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## People, Paper and Power: The Birth of the Passport in International Law

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### Abstract

This paper presents a genealogy of the passport in international law. For the most part, the origins of our contemporary mobility order are narrated from the vantage point of the grand principles of sovereignty, hospitality, and liberty. The nuts and bolts through which people access mobility – passports and visas – are generally understood to be the natural, inevitable, and fair by-products of these principles. This paper contributes to existing debates on the coloniality of international migration law by examining the universalization of the passport under the League of Nations. I argue that the universalization of the passport meant abandoning the old idea that the rights of free movement belonged to everyone and, instead, instituted a system that ranks human mobility based on national origins. Theoretically, it is proposed that attention to these “lowly” practices of mobility governance allows us to track the afterlives of race in the international order.

**Keywords:** history and theory of international law; international migration law; passports; race and colonialism; freedom of movement; human rights

### I. The Need for a “Twail-Genealogy” of the Paper Revolution of the 1920s

In the contemporary age, freedom of movement is organized through a system of passports and visas. While today we are accustomed to thinking this a natural state of affairs, the system of organizing human mobility through paper is relatively recent, starting from the early decades of the twentieth century. There was what might be termed a “paper revolution” in governing human mobility. For the vast majority of human history, mankind found no need for a passport.<sup>1</sup> Then, quite suddenly, in the early twentieth century,

<sup>1</sup> Historians of passports have tended to trace the origins of the document to early modern Europe. They also note that it is analytically beneficial to distinguish between the modern passport in its booklet format and pre-modern practices of managing mobility with paper. These not only took a multitude of forms but were, *ad hoc*, easily circumvented and were far from being a universal system of managing international mobility. Consequently, the modern passport of the twentieth century is treated as quite different to the passports of earlier times and places. For a discussion of this see, John TORPEY, *The Invention of the Passport, Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000) at 93–121; Craig ROBERTSON, *The Passport in America, The History of a Document* (Oxford: Oxford University Press, 2010) at 1–18; and Hilde GREEFS and Anne WINTER, eds., *Migration Policies and Materialities of Identification in European Cities, Papers and Gates 1500–1930’s* (New York: Routledge, 2019) at 3–18.

there was a proliferation of paper (passports, visas, identity documents, categories of legitimate and illegitimate movements) and border bureaucracies to read and manage these papers. The passport went from being an obscure and unnecessary document in the facilitation of travel to being absolutely indispensable.<sup>2</sup> An American professor of administrative law, Louis Jaffe, observed that “[s]ince 1929 we have warned our nationals that travel abroad without a passport would be difficult or impossible”.<sup>3</sup> He further pointed out that, since the 1920s, instead of alleviating constraints on travel freedoms, such constraints had only rapidly expanded. Jaffe’s conclusion is worthy of repetition: “[w]hat began in an alarmed concern for the country’s safety concludes in routines of unmitigated gall”.<sup>4</sup> The conventional history of the passport tells us that it was instituted as a temporary, emergency measure during the First World War. Instead of being dismantled after the war, the paper system gained a life of its own and, over time, became firmly established as the normal way of governing mobility.<sup>5</sup> Turack notes that the passport conferences of the 1920s played a key role in standardizing and universalizing the passport under the mandate of the League of Nations.<sup>6</sup> Unfortunately, there is relatively little research on the history of passports in international law.<sup>7</sup> It has, however, received a fair amount of attention in sister disciplines.<sup>8</sup>

In many ways, the history of the passport is entangled with the rise of the modern nation-state. As the premier historian of passports, John Torpey puts it, the birth of the passport allowed states to “monopolize legitimate means of movement”.<sup>9</sup> He argues that the modern passport furnished states with the practical means to distinguish insiders from outsiders. In this sense, he suggests that the document is crucial to imparting the “state-ness” of states.<sup>10</sup> Torpey’s rich and illuminating account of the passport sheds important constructivist light on state formation. However, his account largely ignores the world outside of Euro-America. Historians working on more transnational and global

<sup>2</sup> Robertson, *ibid.*, at 219 and 226; Torpey, *ibid.*, at 120.

<sup>3</sup> Louis. L. JAFFE, “The Right to Travel: The Passport Problem” (1956) 35(1) *Foreign Affairs* 17.

<sup>4</sup> *Ibid.*, at 28.

<sup>5</sup> John TORPEY, “The Great War and the Birth of the Modern Passport System” in J. CAPAN and J. TORPEY, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (New Jersey: Princeton University Press, 2001) at 257; Mark B. SALTER, *Rights of Passage: The Passport in International Relations* (London: Lynne Rienner, 2003) at 77.

<sup>6</sup> Daniel C. TURACK, “Freedom of Movement and the International Regime of Passports” (1968) 6(2) *Osgood Hall Law Journal* 230.

<sup>7</sup> There is a spate of writing by Professor Daniel C. Turack on the topic of passports during the 1960s and 1970s. See *ibid.*; D.C. TURACK, “Freedom of Movement and the Travel Document” (1973) 4(1) *California Western International Law Journal* 8; D.C. TURACK, *The Passport in International Law* (Toronto: Lexington Books, 1972); D.C. TURACK, “Selected Aspects of International and Municipal Law Concerning Passports” (1970–1971) 12(4) *William & Mary Law Review* 805; D.C. TURACK, “Regional Developments Towards Freedom of Movement: The O.E.C.D.” (1969) 5(2) *Belgian Review of International Law* 516; D.C. TURACK, “The Scandinavian Passport Union” (1968) 38(1–4) *Nordic Journal of International Law* 171; D.C. TURACK, “Freedom of Movement Within the British Commonwealth” (1968) 1(3) *Comparative and International Law Journal of Southern Africa* 476. For a recent history of the 1920s passport conferences and the Hapsburg Empire, see Peter BECKER, “Remaking Mobility: International Conferences and the Emergence of the Modern Passport System” in Peter BECKER and Natasha WHEATLEY, eds., *Remaking Central Europe: The League of Nations and the Former Hapsburg Lands* (Oxford: Oxford University Press, 2020).

<sup>8</sup> Existing legal research has tended to focus on the question of whether the passport is sufficient proof of nationality. This question has been gradually worked out by international courts via *Tunis and Morocco Nationality Decrees*, Advisory Opinion, [1923] P.C.I.J. Series B, Rep. 4 at 216, *Nottebohm Case (Liechtenstein vs. Guatemala)* [1955] I.C.J. Rep 1, and others. For a discussion of these matters see, for example, Adam I. MUCHMORE, “Passports and Nationality in International Law” (2004) 10 *UC Davis Journal of International Law and Policy* 301.

<sup>9</sup> Torpey, *supra* note 1 at 6.

<sup>10</sup> *Ibid.*, at 3 and 6.

history traditions have shown that *fin de siècle* mobility governance was, centrally, also a story about racial discrimination. Lake and Reynolds called the late nineteenth and early twentieth centuries an era of making “white men’s countries” when all kinds of immigration “colour bars” began to be drawn up across the world.<sup>11</sup> Historians of twentieth-century migrations outlined the centrality of race as a rationale for organizing human mobilities; they further demonstrated that passports and papers were key tools through which this racial discrimination was conducted.<sup>12</sup> Lake and Reynolds argued that the net effect of these early twentieth-century practices was “racial segregation at an international scale”.<sup>13</sup> While earlier histories tended to focus only on European security concerns (espionage and Bolshevism), recent scholarship on passports also notes the central role of “racial anxieties”, which in many ways predated the security concerns of the First World War.<sup>14</sup>

International law scholarship locates the origins of our contemporary mobility orderings in two major strands of legal and political thought: natural law and social contract theory. First, an extensive body of literature considers the writings of the natural law publicists, from Francesco de Vitoria in the sixteenth century to Emer de Vattel in the nineteenth century.<sup>15</sup> This strand of literature deals with the high principles of mobility governance: sovereignty, hospitality, freedom of the seas, etc. It is largely told as a story of the gradual accretion of rules that eventually coalesced in the current tension between hospitality and sovereignty.<sup>16</sup> A major question that animates these discussions is how far international law supported or subverted European colonial expansion.<sup>17</sup> A second, closely related tradition draws upon social contract theory and the “right to leave” within the history and theory of international law.<sup>18</sup> The right of expatriation is held to be an expression of enlightenment values inscribed into the doctrines of international law.<sup>19</sup> Mark Salter shows how papers were deployed in medieval Europe as a method of marking subjects who “exited” the jurisdiction of the English sovereign with permission.<sup>20</sup> This was a special clemency from a general rule that prohibited the unfettered wandering around of people, afforded only to merchants. In the world of Blackstonian “perpetual allegiance”, a sovereign jealously guarded the people they

<sup>11</sup> Marilyn LAKE and Henry REYNOLDS, *Drawing the Global Colour Line: White Men’s Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2009) at 4–12

<sup>12</sup> *Ibid.*, at 186; See further also, Radhika V. MONGIA, “Race, Nationality, Mobility: A History of the Passport” (1999) 11(3) *Public Culture* 527; E. Tendayi ACHIUME, “Racial Borders” (2022) 110 *The Georgetown Law Journal* 445 at 466; Adam MCKEOWN, *Melancholy Order: Asian Migrations and the Globalisation of Borders* (New York: Columbia University Press, 2008), at 102; and Sarah FINE, “Immigration and Discrimination” in Sarah FINE and Lea YPI, eds., *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford: Oxford University Press, 2016).

<sup>13</sup> *Ibid.*, at 5.

