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Never Again to Us and/or to Anyone

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David Abraham

This article belongs to the debate » [Never Again: The Holocaust, Trauma and Its Effect on Constitutional and International Law](#)

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There are few questions that have proven themselves more fruitless to pose than “What Are the Lessons of the Holocaust?” Whether in law or politics, the answers are too indeterminate and invariably “instrumentalized.” For very many Jews, and certainly for the Israeli state, the lesson, to be realized in law and policy, is “Never Again—to Us” or, more crudely, because we are victims, we will now dominate rather than being dominated. Out of the Holocaust and Never Again comes a *national* struggle, where, at its worst, all its adversaries are Nazis, and any empathy is impossible. The more liberal or universalist lessons, which tend to predominate in the now rather large number of Holocaust Memorial Museums worldwide (and even, to some extent, in Israel’s own Yad Vashem) are a call for civil courage, democratic self-defense and early awareness of the possibility of dictatorship and mass murder, “Never Again—to Anyone. Out of the Holocaust and Never Again comes a universal *civil rights* struggle.” As Masha Gessen, perhaps dubiously, put it in her controversial Hannah Arendt Prize lecture, only in the latter understanding can “Never Again” be a “political project rather than a magic spell.”

The tension between these two perspectives is found everywhere the matter is considered, even in Israel and even symbolically. Thus, in 2006 Israeli settlers being removed from Gaza donned the yellow star to express what they felt was again being done to them. Their move then was met by near-universal disgust as a grotesque instrumentalization. Yet in early 2024, the Israeli ambassador to the UN undertook the same choreography—to mixed reviews. While most observers by March 2024 believed that Gazans faced the possibility of genocide, or were indeed already experiencing it, most Israelis believed it was they who were the intended victims of a Hamas genocidal effort, thereby justifying a savage response. To a certain extent mirroring that view, the German Chancellor even spoke of a *Zivilisationsbruch* – a term redolent of Auschwitz. Ultimately, it will be the ICJ that rules whether a genocide has occurred, though most of the non-legal world has by now already made up its mind one way or the other as a political matter, whatever it might think of international law more generally.

Both views endow the [1948 Genocide Convention](#)—a direct product of the Holocaust—with the definitions to determine as a legal matter what has happened, though any ICJ judgment is likely to emerge as a postscript to the current war and a rhetorical device for the future. At

the same time, it is no secret that many in the Global South (formerly, the Third World) and many in the “settler colonialism” stream of scholarship decry its primary author, Raphael Lemkin, and the Genocide Convention itself as Eurocentric and perhaps intentionally oblivious to the types of mass murders and crimes undertaken by the European colonial powers over many generations, if not centuries. For them, settler colonialism must lead via property theft and ethnic cleansing to genocide, and if it is too late to do anything serious about Australia or the U.S., for example, Israel, notwithstanding its UN birth certificate, is still within some implicit statute of limitations where it might legitimately be “undone.” For this school, “Never Again” is simply invoked as an excuse for Israel’s ongoing ethnic cleansing project, one that renders Palestinians, in that disturbing, multi-functional German phrase, “die Juden der Juden.” At the same time, the sudden renaissance of figures like Aimé Césaire and Franz Fanon constitutes at once an indictment of Europe for its repeated colonial holocausts and, at minimum, a rebuke of any Israeli special pleading.

The Holocaust was also a central driver for the 1951 Refugee Convention (and 1967 Protocol). The war and immediate postwar experience defined the contours and categories eligible for relief. Namely, those refugees, who fled outside their home countries fearing persecution on account of their “race, religion, nationality, membership in a particular social group, or political opinion.”²⁾ Such people are eligible for asylum and non-refoulement at the border of or inside signatory states (where they may after a while become citizens) while others may be organized by the United Nations High Commissioner for Refugees (UNHCR) for permanent resettlement in willing countries. Ironically, the Palestinians, most made homeless already in 1949, are the dramatic multi-generational exception.³⁾ (The Cold War later made those fleeing Communism a successor prototype to the Jewish victim of Nazism.)

Here too recent developments of various sorts have undermined this post-Holocaust legal conception. Are the masses of people fleeing the failed states and poverty of central America (and elsewhere) for the U.S. or of Africa or central Asia fleeing to Europe cognizable in that same way? Certainly not, and “climate refugees” even less so. Indeed, post-W.W.II law appears as inadequate as a tool for managing contemporary migration as post-W.W.I law turned out to be for managing domestic minority rights. The now widely accepted responsibility of the Global North and of “white” empires for the despoliation of the Global South has marginalized the Refugee Convention and made much of even “regular” immigration a matter of reparations owed, or of the Empire striking back.

The “human rights” of people everywhere seem now to have overtaken the state-based “civil rights” emphasized by the post-Holocaust regime. In 1951, Hannah Arendt, in her classic *Origins of Totalitarianism*, could write that a lesson of the fascist era was that “the whole question of human rights... [became] quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one’s own people, seems to be able to insure them.” Her claim then that only those on the inside, citizens or potential citizens of a state, could claim the “right to have rights” seems almost anachronistic now and would likely be denied by most of today’s Arendt aficionados, who do not associate

the nation state with rights but rather with exclusion. Concerns for global justice and global redistribution owe something to remedies sought for the horrors of Nazism as well as to decolonization and the battle between the two Cold War camps. But they may owe even more to the decline of the social democratic consensus that developed in the decades after the Holocaust as a response to multiple interwar crises—and which has itself declined in recent years.

The moral, legal, and political paradigms established in response to the Holocaust were not going to last forever, not in Israel, not in Germany, and not internationally. Traumas may spur on positive change, but they may also immobilize the traumatized and obscure reality. What we witness now is a persistence of the traumas associated with the Holocaust and the “Never Again” commitment combined with an erosion of the legal frameworks and political beliefs established in their aftermath and intended to prevent the worst from recurring in the future. Their joint breakdown produces morbid symptoms—and tragedy.

References

- ↑1 The most direct expression of this position is probably that by Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8:4 (Dec 2006), pp. 387-409. More recently, the Australian scholar A. Dirk Moses has made quite a name for himself excoriating Germany’s political class and clerisy for resisting the subsumption of Israel into this analysis, thereby learning the wrong lesson from the Holocaust and doing the wrong *Vergangenheitsaufarbeitung*.

- ↑2 The U.S. definition is lodged in §101a(42) of the Immigration and Naturalization Act and reads: “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

- ↑3 Much in the news lately, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), was established in 1949 to aid all the people displaced by the 1948 war, the Palestinian *naqba*. Unlike the UNHCR which has resettlement of refugees elsewhere as its mandate, UNWRA looks out for Palestinian refugees under A/RES/194 which foresaw a “right of return” for those willing to live peacefully with their neighbors.

References

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