in an effort to make them more visible to historians. See, for example, A. Dirk Moses, *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (Vancouver: UBC Press, 2009); Richard Gott, *Britain's Empire: Resistance, Repression and Revolt* (London: Verso, 2011).
- 25 M.F. Lindley, *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (New York: Negro Universities Press, 1969), reprint; original 1925.
- 26 Westlake, *Chapters*, 137–8, 140, 143.
- 27 Mark Mazower, *Governing the World: The History of an Idea, 1815 to the Present* (New York: Penguin, 2012), 78–9. Churchill is said to have 'enthusiastically supported' the practice (even convening a conference on the subject in Cairo in 1921). A 1922 circular on 'Suggested Systems of Attack Against Uncivilised Tribes' considered airborne weapons ranging from phosphorous bombs, long-delay bombs, rockets and aerial darts to mustard gas, napalm and crude oil (the latter to pollute water supplies). A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), 71–5.
- 28 Margherita Zanasi, 'Exporting Development: The League of Nations and Republican China', *Comparative Studies in Society and History* 49, 1 (June 2007), 143–69.

- 29 As Cooper explains, 'developmental colonialism was in part a response to the narrowing grounds on which a convincing case could be made for the exercise of state power over people who were "different"'. Frederick Cooper, *Africa Since 1940: The Past of the Present* (Cambridge: Cambridge University Press, 2002), 37.
- 30 The League lawyers, while formulating the concept of 'mandate' territories, drew directly from the writings of the seventeenth-century Spanish jurist Francisco de Vitoria. Vitoria defended the Spanish colonization of the Americas on the grounds that Indians were 'wards' of the Spanish, who ruled in the former's interests. Anghie, *Imperialism*, 144–45.
- 31 Annual reports were submitted to the Permanent Mandates Commission, a body made up of experts in various aspects of colonial administration.
- 32 The full text of the treaty is available at <http://avalon.law.yale.edu/imt/parti.asp> [accessed 23 September 2014].
- 33 The League's 1926 Convention to Suppress the Slave trade and Slavery focused attention on the related question of 'native labour' in colonial territories, and whether the widespread practice of forced labour in colonial territories amounted to a veiled form of slavery. Daniel Maul, 'The International Labor Organization and the Struggle against Forced Labor from 1919 to the Present' *Labor History*, 48, 4 (November 2007), 477–500; Susan Zimmerman, 'Special Circumstances in Geneva: The ILO and the World of Non-Metropolitan Labour in the Interwar Years', in Jasmien van Daele et al. (eds), *ILO Histories: Essays on the International Labour Organization and its Impact on the World During the Twentieth Century* (Bern: Peter Lang, 2010), 221–50.
- 34 Anthony Alcock, *History of the International Labour Organisation* (London: Macmillan, 1971), 83–4.
- 35 International Labour Office, Twelfth Session, 1929, Committee on Forced Labour. Report by M. J. J. Schrieke, Netherlands Government delegate. 15 June 1929, 4. Forced labour was discussed in the ILO's annual International Labour Conference made up of government delegates representing the member state, employer delegates and worker delegates.
- 36 Alcock, *History*, 83–4.
- 37 The full text of the Convention is available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [accessed 23 September 2014].
- 38 When it appeared that the colonial powers' response to the 1930 Convention on Forced Labour was to switch from administrative coercion to labour 'recruitment,' on the grounds that the latter was 'voluntary,' the International Labour Conference adopted a 1932 resolution calling on the ILO's Governing Body to place the question of indentured labour on its agenda. *The Report of the Committee on the Recruiting of Labour in Colonies and in other Territories with Analogous Labour Conditions* was subsequently presented to the 19th Session of the International Labour Conference in 1935. See International Labour Office, Series NL, File No. 1-25.12. Native Labour – Non-Metropolitan Territories Division – Correspondence with UK Colonial Office; International Labour Conference, XIX Session, Geneva 1935, Final Record (Geneva: ILO, n.d.), 854–5.
