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Colonialism, Decolonisation, and the Right to be Human: Britain and the 1951 Geneva Convention on the Status of Refugees

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Abstract The Geneva Convention on the Status of Refugees is central to scholarship on refugee and asylum issues. It is the primary basis upon which asylum seekers make their claims to the majority of host states today and, as a key text of the human rights framework, has come to be associated with the very idea of a universalised rights-bearing human being. Yet British asylum policy today is characterized by efforts to limit access to the right to asylum. Many scholars believe this is because asylum seekers today are different, in character and number, to previous cohorts of applicants. This article goes back to the founding of the refugee rights regime and investigates the exclusions of colonized peoples from access to the right to asylum. Using Chimni's concept of the "myth of difference", the article demonstrates that asylum seekers have long existed outside of Europe, and that their exclusion from international rights has been both longstanding and intentional. This historical sociology suggests that the basis for critical work on the issue of asylum policy today must be one which takes colonial histories into account.

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Introduction

A highly restrictive asylum regime has emerged in Britain and other "Western" states in recent decades. While scholars have provided a wide range of explanations for restrictivist policies (for example, Goodwin-Gill 2001, Pirouet 2001, Schuster 2003, Gibney 2004, Hintjens 2006, Clements 2007, Bohmer and Shuman 2008, Haddad 2008), most of these explanations are underpinned by a belief that asylum seekers today are fundamentally different from previous cohorts in number and character. Where the former are large in number ("unprecedented") and always non-European, the latter were small in number ("manageable") and European. Chimni (1998) labels this underlying assumption the "myth of difference". Western governments are assumed to have willingly signed up to universal human rights commitments in the middle of the 20th century, only changing their policy approach –backtracking on commitments made previously- at that point at which flows of asylum seekers changed fundamentally.

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By looking back to the founding moment of contemporary refugee rights, the 1951 Geneva Convention on the Status of Refuges, this article presents evidence showing that the British government was hostile to non-European refugees, particularly those from the colonies, right from the start. This analysis challenges the "myth of difference" and raises important critical questions about the exclusionary politics of asylum today. The article is based on new archival research, drawing upon evidence from two main sources. First, British government documents, including those held at the National Archives: the minutes of Cabinet meetings in conjunction with cabinet papers and departmental sources; Hansard records of parliamentary debates, and official submissions to, as well as preparations for, the UN human rights negotiations in the late 1940s and early 1950s. Second, evidence drawn from the UN archives; from the negotiations surrounding the refugee convention, as well as the Declaration of Human Rights, where relevant. Specifically, transcripts of the negotiation meetings, including the UN Ad Hoc Committee on Refugees and Stateless Persons and the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. This is then supported by reference to secondary sources.

My intention is not to propose that paying attention to history provides a singular explanation which invalidates all others. Rather, it is to foreground something which has hitherto been paid very little attention in a scholarly field largely focused on the present and recent past. Where histories of colonialism and decolonisation appear in the literature, it is often to highlight their influence on those countries and populations who were on the receiving end of European rule (Marfleet 2006). Yet, as Albert Memmi ([1957] 2003) has pointed out, colonialism affected colonized and colonizer alike. This under-researched area is therefore ripe for exploration.

The Refugee Convention and the Myth of Difference

Article 14 of the Universal Declaration of Human Rights (UDHR) states that "everyone has the right to seek and to enjoy in other countries asylum from persecution" (United Nations General Assembly 1948). This was the first international document to recognise the universal right to asylum. It was then bolstered by the 1951 Convention on the Status of Refugees, which was the first in a succession of legal instruments enshrining the rights of particular groups in international law. Refugee rights are therefore human rights, and the convention specifically dealing with them was being negotiated at the same time as the broader human rights

declaration was being drafted (Hathaway 1990). Negotiations around the Refugee Convention, specifically around the refugee definition and the territorial applicability of the refugee convention heavily drew upon the UDHR, as well as the already existing rules governing the European focused International Refugee Organisation. It is therefore necessary to analyse the refugee convention with reference to these broader discussions. The human rights framework was based on the idea that the need for some legal constraints on a (non-colonised) state's sovereignty might be necessary order to prevent a repeat of the atrocities committed in Nazi Germany. The Geneva Convention on the Status of Refugees was thus agreed at a United Nations conference on 25 July 1951 following three years of discussion. It was ratified in 1954, amended with a new protocol in 1967, and today has 145 signatories.

