

MIGRATION, REPRESSION AND REFUGEES  
The Special Responsibility of Germany

by

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Foreward

This is a paper on the difference between the responsibility of states to two different types of migrants - immigrants whom a state selects to come, and those who arrive because they have fled a repressive regime. Its central focus is the human rights of those two different groups in the state to which they have migrated or sought asylum. It is an essay in political theory.

But it is a very personal one for me. Though I have given papers all over the world, this is the first paper I have given in Germany. I have been to Germany before as a tourist and once as a guest of the government when Germany voted to increase its intake of Vietnamese Boat People from 12,000 to 20,000. But this time I am here as an academic giving a paper in Berlin, a Berlin that has only been recently reunited, a Berlin with at least three very important exhibits which opened this year, one on Jewish Life Worlds, one on the Wannsee Villa and one on the Jewish Cultural Association, the latter dedicated to those Jewish performers, artists and writers segregated from the rest of German cultural life after Hitler assumed power in 1933. And I am Jew whose ancestors sometime in the past assumed a German name which depicted a family that was to be dedicated to the service of noble ideals and ideas. And it is the Berlin of Hegel, whom I still consider the greatest philosopher of modernity. For it is at the University of Berlin that Hegel reached the zenith of his philosophical creativity, a university which was, as I

depicted in my book, The Holiversity, the first Sanctuary of Method, the first truly modern university dedicated to professionalizing intellectual life.

When I was at your equivalent to a hochschüle, 'Ich habe Deutsch in der Schüle gelernt', but I never really learned to speak German. It became for me like Latin or Greek or what Hebrew used to be, not a dead language, but a language whose spirit lived in the cemeteries of life, a haunting language, but unlike Greek and Latin and Hebrew, not languages which allowed the ancient and classical world to haunt the present, but a language which allowed the postmodern world to be haunted by modernity, that period when people rose to their intellectual heights by believing in the enlightenment, by believing that reason could rule, by believing that what was rational was actual.

So I come to this place as a Jew. I come as one who has studied at the feet of a German whom I consider the greatest philosopher of modernity. And I come at a particular junction of history, not only for Germany faced with the prospect of hordes of migrants from not only the East but the Third World as well, faced with a post war past in Germany has had difficulty integrating migrants who were not ethnic Germans, particularly the Turks. Recently, a whole issue of Der Spiegel was devoted to the mobs of neo-Nazis who harassed, beat up, and even killed foreigners.

I also come at a very personal historical conjunction in my own life. Immediately prior to leaving for Berlin to attend this conference, I was at two important meetings. Last week I attended a meeting in Ottawa, Canada's capital, organized by the Department of External Affairs. It was a private, confidential meeting of government insiders and a few experts called to help prepare for the fifth stream of Middle East peace talks between the Israelis and the Arabs specifically

focused on refugees in the Middle East. (This fifth working group was only added on in the Moscow meeting, partly as a compromise with the Palestinian section of the Jordanian delegation who initially refused to attend that meeting.) As someone who has written extensively on Palestinian refugees as well as peace in the Middle East, I was there as an advisor to our government.

This week began with my attendance at A Symposium in Toronto on "The Thought of Emil Fackenheim." Fackenheim, one of the great Jewish philosophers of the twentieth century, had been one of my great teachers both as an undergraduate and a graduate student. An authority on Hegel, author of Hegel's Early Religious Writings, Emil Fackenheim became my teacher in the fifties because of an 'accident' of history. He was forced to flee Berlin, where he was studying up until 1938 (he originally came from Halle) following Kristallnacht and then was sent for a period in a concentration camp. After fleeing Germany, he was eventually transferred to Canada where he was interned as a German national. When he was released, he continued his education in Mediaeval philosophy at the University of Toronto under such great Catholic philosophical Thomists such as Jacques Maritain, Etienne Gilson and Father Phelan.

Fackenheim, among his many writings, is the author of the book To Mend the World. Its subtitle is, Foundations of Future Jewish Thought. I was asked to chair the first session of the Symposium on that topic. In that book, Fackenheim attempted to find a ground for understanding how life and thought could continue after the Holocaust, that immense abyss and total rupture in history over which we must construct a continuity between the past and the future - the principle means by which the world needs to be mended. A specific problem was how humans, and Jews in particular, could be **universalists** while retaining their particularity as Jews, most specifically in

the face of the unique particular rebirth of Israel, how humans and Jews in particular could continue to be **secularists** caught up in "human normalcy" but at the same time must fall back on a specifically religious past for their moral norms if there is to be any real future at all, for the abstract universal values of the enlightenment are inadequate in a post-Holocaust world, and, finally, how we could be **modernists** in a post-modern world in which nationalism continually defeats the attempts of Marxist and Liberal universal thinkers to construct a new rational world order and where the greatest catastrophe ever perpetrated against Jews occurred in a country which was the beacon of the enlightenment in the nineteenth century and by a process which itself was distinctively modern and set the precedent for the dehumanized and mechanized torture and slaughter of millions, from Myanmar to Rwanda and Burundi.