- 39 International Labour Office, Twelfth Session, 1929, Committee on Forced Labour. Report by M. J. J. Schrieke, Netherlands Government delegate. 15 June 1929, 17. In 1935 the Dutch East Indies government recorded some 379, 341 persons working under forced labour in Java; nearly 1.5 million in Outer Islands under direct colonial administration; and a further 1.3 million in Outer Islands that were under 'autonomous

- native administration'. *Annual Statistical Review of the Netherlands Indies* cited in *Industrial and Labour Information* (Geneva) LX111, 13 (27 September 1937), 417–8.
- 40 David Northrup, *Indentured Labour in the Age of Imperialism* (Cambridge: Cambridge University Press, 1995); Alcock, *History*, 82.
- 41 International Labour Conference XIX Session, Geneva 1935, Final Record (Geneva: ILO, n.d.), 420–2; 443–4.
- 42 Cited in Lake and Reynolds, *Drawing the Global Colour Line*, 337.
- 43 Northrup, *Indentured Labour*.
- 44 Adam M. McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2008).
- 45 For instance, 'Moxige paichi huaqiao' (墨西哥排斥华侨) (Mexico expels Overseas Chinese) *Dongfang zazhi* (东方杂志) 30, 11 (June 1, 1933), 2–3; Qiu Hanping (丘汉平), 'Meiguo paihualü zhi guoqu ji xianzai' (美国排华律之过去及现在) (The past and present reality of US anti-Chinese exclusion laws) *Dongfang zazhi* (东方杂志) 31, 12 (June 16, 1934), 61–72.
- 46 C.F. Yong and R.B. McKenna, *The Kuomintang Movement in British Malaya, 1912–1949* (Singapore: Singapore University Press, 1990), 56–8.
- 47 *Nanfang ribao* (南方日报) 18 June 1952, 26 June 1952. According to Simpson, more than 4000 tonnes of bombs were dropped on Malayan insurgents in one year alone (1952), and between 14,000 and 26,000 ethnic Chinese were deported to China during the course of the Emergency. Simpson, *Human Rights*, 74, 833.
- 48 Alison Bashford, 'Nation, Empire, Globe: The Spaces of Population Debate in the Interwar Years', *Comparative Studies in Society and History* 49, 1 (January 2007), 188; Mazower, *Dark Continent*, 57–8.
- 49 Cooper, *Africa*, 37.
- 50 Mazower, *Dark Continent*, xiii.
- 51 Mazower, *Governing*, 317–318; Simpson, *Human Rights*, 456–61.
- 52 Simpson, *Human Rights*, 295–297, 450–452, 456–7.
- 53 Singapore governor to Arthur Creech Jones, Colonial Office, 5 (?) July 1949, 'Memorandum on racial Discriminatory Legislation, etc'. TNA CO 859/130/5: Colour Discrimination: Singapore 01/01/1948 - 31/12/1949.
- 54 UNHCR archives. Aamir Ali, UNHCR Branch Office, Bangkok to Mr A. A. Hoveyda, UNHCR, Geneva, 29 July 1953. 15/7 Vietnamese Refugees. Fonds 11, Series 1, Box 265. The next occasion was in 1958 when the UN General Assembly authorized UNHCR to assist refugees from Algeria's war of independence against France who had fled into neighbouring Tunisia and Morocco.
- 55 Peter Gatrell, *Free World? The Making of the Modern Refugee* (Oxford: Oxford University Press, 2013), 248.
- 56 Glen Peterson, 'The World's Last Colonization Project? Chinese Refugee Resettlement and the British Honduras' (unpublished paper).
- 57 Anghie, *Imperialism*, 4.
- 58 *Refugee Problem in Hong Kong: Report of a Special Subcommittee of the Committee of the Judiciary House of Representatives* (Washington, DC: Government Printing Office, 1962), 8–9, 29–30.