<sup>14</sup> Radhika SINGHA, “The Great War and a ‘Proper’ Passport for the Colony: Border-Crossing in British India, c. 1882–1922” (2013) 50(3) *The Indian Economic and Social History Review* 289; Torpey, *supra* note 1 at 111; Salter, *supra* note 5 at 20, 88–95.

<sup>15</sup> Vincent CHETAIL, “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel” (2016) 27(4) *The European Journal of International Law* 901; Georg CAVALLAR, “Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?” (2008) 10(2) *Journal of the History of International Law* 181; and Gideon BAKER, “Right of Entry or Right of Refusal? Hospitality in the Law of Nature and Nations” (2011) 37(3) *Review of International Studies* 1423.

<sup>16</sup> Chetail, *ibid.*, at 902.

<sup>17</sup> See Section 2 of the present essay for a detailed discussion of this point.

<sup>18</sup> Jane MCADAM, “An Intellectual History of Freedom of Movement in International Law: The Right to Leave as Personal Liberty” (2011) 12(1) *Melbourne Journal of International Law* 1 at 12–29; Dimitry KOCHENOV, “The Right to Leave Any Country Including Your Own in International Law” (2011) 28 *Connecticut Journal of International Law* 43 at 47; Jaffe, *supra* note 3 at 18 and 25.

<sup>19</sup> McAdam, *ibid.*

<sup>20</sup> Salter, *supra* note 5 at 12–20.

ruled over, preventing their subjects from declaring loyalty to another sovereign. Accordingly, a special leave of absence was a prerequisite for overseas travel.<sup>21</sup> Social contract theorists writing in the Enlightenment were posing a new kind of political and legal answer – a more egalitarian answer – to the question of how people related to their monarch.<sup>22</sup> The main thrust of social contract theory was that a dissatisfied subject could vote *with their feet* and leave. Of course, the colonization and consequent influx of Europeans to the “new world” is the background condition for this development of political theory.<sup>23</sup>

While natural law and social contract theory are important starting points for thinking about the emergence of our mobility order, they leave open some major questions: where is the non-European world in relation to these histories of the development of the high principles that underpin the architecture of our mobility order? Moreover, we are also left to fill in the blanks with respect to how these grand theories are married to nitty-gritty details, such as the “lowly practices” of applying for a passport or visa to supply proof of the legitimacy of one’s movement. Salter refers to the long history of the passport as “a process of political revolutions and slow bureaucratic accretion”.<sup>24</sup> We might normatively describe elements in this history as good and others as bad. Certainly, the development of the right of expatriation might be labelled progress. At the same time, the slow bureaucratic accretion of the passport and its related bureaucracies – the “paper revolution” – point in more problematic directions. David Graeber observes the incongruity between our liberal stories of progress and the concurrent emergence of modern bureaucracies. Modern bureaucracies’ practices do not fit neatly alongside narratives of the forward march of freedom and egalitarianism.<sup>25</sup> In parallel to the discussions I have been highlighting so far, sociologists of human mobility have noted that race continues to be a feature in the governance of global mobility, even today.<sup>26</sup> As early as the 1990s, Bauman observed that a spectrum of movers exists in our hypermobile and cosmopolitan modernity. In figurative terms, he suggested all our mobilities are organized somewhere along the poles between “the vagabond” and “the tourist”.<sup>27</sup> The field of mobility studies has developed this understanding into a much wider elaboration of how mobilities are shaped by power.<sup>28</sup> From a practical perspective, everybody knows that freedom of movement is organized along principles of national origin (verified by a passport).<sup>29</sup> Yet, the central role of papers in the global governance of mobility and the racialized effects they produce is largely considered natural, inevitable, and quite a *normal* state of affairs.

<sup>21</sup> *Ibid.*

<sup>22</sup> Jean-Jacques ROUSSEAU, “Chapter XVIII: How to Check the Usurpations of Government” in *On the Social Contract* (Indianapolis: Augustine Press, 2018), [Trans. G.D.H Cole 1923] at 116.

<sup>23</sup> Astride R. ZOLBERG, *A Nation by Design, Immigration Policies in the Fashioning of America* (London: Harvard University Press, 2008) at 432–60.

<sup>24</sup> Salter, *supra* note 5 at 11.

<sup>25</sup> David GRAEBER, *The Utopia of Rules: On Technology, Stupidity and the Secret Joys of Bureaucracy* (London: Melville House, 2015) at 7.

<sup>26</sup> See for example, Mark B. SALTER, “The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics” (2006) 31(2) *Alternatives: Global, Local, Political* 167; Horng-Luen WANG, “Regulating Transnational Flows of People: An Institutional Analysis of Passports and Visas as a Regime of Mobility” (2004) 11(3) *Identities: Global Studies in Culture and Power* 351.

<sup>27</sup> Zygmunt BAUMAN, “Tourists and Vagabonds: Or, Living in Postmodern Times” in Joseph E. DAVIS, ed., *Identity and Social Change* (New York: Routledge, 2000).

<sup>28</sup> For an overview of this literature see, Mimi SELLER and John URRY, “The New Mobilities Paradigm” (2006) 38(2) *Environment and Planning A* 207.

<sup>29</sup> Steffan MAU, H. BRABANDT, L. LAUBE, and C. ROOS, eds., *Liberal States and the Freedom of Movement: Selective Borders, Unequal Mobility* (Basingstoke: Palgrave Macmillan, 2012), at Chapters 2 and 3.

These days, international law and international relations scholars have begun to talk about international migration law<sup>30</sup> and global mobility governance.<sup>31</sup> In the last twenty years, the “turn to history” in international law has also moved research agendas beyond positivist readings of legal doctrine to enquire into the power relations inscribed into the international order through law.<sup>32</sup> There is currently an odd disjuncture between theory and practice in our mobility order. The political and legal theories drawn upon to justify and explain the groundings of the current system have tended to ignore the fundamental role of passports, visas, and paper. At the same time, we are living in a world of gross “mobility injustice”, and the violence conducted through paper is readily apparent, even to the most casual observer.<sup>33</sup> Taking these concerns as my point of departure, I suggest there is a need to question international law’s role in either facilitating or proscribing those older forms of racial governance that have been described in the literature.

This paper presents an account of the birth of the passport in international law. The view developed here is inspired by Third World Approaches to International Law (hereafter TWAIL) and genealogy. Susan Pederson revises the history of the League of Nations by pointing out that stories of “failure” are not entirely fair assessments of its work.<sup>34</sup> The League undertook a lot of very important work that continues to have a lasting impact in structuring our present through its many technical sections. For this paper, I will focus on the work of the Transit and Communications section. Indeed, the League had prioritized the “functional” development of world politics. The “functional approach” speaks to the centrality of practices, or “low politics” – the actual on-the-ground methods and procedures through which order is made.<sup>35</sup> In genealogical terms, these low politics, the actual methods and procedures themselves, are ripe for investigation as they allow us to bring the operations (or microphysics) of power to the fore; as Foucault told us, power is not only a theoretical concern of justifications in political theory. Rather, by paying attention to the mundane and the everyday, we can see more clearly how power is exercised in its minutiae and how it is imbued across the social fabric via institutions and the seemingly apolitical practices we take for granted.<sup>36</sup> The TWAIL part of my argument

<sup>30</sup> See Jaya RAMJI-NOGALES and Peter J. SPIRO, “Introduction to Symposium on Framing Global Migration Law” (2017) 111 *American Journal of International Law* Unbound, at 1–2; Vincent CHETAIL, *International Migration Law* (Oxford: Oxford University Press, 2019), at 7.

<sup>31</sup> See Alexander BETTS, *Global Migration Governance* (Oxford: Oxford University Press, 2011) at 1–30; Anna TRIANDAFYLLOU, “The Global Governance of Migration: Towards a ‘Messy’ Approach” (2022) 60 *International Migration* 1, at 1–9. For an overview of decidedly more critical “governmentality” literature see William WALTERS, “Reflections of Migration and Governmentality” (2015) 1(1) *Movements. Journal for Critical Migration and Border Regime Studies* 1 at 1–25.

<sup>32</sup> B.S. CHIMNI, “The Geopolitics of Refugee Studies: A View From the South” (1998) 11(4) *Journal of Refugee Studies* 350; E. Tendayi ACHIUME, “Migration as Decolonization” (2019) 71(6) *Stanford Law Review* 1509.

<sup>33</sup> Mimi SELLER, *Mobility Justice, The Politics of Movement in the Age of Extremes* (London: Verso, 2018) at 18.

<sup>34</sup> Susan PEDERSON, “Back to the League of Nations” (2007) 112(4) *The American Historical Review* 1091 at 1108–9.

<sup>35</sup> The functional argument was developed by David Mitrany, who argued that governments could effectively achieve their goals of international peace and stability if they focused on coordinating efforts to specific technical matters; for example, the development of the postal system, labour standards, etc. The key text is David MITRANY, *A Working Peace System: An Argument for the Functional Development of International Organization* (London, Royal Institute of International Affairs, 1943) at 42. For a discussion of this theme, see Pederson, *ibid.*; for a discussion of the functional method in legal studies, see Felix S. COHEN, “Transcendental Nonsense and the Functional Approach” (1935) 35 *Columbia Law Review* 834; See also J. Klabbbers’ important argument that functionalist interpretations which tend to focus on the achievement of international cooperation in technical matters often downplay the colonial inspirations behind many of these developments in Jan KLABBERS, “The Emergence of Functionalism in International Institutional Law: Colonial Inspirations” (2014) 25(3) *European Journal of International Law* 645.