Despite being one of the founding members of the UN and among the first to sign the Geneva Convention, Britain today is not a welcoming place for asylum seekers. Since the early 1990s, when asylum seekers from non-European countries began to increase as a proportion of all those seeking asylum, great effort has been expended on preventing people from seeking refuge from persecution in Britain. As well as preventing asylum seekers from entering the country and limiting the numbers granted refugee status, legislation has been passed preventing asylum seekers who do manage to make a claim from working, travelling, or living in a city of their choosing, and on detaining and deporting the many whose claims are unsuccessful back to often unstable countries (Hassan 2000, Sales 2002, Bacon 2005, Bloch and Schuster 2005, Welch and Schuster 2005; Gibney 2006, Hintjens 2006, Bohmer and Shuman 2008, Squire 2009).

A large number of authors attribute the fact that a restrictive, punitive asylum regime has emerged in the UK in recent decades to the sheer "newness" of the refugees that have been arriving in Europe since the 1980s. That is, newness in terms of their numbers, the reasons for their flight, and the context in which they have arrived. A common argument made is that the numbers of asylum seekers coming to the UK is at a historically unprecedented high. Hansen (2003) writes that "for much of the post-war period, asylum was a Cold War sideshow . . . accepting rare large-scale outflows . . . allowed the West to assert, without much financial cost, its moral superiority" (p.35). Then, in the 1980s numbers began to increase, after 1989 "they exploded" (ibid). He suggests that despite all efforts on the part of European governments to the contrary, numbers of applications remain "at intolerably high levels. At the same time, only the most resourceful – generally the young and male – can make it to Europe's shores and they are by

definition not always the most deserving" (p.36). Haddad (2008) echoes this: "when numbers reached hitherto unimaginable heights, something had to change –one refugee is an individual in need who should be let in, a thousand refugees are a threat and a burden" (p.31).

This article problematises the suggestion that it is the unprecedented nature of refugee flows since the 1980s which explains the character of the asylum regime in the manner of cause and effect. In making this argument I will draw on an article by Chimni (1998), which charges academics with contributing to the pervasive "myth of difference" between European and "Third World" refugees. Chimni argues that the discourse of refugee studies up to 1989 was relatively depoliticised due to a consensus that the concept of asylum was consistent with Cold War aims. He writes

> The arrival in the North, since the early eighties, of the "new asylum seekers", initiated a process of rethinking. Once the Cold War ended, and the refugee no longer possessed ideological or geopolitical value, the rethinking translated into a series of restrictive measures which, together with those introduced earlier, constitute today what has been called the non-entrée regime (p.351)

This policy shift was, according to Chimni, accompanied by the rise and expansion of "refugee studies". The new interdisciplinary field represented "the nature and character of refugee flows in the Third World . . . as being radically different from refugee flows in Europe at the end of the First World War" (ibid). Thus, "an image of a 'normal' refugee was constructed – white, male and anti-communist – which clashed sharply with individuals fleeing the Third World" (ibid).

On numbers, Skran (cited in Chimni 1998) points out that in 1926 an estimated 9.5 million people were considered refugees, approximately the same as the refugee population in 1980. However, since the world's population doubled in that time there were proportionally more refugees in 1926. Europe now hosts a tiny proportion of global refugees, whereas in the mid-twentieth century, as a producing region, it hosted a much greater proportion. The World Refugee Survey 1992 (cited in Chimni, 1998:59) shows that in 1991, a peak year in terms of applications for asylum in Europe, "Sudan alone was hosting more refugees than the number of applications received by Western Europe and North America combined".

