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The Origins of Totalitarianism

by Hannah Arendt

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CHAPTER NINE: The Decline of the Nation-State and the End of the Rights of Man

It is almost impossible even now to describe what actually happened in Europe on August 4, 1914. The days before and the days after the first World War are separated not like the end of an old and the beginning of a new period, but like the day before and the day after an explosion. Yet this figure of speech is as inaccurate as are all others, because the quiet of sorrow which settles down after a catastrophe has never come to pass. The first explosion seems to have touched off a chain reaction in which we have been caught ever since and which nobody seems to be able to stop. The first World War exploded the European comity of nations beyond repair, something which no other war had ever done. Inflation destroyed the whole class of small property owners beyond hope for recovery or new formation, something which no monetary crisis had ever done so radically before. Unemployment, when it came, reached fabulous proportions, was no longer restricted to the working class but seized with insignificant exceptions whole nations. Civil wars which ushered in and spread over the twenty years of uneasy peace were not only bloodier and more cruel than all their predecessors; they were followed by migrations of groups who, unlike their happier predecessors in the religious wars, were welcomed nowhere and could be assimilated nowhere. Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rootless, the scour of the earth. Nothing which was being done, no matter how stupid, no matter how many people knew and foretold the consequences, could be undone or prevented. Every event had the finality of a last judgment, a judgment that was passed neither by God nor by the devil, but looked rather like the expression of some unreasonably stupid fatality.

Before totalitarian politics consciously attacked and partially destroyed the very structure of European civilization, the explosion of 1914 and its severe consequences of instability had sufficiently shattered the façade of Europe’s political system to lay bare its hidden faults. Such visible exposures were the sufferings of more and more groups of people to whom suddenly the rules of the world around them had ceased to apply. It was precisely the seeming stability of the surrounding world that made each group forced out of its protective boundaries look like an unfortunate exception to
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governments to represent and to protect them and therefore were forced to live either under the law of exception of the Minority Treaties, which all governments (except Czechoslovakia) had signed under protest and never recognized as law, or under conditions of absolute lawlessness.
With the emergence of the minorities in Eastern and Southern Europe and with the stateless people driven into Central and Western Europe, a completely new element of disintegration was introduced into postwar Europe. Deterritorialization became a powerful weapon of totalitarian politics, and the constitutional inability of European nation-states to guarantee human rights to those who had lost nationally guaranteed rights, made it possible for the persecuting governments to impose their standard of values even upon their opponents. Those whom the persecutors had singled out as scum of the earth—Jews, Trotskyites, etc.—actually were received as scum of the earth everywhere; those whom persecution had called undesirable became the "indispensables" of Europe. The official SS newspaper, the Schwarze Korps, stated explicitly in 1938 that if the world was not yet convinced that the Jews were the scum of the earth, it soon would be when undeniably beggars, without nationality, without money, and without passports crossed their frontiers. And it is true that this kind of factual propaganda worked better than Goebbels' rhetoric, not only because it established the Jews as scum of the earth, but also because the incredible plight of an ever-growing group of innocent people was like a practical demonstration of the totalitarian movements' cynical claims that no such thing as inalienable human rights existed and that the affirmations of the democracies to the contrary were mere prejudice, hypocrisy, and cowardice in the face of the cruel majesty of a new world. The very phrase "human rights" became for all concerned—victims, persecutors, and onlookers alike—the evidence of hopeless idealism or flattering feeble-minded hypocrisy.

1:  The "Nation of Minorities" and the Stateless People

MODERN POWER CONDITIONS which make national sovereignty a mockery except for giant states, the rise of imperialism, and the pan-movements un

8 The early persecution of German Jews by the Nazis must be considered as an attempt to spread antisemitism among "those peoples who are friendly disposed to Jews, above all the Western democracies" rather than as an effort to get rid of the Jews, a regular letter from the Ministry of Foreign Affairs to all German authorities abroad shortly after the November pogroms of 1938, stated: "The emigration movement of only about 10,000 Jews has already sufficed to awaken the interest of many countries in the Jewish danger . . . Germany is very interested in maintaining the disposal of Jews . . . the influx of Jews in all parts of the world involves the opposition of the native population and thereby forms the best propoganda for the German Jewish policy. . . . The poorer and therefore more burdensome the im-

By S. Lawford Childs, "Refugees—a Permanent Problem in International Organiza-

1938, published by the International Labor Office.
because only new states, and not even defeated Germany, were bound to them.

The perplexing power vacuum resulting from the dissolution of the Dual Monarchy and the liberation of Poland and the Baltic countries from Czarist despotism was not the only factor that had tempted the statesmen into this disastrous experiment. Much stronger was the impossibility of arguing away any longer the more than 100 million Europeans who had never received the stage of national freedom and self-determination to which colonial peoples already aspired and which was being held out to them. It was indeed true that the role of the Western and Central European proletariat, the oppressed history-suffering group whose emancipation was a matter of life and death for the whole European social system, was played in the East by “peoples without a history.” The national liberation movements of the East were revolutionary in much the same way as the workers’ movements in the West; both represented the “unhistorical” strata of Europe’s population and both strove to secure recognition and participation in public affairs. Since the object was to conserve the European status quo, the granting of national self-determination and sovereignty to all European peoples seemed indeed inevitable; the alternative would have been to condemn them ruthlessly to the status of colonial peoples (something the pan-nationalists had always proposed) and to introduce colonial methods into European affairs.

The point, of course, is that the European status quo could not be preserved and that it became clear only after the downfall of the last remnants of European autocracy that Europe had been ruled by a system which had never taken into account or responded to the needs of at least 25 per cent of her population. This evil, however, was not cured with the establishment of the successor states, because about 30 per cent of their roughly 100 million inhabitants were officially recognized as exceptions who had to be specially protected by minority treaties. This figure, moreover, by no means exhausted the actual situation. The emancipation of nations from dynastic rule and the overthrow of an international autocracy was accompanied by the emancipation of literatures from the “international” language of the learned (Latin first and later French) and the growth of national languages out of the popular vernaculars. It seemed that peoples whose language was fit for literature had reached national maturity per definitionem. The liberation movements of Eastern European nationalities, therefore, started with a kind of philological revival (the results were sometimes grotesque and sometimes very fruitful) whose political function it was to prove that the people possessed a literature and a history of their own, had the right to national sovereignty. For a good summary of Yugoslav history between the two wars, see Propädeutik der Zeitgeschehen, 1932; Band 10, 671 ff.


3 The struggle of the Slovaks against the “Czech” government in Prague ended with the Hitler-supported independence of Slovakia; the Yugoslav constitution of 1921 was “accepted” in Parliament against the wishes of all Croat and Slovene representatives. For a good summary of Yugoslav history between the two wars, see Propädeutik der Zeitgeschehen, 1932; Band 10, 671 ff.

4 Musolini was quite right when he wrote after the Munich crisis: “If Czecho-

5 slovakia finds herself today in what might be called a delicate situation, it is because she was not just Czecho-Slovakia, but Czech-German-Polono-Magyar-Romano-Slovakia.” (Quoted from Herbert Ripka, Munich: Before and After, London, 1939, p. 117.)

6 Of course this was not always a clear-cut alternative. So far nobody has bothered to find out the characteristics similarities between colonial and minority exploitation. Only Jacob Robinson, “Staatsbürgerliche und wirtschaftliche Gleichberechtigung” in Süddeutsche Monatsschrift, 26. Jahrgang, July, 1929, remarks in passing: “A peculiar economic protectionism appeared, not directed against other countries but against certain groups of the population. Surprisingly, certain methods of colonial exploitation could be observed in Central Europe.”
means tells the whole story; it only indicates the difference between peoples with a government of their own and those who supposedly were too small and too scattered to reach full nationhood. The Minority Treaties covered only those nationalities of whom there were considerable numbers in at least two of the succession states, but omitted from consideration all the other nationalities without a government of their own, so that in some of the succession states the nationally frustrated peoples constituted 50 per cent of the total population. The worst factor in this situation was not even that it became a matter of course for the nationalities to be disloyal to their imposed government and for the governments to oppress their nationalities as efficiently as possible, but that the nationally frustrated population was firmly convinced—as was everybody else—that true freedom, true emancipation, and true popular sovereignty could be attained only with full national emancipation, that people without their own national government were deprived of human rights. In this conviction, which was based on the fact that the old national Rights of Man had been ignored by the Minority Treaties themselves, which did not entrust the governments with the protection of different nationalities but charged the League of Nations with the safeguarding of the rights of those who, for reasons of territorial settlement, had been left without national status of their own.