<sup>36</sup> Michel FOUCAULT, “Nietzsche, Genealogy, History” in Paul RABINOW, ed., *The Foucault Reader* (New York: Pantheon, 1991), at 88.

stems from the recognition that, historically, international law tended to closely align with colonial world-making projects.<sup>37</sup> A key contribution of this literature to wider debates on historiography has been to stress the need to move beyond Eurocentric histories.<sup>38</sup> To this end, I have framed my intervention as a TWAIL genealogy. There is a growing appreciation of the importance of the early twentieth century in making our mobility order.<sup>39</sup> I want to suggest that a postcolonial or TWAIL genealogy is necessary to understand the “regressive” or “illiberal” stories of struggle written into the international organization of global mobility.<sup>40</sup> This requires us to take stock of the origins of the great many travel bureaucracies that we take for granted today.

This paper complicates simplistic narratives of a rise and fall in norms of free movement by bringing to the fore the racialized and colonial logic that inspired the emergence of the passport as a universally mandated travel document.<sup>41</sup> It is more appropriate to think of the passport as legitimizing a hierarchy of mobile subjects: after all, globalization enabled the unprecedented expansions of freedom of movement for some people.<sup>42</sup> For this group of people, passports came to be synonymous with freedom and privilege. For others, there was a dramatic fall in possibilities of movement. For this latter group – largely citizens of the Global South – passports pose an often insurmountable barrier to what was once widely recognized as a natural right belonging to *all* of mankind across civilizations.<sup>43</sup> The birth of the passport and its auxiliary rules are a key part of this story. The passport allowed our ancestors to use paper as a proxy for race. The more lasting effect of this on our epistemic horizons is that it twists the old idea that freedom of movement, or the inclination to know and travel the world, was something innate to *all* human beings. Instead, it ranks freedoms of movement through a hierarchy of national origins. My history of the passport proceeds in three steps. First, as I have been suggesting in this section, we need to mark and acknowledge the emergence of the passport as something novel in the history of international law. Second, drawing upon global migration literature, I suggest we need to more carefully examine the interplay of international law and racial-colonial governance techniques as we attempt to chart the movement of the old international law of racism to the new international law that supposedly shed its racist underpinnings. The third part of this paper explores the history of passport conferences, which show us the oft-overlooked and humble beginnings of one of the most powerful pieces of paper in human history – the modern-day passport.

<sup>37</sup> The key text is Antony ANGHIE, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

<sup>38</sup> For a comprehensive discussion of the issues at stake see, Ignacio DE LA RASILLA, *International Law and History: Modern Interfaces* (Cambridge: Cambridge University Press, 2021), at Chapter 4.

<sup>39</sup> This point has been best developed from a refugee studies angle. See Betts, *supra* note 31 at 1–32; Katy LONG, “When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection” (2013) 1(1) *Migration Studies* 4.

<sup>40</sup> Graeber, *supra* note 25 at 82.

<sup>41</sup> Richard PLENDER, *International Migration Law* (Dordrecht: Martinus Nijhoff Publishers, 1988), at 66; Chetail, *supra* note 15 at 901.

<sup>42</sup> See for example, a discussion of the supposed “democratisation of travel” in Patricia GOLDSTONE, *Making the World Safe for Tourism* (New Haven: Yale University Press, 2001) at 1–20. See also Salter, *supra* note 5 at 101.

<sup>43</sup> While the Western classics on hospitality and sovereignty are extensively studied, international law has yet to develop a comprehensive understanding of how human mobility was imagined beyond Europe. For a discussion of Islamic jurisprudence on hospitality, see Hassan S. KHALILIEH, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019).



## II. Race and Mobility in the History of International Law

In recent years, migration law scholars have started to draw upon global history approaches to understand the development of international law. To my mind, it is helpful to bring some theoretical concerns about anachronistic<sup>44</sup> and Eurocentric<sup>45</sup> history writing to bear on these discussions. To answer the question, *where are all the non-Europeans in the history of international migration law?* We might say they are buried under layers of theoretical misconceptions. Let us first consider the problem of anachronism and state-centric analyses. There is a tendency to think of mobility as a particularly modern problem resulting from contemporary globalization.<sup>46</sup> The literature also widely notes that, over the past five centuries, norms of “free movement” declined in favour of “sovereignty”.<sup>47</sup> There is an important tension here with respect to the state.<sup>48</sup> Anachronistic accounts have tended to take the modern state and sovereign as two interchangeable objects when, in fact, we know that the modern state itself was historically constituted through circulation, emigration, and immigration.<sup>49</sup> Accordingly, for the purposes of studying the history of international law and mobility, it is more appropriate to view the state not as a fixed entity, anachronistically floating through time, but to frame it in a more constructivist lens. To understand what is at stake in this matter, let us note that the world map upon which early twentieth-century movements took place was

<sup>44</sup> The debate over anachronism is a major point of contention in the literature dealing with the “turn to history” in international law. Key works include Anne ORFORD, “On International Legal Method” (2013) 1 *London Review of International Law* at 175; Anne ORFORD, *International Law and the Politics of History* (Cambridge: Cambridge University Press, 2021) at Chapter 3; Martti KOSKENNIEMI, “Victoria and Us: Thoughts on Critical Histories of International Law” (2014) 22 *Rechtsgeschichte* 119; For a pertinent critical discussion, see Kate PURCELL, “On the Uses and Advantages of Genealogy for International Law” (2020) 33(1) *Leiden Journal of International Law* 13; For an excellent summary and discussion of this literature see Natasha WHEATLEY, “Law and the Time of Angels: International Law’s Method Wars and the Affective Live of Disciplines” (2021) 60(2) *History and Theory* 311.

<sup>45</sup> For this paper, I am drawing upon Samir Amin’s original formulation of Eurocentrism. Amin identified it as a mode of history writing that celebrates the Western subject as the author and hero of history. See Samir AMIN, *Eurocentrism: Modernity, Religion and Democracy, A Critique of Eurocentrism and Culturalism* (New York: Monthly Review Press, 1989) at 165–188. See also, Ignacio DE LA RASILLA, “Looking Forward Through and Beyond the Western Classics” (2023) 13(1) *Asian Journal of International Law* 146, 163–166; S.V. SCOTT, “Inserting Visions of Justice into a Contemporary History of International Law” (2014) 41(1) *Asian Journal of International Law* 41 at 41–42; and Ntina TZOUVALA, “The Spectre of Eurocentrism in International Legal History” (2021) 31(2) *Yale Journal of Law & The Humanities* 413.

<sup>46</sup> McKeown, *supra* note 12 at 364–8; Valeska HUBER, *Channelling Mobilities: Migration and Globalisation in the Suez Canal Region and Beyond, 1869–1914* (Cambridge: Cambridge University Press, 2013), at 13; Barry BUZAN and George LAWSON, *The Global Transformation: History, Modernity and the Making of International Relations* (Cambridge: Cambridge University Press, 2015), at Chapter 3.

<sup>47</sup> Plender, *supra* note 41 at 66; Chetail, *supra* note 15 at 901.

<sup>48</sup> The problem of “the state” is well known to social science investigations of human mobility. See for example, Roxanne L. DOTY, “Racism, Desire and the Politics of Immigration” (1998) 28(3) *Millennium: Journal of International Studies* 585 at 587; Soguk NEVZAT, *States and Strangers Refugees and Displacements of Statecraft* (Minneapolis: Minnesota University Press, 1993) at 57; and Agnes CZAJKA, “Migration in the Age of the Nation-State: Migrants, Refugees and the National Order of Things” (2014) 39 *Alternatives: Global, Local, Political* 151 at 154; Emma HADDAD, *The Refugee in International Society: Between Sovereigns* (Cambridge: Cambridge University Press, 2008) at 47–96. More recently, scholars of international law have also started to frame the problem of mobility as a reiteration of the “problem of the state” or “methodological nationalism.” See, for example, Sherali MUNSHI, “Unsettling the Border” (2021) 67 *UCLA Law Review* 1722 at 1724.

<sup>49</sup> Zolberg, *supra* note 23; Lake and Reynolds, *supra* note 11; Radhika MONGIA, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham: Duke University Press, 2018) at 1–29; Michel FOUCAULT and Michel SENELLART *et al.*, *Security, Territory, Population, Lectures at the Collège De France, 1977–1978* (Basingstoke: Palgrave Macmillan, 2007) at 49. For a political theory-based literature see Thomas NAIL, *The Figure of the Migrant* (Stanford: Stanford University Press, 2015) at 4; Torpey, *supra* note 1 at 6, 4–20.

crucially different from our present. The world map was divided and organized in the form of empires, not neatly bordered and sealed off nation-states. Empires consisted of large tracts of disconnected lands, supposedly unified by the political rule of a European sovereign. The inhabitants of these territories existed loosely as political subjects of the same sovereign, although the system of racial hierarchy (or standard of civilization) evoked great debate and discord amongst them. Moreover, the movement of people across these territories was also a lot more fluid. While we are used to thinking about the passport purely as a document that denotes citizenship, this truth only came to be settled after a long, protracted period of debate and contestation.<sup>50</sup> In the early twentieth century, both people and place were scripted in quite radically different ways. It is my contention that allowing this difference to hold rather than sweeping it under the gloss of a progressive narrative has important theoretical implications. Put another way, framing the history of the state in a more constructivist lens allows us to bring to the fore the power relations and contestations that ordered and fixed relationships between people, place, and the meanings and values attached to human mobility.