The issue appears less one of numbers then, and more the perception of an uncontrollable "flood" of visible refugees. As Bloch and Schuster (2005) point out "although the numbers [of asylum seekers entering Europe] have never reached the levels of the early 1990s, the measures introduced are not eased, but are added

to – indicating that the "crisis' itself has little to do with numbers." (p.492). Indeed, applications for asylum in the UK fell by two thirds between 2002 and 2008 (Information Centre on Asylum Seekers and Refugees 2009). A spike in applications in 1999 totalled 91,200, while in the year and a half between the outbreak of the First World War and the end of 1915 the Home Office estimated that 250,000 Belgian refugees alone arrived in the UK. 15,000 arrived in Folkstone on one day (Storr 2009).Though the revolution in transport and telecommunications technology has allowed refugees from outside of Europe to arrive more quickly, their numbers remain historically low, and are falling every year. Taking a longer view, Europe has been a significant producer of migrants globally since 1800, peaking in the colonial period, and before that was by far the major net producer of forced migrants through the slave trade in to the nineteenth century (see Harzig and Hoerder 2009).

A key aspect of this focus on "newness" is the fact that refugees in the middle of the twentieth century are often presented as being European, only becoming non-European in the 1980s and '90s with the advent of cheap mass international air travel and growing instability in many African and Middle Eastern countries. In her discussion of the history of asylum legislation and refugee movements, Schuster (2002), for example, focuses solely on European refugees. Similarly, Barber and Ripley (1988) suggest that in 1951 "the overwhelming majority of refugees were European" (p.53). Starting from this same assumption a decade later, Bloch and Levy (1999) describes how the 1967 Protocol opened up recourse to the 1951 Convention to people from all over the world "which reflected changes as refugees were no longer just a European phenomenon; instead refugee migration was occurring from conflicts all over the world" (p.1). And yet, there was a vast exodus from China between 1949 and 1950, millions of refugees created by the partition of India, millions as a consequence of the Korean War (1950–53), and 700,000 Palestinians became refugees during the Arab-Israeli conflict of 1948 (Sandler 1999, Morris 2003, Chi-Kwan 2007). These issues were raised on a regular basis in the British parliament throughout the 1950s (more than European refugee issues) and the country provided significant sums of bilateral aid (for example House of Commons, 19 March 1951b). It might therefore be assumed that a discussion of the history of refugee policy, at least in Britain, would include some mention of such movements.

In 1940 Britain and her Western European allies held Empires covering much of the globe, founded and maintained on ideas of racial hierarchy (Rich 1990). By 1960, a number had gained independence, while many of the remaining colonies were in turmoil as

anti-colonial movements struggled for self-determination. While this reconfiguration of the global social and political order resulted in massive population displacements, ideas of racial hierarchy were not necessarily dissolved. These events, integral to understanding conceptions of "insiders" and "outsiders", and occurring concurrently with the development of the asylum regime, are, I believe, highly pertinent to the history of refugee policy and to understanding the response of governments such as Britain to asylum seekers today.

Silences around the colonial rationales that informed early exclusions from refugee rights, as well as around histories of displacement outside of Europe, are therefore problematic in the limitations they place on critical engagement with contemporary asylum policy. For example, Boswell (2005) suggests that the standards enshrined in the Geneva Convention "have been steadily eroded since the 1970s" (p.3) as, "faced with large numbers of asylum seekers they had little obvious economic or political incentive to accept, industrialised states found their international legal obligations difficult to fulfill" (p.28). Factoring colonialism and decolonisation into the analysis alters this account and provides a means of problematising the "little obvious" incentive which has been felt by politicians in Britain in recent decades. It shows that exclusions are not recent deviations from earlier moral standards, they were there from the start. This may mean that there is less that is new in the present than many accounts suggest.

Britain and the Convention Negotiations

This section is concerned with the exclusion of particular peoples from the remit of the refugee rights agenda in 1951. The British perspective provides a case study of a major colonial power and its involvement in this systematic exclusion. Evidence is presented which shows the extent of vocal resistance to exclusions on the part of a those whose refugees would not be considered under the rubric of the Convention. The British response is indicative of the fact that recent attempts to exclude non-European asylum seekers from the right to asylum are not new, they were an integral part of the British agenda at the outset of Convention negotiations. This fact has clear implications for our reading of current asylum policy, the perception of "newness", and the "myth of difference".