Not that the minorities would trust the League of Nations any more than they had trusted the state peoples. The League, after all, was composed of national statesmen whose sympathies could not but be with the unhappy new governments which were harnessed and opposed on principle by between 25 and 50 per cent of their inhabitants. Therefore the creators of the Minority Treaties were so concerned to secure that new governments more strictly and to point out the "duties" the minorities owed to the new states; it now developed that the Treaties had been conceived merely as a palliative and humane method of assimilation, an interpretation which naturally enraged the minorities. But neither the League of Nations, nor the national aspirations that 1914 were about 100 million peoples whose national aspirations had not been fulfilled. (See Charles Kingsley Webster, "Minorities: History," in Encyclopedia Britannica, 1929.) The population of minorities was estimated at about 25 and 50 million (P. de Azcarate, Minority Problems of the League of Nations, page 56). The actual situation in Czechoslovakia and Yugoslavia was much worse. In the former, a state that constituted with 7,200,000, about 50 per cent of the population, and in the latter, 5,000,000 Serbs formed only 42 per cent of the total. See W. Wieser, Statistisches Handbuch der europäischen Nationalitäten, Vienna, 1931; Otto Hirt, National Minorities in Europe, 1932. Slightly different figures are given by Trumpey, op. cit.

P. de Azcarate, op. cit.: "The Treaties contain no stipulations regarding the 'duties' of minorities towards the States of which they are a part. The Third Ordinary Assembly of the League, however, in 1922, adopted regulations regarding the 'duties' of minorities."

"The French and the British delegates were most outspoken in this respect. Said Briand: 'The process at which we should aim is not the disappearance of the minorities, but a kind of assimilation.' And Sir Asquith, Chamberlain, British representative, declined within a system of sovereign nation-states; if the Minority Treaties had been intended to be more than a temporary remedy for a toppy-turvy situation, then their implied restriction on national sovereignty would have affected the national sovereignty of the older European powers. The representatives of the great nations knew only too well that minorities within nation-states must sooner or later be either assimilated or liquidated. And it did not matter whether they were moved by humanitarian considerations to protect splinter nationalities from persecution, or whether political considerations led them to oppose bilateral treaties between the concerned states and the majority countries of the minorities (after all, the Germans were the strongest of all the officially recognized minorities, both in numbers and economic position); they were neither willing nor able to overlook the laws by which nation-states exist. Neither the League of Nations nor the Minority Treaties would have prevented the newly established states from more or less forcefully assimilating their minorities. The strongest factor against assimilation was the numerical and cultural weakness of the so-called state peoples. The Russian or the Jewish minority in Poland did not feel Polish culture to be superior to its own and neither was particularly impressed by the fact that Poles formed roughly 60 per cent of Poland's population.

The embittered nationalities, completely disregarding the League of Nations, soon decided to take matters into their own hands. They banded together in a minority congress which was remarkable in more than one respect. It contradicted the very idea behind the League treaties by calling itself officially the "Congress of Organized National Groups in European States," thereby nullifying the great labor spent during the peace negotiations to avoid the ominous word "national." This had the important consequence that all "nationalities," and not just "minorities," would join and that the number of "the nation of minorities" grew so considerably that even claimed that "the object of the Minority Treaties is ... to secure ... that minorities of protection and justice which would gradually prepare them to be merged in the national community to which they belonged." (C. A. Macartney, National States and National Minorities, London, 1934, pp. 216, 235).

It is true that some Czech statesmen, the most liberal and democratic of the leaders of national movements, once dreamed of making the Czechoslovak republic a kind of commonwealth. But the reason why even Benes never seriously attempted to effectuate such a solution to his harassing nationality problems was that Switzerland was not a model that could be imitated, but rather a particularly fortunate exception that proved an otherwise established rule. The newly established states did not feel secure enough to abandon a centralized state apparatus and could not trust outright those small self-governing minority bodies of communities and cantons upon whose very extensive powers the Swiss system of federation is based.

Wilson notably, who had been a fervent advocate of genuine "racial, religious, and linguistic rights to the minorities," feared that "national rights would prove harmful insomuch as minority groups thus marked as separate corporate bodies would be rendered thereby "liable to jealousy and attack." "(Oscar J. Janowsky, The Jews and Minority Rights, New York, 1933, p. 351). Macartney, op. cit., p. 4, describes the situation and the "prudent work of the Joint Foreign Committee" that labored to avoid the term "national."
the combined nationalities in the succession states outnumbered the state peoples. But in still another way the "Congress of National Groups" dealt a decisive blow to the League treaties. One of the most baffling aspects of the Eastern European nationality problem (more baffling than the small size and great number of peoples involved, or the "best of mixed populations") was the interregional character of the nationalities which, in case they put their national interests above the interests of their respective governments, made them an obvious risk to the security of their countries. The League treaties had attempted to ignore the interregional character of the minorities by concluding a separate treaty with each country, as though there were two Jewish or German minorities: the Hutsuls in Eastern and Southern Europe. These two groups were the Germans and the Jews. The German minorities in Rumânia and Czechoslovakia voted of course with the Germans, the nation, in Poland and Hungary, and nobody could have expected the Polish Jews, for instance, to remain indifferent to discriminatory practices of the Rumanian government. In other words, national interests and not common interests of minorities so formed the true basis of membership in the Congress, and only the harmonious relationship between the Jews and the Germans (the Weimar Republic had successfully played the role of special protector of minorities) kept it together. Therefore, in 1933 when the Jewish delegation demanded a protest against the treatment of Jews in the Third Reich (a move which they had no right to make, strictly speaking, because German Jews were no minority) and the Germans announced their solidarity with Germany and were supported by a majority (lesser of the two) of the Congress, after the Jewish delegation had left forever, sank into complete insignificance.

The real significance of the Minority Treaties lies not in their practical application but in the fact that they were guaranteed by an international body, the League of Nations. Minorities had existed before, but the


19 "The result of the Peace settlement was that every State in the belt of mixed popula-


15 In 1934 the chairman of the Congress expressly emphasized: "One thing is cer-

11 De Mello Franco, representative of Brazil on the Council of the League of Na-

12 "The first minorities were when the Prussian prince principle of freedom of conscience

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At the time of the Minority Treaties it could be, and was, argued, in their favor, as it were as their excuse, that the older nations enjoyed constitutions which implicitly or explicitly (as in the case of France, the nation par excellence) were founded upon the Rights of Man, that even if there were other nationalities within their borders they needed no additional law for them, and that only in the newly established succession states was a temporary enforcement of human rights necessary as a compromise and exception. The arrival of the stateless people brought an end to this illusion. The minorities were only half stateless, de jure they belonged to some political body even though they needed additional protection in the form of special treaties and guarantees; some secondary rights, such as speaking one's own language and staying in one's own cultural and social milieu, were jealously and halfheartedly protected by an outside body; but other more elementary rights, such as the right to residence and to work, were never touched. The framers of the Minority Treaties did foresee the possibility of wholesale population transfers or the problem of people who had become "undesirable" because there was no country on earth in which they enjoyed the right to residence. The minorities could still be regarded as an exceptional phenomenon, peculiar to certain territories that deviated from the norm. This argument was always tempting because it left the system itself untouched; it has in a way survived the second World War whose peacemakers, convinced of the impracticability of minority treaties, began to "repatriate" nationalities as much as possible in an effort to unscramble "the belt of mixed populations." And this attempt large-scale repatriation was not the direct result of the catastrophic experiences following in the wake of the Minority Treaties; rather, it was hoped that such a step would help to solve the problem which, in the preceding decades, had assumed ever larger proportions and for which an internationally recognized and accepted procedure simply did not exist—the problem of the stateless people.