Second, Eurocentrism offers an even more fundamental problem.<sup>51</sup> Histories of international law tend to narrate the story of the Euro-American subject, almost always in the lineage of a noble history, and this is largely true for histories of migration.<sup>52</sup> McKeown has argued that, for the most part, migration studies have operated with a highly Eurocentric assumption about mobility itself. The world outside of Europe had been largely imagined as being composed of sedentary, land-bound peasants.<sup>53</sup> If they moved at all, they moved as passive “cheap labour” to serve more important imperial world-making projects. Consider, for example, an argument presented by McAdam in her intellectual history of freedom of movement. In tracing the ideational equation between liberty and a right of expatriation, she recognizes that this was uniquely the privilege of certain classes of European men.<sup>54</sup> Upon considering the concurrent mobilities of non-European peoples, McAdam concludes that these “reflect less the notion of ‘free movement’ in accordance with concepts of personal ‘liberty’ and more the importation of indentured foreign labour”.<sup>55</sup> This imaginary is simply not sustained by the truths of the historical record. Certainly, a large number of non-European movements were embroiled in the exploitative labour practices of Europe. That, however, does not give us license to conclude that they were passive victims devoid of agency. Nor does it allow us to assume that, had they a real choice, they would have stayed put, tied to their lands. Indeed, one of the major debates in the literature on labour migration remains the problem of defining a universally shared point from which we can credibly draw lines between free and unfree labour.<sup>56</sup> Wherever these lines can and should be drawn, it is clear that race or “national origins” – either historically or in the present – cannot serve this function. Moreover, we also know that not all non-Europeans were moving

<sup>50</sup> See for example, Mongia, *ibid.*, at 4–15.

<sup>51</sup> Tzouvala, *supra* note 45; Koskeniemi, *supra* note 45.

<sup>52</sup> Philip ALSTON, “Does the Past Matter? On the Origins of Human Rights” (2013) 126 (7) Harvard Law Review 2043.

<sup>53</sup> McKeown, *supra* note 12 at 45. See also Adam MCKEOWN, “Periodizing Globalization” (2007) 63 History Workshop Journal 218 at 226.

<sup>54</sup> McAdam, *supra* note 18 at 12 and 15; For a broader sociological discussion of this problem see also Beverley SKEGGS, *Class, Self, Culture* (New York: Routledge, 2004), at Chapter 3.

<sup>55</sup> McAdam, *ibid.*, at 15.

<sup>56</sup> See Tom BRASS and Marcel VAN DER LINDEN, *Free and Unfree Labour: The Debate Continues* (Bern: Peter Lang, 1997) at 11.



as “slaves” or “indentured labourers”.<sup>57</sup> The movements of non-Europeans are as complex and varied as any other ethnic or racial group. Abu-Lughod outlined the expansive world of movement that existed in the Indian Ocean region prior to European hegemony.<sup>58</sup> Others have similarly shown how during the age of mass migrations in the nineteenth century – the world was on the move. Asians, Africans, and Europeans were dispersing themselves across distances in the pursuit of all kinds of legitimate, illegitimate, and not so clearly defined pursuits.<sup>59</sup>

Perhaps more than states or their “monopoly over the legitimate means of movement”,<sup>60</sup> the fact of people moving across the Earth’s surface has been a constant in the history of mankind. If we accept that the world has always been on the move for all types of reasons, then we are faced with more concrete questions about international law and power when we try to explain how certain types of movements came to be facilitated and others curtailed. Why was it specifically at this historical moment that specific new legal rules and methods of ordering human mobility were introduced in the early twentieth century? The need to fit the myriad and multifarious mobilities into a grid of order and regulation was a specific colonial desire. During the 1920s, Young notes that 90% of the Earth’s surface was controlled by European colonial powers.<sup>61</sup> This territorial control also had profound implications for how people of all backgrounds could travel. In this regard, Huber’s framework of “channeling mobilities” is helpful for thinking about how everyone’s mobilities were inscribed into colonial circuits of movement.<sup>62</sup> As colonial powers went about their projects of building bridges and railways and connecting various regions of the Earth, they also went about ensuring that the use of these facilities favoured their own geopolitical interests. In the late nineteenth and early twentieth centuries, it was specifically the movements of “Asiatics” to the European settler colonies that gave rise to hysteria about passports, visas, and immigration based on ethnic or geographical origins. To uncover some of the effects of Eurocentric history writing, particularly in the history of international law, we also need to account for *how* colonial power made differentiated and hierarchical mobile subjects. The birth of the passport as a universal document of mobility is an important part of this story.

Third, and finally, the upshot of these concerns about anachronism and Eurocentrism are more general anxieties about how we might theorize the history of international law. Is international law the gentle civilizer of nations, entirely a discourse of power, or somewhere in between? A major discussion within legal scholarship on hospitality, sovereignty, and freedom of movement is the extent to which European jurists provided the intellectual backbone for European overseas colonization. To date, no conclusive answers have emerged. Chetail finds that Grotius had formulated a “decolonized” right to movement.<sup>63</sup> Pagden told us that de Vitoria’s right of hospitality, at least in theory, extended to the “barbarians” of the new world travelling to Europe, as it did to Europeans travelling to

<sup>57</sup> The most well-known and spectacular event in the history of global migration is the incident of the Komagata Maru. For a discussion of this see history, see R.V. MONGIA, “Historicizing State Sovereignty: Inequality and the Form of Equivalence” (2007) 49(2) *Comparative Studies in Society and History* 384 at 406.

<sup>58</sup> Janet ABU-LUGHOD, *Before European Hegemony, The World System A.D 1250-1350* (Oxford: Oxford University Press, 1989) at 34. See also C. MARKOVITZ, *The Global World of Indian Merchants, 1750-1947: Traders of Sind from Bukhara to Panama* (Cambridge: Cambridge University Press, 2000) at 10.

<sup>59</sup> Patrick MANNING, *Migration in World History* (London: Routledge, 2005) at 149.

<sup>60</sup> Torpey, *supra* note 1 at 6.

<sup>61</sup> Robert YOUNG, *Postcolonialism: A Very Short Introduction* (Oxford: Oxford University Press, 2003) at 2.

<sup>62</sup> Huber, *supra* note 46 at 317.

<sup>63</sup> Chetail, *supra* note 15 at 906.

the new world.<sup>64</sup> By contrast, Gani argues that an entire literature debates the historical and contemporary intricacies of Kant's cosmopolitan right but erases the quite central discursive function of race.<sup>65</sup> It is no secret that historical international law once subscribed to the noxious standard of civilization. This imbued international law with an explicitly racial logic. Today, there nevertheless remains a widespread misconception that racism in international law is a thing of the past.<sup>66</sup> Over the last twenty years, a wealth of research has indicated that such a simplistic analysis of race is untenable.<sup>67</sup> Racism in international law continues to this day, although it might not always have the same shape and form as it did in the late nineteenth and early twentieth centuries. Numerous areas of international law, including the sovereignty doctrine, good governance, international economic law, development, and the laws of warfare and terrorism, continue to be haunted by the racialized logics of the past.<sup>68</sup> Scholars have likewise highlighted the colonial and racial politics at play in global migration law.<sup>69</sup> Alongside this literature, I contend that revisiting the interplay between colonial and international lawmaking during the 1920s can help us chart how the universalization of the passport was linked to racial and colonial politics of the time and, of course, remain intimately tied to the ongoing projects of racialized violence and injustice at borders today.

The 1920s were the heyday of scientific racism and the high noon of imperialism. This is the context in which the League worked on its functional development of Transit and Communications. One striking element of this history is that, on the one hand, the League's language is couched in terms of paternal benevolence and speaks of the protection of natives and indigenous peoples. At the same time, global historians have shown that on-the-ground labour, immigration, and control practices that were fostered or

<sup>64</sup> Anthony PAGDEN, *The Burdens of Empire, From 1539-Present* (Cambridge: Cambridge University Press, 2015) at 65.

<sup>65</sup> Jasmine K. GANI, "The Erasure of Race: Cosmopolitanism and the Illusion of Kantian Hospitality" (2017) 45 (3) *Millennium: Journal of International Studies* 425 at 433.

<sup>66</sup> Siba N. GROVOGUI, *Sovereigns, Quasi-Sovereigns and Africans: Race and Self-Determination in International Law* (Minneapolis: University of Minnesota Press, 1996) at 1–10; Christopher GEVERS, "Unwhitening the World": Rethinking Race and International Law" (2021) 67 *UCLA Law Review* 1652 at 1656; Zoltán I. BÚZÁS, "Racism and Antiracism in International Order" (2021) 75(2) *International Organization* 440 at 441.

<sup>67</sup> One simplistic analysis of race implies that racism is limited only to the belief in biologically distinct races. Another equates racism to only the specific deliberate acts of discrimination by individuals. For a discussion of more systemic understandings of race in international law, see, for example, Robert KNOX, "Valuing Race? Stretched Marxism and the Logic of Imperialism" (2016) 4(1) *London Review of International Law* 81; James T. GATHII, "Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other" (2021) 67 *UCLA Law Review* 1610; and E.T. ACHIUME and D.W. CARBADO, "Critical Race Theory Meets Third World Approaches to International Law" (2021) 67 *UCLA Law Review* 1462.