Fackenheim demanded that his students wrestle with paradoxes, wrestle with a faith we inherited, whether as Jews or Christians, but one in which we can no longer find a refuge in old ideas. Fackenheim demanded that we dedicate our lives and thought to mending the world. He articulated the 614th commandment not to give Hitler a posthumous victory, an imperative which commands Jews to survive as Jews lest the Jewish people perish while serving the world of reason. We cannot despair that the Geist, of which Hegel wrote so passionately, will remain hidden lest the world become a place where meaninglessness prevails and the world perishes. The 614th commandment commands all humans to say with truth and conviction, "Never Again!"

Central to Hegel's philosophy of history was the role of chance. History is bedevilled with contingency and we are required to react to special events. I became involved in refugee studies in 1979. I was writing a book on Hegel's Phenomenology on my island in northern Canada and, after six

weeks in isolation, left for what I thought was only two days to run a long ago promised workshop on peace in the Middle East. It was two years before I returned. When I left I was also delivering a review article on Martin Gilbert and his discussion of the treatment of Jewish refugees by the West and Britain in particular during the thirties. Hegel was on my mind. Jewish refugees were in my heart. And what news struck me when I left. Front page stories had been running for weeks on the plight of the Boat People fleeing Vietnam. My gut was wrenched. We say, "Never Again", but each day we are struck Again and Again and Again by inhumanity on a massive scale.

I became involved with the Boat People campaign and helped organize Operation Lifeline. I wrote one book and edited another on Vietnamese refugee policy. I was talked into preserving the massive collection of documents and materials on the Vietnamese I had accumulated by Irving Abella, co-author of a book entitled None Is Too Many, an account of Canada's response to the plight of Jewish refugees, a record which was the worst in the western world. Irving Abella arranged for the grant that set up the Refugee Documentation Project which eventually became the Centre for Refugee Studies and which I now head.

Today I am in Berlin, the city where Hegel wrote philosophy and demonstrated he was a friend of the persecuted and not the reactionary apologist of Prussian authoritarianism and bureaucratic superiority as he is often portrayed. It is to the spirit of Hegel and Fackenheim's maxim requiring us to Mend the World, not only in space, but to overcome the abyss between the post-war present, wrought by the Holocaust, that has made this the century of refugees, and the past, particularly the German past, a Germany which was the pinnacle of the enlightenment, a Germany which produced 40 Nobel prize winners (twelve of whom were Jewish) up until 1940.

## Introduction

This paper has the appearance of a theoretical paper. It appears to be about the fundamental conceptions behind the immigration and refugee practices of western states. In appearing to be about the thoughts behind the deeds, the conceptual roots of practice, there is the implication that thought precedes deed, that first there is the word - logos. If it is about thoughts that are now hidden suddenly made to appear, then it is not about thoughts at all, which by their very nature as pure thoughts can never make an appearance.

This essay is about thoughts buried in the deeds and practices, not thoughts underlying or underpinning them. It is not about the burial grounds of practice, but the thoughts buried in practice. This is an essay in resurrection, not in theory contrasted with facts, for facts without theory are dead, lifeless, without a sense of time, of history, of context, like the lobotomized amnesiac who can learn to utter the fact that today is Saturday, March 21, 1992, but does not know that this means it is chronologically the first day of spring near the end of the twentieth century.<sup>1</sup> For the fact is, one cannot know any facts without a theoretical context. Facts are given life again by allowing theory to reappear. Like the words of a song of the Ungrateful Dead, by making the words grate against one another, they become alive again.

This essay is only very indirectly concerned with so-called "root causes" behind refugee flows. It is primarily concerned with the policies of receiving countries dealing with refugee flows. It focuses on two basic contradictions in western societies that make it difficult for western societies to develop a coherent refugee policy. The first is the conflict between two very different conceptions of the individual at the root of western societies - the materialist conception of possessive individualism and the moral

conception of the individual as a person with inherent rights. The second is the contradiction in the collectivity that is used to express the will of western societies - the state and the nation.