Much more stubborn in fact and much more far-reaching in consequence has been statelessness, the newest mass phenomenon in contemporary history, and the existence of an ever-growing new people comprised of stateless persons, the most symptomatic group in contemporary politics. Their existence can hardly be blamed on one factor alone, but if we consider the different groups among the stateless it appears that every political event since the end of the first World War inevitably added a new category to those who lived outside the pale of the law, while none of the categories, no matter how the original constellation changed, could ever be renormalized. Among them, we still find that oldest group of stateless people, the Heimatlosen produced by the Peace Treaties of 1919, the dissolution of Austria-Hungary, and the establishment of the Baltic states. Sometimes their real origin could not be determined, especially if at the end of the war they happened not to reside in the city of their birth, sometimes their place of birth was in jeopardy and they were halfheartedly protected by an outside body; but other more elementary rights, such as the right to residence and to work, were never touched. The framers of the Minority Treaties did not foresee the possibility of wholesale population transfers or the problem of people who became "undesirable" because there was no country on earth in which they enjoyed the right to residence. The minorities could still be regarded as an exceptional phenomenon, peculiar to certain territories that deviated from the norm. This argument was always tempting because it left the system itself untouched; it has in a way survived the second World War whose peacemakers, convinced of the impracticability of minority treaties, began to "repatriate" nationalities as much as possible in an effort to unscramble "the belt of mixed populations." And this attempted large-scale repatriation was not the direct result of the catastrophic experiences following in the wake of the Minority Treaties; rather, it was hoped that such a step would help to solve the problem which, in the preceding decades, had assumed ever larger proportions and for which an internationally recognized and accepted procedure simply did not exist—the problem of the stateless people.

"The problem of statelessness became prominent after the Great War. Before the war, provisions existed in some countries, notably in the United States, under which naturalization could be revoked in those cases in which the naturalized person ceased to maintain a genuine attachment to his adopted country. A person who denationalized became stateless. During the war, the principal European States found it necessary to attend their laws of nationality so as to take power to cancel naturalizations" (John Hope Simpson, The Refugee Problem, Institute of International Affairs, Oxford, 1939, p. 231). The class of stateless persons, created through revocation of naturalizations was very small; they established, however, an easy precedent so that, in the interwar period, naturalized citizens were as a rule the first section of a population which became stateless. Mass cancellation of naturalizations, such as the one introduced by Nazi Germany in 1933 against all naturalized Germans of Jewish origin, usually preceded denationalization of citizens by birth in similar categories, and the introduction of laws that made denationalization possible through simple decree, like the ones in Belgium and other Western democracies in the thirties, usually preceded actual mass denationalizations; a good instance is the practice of the Greek government with respect to the Armenian refugees: of 45,000 Armenian refugees 1,000 were naturalized between 1923 and 1928. After 1928, a law which would have naturalized all refugees under twenty-two years of age was suspended, and in 1936, all naturalizations were canceled by the government. (See Simpson, op. cit., p. 41.)

"Twenty-five years after the Soviet regime had dissolved one and a half million Russians, it was estimated that at least 350,000 to 450,000 were still stateless—which is a tremendous percentage if one considers that a whole generation had passed since the initial flight, that a considerable portion had gone overseas, and that another large part had acquired citizenship in different countries through marriage. (See Simpson, op. cit., p. 559; Eugenia M. Kishner, The Displacement of Population in Europe, Montreal, 1943; Winfred N. Hadley, "Can Europe's Refugees Find New Homes?" in The American Friends Service Bulletin (General Relief Bulletin, March, 1932)"

It is true that the United States has placed stateless immigrants on a footing of complete equality with other foreigners, but this has been possible only because this, the country par excellence of immigration, has always considered newcomers as prospective citizens of its own, regardless of their former national allegiances. (2) The American Friends Service Bulletin (General Relief Bulletin, March, 1943) prints the perplexed report of one of their field workers in Spain who had been concerned with the problem of "a man who was born in Berlin, Germany, but who is of Polish origin because of his Polish parents and who is therefore ... Apartheid, but is also reclaiming Ukrainian nationality and has been claimd by the Russian government for repatriation and service in the Red Army."
origin changed hands so many times in the turmoil of postwar disputes that the nationality of its inhabitants changed from year to year (as in Vilna which a French official once termed la capitale des apărători); more often than one would imagine, people took refuge in statelessness after the first World War in order to remain where they were and avoid being deported to a "homeland" where they would be strangers (as in the case of many Polish and Rumanian Jews in France and Germany, mercifully helped by the antisemitic attitude of their respective consuls). Unimportant in himself, apparently just a legal freak, the apartheid received belated attention and consideration when he was joined in his legal status by the postwar refugees who had been forced out of their countries by revolutions, and were grossly denationalized by the victorious governments at home. To this group belong, in chronological order, millions of Russians, hundreds of thousands of Armenians, thousands of Hungarians, hundreds of thousands of Germans, and more than half a million Spaniards—to enumerate only a few. The behavior of these governments may appear today to be the natural consequence of civil war, but at the time mass denationalizations were something entirely new and unforeseen. They presupposed a state structure which, if it was not yet fully totalitarian, at least would not tolerate any opposition and would rather lose its citizens than harbor people with different views. They revealed, moreover, what had been hidden throughout the history of national sovereignty, that sovereignties of neighboring countries could come into deadly conflict not only in the extreme case of war but in peace. It now became clear that full national sovereignty was possible only as long as the comity of European nations existed; for it was this spirit of unorganized solidarity and agreement that prevented any government's exercise of its full sovereign power. Theoretically, in the sphere of international law, it had always been true that sovereignty is nowhere more absolute than in matters of "emigration, naturalization, nationality, and expulsion"; the point, however, is that practical consideration and the silent acknowledgement of common interests restrained national sovereignty until the rise of totalitarian regimes. One is almost tempted to measure the degree of totalitarian infection by the extent to which the concerned governments use their sovereign right of denationalization (and it would be quite interesting then to discover that Mussolini's Italy was rather reluctant to treat its refugees this way). But one should bear in mind at the same time that there was hardly a country left on the Continent that did not pass between the two wars some new legislation which, even if it did not use this right...
regard to those who were citizens by birth, now we have reached the point where even free democracies, as, for instance, the United States, were seriously considering depriving native Americans who are Communists of their citizenship. The sinister aspect of these measures is that they are being considered in all innocence. Yet, one need only remember the extreme care of the Nazis, who insisted that all Jews of non-German nationality "should be deprived of their citizenship either prior to, or, at the latest, on the day of deportation" 26 (for German Jews such a decree was not needed, because in the Third Reich there existed a law according to which all Jews who had left the territory—including, of course, those deported to a Polish camp—automatically lost their citizenship) in order to realize the true implications of statelessness.