<sup>68</sup> Anghie, *supra* note 37; Chantal THOMAS, "International Economic Law and Racialised 'Others'" (2022) 116 *American Journal of International Law Unbound* 113 at 113–18; Mohsen AL ATTAR and Claire SMITH, "Racial Capitalism and the Dialectics of Development: Exposing the Limits and Lies of International Economic Law" (2022) *Law and Critique* 1; Rotem GILADI, "The Phoenix of Colonial War: Race, the Laws of War, and the 'Horror on the Rhine'" (2017) 30(4) *Leiden Journal of International Law* 847; Kim A. WAGNER, "Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency" (2018) 85 *History Workshop Journal* 217 at 217–37.

<sup>69</sup> Achiume, *supra* note 12, at 455–464; Achiume, *supra* note 32, at 1533–1547; Chantal THOMAS, "The Struggle Against Empire Continues: Reflections on Migration as Decolonisation" (2020) 72 *Stanford Law Review* 53 at 53–60; Frédéric MÉGRET, "The Contingency of International Migration Law: 'Freedom of Movement' Race and Imperial Legacies" in Ingo VENZEKE and Kevin Jon HELLER, eds., *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford: Oxford University Press, 2021) at 179–198; Chimni, *supra* note 32, at 350–353; K. de VRIES and Thomas SPIJKERBOER, "Race and the Regulation of International Migration: The Ongoing Impact of Colonialism in the Case Law of the European Court of Human Rights" (2021) 39(4) *Netherlands Quarterly of Human Rights* 291 at 292; Nadine EL-NANY, *Bordering Britain: Law, Race and Empire* (Manchester: Manchester University Press, 2018) at 1–16.

tolerated during this era can hardly be described as humane.<sup>70</sup> More surprisingly was the realization that the authorities charged with making new mobility regulations knew very well that they were implementing rules that were deeply resented and resisted as racial discrimination. Rather than addressing these concerns squarely, however, they went about obfuscating the matter.<sup>71</sup> Given the contradictory nature of how racialized exploitation and governance appear in the historical records, I considered the genealogical approach to be well-suited to the matter at hand. Rather than proceeding with a general assumption about how race operated in the entirety of international law, my genealogical inquiry explores in more practical terms how specific issues were addressed and worked out historically. Benton argued that international law did not develop in some orchestrated concert but from the rather more patchy, *ad hoc* attempts to secure imperial influence across distant regions of the world.<sup>72</sup> For the study of human mobility, we should be careful not to repeat colonial ordering practices and approach the past more reflexively. As scholars, our methodological commitment should not be to salvage imperial discourse against all odds but, first, to track it in the fullness of its complexity. Equally, as Pahuja and others in the TWAIL tradition have argued, this does not mean totally rejecting international law as purely a discourse of domination.<sup>73</sup> The point of this historical investigation is not to narrate a story of heroes and villains but to explore how the past continues to shape the present through concepts, categorizations, and epistemological frameworks, both in continuous and discontinuous ways.<sup>74</sup>

Let us now explore more closely the historical background upon which the League's activities of ordering mobilities were being conducted. In the following pages, I explore how the League imagined non-Western mobilities while highlighting some early on-the-ground colonial practices of ordering mobilities through paper in the era before the birth of the universal passport system.

### A. Article 23 of the League of Nations Covenant, 1919

In the post-1945 world order, we have grown accustomed to a particular way of ordering human mobility.<sup>75</sup> However, if we step further back in time to the early twentieth century, we obtain a rather different picture. Article 23 of the League's Covenant was known as the "Transit and Communications" clause, and it is especially instructive in bringing to the fore the imperial foundations upon which our contemporary mobility order is built.<sup>76</sup> The article guaranteed the freedom of transit and communications between League members, with certain topics outlined for special interest: labour, fair treatment towards colonial subjects, the traffic of human beings, drugs, disease, and arms. Article 23 discloses a curious mix of ideals that only make sense when lumped together and contextualized. These are the ideals professed by imperial governments about how they would conduct their imperial and inter-imperial relations. During the 1920s, most of the world had fallen

<sup>70</sup> See for example McKeown, *supra* note 12; Ali HAMMOUDI, "International Order and Racial Capitalism: The Standardisation of 'Free Labour' Exploitation in International Law" (2022) 35 *Leiden Journal of International Law* 779.

<sup>71</sup> See the discussion in Section 3 for a detailed exposition of this point.

<sup>72</sup> Lauren BENTON and Lisa FORD, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (London: Harvard University Press, 2016) at 1–27.

<sup>73</sup> See Sundhya PAHUJA, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011), especially the Introduction.

<sup>74</sup> Anghie, *supra* note 37.

<sup>75</sup> The mobility of people across nation-states as opposed to the mobility of people across empires.

<sup>76</sup> *The Covenant of the League of Nations*, 10 January 1920, art. 23, online: <https://www.ungeneva.org/en/about/league-of-nations/covenant>. Article 23 is reproduced in the Annex of this article.

under the territorial control of Europe. The history of the passport cannot be fully appreciated without reference to concurrent debates about “racial contact” between so-called “civilizations” in the early twentieth century. Political scientists produced extensive texts debating the exact terms on which the contact between civilizations should be maintained.<sup>77</sup> Historians of international relations have written sobering accounts of how the *raison d'être* of colonial international relations was the governance of interracial relations.<sup>78</sup> The history of mobility governance is, of course, part of these broader efforts.

Article 23 of the Covenant is only one small point on the map of international law and human mobility. The passport conferences of the 1920s stemmed from the League's interest in promoting the smooth and orderly movements of people. Article 23(e) specifically promised that the League would “make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League”. The Transit and Communications Office was established as the technical section to aid the practical achievement of this lofty goal. In turn, this office organized the passport conferences as meetings between world leaders and technical experts.

As far as the colonies were concerned, the activities of the League were not based on a reciprocal practice of mutual understanding or respect. Even though Article 23(b) undertook to secure the “just treatment” of natives, we cannot simply assume that European colonial officials were able to mete out justice. The literature has debated extensively what precisely “just treatment” under conditions of coloniality might look like.<sup>79</sup> By now, an impressive body of research has attended to the “standard of civilization” which animated international law discourse of the nineteenth and early twentieth centuries.<sup>80</sup> I will not rehearse the same arguments here but reiterate, along with them, that the natives, as they were called, *did not speak* in these discussions.<sup>81</sup> As Chimni has observed, historically, colonized populations only existed as passive “objects” upon whom international and imperial legal interventions were to be made.<sup>82</sup> Before we turn to the discussions of the passport conferences under the League's mandate, let us take a quick look at these on-the-ground practices of fair and orderly movements of people conducted in the late nineteenth and early twentieth centuries.

### B. Ordering Mobilities and the Discharge of the White Man's Burden

No single coloured person has been allowed to pass without our getting satisfactory explanations about her position.<sup>83</sup>

<sup>77</sup> Lake and Reynolds, *supra* note 11 at 60 and 73; John M. HOBSON, *The Eurocentric Conception of World Politics, Western International Theory, 1760-2010* (Cambridge: Cambridge University Press, 2012), at 8; Duncan BELL, *Dreamworlds of Race, Empire and the Utopian Destiny of Anglo-America* (Princeton: Princeton University Press, 2020), at 6.

<sup>78</sup> Robert VITALIS, *White World Order, Black Power Politics: The Birth of American International Relations* (Ithaca: Cornell University Press, 2015) at 169–181.

<sup>79</sup> Anghie, *supra* note 37; Pederson, *supra* note 34; See also Ian HUNTER, “Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations” in S. DORSETT and I. HUNTER, eds., *Law and Politics in British Colonial Thought* (New York: Palgrave Macmillan, 2010) at 11.

<sup>80</sup> Anghie, *ibid.*; Antony ANGHIE, “Imperialism and International Legal Theory” in Anne ORFORD, Florian HOFFMANN, and Martin CLARK, eds., *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016) at 157–8; Adom GETACHEW, *Worldmaking After Empire, The Rise and Fall of Self Determination* (New Jersey: Princeton University Press, 2019) at 19.

<sup>81</sup> B.S. CHIMNI, *International Law and World Order: A Critique of Contemporary Approaches*, 2nd ed. (Cambridge: Cambridge University Press, 2017) at 16.

<sup>82</sup> *Ibid.*, at 16.

<sup>83</sup> Colonel Schaefer, quoted in Huber, *supra* note 46 at 197.