a.   Human Rights: the British Government Response

In the late 1940s British government ministers were against the institutionalization of human rights, particularly if they affected

activities in the Empire. Discussions within the British state of human rights in the late 1940s primarily took place within the Foreign Office. The Foreign Office and Cabinet Office jointly led an inter-departmental working party, set up in 1946, of officials which included the Home Office and Colonial Office (Cabinet Office Papers 1947). The main concern of the Colonial Office lay in the danger posed by the UN, and particularly its human rights agenda, for British colonial interests. For example, in a meeting of the working party on 9th June 1947 Mr.Grossmith (Colonial Office) stated that "The convention provided that forced labour be abolished in the shortest possible time, but at the present stage it would be impossible to develop certain of the colonial territories unless some degree of forced labour were imposed" (see also Colonial Office 1952). In addition, concern about the connection between the International Labour Organisation Convention on Forced Labour and human rights, and particularly the applicability of enforced labour provisions in the colonies, consumed a significant amount of time (ibid).

British ministers were initially uninterested, then hostile to any human rights conventions which might place demands on the British state, including those pertaining to refugees. For imperial institutionalists, the UN "was to be a device for cushioning the British Empire, cementing its ties with the United States, and coming to terms with the unfortunate but tolerable fact that the Soviet Union had become a world power" (Mazower, 2009:104). When proposals came along which placed demands inconsistent with the activities of Empire, therefore, they were not well received (Colonial Office 1952).

The cabinet secretary's notebooks from the period show that there were long discussions between senior British ministers about not wanting to be bound by the human rights conventions, but equally not wanting to be seen to be against them. This is pertinent to the outcome of the refugee convention as the broader human rights agenda set the stage, and in many cases the written precedent, upon which the outcomes of the negotiations on refugee agreements were based. There are commonalities here with the present: reiteration of commitments to "genuine" refugees, while restrictive asylum policies suggesting the opposite are implemented. There was a belief that the British had an innate understanding of rights, liberties and justice, and that this was so intrinsic to the national character that it was not necessary to codify it in law. If there were exceptions to the rule (in the colonies, for example), they were always for the good of people who were not yet able to look after themselves. For example, in the UK submission to the UN yearbook on human rights in 1946, where each

member country reported on their perspective on human rights and the situation in their country (which was the first indication of the British position on the subject) Sir Cecil Carr concluded

Although human rights in Britain do not rest upon a written constitution, this brief survey will have shown that what Lord Wright described as "the good sense of the people" and "the representative and responsible government which has been evolved here" have produced a society in which the fundamental human liberties are respected and protected to the full (p.321)

Here, Carr is speaking primarily of white British citizens located in the metropolitan territory. The dominant hierarchical view of humanity (see Rich 1990, Banton 1998) set the non-white colonised below their imperial rulers and hence at the mercy of their perception of "good sense" in the case of caring for "child like" races (a term often used by Jan Smuts, see Smuts 1944).

There was a concern that a legally binding human rights convention would put in place a body of law above the sovereign British legislature, and over the judicial review functions of the House of Lords. This provided a legally inflected nationalistic justification for objecting to inconvenient international legal constraints. These suspicions, however, did not develop into solid opposition for a couple of years, primarily because many senior British ministers did not take human rights particularly seriously.

There was pressure on the government from within (primarily the Foreign Office) to support a European Convention on Human Rights within the context of Cold War politics (Bevin 24th October 1949:3). Thus, despite reservations, they determined to be in favour of a European Bill of Human Rights. However, for the time being the government remained privately against a UN convention, as there were no decipherable benefits and many dangers. One of the central dangers lay in the colonial question: the British government were reluctant to sign the conventions if they applied to people in the colonies. As early as 1947 the problems raised by colonial activities within the context of a proposed International Bill of Human Rights was causing concern. The cabinet secretary's notebook entry for 30th October (Brook 1947) that year contains the following notes:

R.W.[1]   In formula, don't use phrase "Col. Territories".

There are 8 areas where comp. Labour in force.

Words "exceptional cond^{ns}. . ." will cover our case.

This shows that right from the start, ministers were aware that their treatment of colonised subjects would not meet the standards demanded by a concept of rights based on humanity. In their

Empire, all humans were not equal and change was not (at this point) an option.