The first great damage done to the nation-states as a result of the arrival of hundreds of thousands of stateless people was that the right of asylum, the only right that had ever figured as a symbol of the Rights of Man in the sphere of international relationships, was being abolished. The time-honored and sacred history dates back to the very beginnings of regulated political life. Since ancient times it has protected both the refugee and the land of refuge from situations in which people were forced to become outlaws through circumstances beyond their control. It was the only modern remnant of the medieval principle that quid quod est in territorio est de territorio, for in all other cases the modern state tended to protect its citizens beyond its own borders and to make sure, by means of reciprocal treaties, that they remained subject to the laws of their country. But though the right of asylum continued in function in a world organized into nation-states and, in individual instances, even survived both World Wars, it was soon to be an anachronism and in conflict with the international rights of the state. Therefore it cannot be found in written law, in an international or international agreement, and the Covenant of the League of Nations never even so much as mentioned it. 27 It shares, in this respect, the fate of the Rights of Man, which also never became law but led a somewhat shadowy existence as an appeal in individual exceptional cases for which normal legal institutions did not suffice. 28

The second great shock that the European world suffered through the arrival of the refugees 29 was the realization that it was impossible to get rid of them or transform them into nationals of the country of refuge. From the beginning everybody had agreed that there were only two ways to solve the problem: repatriation or naturalization. 30 When the example of the first Russian and Armenian waves proved that neither way gave any tangible results, the countries of refuge simply refused to recognize statelessness in all later arrivals, thereby making the situation of the refugees even more intolerable. 31 From the point of view of the governments concerned it was understandable enough that they should keep reminding the League of Nations that "its Refugee work must be liquidated with the utmost rapidity"; 32 they had many reasons to fear that those who had been ejected

22 The only guardians of the right of asylum were the few societies whose special aim was the protection of human rights. The most important of them, the French-sponsored Ligue des Droits de l'Homme with branches in all democratic European countries, believed as though the question were still merely the saving of individuals persecuted for their political convictions and activities. This assumption, pointless already in the case of millions of Russian refugees, became simply absurd for Jews and Armenians. The League was neither ideologically nor administratively equipped to handle the new problems. Since it did not want to face the new situation, it transferred it into functions which were much better fulfilled by any of the many charity agencies which the refugees had built up themselves with the help of their compatriots. When the Rights of Man became the object of an especially inefficient charity organization, the concept of human rights naturally was discredited a little more.

23 The many and varied efforts of the legal profession to simplify the problem by stating a difference between the stateless person and the refugee—such as maintaining "that a stateless person is characterized by the fact of his having no national allegiance, whereas that of a refugee is determined by his having lost diplomatic protection" (Simpson, op. cit. p. 232)—were always defeated by the fact that "all refugees are for practical purposes stateless" (Simpson, op. cit. p. 4).

24 The most ironical formulation of this general expectation was made by R. Yedwall in "Some International Aspects of the Refugee Quasi-state" in British Yearbook of International Law, 1939: "The status of a refugee is not, of course, a permanent one. The aim is that he should rid himself of that status as soon as possible, either by repatriation or by naturalization in the country of refuge."

25 Only the Russians, in every respect the aristocracy of the stateless people, and the Armenians, who were assimilated in the Russian state, were ever officially recognized as "stateless," placed under the protection of the League of Nations Nansen Office, and given traveling papers. 26 Childs, op. cit. The reason for this desperate attempt at promptness was the fear of all governments that even the smallest positive gesture "might encourage countries to get rid of their unwanted people and that many might emigrate who would otherwise remain in their countries even under serious disabilities" (Louise W. Holborn, "The Legal Status of Political Refugees, 1920-38", in American Journal of International Law, 1938).

See also Georges Mauro (in Esprit, 6e annee, No. 82, July, 1939, p. 900): "An assumption of the German refugees to the status of other refugees who were taken care of by the Nansen office would naturally have been the simplest and best solution.
from the old trinity of state-people-territory, which still formed the basis of European organization and political civilization, formed only the beginning of an increasing movement, were only the first trickle from an ever-growing reservoir. It was obvious, and even the Evian Conference recognized it in 1938, that all German and Austrian Jews were potentially stateless; and it was only natural that the minority countries should be encouraged by Germany's example to try to use the same methods for getting rid of some of their minority populations. Among the minorities the Jews and the Armenians ran the greatest risks and soon showed the highest proportion of statelessness; but they proved also that minority treaties did not necessarily offer protection but could also serve as an instrument to single out certain groups for eventual expulsion.

Almost as frightening as these new dangers arising from the old trouble spots of Europe was the entirely new kind of behavior of all European nations in "ideological" struggles. Not only were people expelled from country and citizenship, but more and more persons of all countries, including the Western democracies, volunteered to fight in civil wars abroad (something which up to then only a few idealists or adventurers had done) even when this meant cutting themselves off from their national communities. This was the lesson of the Spanish Civil War and one of the reasons why the governments were so frightened by the International Brigade. Matters would not have been quite so bad if this had meant that people no longer clung so closely to their nationality and were ready eventually to be assimilated into another national community. But this was not at all the case. The stateless people had already shown a surprising stubbornness in retaining their nationality; in every sense the refugees represented separate foreign minorities who frequently did not care to be naturalized, and they never banded together, as the minorities had done temporarily, to defend common interests.

The International Brigade was organized into national battalions in which the Germans felt they fought against Hitler and the Italians against Mussolini, just as a few years later, in the Resistance, the Spanish refugees felt they fought against Franco when they helped the French against Vichy. What the European governments were so afraid of in this process was that the new stateless people could no longer be said to be of dubious or doubtful nationality (de nationalité indéterminée). Even though they had renounced their citizenship, no longer had any connection with or loyalty to their country of origin, and did not identify their nationality with a visible, fully recognized government, they retained a strong attachment to their nationality. National splinter groups and minorities, without deep roots in their territory and with no loyalty or relationship to the state, had ceased to be characteristic only of the East. They had by now infiltrated, as refugees and stateless persons, the older nation-states of the West.

The real trouble started as soon as the two recognized remedies, repatriation and naturalization, were tried. Repatriation measures naturally failed when there was no country to which these people could be deported. They failed not because of consideration for the stateless person (as it may appear today when Soviet Russia claims its former citizens and the democratic countries must protect them from a repatriation they do not want); and not because of humanitarian sentiments on the part of the countries that were swamped with refugees; but because neither the country of origin nor any other agreed to accept the stateless person. It would seem that the very unestablishability of the stateless person should have prevented a government's expelling him; but since the man without a state was "an anomaly for whom there is no appropriate niche in the framework of the general law"—an outlaw by definition—he was completely at the mercy of the police, which itself did not worry too much about committing a few illegal acts in order to diminish the country's burden of indesirables. In other words, the state, insisting on its sovereign right of expulsion, was forced by

The behavior of Russian refugees is quite characteristic. The Nansen passport described its bearer as "personne d'origine russe," because "one would not have dared to tell the Russian émigré that he was without nationality or of doubtful nationality. (See Marc Vichneae, "Le Statut International des Apatrides," in Revue des Courts de l'Académie de Droit International, Vol. XXXIII, 1933.) An attempt to provide all stateless persons with uniform identity cards was bitterly contested by the holders of Nansen passports, who claimed that their passport was "a sign of legal recognition of their peculiar status." (See Berming, op. cit.) Before the outbreak of the war even refugees from Germany were far from eager to be merged with the mass of the stateless, but preferred the description "réfugié provisoire d'Allemagne" with its remnant of nationality.

More convincing than the complaints of European countries about the difficulties of assimilating refugees are statements from overseas which agree with the former that "of all classes of European immigrants the least easy to assimilate are the South, Eastern, and Central Europeans. (See "Canada and the Doctrine of Peaceful Changes," edited by H. P. Angus in International Studies Conference: Demographic Questions: Peaceful Changes, 1937, pp. 173-180.)"

Berming, op. cit.

22 A circular letter of the Dutch authorities (May 7, 1938) expressly considered each refugee as an "undesirable alien," and defined a refugee as an "alien who left his country under the pressure of circumstances." See "L'Emigration, Problème Révolutionnaire," in Esprit, 7e année, No. 82, July, 1939, p. 602.
the illegal nature of statelessness into admittedly illegal acts.54 It smuggled its expelled stateless into the neighboring countries, with the result that the latter retaliated in kind. The ideal solution of repatriation, to smuggle the refugee back into his country of origin, succeeded only in a few prominent instances, partly because a nontotalitarian police was still restrained by a few rudimentary ethical considerations, partly because the stateless person was as likely to be smuggled back from his home country as from any other, and last but not least because the whole traffic of illegal deportations to the neighboring countries. The consequences of this smuggling were petty wars between the police at the frontiers, which did not exactly contribute to good international relations, and an accumulation of jail sentences for the stateless who, with the help of the police of one country, had passed "illegally" into the territory of another.