Stefan Zweig is known for writing a melancholic critique of the passport system, which suddenly emerged at the onset of the First World War and forever changed the world in its aftermath. He wrote:

Before 1914 the earth had belonged to all. People went where they wished and stayed as long as they pleased. There were no permits, no visas, and it always gives me pleasure to astonish the young by telling them that before 1914, I travelled from Europe to India and America without a passport and without ever having seen one.<sup>84</sup>

The conventional, Eurocentric history of the passport as being borne from security fears during the First World War is firmly established. Yet, for the people subjected to European colonialism, the paper governance of mobility was already quite familiar. Indeed, until the First World War, passports were not really an important feature of international mobility governance, *except* in the case of “undesirable” racialized travellers moving from Asia to the “white settler colonies”.<sup>85</sup> Australia was a world leader in this respect, requiring a passport from certain types of unwanted migrants to consolidate the aims of its “white Australia policy”.<sup>86</sup>

In the grand history of modern state formations, there were a number of processes at work. “Paper” and citizenship laws were instrumental modes of achieving the then political science ideal of a racially and culturally homogenous nation-state.<sup>87</sup> One process underway was ridding the body politic of so-called “impure” elements;<sup>88</sup> for example, when European settlers began to consolidate their control over the so-called *terra nullius*. Beyond old-fashioned racism, they needed a more tangible system of asserting control over the territory. The “Native pass system” was invented to prohibit the free movement of natives on the contested territory of Canada. Its goal was not only to confine and contain the “threat” that indigenous peoples presented to the settlers but also their eventual elimination.<sup>89</sup> Similarly, historians of European bureaucracies have shown that paper was a tool by which citizens were made and unmade. In early twentieth-century Europe, Jewish people, homosexuals, and others were identified as threats and subjected to one of the most horrifying examples of genocide in world history. Note, for example, in their struggle against the Berlin authority, one member of the Jewish community exclaimed: “Certainly: the paper! Half a Jewish life is spent with the fight against ‘papers’.”<sup>90</sup> Alongside this process of ridding the body politic of internal misfits, a new repertoire of bordering practices also emerged during the early twentieth century to define and safeguard the *external* boundaries of the state. Passports, visas, and

<sup>84</sup> Stefan ZWEIG, *The World of Yesterday* (Lincoln: University of Nebraska Press, 1964) at 409–10.

<sup>85</sup> The term white settler colonies, refers to America, Canada, Australia, New Zealand, South Africa. When Europeans “discovered” these territories as *terra nullius* – not belonging to anybody – they deemed them suitable locations for the outpouring of European “surplus populations”. See Zolberg, *supra* note 23. See also Lake and Reynolds, *supra* note 11.

<sup>86</sup> Salter notes that Colonial British passport regime was already in place before the international system was invented. As I outline in Section 3 of the present essay, British delegates also played a central role in shaping the League’s passport system. See Salter, *supra* note 5 at 77.

<sup>87</sup> Lake and Reynolds, *supra* note 11 at 57; For a further discussion, see Alison BASHFORD, “Internationalism, Cosmopolitanism and Eugenics” in Alison BASHFORD and Philippa LEVINE, eds., *The Oxford Handbook of the History of Eugenics* (Oxford: Oxford University Press, 2010) at 154–172.

<sup>88</sup> Michel FOUCAULT, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Michel SENELLART, ed., Trans. Graham BURCHELL (New York: Picador, 2004) at 185–213.

<sup>89</sup> Keith D. SMITH, *Strange Visitors: Documents in Indigenous-Settler Relations in Canada from 1876* (Toronto: University of Toronto Press, 2014), at 82–93.

<sup>90</sup> Christiane REINECKE, “Producing the ‘Undocumented Migrant’, Registration and Deportation in Early Twentieth Century London and Berlin”, in Greefs and Winter, *supra* note 1 at 243.



immigration laws were key armaments in this arsenal. The racialized nature of these bordering histories is already well known: Lake and Reynolds aptly described it as the making of “white man’s countries”.<sup>91</sup>

Beyond histories of state formation, there is also an international element to the organization of mobility and citizenships. This part is still underdeveloped in the literature, but a number of Marxist elaborations about the border indicate that imperial mobility management was also fundamentally related to the organization of labour on an imperial (or international) scale.<sup>92</sup> The roots of our modern mobility order are also tied to the organization of economic and labour relations between Europe and its colonies. Early traces of paper governance appear wherever European powers had to order and fix divisions and hierarchies of labour.

One of the most cited instances of the genius of paper relates to the governing of early migrant workers, also known as “coolies”.<sup>93</sup> Until the 1800s, the sugar plantations of the Caribbean had relied on a steady supply of enslaved Africans. After the abolition of the slave trade, the need for “cheap labour” continued well into the twentieth century.<sup>94</sup> Through the genius of paper, the contract established a distinction between “slavery” and “free migrants”. Even then, there was no shortage of criticism against the indentured labour trade. The solution devised to avoid this critique was to prove that the labourer had truly consented to his fate. A number of procedures were set in place to detect and record his free will. A collector of customs was appointed to personally ensure that each intending migrant was really free; the migrant was required to press his thumbprint onto a physical contract to indicate his agreement to being transported overseas for a specified period of bonded labour. Of course, the historical records are chock full of documentation of the horrors – kidnap, coercion, violence, rape, murder, and suicide – that remained fully intact with this system.<sup>95</sup> Nevertheless, it was a piece of paper – in this case, “a contract” – that mysteriously denoted truth to an otherwise clearly visible fiction that the practice of “indentured labour” was somehow substantively different from “slavery”.

At yet another crossroads of empire – the Suez region connecting Asia, Africa, and Europe – we see another instance of how colonial powers deployed paper to mark and order non-European mobilities. Valeska Huber shows how black mobilities in Eastern Suez became a particular kind of problem at the turn of the century. Imperial attempts to thwart the Arabian slave trade brought into being a new system of papers where every single “coloured person” on the move had to be subjected to inspection. Arabs (alleged slavers) and Africans (allegedly enslaved persons) would only be allowed to pass through the various checkpoints set up across the region if they could prove that their movements were legitimate. The sum total of these well-meaning interventions

<sup>91</sup> Lake and Reynolds, *supra* note 11 at 3–12.

<sup>92</sup> See the Annex for a reproduction of Article 23. Article 23(a) of the League’s Covenant clearly recognizes the centrality of colonial labour as an important element of “transit and communications”. The extent to which the freedom of movement or liberty of colonized populations was of interest within the imaginary of justice envisioned by the League, or indeed international law thereafter, is unclear. Notably, Article 23(e), which provides for freedom of communication, was limited to League members. For a critical Marxist theory of the border, see Nicholas De GENOVA, “The Crisis of European Border Regime: Towards a Marxist Theory of Borders” (2016) 150 *International Socialism: A Quarterly Review of Socialist Theory* 31.

<sup>93</sup> It must be pointed out that this word is widely recognized as being a racial slur. For an excellent discussion of this terminology see the preface, “The C-Word” in Gaiutra BAHADUR, *Coolie Woman: The Odyssey of Indenture* (London: Hurst & Company 2013) at xix.

<sup>94</sup> The indentured labour trade was officially abolished in 1917. For a discussion of this literature see Hugh TINKER, *Separate but Unequal: India and the Indians in the British Commonwealth, 1920–1950* (Vancouver: University of British Columbia Press, 1976) at 21–43; McKeown, *supra* note 12 at 71–74; Mongia, *supra* note 12 at 529.

<sup>95</sup> *Ibid.*



was that black people (especially women) simply could not traverse the region without “freedom papers”.<sup>96</sup>

The sending back and forth of racialized cheap labour between various European colonies appeared to be a perfectly logical thing for colonial officials to facilitate. It has never really been the ambition of colonial administrators to maximize the “freedom” of non-Europeans. Accordingly, pockets of “free” Asians already established in the settler colonies became a great source of danger. In addition to violence, internments, and deportation in the early twentieth century, there were calls to absolutely bar the possibility of further arrivals. Of the many arguments that were presented to demand the expulsion and legal subordination of Asian communities, the protection of “white labour” appeared as a special demand.<sup>97</sup> White labour, protected by trade unions, demanded that their special privileges, higher rates of pay, and unique social and cultural traditions be protected from the “threat” of non-European others. In their imaginaries, the only natural and inevitable position for non-Europeans was to exist in a state of *being* cheap labour. While it was impossible for the colonial societies of America, Canada, Australia, and New Zealand to imagine that white labour be paid and remunerated at the same rates as everybody else, we can certainly imagine this was not a universally shared assumption.

In line with recent calls to “decolonize” international law, the central contention developed in this paper is that we must attend to the history of colonialism whereby European powers effectively controlled 90% of the Earth’s surface.<sup>98</sup> A key feature of this spatial control was the control over peoples’ freedom of movement. Some populations were rendered mobile, while others were immobile as part of colonial order-making practices. While “freedom” was increasingly a term used to describe *white* Euro-American movements, this could not be said for the rest of the world.<sup>99</sup> I argue that it is precisely in this context that we must read the emergence of the passport in international law. To demonstrate the role of international law in the making of our modern mobility order, I shall now focus on the passport conferences held under the auspices of the League of Nations.

### III. New Frontiers of Twentieth-Century Mobility Governance “After Race”: Passports and Visas

Following TWAIL’s elaborations of historiography, I insist that non-European peoples who increasingly found their mobilities curtailed were complete subjects of history: they actively resisted, critiqued, and attempted to overthrow this unjust system. The previous sections have outlined how race-based immigration laws were put into place by white settler colonies to keep the political space of those regions “white” and dominated by “European civilization”. However, these attempts at asserting racial control over the vast territories of *terra nullius* were fiercely contested. Indian, Chinese, and Japanese peoples, who were targeted by emergent legal measures, resisted them in whatever

<sup>96</sup> Huber, *supra* note 46, at 198.

<sup>97</sup> Lake and Reynolds, *supra* note 11, at 150–7 and 187.

<sup>98</sup> Young, *supra* note 61 at 2. TWAIL discussions of historiography have alerted us to the dangers of the proceeding as if non-Europeans were merely passive recipients of benevolent European law-making. For example, see Chimni, *supra* note 81 at 16; Balakrishnan RAJAGOPAL, *International Law from Below* (Cambridge: Cambridge University Press, 2009), at 174. On the possibility of “decolonising” international law, see Pahuja, *supra* note 73 and Mohsen AL ATTAR and Shaimaa ABDELKARIM, “Decolonising the Curriculum in International Law: Entrapments in Praxis and Critical Thought” (2023) 34 *Law and Critique* 41.