In the late 1940s government ministers do not appear too concerned about the Bill, assuming that an "exceptional conditions" clause could be inserted without too many problems. Such a clause would exclude certain groups from rights claims with the justification that "exceptional conditions" necessitated such action. Those groups to be excluded were, of course, colonial subjects: In a memo to the Cabinet from the Foreign Office in 1949 it was recommended that the Foreign Secretary should accept in principle that a Convention should be drawn up but that he "should, if possible, refrain at the present stage from taking up a position on the application of the convention to colonial territories". The Foreign Secretary duly refrained in public but by January 1951 the issue was looking more problematic, as this conversation from the Cabinet Secretary's notebooks shows:

J.G.   Want it clear tht. Protocols may be accepted separately in Col. Territories. Cd. Not apply 7 at once in Colonies.

J.   Second Protocol ". . . so far as resources permit." Who is to judge? Can Comm[n] rule our resources allow of our doing more for education in a Colony?

H.M.[2]   I have always bn. against this Convention – all of it. Humbug.

A[3]   Prefer a frontal attack of this nonsense. Don't express any sympathy.

Att.G.   Not merely Layton. Some Tories & Labour supporters keenly favour it.

P.M.   3rd Protocol: restrict to home territories[4]

In April 1951 the Cabinet discussion continues with increasing anxiety:

H,M.   I don't know anything about this – except that we are in a mess. Started as anti-Soviet propaganda. As it goes on, it looks as tho' it will put us on the spot – especially re. Colonies.

J.G.   Col. Appl[n] clause is out now, by U.N. vote.

   We couldn't apply this Covenant in the Colonies. Tho' politically dangerous for us to w'draw. If we stay in, we mght. guide disc[n] usefully.

J.   Stay in and make difficulties.

   V. difficult for us to walk out.

G.W.[5]   As it stands, w'out Col. appl[n] clause, it is unacceptable to us.

   We should realise that.[6] (Brook, 1951)

Here, we can see the tension between the need to maintain an outward image commensurate with world power status (high moral

standards), and the reality of activities in the Empire; with a belief that such activities should continue despite ongoing negotiations on human rights. The "colonial application clause referred to is, again, the proposal to exclude colonised people's from access to human rights (in simple terms, colonial non-application). In March the following year, the discussion appears as follows:

S.Ll.[7]   [Human rights] Designed to embarrass Russians, has ended up by embarrassing us and U.S. much more because of coloured popul[ns].

One Covenant signed.

This one will surely emerge in a form wh. we can't ratify.

We must go on with the knowledge that we will never ratify.

O.L.[8]   Can't ratify anything wh. involves enforcement.

M-F.[9]   We cdn't reverse engines on enforcemt.

O.L.   V.well. Let's pursue policy of steady obstruction by legal quibbles. (Brook, 1952)

Human rights was becoming embarrassing because "coloured populations" were treated as inferior humans by Britain and the US, despite the British Empire's rhetoric of fairness and equality. Over time, due to domestic and external pressure, not least the need to *be seen* to take the moral high ground internationally, there was little choice but to sign up to the human rights agenda as it unfolded. The central concern was ensuring the least inhibiting outcome regarding activities in the Empire.

At the same time as remaining reluctant to sign a broad human rights Convention which might be applicable to the colonies, the British government were similarly reluctant to include colonised peoples under the rubric of the proposed Refugee Convention. That is not to suggest that aid for non-European refugees was withheld. On the contrary, with widespread support in parliament, the government provided significant sums of bilateral aid to assist non-European refugees, for example Koreans in the early 1950s. The signal was that help should be extended in exceptional circumstances but a line must be drawn at access to fundamental rights. Indeed, Arab (Palestinian) and Korean refuges were discussed more in parliament in 1951 than European refugees (House of Commons 15 March 1951a, 19 March 1951b). Despite the volume of discussion, never did the issue of extending the UN Convention right to asylum in the case of these refugees appear.