Every attempt by international conferences to establish some legal status for stateless people failed because the same common international territory to which an alien, within the framework of existing law, must be deportable. All discussions about the refugee problems revolved around this recognition: How can the refugee be made deportable again? The second World War and the DP camps were not necessary to show that the only practical substitute for a nonexistent homeland was an internment camp. Indeed, as early as the thirties this was the only "country" the world had to offer the stateless.55

Naturalization, on the other hand, also proved to be a failure. The whole naturalization system of European countries fell apart when it was confronted with stateless people, and this for the same reasons that the right of asylum had been set aside. Essentially naturalization was an appendage to the nation-state's legislation that reckoned only with "nationals," people born in its territory and citizens by birth. Naturalization was needed in exceptional cases, for single individuals whom circumstances pushed or driven into a foreign territory. The whole process broke down when it be-

\[\text{Lawrence F. J. Weiss, op. cit., describes the spread of illegality as follows:} \]

"The initial illegal act of the denationalizing government . . . puts the expelling country in the position of an offender of international law, because its authorities violate the law of the country to which the stateless person is expelled. The latter country, in turn, cannot . . . refuse to receive him . . . except in violation of international law. [The stateless person finds himself before the following alternative]: either he violates the law of the country where he resides . . . or he violates the law of the country to which he is expelled."

Sir John Foster Williams ("Denationalisation," in British Year Book of International Law, VII, 1927) concludes from this situation that denationalisation is contrary to international law; yet at the Conference pour la Codification du Droit International at the Hague in 1930, it was only the French government which maintained that "loss of nationality . . . should not constitute a punishment . . . nor be pronounced in order to get rid of an undesirable person . . . to which the refugee could be returned even from abroad, which, in other words, should replace a homeland for deportation purposes."

\[\text{DECLINE OF NATION-STATE; END OF RIGHTS OF MAN} \]

Two instances of mass naturalization in the Near East were clearly exceptional: one involved Greek refugees from Turkey whom the Greek government naturalized in May 1927 because it was actually a matter of repatriation of a Greek minority and not of foreign citizens; the other benefited Armenian refugees from Turkey in Syria, Lebanon, and other formerly Turkish countries, that is, a population with which the Near East had shared common citizenship only a few years ago.

\[\text{Where a wave of refugees found members of their own nationality already settled in the country to which they immigrated—as was the case with the Armenians and Italians in France, for example, and with Jews everywhere—a certain retrogression set in in the assimilation of those who had been there longer. For their help and solidarity could be mobilized only by appealing to the original nationality they had in common with the newcomers. This point was of immediate interest to countries flooded by refugees but unable or unwilling to give them direct help or the right to work. In all these cases, national feelings of the older group proved to be "one of the main factors in the successful establishment of the refugees." (Simpson, op. cit., pp. 43-61), but by appealing to such national conscience and solidarity, the receiving countries naturally increased the number of unassimilated aliens. To take one particularly interesting instance, 10,000 Italian refugees were enough to postpone indefinitely the assimilation of almost one million Italian immigrants in France.}

\[\text{The French government, followed by other Western countries, introduced during the thirties an increasing number of restrictions for naturalized citizens: they were eliminated from certain professions for up to ten years after their naturalization, they had no political rights, etc.} \]
culty to distinguish clearly between stateless refugees and normal resident aliens. Once the government tried to use its right and repatriate a resident alien against its will, he would do his utmost to find refuge in statelessness. During the first World War enemy aliens had already discovered the great advantage of statelessness. But what then had been the running of individuals who found a loophole in the law who had now become the instinctive reaction of masses. France, Europe's greatest immigrant-reception area, because she had regulated the chaotic labor market by calling in alien workers in times of need and deporting them in times of unemployment and crisis, taught her aliens a lesson about the advantages of statelessness which they did not readily forget. After 1935, the year of mass repatriation by the Laval government from which only the stateless were surved, so-called "economic immigrants" and other groups of earlier origin—Balkans, Italians, Poles, and Spaniards—mixed with the waves of refugees into a tangled that never again could be unraveled.

Much worse than what statelessness did to the time-honored and necessary distinction between nationals and foreigners, and to the sovereign right of states in matters of nationality and expulsion, was the damage suffered by the very structure of legal national institutions when a growing number of residents had to live outside the jurisdiction of these laws and without being protected by any other. The stateless person, without right to residence and without the right to work, had of course customarily to transgress the law. He was liable to jail sentences without ever committing a crime. More than that, the entire hierarchy of values which prevailed in civilized countries was revered in his case. Since he was the anomaly for whom the general law did not provide, it was better for him to become an anomaly for which it did provide, that of the criminal.

The best criterion by which to decide whether someone has been forced outside the pale of the law is to ask if he would benefit by committing a crime. If a small burglary is likely to improve his legal position, temporarily, one may be sure he has been deprived of human rights. For then a criminal offense becomes the best opportunity to regain some kind of human equality, even if it be as a recognized exception to the norm. The one important fact is that this exception is provided for by law. As a criminal even a stateless person will not be treated worse than another criminal, that is, lie will be treated like everybody else. Only as an offender against the law can he gain protection from it. As long as his trial and his sentence last, he will be safe from that arbitrary police rule against which there are no lawyers and no appeals. The same man who was in jail yesterday because of his mere presence in this world, who had no rights whatever and lived under threat of deportation, or who was dispatched without sentence and without trial to some kind of internment because he had tried to work and make a living, may become almost a full-fledged citizen because of a little theft. Even if he is penniless he can now get a lawyer, complain about his jailers, and he will be listened to respectfully. He is no longer the scum of the earth but important enough to be informed of all the details of the law under which he will be tried. He has become a respectable person.

A much less reliable and much more difficult way to rise from an unrecognized anomoly to the status of recognized exception would be to become a genius. Just as the law knows only one difference between human beings, the difference between the normal noncriminal and the anomalous criminal, so a conformist society has recognized only one form of determined individualism, the genius. European bourgeois society wanted the genius to stay outside of human laws, to be a kind of monster whose chief social function was to create excitement, and it did not matter if he actually was an outlaw. Moreover, the loss of citizenship deprived people not only of protection, but also of all clearly established, officially recognized identity, a fact for which their eternal fevers towards to obtain at least birth certificates from the country that denationalized them was a very exact symbol, one of their problems was solved when they achieved the degree of distinction that will rescue a man from the huge and nameless crowd. Only fame will eventually answer the repeated complaint of refugees of all social strata that "nobody here knows who I am"; and it is true that the chances of the famous refugee are improved just as a dog with a name has a better chance to survive than a stray dog who is just a dog in general.

The nation-state, incapable of providing a law for those who had lost the protection of a national government, transferred the whole matter to the police. This was the first time the police in Western Europe had received authority to act on its own, to rule directly over people; in one sphere of public life it was no longer an instrument to carry out and enforce the law, but had become a ruling authority independent of government and ministries. Its strength and its emancipation from law and government grew in direct proportion to the influx of refugees. The greater the ratio of state...

In practical terms, any sentence meted out to him will be of small consequence compared with an expulsion order, cancellation of a work permit, or a decree sending him into an internment camp. A West Coast Japanese-American who was in jail when the army ordered the internment of all Americans of Japanese ancestry would not have been forced to liquidate his property at too low a price; he would have remained right where he was, armed with a lawyer to look after his interests; and if he was as lucky as to receive a long sentence, he might have retained right live and peaceful to his former business and profession, even that of a professional thief. His jail sentence guaranteed him the constitutional rights that nothing else—no protests of loyalty and no appeals—could have obtained for him once his citizenship had become doubtful.

The fact that the same principle of formation of an elsa frequently worked in totalitarian concentration camps, where the "aristocracy" was composed of a majority of criminals and a few "geniuses," that is criminals and artists, shows how closely related the social positions of these groups are.