<sup>99</sup> Hagar KOTEF also makes this point in her discussion of European political theory on freedom of movement through a reading of canonical historical writing of John Locke and others. See Hagar KOTEF, *Movement and Ordering of Freedom: On Liberal Governances of Mobility* (Durham: Duke University Press, 2015) at 1–16.

political and legal grammars they had available to them, including international law, imperial law, national law, etc.<sup>100</sup> Their various contestations and challenges posed a question of major world-historical significance – whether race was a valid rationale through which imperial and international mobilities could be organized. There was no straightforward answer to this question. Clearly, the people on the receiving end of travel bans opposed the evolving immigration regimes. The different settler colonies of Europe had their own *internal* politics to answer this question. Internally, their answer was a resounding yes. For them, race was a valid, noble, and necessary reason for border control. For instance, at the level of national discourse, Australian immigration policies were referred to as the “White Australia Policy”. At the same time, Canadian law during the 1930s openly spoke of “two classes of mankind”.<sup>101</sup> Even American law was quite explicit in its assessment that only members of the “white race” could become citizens of the United States.<sup>102</sup> But, *externally*, a rather different line of argumentation was pursued. To maintain a diplomatic face, the policy was to *govern race without actually ever mentioning the word*.<sup>103</sup> In the apt words of Joseph Chamberlain, the British Foreign Secretary, in 1897, border legislation must not cause “wanton injury to the self-respect of non-European [British] subjects”.<sup>104</sup> To maintain international (imperial) relations and not declare an outright war, it was agreed that openly talking about race as a tool for governing peoples was not a legitimate practice. It raised too much trouble, debate, and contestation.<sup>105</sup> From these contradictory concerns arose a system of governing mobilities through a highly technical system of papers that would effectively have the same outcome as racial discrimination but without ever mentioning the word “race”.<sup>106</sup> In other words, papers came to be the proxy through which mobilities were governed, but only after it became apparent that openly talking about race gave rise to too much conflict and contestation. A paper technicality was a less offensive measure of barring entry than race.

It is worth reiterating this point. By the early 1920s, mobility discourse had already come to be contested for enacting racial discrimination. Within colonial affairs, the answer to these contestations was the institution of papers as a less offensive technology of discrimination. In this section, we shall consider how these imperial concerns about governing mobility came to be universalized via international law. The international law that did develop, based on the universalization of the passport and the emergence of ancillary principles such as reciprocity, only legitimized this colonial form of governance. It did not provide any space for dissatisfied subjects to be heard or to register a complaint, let alone subvert this emergent order.

The universalization of the passport and visa system, which until now has been explained as a mere process of standardization, must be revised to enable a more appropriate deconstruction of colonial power. The grand narratives underpinning our histories

<sup>100</sup> Lake and Reynolds, *supra* note 11 at 5; Mongia, *supra* note 12 at 547. See also Moon-Ho JUNG, *Menace to Empire: Anticolonial Solidarities and the Transpacific Origins of the US Security State* (Oakland: University of California Press, 2022) at 121.

<sup>101</sup> Henry Forbes ANGUS, “Canadian Immigration: The Law and its Administration” (1934) 28(1) *American Journal of International Law* 74 at 76.

<sup>102</sup> Ian F. HANEY-LÓPEZ, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996) at 1–2.

<sup>103</sup> See Mongia, *supra* note 12 at 544.

<sup>104</sup> Joseph CHAMBERLAIN, Proceedings of the Colonial Conference, 1897, Cd. 8596, at 12 [IOR/L/PARL/2/338].

<sup>105</sup> In the case of India for example, it was also because colonial officers feared the consequences of widespread outrage at this new system. The biggest colony – the so called “Crown Jewel” of the British Empire – was threatening to boycott the Empire, bar the entry of white fellow subjects on the same conditions they faced overseas, and also insist on boycotting all colonial goods from the “white settler colonies”.

<sup>106</sup> See Mongia, *supra* note 12 at 544. See further Achiume, *supra* note 32 at 449.

of international order tell of the rise and fall of free movement.<sup>107</sup> Concurrently, there is also a widespread understanding that after the fall of empires, race died away as a key ordering principle of international law and politics. My argument is that tracking the history of the paper revolution in the global governance of mobility reveals how race continues to be a central ordering feature despite the superficial insistence that papers have nothing to do with race. The most striking part of this history is the intentionality with which racism was masked. Both Smith and Mongia noted that, as imperial officers instituted new methods of racialized mobility restrictions, those officers wondered what legal authority they had to do so in the first place, recognizing, of course, the inherent cruelty of the system.<sup>108</sup> Similarly, in the archives, I found the same dynamic at play. Officers in charge of making the new rules knew very well that they were upholding a racial hierarchy and that this was not fair or acceptable to those affected. Their policy was to solve the accusation of unfairness with technical rules in the hope of simultaneously obscuring the injustice being enforced.

Indeed, the passport system was intended for the very specific purpose of giving rise to a kind of “colonial reciprocity” that parcelled colonial, hierarchical relations in the form of a highly bureaucratized, theoretical concept of equality. Finally, upon reflection upon the past hundred years of governing human mobilities with paper, I pose the following provocation: in the “era after race”, passports and visas are the onward trajectories of these older mobility forms into the present. This is not to naively suggest that racism was truly over but to suggest that passports and papers play a key role in constituting and reproducing the global colour line as it stands in the present.<sup>109</sup>

#### A. *The Passport Conferences at the League of Nations, c. 1920s*

During the inter-war years, a number of passport conferences were organized under the auspices of the League to realize the imperatives listed in Article 23 of the League’s Covenant – the “smooth and orderly transit and communications between nations”.<sup>110</sup> The initial objective of the League was to call for the total abolition of the passport system and a return to pre-First World War conditions. Supported by the various technical committees and experts, it was held that abolishing the compulsory passport system would “mitigate considerably the disadvantages and expense which that system entails for the relations between peoples and for international trade facilities”.<sup>111</sup> At these initial meetings, world leaders and experts were imbued with a high degree of optimism that the passport system would be abolished. However, their enthusiasm petered out over the

<sup>107</sup> Plender, *supra* note 41. For the “standardisation” of the passport narrative see Turack, *supra* note 6; Sara KALM, “Standardising Movements: The International Passport Conferences of the 1920s”, STANCE Working Paper Series, Lund University, 2017, no. 8.

<sup>108</sup> Mongia, *supra* note 12 at 546 suggests that “the ‘guilt’ of racism is evident both in the demand for confidentiality of the [official government] documents and in the general policy of not naming race”. Smith, *supra* note 88, likewise points out that even as the Native Pass System, which sought to contain First Nations people to reserves was being implemented, the officers in charge privately wondered what legal authority they actually had to institute such a cruel system. For a discussion of how contemporary anti-discrimination law focuses on intentions of specific actors versus a systematic discussion of anti-racism, see Achiume and Carbado, *supra* note 67 at 1497.

<sup>109</sup> W.E.B. DU BOIS, “The Present Outlook for the Dark Races of Mankind” in C.N. DIMITRI, ed., *The Problem of the Colour Line at the Turn of the Twentieth Century: The Essential Essays* (New York: Fordham University Press, 2015), at 111.

<sup>110</sup> These conferences were held with the aim of advancing the aims of Article 23 of the League’s Charter. See the Annex to this article.

<sup>111</sup> A Resolution was taken at the 6th Assembly of the League of Nations calling for the total abolition of compulsory passports. For a discussion of this point see Turack, *supra* note 6.

course of successive conferences. At the Rome Passport Conference held in 1924, there were still some lingering hopes for a different type of mobility resolve: delegates professed favour for the total abolition of passports *as soon as possible* but agreed that, until such a time was attainable, a simplification of rules was in order. It was at this conference that the standard form of a passport took shape.<sup>112</sup> Delegates agreed to settle on a universal standard form of an identity booklet, departing from earlier, more varied, and *ad hoc* forms, which could be as minimal as a single sheet of paper.<sup>113</sup> However, two years later, at the Geneva Passport Conference held in 1926, optimism for the abolition of the passport had fully expired. Here, it was accepted as impossible due to certain “political facts”. A vote was taken on whether or not the League should continue to agitate for the abolition of passports and visas. Out of thirty-eight delegates, only five voted against the resolution: Italy, Greece, India, South Africa, and Britain.<sup>114</sup> In the following section, we shall examine the background of these “political facts” more closely and explore what they meant for colonial and metropolitan societies.

The world over, the “passport nuisance” was resisted as an unnecessary hassle.<sup>115</sup> In light of the failure to pass a resolution towards the abolition of the passport, the technical committees worked towards standardizing its form, improving conditions for travellers, and facilitating those easements that were possible to make. These technical, functionalist developments have been credited as an “achievement” of the League.<sup>116</sup> Sure, these developments made the bureaucracy slightly less complicated for some people, but I contend this development had much more profound and far-reaching effects on the mobilities of all those who, for whatever reason, were imagined as inferior races. The passport entered the annals of world history almost by stealth. It was introduced as an emergency measure during the First World War, with a promise that it would be eliminated as soon as the war was over. But, eventually, it came to stand in as an unhappy compromise between free trade, economic exchange, desire for travel and communication, and more communitarian imperatives such as ethnonationalism and national security. At the conferences, British delegates were at the forefront of arguing for the continuation of the passport system. They argued that passports, “far from being a hinderance to the traveller, were in fact most valuable documents to the traveller, connotating as they did, the simplest evidence of nationality and identity yet devised”.<sup>117</sup> They were sceptical of the overly economic focus of the League’s experts, implying that the officers of the British Empire had far greater expertise and knowledge on the proper functioning of passports, permits, and papers.<sup>118</sup> These had, after all, been used within the British Empire to manage the mobilities of colonial subjects for more than two decades.