## Immigration and Refugees

Restrictive immigration is rooted in two sources - the concern with the preservation and enhancement of the wealth and well-being of the members of one's own state and the preservation of one's national identity. Thus, George J. Borjas begins his book, Friends or Strangers (New York: Basic Books, 1990) with this observation. "Two arguments are typically used to justify and legitimize restrictions (on immigration). The first is that immigrants have an adverse impact on the earnings and employment opportunities of native-born Americans...It is also argued that immigrants find it hard to adapt or assimilate in the United States because of their very different cultural, political and economic backgrounds. This view, in turn, raises fears that a large number of unassimilated immigrants will splinter the country's national identity." (p. 4)

A proactive immigration policy is based on taking in new members on the basis that those members will strengthen the economic well-being of one's own society and/or they will increase the numbers and reinforce one's national group either by reuniting members of one's national group currently in exile or by recruiting new members to one's national group. Modern immigration policy is not designed to allow entry to the impoverished huddled masses of the Third World. Further, those who come, even illegally or through so-called "irregular movements", are not the unemployed, but, in fact, have higher qualifications and skills than the average among the native born. "Why...should middle-class professionals and skilled workers embark in a costly journey, sometimes surreptitiously,

and sacrifice work, friends and family back home? The basic reason is the gap between life aspirations and expectations and the means to fulfil them in the sending countries. Different groups feel this gap with varying intensity, but it clearly becomes a strong motive for action among the most ambitious and resourceful. Because *relative*, not absolute deprivation lies at the core of most contemporary immigration, its composition tends to be positively selected in terms of both human capital and motivation."<sup>2</sup>

Immigration is thus rooted in the conception of the human being as primarily a self-interested economic acquirer of wealth and in the interests of state in fostering membership for those with such skills and motivation. But, except for those who already share an identity with the dominant nationality in one's state and are now living in a diaspora<sup>3</sup>, that nation has no interest in fostering immigration unless there is a dire need for the nation to renew itself, either to renew its numbers because the reproductive rate has fallen so that it is on the path of decline, or to renew its spirit and identity because the nation has lost its way, has become lost in time without its sense of its own past and prospective future into which the events of the world can be fitted.<sup>4</sup> Or we might have a state in which the nation is defined as one without a memory past a certain point in time, a nation born in time at a point in the not too distant past so that others may join. The state is then used as the instrument to forge a national identity. In such circumstances, refugees may be taken into the bosom of one's nation because they may provide excellent raw material to be reformed and reborn with a new national identity but only so long as that nation is in the process of formation. The more time that passes, the more the identity of the nation becomes reified, the less openness there will be to receiving immigrants or refugees as part of a process of creating a new nation.



Refugees are taken in for another reason. They have been given the "right" to come.<sup>5</sup> But why should any state give an individual a 'right' to become a member. If an individual is deemed to be an economic benefit to the state, and if the state has, at the same time, decided that it wants more members because they will help improve the economic well-being of the state, then the state may select some immigrants for members. But why give individuals who have not been so selected the **right** to become a member. Ignore for a minute the grounds upon which the individual can choose to exercise such a right. Giving the right in the first place is the root of the problem for the state in controlling its borders and determining its own membership.

Suffice it to say that this is a question that cannot be answered simply by an abstraction. For example, arguing that the United States is a liberal state and that it is incumbent upon liberal states, once the world has been completely divided up into states, to give individuals, who are outside their own states and have lost the protection of that state, the **right** to claim membership in a new state, ignores historical facts. The United States and Canada, Britain and Australia, gave no such rights when the Jews were fleeing the murderous Nazi regime. Canada, for example, a country in dire need of immigrants, had the worst record and deemed that for Jews, None Were Too Many.<sup>6</sup>

But they have since given individuals such rights. Was it because these states learned their lesson as a result of the Holocaust? Have these states redeemed themselves through subsequent historical acts? There is no such evidence. Quite the reverse. The evidence suggests that rights were granted to refugees because of the historical emergence of the Cold War.<sup>7</sup> We need not go back in history, however, to illustrate the point. The contrast between the American treatment of Cuban and Haitian refugees provides ample illustrative material.

In Cuba, dissidents continue to be arrested on such charges as "illegal association", "clandestine printing" and "contempt of the President". A series of events this past Fall are but illustrations. Maria Elena Cruz Varela, the Cuban poet, was brutally treated by a mob and then sentenced to two years in prison for writing a declaration of principles on human rights. Elizardo Sánchez Santacruz, head of the Cuban Commission on Human Rights, was beaten by a "spontaneous" mob at his own house. Yndamaro Restano, head of a Social Democratic movement, was arrested. All are accused of being in the pay of the CIA, stooges of imperialism and counter-revolutionaries.<sup>8</sup> If they wanted to or could escape to America, each would be given asylum.