In France, for instance, it was a matter of record that an order of expulsion emanating from the police was much more serious than one which was issued "only" by the Ministry of Interior and that the Minister of Interior could only in rare cases cancel a police expulsion, while the opposite procedure was often merely a question of bribery. Constitutionally, the police is under the authority of the Ministry of Interior.
less and potentially stateless to the population at large—in prewar France it had reached 10 per cent of the total—the greater the danger of a gradual transformation into a police state.

It goes without saying that the totalitarian regimes, where the police had risen to the peak of power, were especially eager to consolidate this power through the domination over vast groups of people, who, regardless of any offenses committed by individuals, found themselves anyway beyond the pale of the law. In Nazi Germany, the Nuremberg Laws with their distinction between Reich citizens (full citizens) and nationals (second-class citizens without political rights) had paved the way for a development in which eventually all nationals of "alien blood" could lose their nationality by official decree; only the outbreak of the war prevented a corresponding legislation, which had been prepared in detail. On the other hand, the increasing groups of stateless in the non-totalitarian countries led to a form of lawlessness, organized by the police, which practically resulted in a co-ordination of the tree world with the legislation of the totalitarian countries. Thus the concentration camps are ultimately provided for the same groups in all countries, even though there were considerable differences in the treatment of their inmates, was all the more characteristic as the selection of the groups was left exclusively to the initiative of the totalitarian regimes: if the Nazis put a person in a concentration camp and if he made a successful escape, say, to Holland, the Dutch would put him in an internment camp. Thus long before the outbreak of the war the police in a number of Western countries, under the pretext of "national security," had on their own initiative established close connections with the Gestapo and the GPU, so that one might say there existed an independent foreign policy of the police. This police-directed foreign policy functioned quite independently of the official governments; the relations between the Gestapo and the French police were never more cordial than at the time of Louis Blum's populist-frank government, which was guided by a decidedly anti-German policy. Contrary to the governments, the various police organizations were never overburdened with "prejudices" against any totalitarian regime; the information and denunciations received from GPU agents were just as welcome to them as those from Fascist or Gestapo agents. They knew about the eminent role of the police apparatus in all totalitarian regimes, they knew about its elevated social status and political importance, and they never harbored to conceal their sympathies. That the Nazis eventually met with so disgracefully little resistance from the police in the countries they occupied, and that they were able to organize terror as much as they did with the assistance of these local police forces, was due at least in part to the powerful position which the police had achieved over the years in their unrestricted and arbitrary domination of stateless and refugees.

Both in the history of the "nation of minorities" and in the formation of a stateless people, Jews have played a significant role. They were at the head of the so-called minority movement because of their great need for protection (matched only by the need of the Armenians) and their excellent international connections, but above all because they formed a majority in no country and therefore could be regarded as the "minority par excellence," i.e., the only minority whose interests could be defended only by internationally guaranteed protection.

The special needs of the Jewish people were the best possible pretext for denying that the Treaties were a compromise between the new nations' tendency forcefully to assimilate alien peoples and nationalities who for reasons of expediency could not be granted the right to national self-determination. A similar incident made the Jews prominent in the discussion of the refugee and statelessness problem. The first Heimtafel or asparites, as they were created by the Peace Treaties, were for the most part Jews who came from the succession states and were unable to find or unwilling to place themselves under the new minority protection of their homelands. Not until Germany forced German Jews into emigration and statelessness did they form a very considerable portion of the stateless people. But in the years following Hitler's successful persecution of German Jews all the minority countries began to think in terms of expatriating their minorities, and it was only natural that they should start with the minority par excellence, the only nationality that actually had no other protection than a minority system which by now had become a mockery.

The notion that statelessness is primarily a Jewish problem was a pre-

44 On the role of the Jews in formulating the Minority Treaties, see Macartney, op. cit., pp. 6, 213, 281 and passim; David Erbe, Le Statut juridique des Minorités en Europe, Paris, 1932, pp. 11 ff.; Oscar J. Janowsky, op. cit.

45 This was by no means only a notion of Nazi Germany, though only a Nazi author dared to express it: "It is true that a refugee question will continue to exist even..."
text used by all governments who tried to settle the problem by ignoring it. None of the statesmen was aware that Hitler's solution of the Jewish problem, first to reduce the German Jews to a nonrecognized minority in Germany, then to drive them as stateless people across the borders, and finally to gather them back from everywhere in order to ship them to extermination camps, was an eloquent demonstration to the rest of the world how really to "liquidate" all problems concerning minorities and stateless. After the war it turned out that the Jewish question, which was considered the only insoluble one, was indeed solved—namely, by means of a colonized and then conquered territory—but this solved neither the problem of the minorities nor the stateless. On the contrary, like virtually all other events of our century, the solution of the Jewish question merely produced a new category of refugees, the Arabs, thereby increasing the number of the stateless and rootless by another 700,000 to 800,000 people. And what happened in Palestine within the smallest territory and in terms of hundreds of thousands was then repeated in India on a large scale involving many millions of people. Since the Peace Treaties of 1919 and 1920 the refugees and the stateless have attached themselves like a curse to all the newly established states on earth which were created in the image of the nation-state.

For these new states this curse bears the germs of a deadly sickness. For the nation-state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals. Laws that are not equal for all revert to rights and privileges, something contrary to the very meaning of a people. From the beginning the paradox involved in declaring the illegitimacy and their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police.

II: The Perplexities of the Rights of Man

The Declaration of the Rights of Man at the end of the eighteenth century was a turning point in history. It meant nothing more nor less than that from then on Man, and not God's command or the customs of history, should be the source of Law. Independent of the privileges which history had bestowed upon certain strata of society or certain nations, the declaration indicated man's emancipation from all tutelage and announced that he had now come of age.

When there is no longer a Jewish question, but since Jews form such a high percentage of the refugees, the refugee question will be much simplified" (Kubermann, "Das internationale Flüchtlingsproblem", in Archiv für Politik, Bd. 29, Heft 3, 1939).

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Beyond this, there was another implication of which the framers of the declaration were only half aware. The proclamation of human rights was also meant to be a much-needed protection in the new era where individuals were no longer secure in the estates to which they were born or sure of their equality before God as Christians. In other words, in the new secularized and emancipated society, men were no longer sure of these social and human rights which until then had been outside the political order and guaranteed not by government and constitution, but by social, spiritual, and religious forces. Therefore throughout the nineteenth century, the consensus of opinion was that human rights had to be invoked whenever individuals needed protection against the new sovereignty of the state and the new arbitrariness of society.

Since the Rights of Man were proclaimed to be "inaeliable," irrededucible to and undeniable from other rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal. No special law, moreover, was deemed necessary to protect them because all laws were supposed to rest upon them. Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people's sovereignty (different from that of the prince) was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the "inalienable" rights of man would find their guarantee and become an inalienable part of the right of the people to sovereign self-government.