In the negotiations on human rights at the UN the standard (at the time) British approach to international treaty drafting was pursued -pushing for a colonial application clause. As previously stated, such clauses were inserted into treaties so that the

British were under no obligation to apply them in the colonies. The government publicly argued that non-application was a means of promoting self-determination and democracy in the colonies, despite appearing to have the opposite effect (Simpson 2004). Records of the UN Ad Hoc Committee on Refugees and Stateless Persons and the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons show these bodies deferring back to discussions on colonial application covered in the human rights convention discussions. In these discussions the delegate for the UK

emphasized that the question before the Committee was not whether it was right or wrong that a colonial system should still exist in the 20th Century but merely whether, with such system in existence a colonial clause should be incorporated in the Covenant [. . . colonised] peoples were constantly progressing along the road to self-government and independence and it was precisely in order to take such progress into account that a colonial clause should be inserted in the Covenant . . . (United Nations 17 February 1950)

Those in agreement with the UK delegate were France, Belgium, Greece, Australia, New Zealand and Canada – the major colonial powers, and large white settler colonies. Those against, whose objections are elaborated in the next section, were numerous and included India, Syria, Ethiopia, Pakistan, Iraq, Saudi Arabia, Indonesia, Lebanon, Mexico, Chile and Afghanistan – the colonised and formerly colonised peoples of the world.

The objectors, using persuasive language and statistical evidence, were successful in arguing against the colonial application clause. Nevertheless, defeating this clause was rendered pointless when an alternative, less emotive in title – yet identical in principle-"territorial application clause", was proposed and passed later in the negotiations. Thus, Article 40, paragraph 1 of the final Refugee Convention document, the territorial application clause, stated:

Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

Despite at this time holding significant overseas territories, the UK extended the Convention only to the Channel Islands and the Isle of Man.

b. The Anti-Colonial Challenge

The evidence presented above reveals the degree to which the British, alongside other colonial powers, sought to resist the

extension of rights to the colonised in 1951. This section is concerned with resistance to this agenda at the UN negotiating table. Highlighting this resistance is important because it highlights the fallacy of the myth of difference; particularly the perception that refugees at the time of signing the convention were primarily a European phenomenon. This is the other side of the story, and one which sets a critical analysis of the present within a much broader history.

Discussions regarding the territorial applicability of the refugee convention were very much framed within discussions of the "colonial application clause" within the human rights convention. As previously stated, the old colonial powers, Britain included, were in favour of such a clause. In response, many of the objections to the clause came from delegations with experience, currently or in the recent past, of living under colonial rule, and were articulated in terms of anti-colonialism. For example, Indonesian representative (unnamed in the record transcript but likely to be Mr. Nikijoeloew)

pointed out that if the clause were included the General Assembly would in effect be giving a privileged class of human beings the right to decide arbitrarily how far the rights enjoyed unreservedly by themselves could be granted to less favoured classes.

The Saudi Arabian representative, (unnamed in the record transcript but likely to be Mr Baroody)

explained the effects of the colonial situation upon the problem under discussion, so long as the colonies remained indispensable to the economic survival of the metropolitan powers, those powers could not afford to allow the dependent peoples to enjoy the advantages of instruments like the Covenant which would make them conscious of their rights.

The representative of Afghanistan stated that "those who claimed they were trying to civilize the peoples whom they were colonizing should at least give them the right to learn how to become conscious of their human dignity".

Meanwhile, the delegation from India was

strongly opposed to the insertion of the colonial clause because it was precisely in the Non-Self-Governing Territories and in the colonies that the Covenant should be especially applied, since it was there that violations of human rights were unfortunately most frequent (United Nations 3 July 1951)

The records of the discussions at the UN on a convention for refugees and displaced persons in the late 1940s show clear and consistent resistance from some states (all former colonies) regarding an exclusive refugee definition. It appeared as though the IRO

definition would be used. In November 1949, Pakistani representative Mr. Bokhari, called for a revision of the refugee definition. He pointed out that

As defined in the Constitution of the IRO, that term only applied to victims of events which had occurred during the Second World War in Europe. After the end of hostilities, however, other events had taken place in other parts of the world. If the United Nations was to be entrusted with that problem, it should consider it on a world-wide basis. [. . .] Pakistan had been compelled to receive from 6 to 7 million refugees coming from various parts of India. More recently it had had to give asylum to 500,000 or 600,000 fugitives from Kashmir (UN General Assembly 10 November 1949a)

In the following meeting, the representative of India noted that although India was not a member of the IRO, "it had done its utmost to aid both UNRRA and the IRO and had helped six thousand European refugees to settle in its territory after the war" while also coping with its own refugee problem, namely six million Indian refugees displaced through partition, who had to be looked after and resettled. He "hoped the United Nations would acknowledge that India was performing an international as well as a national duty by helping those people, and that it would not be asked to shoulder any further responsibility regarding European refugees". This was followed by support for the Pakistani representative's suggestion that the IRO be maintained and that it address itself to the drafting of a convention on the legal protection of refugees *everywhere* (UN General Assembly 10 November 1949a). These objections explicitly highlighted the presence of a hierarchical conception of humanity at work in the negotiations, associated this with colonialism, and challenged it right from the start.