But events in Haiti are much worse. Since the overthrow of the Aristide government by the military last September, an estimated 1500 Haitians have been brutally murdered, presumably Aristide supporters or members of popular democratic movements. Organized trade unions and peasant groups have been repressed. Hundreds, if not thousands, have been arrested. Not tens, but hundreds of thousands have fled their homes into the interior to escape the repression.<sup>9</sup> Yet the United States has an interdiction policy of collecting those who flee in boats on Coast Guard cutters, subjecting them to summary screenings and returning virtually all claimants to Haiti. (Only 11 of 23,000 successfully passed the refugee hearings, in contrast with the one-third who managed to get through the Immigration and Naturalization Service hearings if the refugee claimants managed to reach America, including 41 of 42 'double-backers, that is 41 interdicted claimants who were returned to Haiti and immediately fled again.) Yet the United States Supreme Court recently ruled by a narrow majority that those Haitians who had reached the American Guantanamo Bay Naval Base in Cuba that they could be returned and were not at risk. Nor is the US willing to grant

the refugees fleeing Haiti even temporary protected status.

In summary, the current refugee protection regime was developed in its form of giving protection to those who could establish that they had a well-founded fear because of abuses of their individual human rights and continues to be operated on that basis except where even reasons of state find it beneficial to set aside such considerations because of foreign policy interests. Nevertheless, refugees can become members of the state by right, even if there are many efforts to restrict the exercise of that right for reasons of controlling and managing numbers, racist fears or foreign policy concerns.

Who then gets to immigrate? Those who serve the economic interests of the state as well as those members of the nation considered to still be living in a diaspora. The latter do so usually by right. The former are selected by the state. Who gets to be classified as a refugee with a right of entry? Individuals with a well-founded fear of persecution. They come by right unless state interests interfere

1. "We can give Greg (a severely brain damaged patient with orbito-frontal syndrome) the date every day, in the form of a jingle, and he can readily isolate this, and say it when asked - give it, that is, without the jingle. But what does it mean to say, 'This is December the 19th, 1991,' when one is sunk in the profoundest amnesia, when one has lost one's sense of time and history, when one is existing from moment to moment in a sequenceless limbo? 'Knowing the date' means nothing in these circumstances." Oliver Sacks, "The Last Hippie", New York Review of Books, XXXIX:6, March 26, 1992, p. 62. Greg had a memory for geometrical theory, procedural memory so he could get from place to place, even of songs and limericks, but, "he could not absorb new 'facts'." (p. 59)

2. Alejandro Portes and Rubén G. Rumbaut, Immigrant America: A Portrait, Los Angeles: University of California Press, 1990, p.12.

3. cf. William Safran, "Diasporas in Modern Societies: Mythos of Homeland and Return," in Diaspora, I:1 Spring, 1991.

4. This does not mean the converse is true. A nation may have

lost its way and have no will to renew itself. Further, a nation may not know its way because of external circumstances, because an abyss between the unassimilated past and a future which can no longer be anticipated has emerged because the nation has been traumatized, as the Jews were by the Holocaust or the North American aboriginal peoples were by first the wave of European settlement followed by the breach of their treaty rights and the resettlement of the aboriginal peoples on reservations where they were prevented from linking up their past with the future by a custodial state.

5. cf. Howard Adelman, Journal of Refugee Studies, I:1.

6. Irving Abella and Harold Troper, None Is Too Many: Canada and the Jews of Europe, 1933-1948, Toronto: Lester Orpin & Dennis, 1983. See also Bernard Wasserstein, Britain and the Jews of Europe 1939-1945, Oxford: Clarendon Press, 1979 and David S. Wyman, The Abandonment of the Jews: America and the Holocaust 1941-1945, New York, Pantheon Books, 1984.

7. cf. Gil Loescher and John A. Scanlan, Calculated Kindness: Refugees and America's Half-Open Door 1945-Present, New York: The Free Press, 1986, and Gerald Dirks, Canada's Refugee Policy: Indifference or Opportunism? Montreal: McGill-Queen's University Press, 1977.

8. cf. Arthur Schlesinger, Jr., "Four Days with Fidel: A Havana Diary," New York Review of Books, XXXIX:6 March 22, 1992, p. 22.

9. cf. Kenneth Roth, "The Shadows of Terror," New York Review of Books, XXXIX:6, March 22, 1992, p. 62. See also "Return to the Darkest Days: Human Rights in Haiti Since the Coup," Americas Watch, the National Coalition for Haitian Refugees, and Physicians for Human Rights.