In other words, Man had already appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a mass of people. The clearest proof of their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police.
turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them. Or when, as in the case of the minorities, an international body arrogated to itself a nongovernmental authority, its failure was apparent even before its measures were fully revealed; not only were the governments more or less openly opposed to this encroachment on their sovereignty, but the concerned nationalities themselves did not recognize a nonnational guarantee, mistrusted everything which was not clear-cut support of their "national" (as opposed to their mere "linguistic, religious, and ethnic") rights, and preferred either, like the Germans or Hungarians, to turn to the protection of the "national" mother country, or, like the Jews, to some kind of interterritorial solidarity. 4

The stateless people were as convinced as the minorities that loss of national rights was identical with loss of human rights, that the former inevitably entailed the latter. The more they were excluded from right in any form, the more they tended to look for a reintegration into nations they had lost in their own national community. The Russian refugees were only the first to insist on their nationality and to defend themselves furiously against attempts to lump them together with other stateless people. Since them, not a single group of refugees or Displaced Persons has failed to develop a fierce, violent group consciousness and to clamor for rights as—and only as—Frenchmen or Poles or Jews or Germans, etc. 4

Even worse was that all societies formed for the protection of the Rights of Man, all attempts to arrive at a new bill of human rights were sponsored by marginal figures by a few international jurists without political experience or professional philanthropists supported by the uncertain sentiments of professional idealists. The groups they formed, the declarations they issued, showed an uncanny similarity in language and cantus in so many of the societies for the prevention of cruelty to animals. No state, no political figure of any importance could possibly take them seriously; and none of the liberal or radical parties in Europe thought it necessary to incorporate into their program a new declaration of human rights. Neither, before nor after the second World War have the victims themselves ever invoked these fundamental rights, which were so evidently denied them, in their many attempts to find a way out of the barbed wire labyrinth into which events had driven them. On the contrary, the victims shared the disdain

4 Pithetic instances of this exclusive confidence in national rights were the congress, before the second World War, of nearly 75 per cent of the German minority in the Italian Tyrol to leave their homes and revitalize in Germany, the voluntary repatriation of a German island in Slovenia (which was fought over, or, immediately after the close of the war, the unanimous rejection by Jewish refugees in an Italian DP camp of an offer of mass naturalization by the Italian government. In the face of the experience of European peoples between the two wars, it would be a serious mistake to interpret this behavior simply as another example of fanatic nationalistic sentiment; these people no longer felt sure of their elementary rights if these were not protected by a government to which they belonged by birth. See Eugene M. Kulischer, op. cit.
nothing to do with any material problem of overpopulation; it was a problem not of space but of political organization. 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 organized closed communities found himself thrown out of the family of nations altogether.\textsuperscript{16}

The second loss which the rightless suffered was the loss of government protection, and this did not imply just the loss of legal status in their own, but in all countries. Treaties of reciprocity and international agreements have woven a web around the earth that makes it possible for the citizen of every country to take his legal status with him no matter where he goes (so that, for instance, a German citizen under the Nazi regime might not be able to enter a mixed marriage abroad because of his race). But, whoever is no longer caught in it finds himself out of legality altogether (thus during the last war stateless people were invariably in a worse position than enemy aliens who were still indirectly protected by their governments through international agreements).

By itself the loss of government protection is no more unprecedented than the loss of a home. Civilized countries did offer the right of asylum to those who, for political reasons, had been persecuted by their governments, and this practice, though never officially incorporated into any constitution, has functioned well enough throughout the nineteenth and even in our century. The trouble arose when it appeared that the new categories of persecuted were far too numerous to be handled by an unofficial practice destined for exceptional cases. Moreover, the majority could hardly qualify for the right of asylum, which implicitly presupposes political or religious convictions which were not outlawed in the country of refuge. The new need of persecuted not because of what they had done or thought, but because of what they unchangeably were—born into the wrong kind of race or the wrong kind of class or drafted by the wrong kind of government (as in the case of the Spanish Republican Army).\textsuperscript{17}

The more the number of rightless people increased, the greater became the temptation to pay less attention to the deeds of the persecuting governments than to the status of the persecuted. And the first glaring fact was that these people, though persecuted under some political pretext, were no

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\textsuperscript{16} The few chances for reintegration open to the new migrants were mostly based on their nationality: Spanish refugees, for instance, were welcomed to a certain extent in Mexico. The United States, in the early twenties, adopted a quota system according to which each nationality already represented in the country received, so to speak, the right to receive a number of former countrymen proportionate to its numerical part in the total population.

\textsuperscript{17} Now dangerous it can be to be innocent from the point of view of the persecuting government, became very clear when, during the last war, the American government offered asylum to all those German refugees who were threatened by the extradition paragraph in the German-French Alliance. The condition was that the applicant could prove that he had done something against the Nazi regime. The proportion of refugees from Germany who were able to fulfill this condition was very small, and they, strangely enough, were not the people who were most in danger.
law exists for them, not that they are oppressed but that nobody wants even to oppress them. Only in the last stage of a rather lengthy process is their right to live threatened; only if no body can be found to "claim" them, may their lives be in danger. Even the Nazis started their extermination of Jews by first depriving them of all legal status (the status of second-class citizenship) and cutting them off from the world of the living by herding them into ghettos and concentration camps; and before they set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people. The point is that a condition of complete rightlessness was created before the right to live was challenged.

The same is true even to an ironical extent with regard to the right of freedom which is sometimes considered to be the very essence of human rights. There is no question that those outside the pale of the law may have more freedom of movement than a lawfully imprisoned criminal or that they enjoy more freedom of opinion in the internment camps of democratic countries than they would in any ordinary despotism, not to mention in a totalitarian country. But neither physical safety—being fed by the state or 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.

These last points are crucial. 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. Something must be fundamentally less than freedom and justice, which are aeas, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to what they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and

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opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any "uncivilized" spot on earth, because whether we like it or not we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.

Before this, what we must call a "human right" today would have been thought of as a general characteristic of the human condition which no tyrant could take away. Its loss entails the loss of the relevance of speech (and man, since Aristotle, has been defined as a being commanding the power of speech and thought), and the loss of all human relationship (and man, again since Aristotle, has been thought of as the "political animal," that is one who by definition lives in a community), the loss, in other words, of some of the most essential characteristics of human life. This was to a certain extent the plight of slaves, whom Aristotle therefore did not count among human beings. Slavery's fundamental offense against human rights was not that it took liberty away (which can happen in many other situations), but that it excluded a certain category of people even from the possibility of fighting for freedom—a fight possible under tyranny, and even under the desperate conditions of modern terror (but not under any conditions of concentration-camp life). Slavery's crime against humanity did not begin when one people defeated and enslaved its enemies (though of course this was bad enough), but when slavery became an institution in which some men were "born" free and others slave, when it was forgotten that it was man who had deprived his fellow-men of freedom, and when the sanction for the crime was attributed to nature. Yet in the light of recent events it is possible to say that even slaves still belonged to some sort of human community; their labor was needed, used, and exploited, and this kept them within the pale of humanity. To be a slave was after all to have a distinctive character, a place in society—more than the abstract nakedness of being human and nothing but human. Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a pittance itself expels him from humanity.

The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the "nature" of man—whereby it makes relatively little difference whether this nature is visualized in terms of the natural law or in terms of a being created in the image of God, whether it concerns "natural" rights or divine commands. The decisive factor is that these rights and the human dignity they bestow should remain valid and real even if only a single human
being existed on earth; they are independent of human plurality and should remain valid even if a human being is expelled from the human community. When the Rights of Man were proclaimed for the first time, they were regarded as being independent of history and the privileges which history had accorded certain strata of society. The new independence constituted the newly discovered dignity of man. From the beginning, this new dignity was of a rather ambiguous nature. Historical rights were replaced by natural rights, "nature" took the place of history, and it was tacitly assumed that nature was less alien than history to the essence of man. The very language of the Declaration of Independence as well as of the Déclaration des Droits de l'Homme—"inalienable," "given with birth," "self-evident truths"—implies the belief in a kind of human "nature" which would be subject to the same laws of growth as that of the individual, and from which rights and laws could be deduced. Today we are perhaps better qualified to judge exactly what this human "nature" amounts to; in any event it has shown us potentialities that were neither recognized nor even suspected by Western philosophy and religion; and which for more than three thousand years and defined and redefined this "nature." But it is not only the, as it were, human aspect of nature that has become questionable to us. Ever since man learned to master it to such an extent that the destruction of all organic life on earth with man-made instruments has become conceivable and technically possible, he has been alienated from nature. Ever since a deeper knowledge of natural processes instilled serious doubts about the existence of natural laws at all, nature itself has assumed a sinister aspect. How should one be able to deduce laws and rights from a universe which apparently knows neither the one nor the other category?