Mrs. Roosevelt (USA), leader of the Human Rights Commission, replied that "the matter required very careful consideration" and she wondered "whether the General Assembly would be prepared at the present juncture to assume responsibility for other groups of refugees than those defined in the IRO Constitution". Ultimately, she dismissed the query as the Economic and Social Council had set up an ad hoc Committee to review existing conventions providing protection for refugees and she assumed therefore that this matter would be discussed there. The Pakistani representative welcomed the formation of this committee but reiterated the fact that "if the proposal before the Committee were adopted, Pakistan would have to share in financing the legal protection of an undefined number of refugees in Europe, while obtaining no benefits for the millions of refugees in its own country". Indeed "there was no mention in any formal proposal of extending the protection of the new organization to all categories of refugees and he hoped that

some concrete amendments would be submitted in order to allay his anxiety". The Lebanese representative concurred that the draft resolution left out new categories of refugees who did not come under the protection of the IRO, specifying Greece, Pakistan, India and China as examples. He said "it should be possible for the United Nations to extend his services to cover all refugees" (UN General Assembly 11 November 1949b).

At the next meeting the Pakistani representative again raised the issue of the refugee definition, stating that

he had gathered the unfortunate impression that some delegations entertained serious doubts as to the purely humanitarian aspect of the problem of refugees and also that politics had perhaps made an unwelcome intrusion into the question . . . he deplored a situation in which refugees might find themselves mere pawns on the international chessboard (UN General Assembly 16 November 1949c)

The implication that "other categories might be added at some later stage" begged the question "what other categories, or when and how they might so be added [it has] never been made clear." Iraqi representative Mrs. Afnan expressed "full support for the views outlined by the representative of Pakistan", as did the Lebanese representative. French representative Mr. Rochefort in response, "regretted that [such] a confusion between refugees and stateless persons continued". This did not placate the objectors and the Iraqi, Indian, Brazilian and Ethiopian representatives all expressed similar concerns (ibid). Resistance was therefore vocal, repeated, and articulated in explicitly anti-colonial terms. For these countries, none European or European white settler states, it was clear that exclusivity in the human rights framework reflected long held beliefs in a hierarchy of humanity. Their ultimate silencing was not for want of persistently setting out their cases, as equals, for inclusion in the Convention.

It is important to note here that states such as Pakistan and India were represented at the UN, and therefore able to voice their concerns because they had gained independence. Other voices could not be heard in any capacity, though rarely for want of trying. For example, in 1945 the African members of Nigeria's Legislative Council passed a resolution unanimously asking the British government to approve a delegation of two unofficial (i.e. African) members to attend the San Francisco conference on human rights (Sherwood, 1996). The British Colonial Office replied that "no such observers were to be allowed" and none were present at the subsequent negotiations (ibid: cited p.81).

This section has demonstrated that in response to British (and other colonial power) objections to extending human rights, including the right to asylum, to the colonies, there were very vocal

counter-arguments being made at the negotiations of the late 1940s and early 1950s. As the earlier part of the case study showed, exclusions were to be made on the basis of not only being a colonised subject, but also being non-European, which was seen as sufficient justification for exclusion from the rights associated with the new Refugee Convention. The silences surrounding these negotiations and the consequent denials of rights claims were there at the very inception of human rights.

There are significant implications of highlighting these histories, which are rarely paid sufficient attention in addressing contemporary efforts to limit access to the right to asylum. Not least in foregrounding the longevity of exclusionary asylum practices on the part of Western European states such as Britain. Indeed, if exclusions are not new then the critical basis of academic scholarship on asylum needs to be revisited, and Chimni's "myth of difference" charge taken seriously. What the implications of this analysis might be for our understanding of the present are addressed further below.