Man of the twentieth century has become just as emancipated from nature as the eighteenth-century man was from history. History and nature become equally alien to us, namely, in the sense that the essence of man can no longer be comprehended in terms of either category. On the other hand, humanity, which for the eighteenth century, in Kantian terminology, was no more than a regulative idea, has today become an inescapable fact. This new situation, in which "humanity" has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. For, contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, a sphere that is above the nations does not exist. Furthermore, this dilemma would by no means be eliminated by the establishment of a "world government." Such a world government is indeed within the realms of possibility, but one may suspect that in reality it might differ considerably from the version promoted by idealistic-minded organizations. The crimes against human rights, which have become a specialty of totalitarian regimes, can always be justified by the pretext that right is equivalent to being good or useful for the whole in distinction to its parts. Hitler's motto that "Right is what is good for the German people" is only the vulgarized form of a conception of law which can be found everywhere and which in practice will remain ineffectual only so long as older traditions that are still effective in the constitutions prevent this. A conception of law which identifies what is right with the notion of what is good for—for the individual, or the family, or the people, or the largest number—becomes inevitable once the absolute and transcendent measurements of religion or the law of nature have lost their authority. 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 conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically—namely by majority decision—that for humanity as a whole it would be better to liquidate certain parts thereof. Here, in the problems of factual reality, we are confronted with one of the oldest perplexities of political philosophy, which could remain undetected only so long as a stable Christian theology provided the framework for all political and philosophical problems, but which long ago caused Plato to say: "Not man, but a god, must be the measure of all things."

These facts and reflections offer what seems an ironical, bitter, and belated confirmation of the famous arguments with which Edmund Burke opposed the French Revolution's Declaration of the Rights of Man. They appear to buttress his assertion that human rights were an "abstraction," that it was much wiser to rely on an "entailed inheritance" of rights which one transmits to one's children like life itself, and to claim one's rights to be the "rights of an Englishman" rather than the inalienable rights of man. According to Burke, the rights which we enjoy spring "from within the nation," so that neither natural law, nor divine command, nor any concept of mankind such as Robespierre's "human race," the "sovereign of the earth," are needed as a source of law. The pragmatic soundness of Burke's concept seems to be beyond doubt in the light of our manifold experiences. Not only did loss of national rights in all instances entail the loss of human rights; the restoration of human rights, as the recent example of the State of Israel proves, has been achieved so far only through the restoration or the establishment of national rights. The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in the abstract nakedness of being human. And in view of objective political conditions, it is hard to say how the concepts of man upon which human rights are based—that is 41 Edmund Burke, Reflections on the Revolution in France, 1790, edited by E. J. Payne, Everyman's Library.
42 Robespierre, Speeches, 1796, Speech of April 24, 1793.
created in the image of God (in the American formula), or that he is the representative of mankind, or that he harbors within himself the sacred demands of natural law (in the French formula)—could have helped to find a solution to the problem.

The survivors of the extermination camps, the inmates of concentration and internment camps, and even the comparatively happy happy stateless people could see without Burke's arguments that the abstract nakedness of being nothing but human was their greatest danger. Because of it they were regarded as savages and, afraid that they might end by being considered beasts, they insisted on their nationality, the last sign of their former citizenship, as their only remaining and recognized tie with humanity. Their distrust of national, their preference for national, rights came precisely from their realization that natural rights are granted even to savages. Burke had already feared that natural "indefeasible" rights would condemn only the "naked savage," and therefore reduce civilized nations to the status of savagery. Because only savages have nothing more to fall back upon than the minimum of face of the human being, people are in their nationality all the more desperately when they have lost the rights and protection that such nationality once gave them. Only their past with its "entailed inheritance" seems to attest to the fact that they still belong to the civilized world.

If a human being loses his political status, he should, according to the implications of the inherent and inalienable rights of man, come under exactly the situation for which the declarations of such rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man. This is one of the reasons why it is far more difficult to destroy the legal personality of a criminal, that is of a man who has taken upon himself the responsibility for his behavior and has determined his fate, than of a man who has been disallowed all common human responsibilities.

Burke's arguments therefore gain an added significance if we look only at the general human condition of those who have been forced out of all political communities. Regardless of treatment, independent of liberties or oppression, justice or injustice, they have lost all those parts of the world and all those aspects of human existence which are the result of our common labor, the outcome of the human artifice. If the tragedy of savage tribes is that they inhabit an unchanged nature which they cannot master, yet upon whose abundance or fertility they depend for their livelihood, that they live and die without leaving any trace, without having contributed anything to a common world, then these rightly people are indeed thrown back into a peculiar state of nature. Certainly they are not barbarians; some of them, indeed, belong to the most educated strata of their countries; nevertheless, in a world that has almost liquidated savagery, they appear as the first signs of a possible regression from civilization.

The more highly developed a civilization, the more accomplished the

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Decline of the Nation-State; End of Rights of Man

world it has produced, the more at home men feel within the human artifice—the more they will resent everything they have not produced, everything that is merely and mysteriously given them. The human being who has lost his place in a community, his political status in the struggle of his time, and the legal personality which makes his actions and part of his destiny a consistent whole, is left with those qualities which usually can become articulate only in the sphere of private life and must remain unqualified, mere existence in all matters of public concern. This mere existence, that is, all that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds, can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and inestimable grace of love, which says with Augustine, "Volo ut sis (I want you to be)," without being able to give any particular reason for such supreme and unsurpassable affirmation.

Since the Greeks, we have known that highly developed political life breeds a deep-rooted suspicion of this private sphere, a deep resentment against the disturbing miracle contained in the fact that each of us is made as he is—single, unique, unchangeable. This whole sphere of the merely given, relegated to private life in civilized society, is a permanent threat to the public sphere, because the public sphere is as consistently based on the law of universal difference and differentiation. Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.

Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals. The dark background of mere giviness, the background formed by our unchangeable and unique nature, breaks into the political scene as the alien in whose all too obvious difference reminds us of the limitations of human activity—which are identical with the limitations of human equality. The reason why highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination. The uncertainty about the spheres in which man cannot act and cannot act and in which, therefore, he has a distinct tendency to destroy. If a Negro in a white community is considered a Negro and nothing else, he loses along with his right to equality that freedom of action which is specifically human; all his deeds are now explained as "necessary" consequences of some "Negro" qualities; he has become some speci-
men of an animal species, called man. Much the same thing happens to those who have lost all distinctive political qualities and have become human beings and nothing else. No doubt, wherever public life and its law of equality are completely victorious, wherever a civilization succeeds in elimin-
ing or reducing to a minimum the dark background of difference, it will end in complete petrification and be punished, so to speak, for having forgotten that man is only the master, not the creator of the world.

The great danger arising from the existence of people forced to live out-
side the common world is that they are thrown back, in the midst of civil-
ization, on their natural giviness, on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some commonwealth and yet, since they are no longer allowed to par-
take in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific animal species. The para-
dox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general—without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself—and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.

The danger in the existence of such people is twofold: first and more obviously, their ever-increasing numbers threaten our political life. Our human artifice, the world which is the result of our common and co-ordi-
nated effort in much the same, perhaps even more terrifying, way as the wild elements of nature once threatened the existence of man-made cities and countrysides. Deadly danger to any civilization is no longer likely to come from without. Nature has been mastered and our barbarians threaten to destroy what they cannot understand, as the Mongolians threatened Europe for centuries. Even the emergence of totalitarian governments is a phe-

"This modern expulsion from humanity has much more radical consequences than the ancient and medieval custom of outlawry. Outlawry, certainly the "most fearful fate which primitive law could inflict," placing the life of the outlawed person at the mercy of anyone he met, disappeared with the establishment of an effective system of law enforcement and was finally replaced by extradition treaties between the nations. It had been primarily a substitute for a police force, designed to compel criminals to surrender."

The early Middle Ages seem to have been quite conscious of the danger involved in "civil death." Excommunication in the late Roman Empire meant ecclesiastical death but left a person who had lost his membership in the church fell freedom in all other respects. Ecclesiastical and civil death became identical only in the Mer-

"Normal me"