Conclusion

Chimni (1998) argues that there is a pervasive "myth of difference" in scholarship on refugees and asylum seekers which represents present day asylum seekers, often fleeing countries outside Europe, as fundamentally different from previous cohorts. In seeking a critical alternative to this reading, this article has investigated the founding moment of modern refugee rights. With specific reference to the British case and citing new archival evidence, a number of key points have been made. First, that the British government was hostile to granting non-European asylum seekers refugee rights under international law from the start of the refugee regime. Second, that there were millions of non-European refugees in need of help at the time of drafting the Geneva Convention, who should be acknowledged as part of the history of refugee policy. Third, that there were many states arguing forcefully at the UN, that these "other" refugees should be included under a new refugee Convention. Their exclusion was intentional.

Scholarship on refugee rights as a universalising approach has largely developed without an account of the histories of domination on which such a regime was founded. Malkki (1995) provides justification for this narrow geographical focus, arguing that in the genealogy of "the refugee", a moment of reconfiguration can be located in post-World War Two Europe. She acknowledges the danger of Eurocentrism "in looking for the global figure of the refugee in post-war Europe" but argues that "it is in the Europe

emerging from World War II, that certain key techniques for managing mass displacements of people first became standardized and then globalized" (p.497). While

this does not mean there were no refugees or techniques for managing them before World War II . . . "the refugee" as a specific social category . . . and legal problem of global dimensions did not exist in its full modern form before this period. (p.497–8)

Yet, as we have seen, "the refugee" of the period was not always European. Indeed, while the process of which Malkki speaks (by which refugees came to be designated "a specific social category" and a "legal problem of global dimensions") is one of perception in the minds of the political leadership of Europe, with the figure of the European refugee in mind. Once we acknowledge the fact of non-European refugees in the period, the spectre of colonialism becomes unavoidable. For example, the presence of millions of Indian refugees in Pakistan, described in the case study section, cannot be accounted for without reference to decolonisation.

Both the experience of Empire and decolonisation had a profound impact on life in Britain, from facilitating the industrial revolution in the nineteenth century to facilitating the arrival of new migrants (see Rex and Tomlinson 1979, Fryer 1984, Joshi and Carter 1984, Visram 2002, Bhambra 2007). While the reconfiguration of the global social and political order which accompanied decolonisation resulted in massive population displacements, ideas of racial hierarchy were not necessarily dissolved. As Rex and Tomlinson (1979) pointed out in their *Colonial Immigrants in a British City*, the end of Empire did not herald a new dawn of equality but "hostile beliefs and attitudes . . . came to be sanctioned by the highest moral authority" (p.288), leading to a "vicious cumulative spiral of escalating racism" (p.291).

These events, then, integral to understanding conceptions of "insiders" and "outsiders", and occurring concurrently with the development of the asylum regime, are highly pertinent to the history of refugee and asylum policy and to understanding the response of governments like the British to asylum seekers today. While the policy regime may appear to be new, this does not necessarily mean that the situation being presented to policy makers is new. We must not assume logical pathways to policy making in the manner of cause and effect. Nor must we assume that policy choices are inevitable or "natural" reactions. Furthermore, while the politics of asylum may appear to have taken on a novel character in recent decades, its purportedly universal principles should not be allowed to hide the inter-relations between this policy area and longer histories of colonialism, exclusion, and

"othering" which are deeply embedded in the hegemonic epistemology of colonial modernity. This is not simply a matter of historical nuance; rethinking these histories is not irrelevant to the pressing issues facing asylum seekers and refugees today. It is fundamental to critical engagement with contemporary asylum policy.

Notes

[1] David Rees Rees-Williams, Under-Secretary of State for the Colonies

[2] Herbert Morrison, who succeeded Ernest Bevin as Secretary of State for Foreign Affairs two months later.

[3] Viscount Addison, leader of the House of Lords and Lord Privy Seal

[4] This is an edited extract.

[5] Patrick Gordon-Walker, Secretary of State for Commonwealth Relations.

[6] This is an edited extract.

[7] John Selwyn-Lloyd, Foreign Secretary.

[8] Oliver Lyttleton, Secretary of State for the Colonies.

[9] David Maxwell-Fyfe, Home Secretary.

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