<sup>112</sup> *Ibid.*, at 235.

<sup>113</sup> *Ibid.*

<sup>114</sup> Report of the Delegate of India to the International Passport Conference, Geneva, May 1926, 2 June 1926 [IOR/L/E/7/1187]. The Passport Conference was attended by thirty-two world representatives, including a delegate from India. It is quite peculiar that an Indian delegate would vote in favour of passports and visas, given that Indians were mostly on the receiving end of quite harsh paper requirements. However, the British government used the presence of various heads of state of colonies for the realpolitik purpose of inflating its weight in international fora. In other words, we are dealing with European representations of the world and how it ought to be governed during the high apogee of racial colonialism.

<sup>115</sup> For a discussion of the passport nuisance, see Robertson, *supra* note 1 at Chapter 11; Jane DOULMAN and David LEE, *Every Assistance and Protection, A History of the Australian Passport* (Sydney: The Federation Press, 2008) at 31. See also early twentieth century discussions of the “passport problem”; for example, Jaffe, *supra* note 3; and Edigo REALE, “The Passport Question” (1931) 9(3) *Foreign Affairs* 506 at 509.

<sup>116</sup> Pederson, *supra* note 34 at 1092.

<sup>117</sup> *Foreign Office Letter Exchanged between British Under Secretary of State for Foreign Affairs, Sgt. R. Sperling and the Secretary of State for India*, (23 June 1926) [IOR/L/E/7/1187, File 133].

<sup>118</sup> *Ibid.*

Let us proceed by way of exploring the case of India and the movement of people within the British Empire. Torpey's assertion that the passport allowed the modern state to monopolize the means over legitimate movement remains, to date, the most persuasive reading of the passport.<sup>119</sup> He suggests that the passport was invented because it allowed a state to "know" its citizens from outsiders.<sup>120</sup> Indeed, the British delegation at the Passport Conference put the matter of passports in precisely these terms: "The passport system is essential to the United Kingdom in order that immigration officers may have a ready means of distinguishing British subjects from aliens."<sup>121</sup> At the same time, it was acknowledged that passports were necessary in India for entirely other reasons, namely "to control the movements of British Indians to countries outside India".<sup>122</sup> The passport was not introduced in India for the sake of knowing Indians from non-Indians. It was the main tool by which Indian attempts at travelling to and settling in so-called "European settler colonies" were to be managed.<sup>123</sup> At the Passport Conference, the colonial office issued the following explanation as to why Indian delegates must vote in favour of the new passport system, even though the passport legislation was deeply resented in the colony:<sup>124</sup>

... entirely different considerations apply to countries belonging to the two following categories: (1) *states like those of Europe* which are closely joined to one another, which have hourly business interests, which are quickly and cheaply traversed and which contain similar racial types and have fairly similar developments," and (2) *states which lie at a distance* and are only reached by long voyages and troublesome land journeys, which contain populations of varying development and which are bordered by regions that are unsettled or are less influenced by the obligations arising from constant business intercourse. [emphasis added]

The upshot was that white mobilities would be treated as fundamentally different to non-white mobilities. To our modern sensibilities, this certainly seems like a strange justification. Instead of abolition, these various concerns ushered in a new system of governing mobility via paper. Instead of universalizing a fair system of governing mobilities, the passport conferences universalized a colonial system of ordering global mobilities. The "rule of colonial difference" between Europeans and non-Europeans was written into the details of the system that emerged.<sup>125</sup> This newly emergent system split human mobilities into a two-tiered scheme that racialized human mobility. Racial doctrines aside, the interactions between these distant places had foremost been about business, trade, and

<sup>119</sup> Torpey, *supra* note 1.

<sup>120</sup> *Ibid.* Torpey's approach suggests that the passport is the basic tool through which a state could know and delimit a body of people known as its citizens or population. In other words, he suggests that the more practical development, the passport, was a technology of governance that emerged first. The notion of citizenship as we know it today emerged from the quite contingent context of trying to monopolize control over movements. For related political theory discussions on this point, see note 49 above.

<sup>121</sup> India Office, London, International Passport Conference, 21 April 1926 [IOR/L/E/7/1187].

<sup>122</sup> *Ibid.*

<sup>123</sup> Mongia, *supra* note 12 at 533; See also Sherally MUNSHI, "Immigration, Imperialism and the Legacies of Indian Exclusion" (2016) 28(1) Yale Journal of Law and the Humanities 51.

<sup>124</sup> Instructions for the Indian Delegate at Geneva Passport Conference, May 1926 [IOR/L/E/7/1187]. It might be surprising to learn that an Indian delegate was present and voted at the passport conferences despite the fact that India was a colony and, as such, was subsumed under British political control. Their mere presence does not suggest that they could vote freely or were in some way representative of a unified Indian voice.

<sup>125</sup> Pratha CHATTERJEE, *The Nation and its Fragments, Colonial and Postcolonial Histories* (Princeton, New Jersey: Princeton University Press, 1991) at 33; Mongia, *supra* note 12 at 531. For a related discussion on how this "myth of difference" plays out in modern refugee politics, see Chimni, *supra* note 32 at 351.

exchange.<sup>126</sup> It can be said that colonialism grossly skewed the rules of this game in favour of Europe, and even at the time, plenty of people saw this as a problem. Histories of their struggles and contestations, however, fell outside of the archive of international law and the development of its doctrines and principles. Instead, what we are left with is the inscription of the rule of colonial difference into the international governance of mobilities. The League experts similarly went about treating non-European mobilities as if they were of a fundamentally different nature and character to the movements of Europeans. As long as the paths for their own mobilities were smoothed over, colonial administrators and politicians saw no problem in rendering colonial subjects immobile.<sup>127</sup> Turack notes that the total abolition of passports became understood as a political impossibility: the League hoped to ease the situation in Europe as much as possible.<sup>128</sup>

Another vital tool in the arsenal of the paper revolution was the visa. Technical committees of the League considered abolishing the entrance, exit, and transit visas.<sup>129</sup> Again, papers of the British delegation shed important light on the need for retaining these. While no objections were stated on the removal of the exit visa, a more stringent line was taken on entrance requirements. The Secretary of State for Dominion Affairs advised that this matter was not up for international debate, noting that “the question of abolition of entrance visa requirements is one for arrangement between specific countries”.<sup>130</sup> From the historical literature on migration, we know why this was the case. Bashford shows that “entry requirements” or immigration laws were the new methods by which racial and eugenic population-making tactics were advanced.<sup>131</sup> For example, in their fierce defence of the “White Australia Policy”, Australian delegates led the way. They noted that Australia would “prefer to retain entrance visa requirements to assist in regulating the influx and preventing unsuitable immigrants from coming here”.<sup>132</sup>

The mobility predicaments of all types of oppressed and racialized groups remained untouched by the actions of the League. The passport became the central tool through which mobilities would be known, rendered legible and governable, allowing effective monopoly over the legitimate means of movement. In the post-1914 world, it increasingly became the case that everybody needed a passport to travel. The visa was a sister document, ensuring that holding a passport was not enough to grant access to mobility. If the passport had come to be a paper stand-in for the person, then the visa would be the tool through which different passports could be discriminated against. The purpose of this documentary apparatus was to set up a system of technicalities that would govern race without mention of the word race.<sup>133</sup> Together, these instruments subjected an individual applicant through a rigmarole of technicalities: an impossible set of barriers and little

<sup>126</sup> Even Article 23 of the League’s Covenant recognized this point.

<sup>127</sup> Canadian authorities had urged the Government of India to institute passports to prevent the unwanted arrivals of Indians to Canadian shores as early as 1906. The British Colonial Office resisted this suggestion because there was no legal precedent or authority to institute such a policy of racialized mobility impediments. See Mongia, *supra* note 12 at 533. By contrast, when passports became universalized during the First World War, Salter notes, Canadian authorities complained at the embarrassment of having to produce a paper to travel within the British Empire. Salter, *supra* note 5 at 86.

<sup>128</sup> Turack, *supra* note 6 at 231.

<sup>129</sup> For a contemporary discussion of the visa as a “remote control” technology, see A. ZOLBERG, “The Archaeology of ‘Remote Control’” in A. FAHRMEIR, O. FARON and P. WEIL, eds., *Migration Control in the North Atlantic World* (New York: Berghahn Books, 2003) at chapter 13.

<sup>130</sup> Telegram from the Secretary of State for Dominion Affairs to Governor General of Canada, Australia, New Zealand and Union of South Africa, 21 April 1926, Para II. C [IOR/L/E/7/1187].

<sup>131</sup> Bashford, *supra* note 87 at 159.

<sup>132</sup> Telegram from the Governor General of the Commonwealth of Australia to the Secretary of State for Dominion Affairs, 4 May 1926, Para B(iii) [IOR/L/E/7/1187].

<sup>133</sup> Mongia, *supra* note 12 at 546. See also Achiume, *supra* note 32.



paper necessities invented solely for the purpose of controlling people's movements to suit colonial visions of how the world ought to be ordered.<sup>134</sup> The effect of all of this was that certain oppressed and racialized groups remained tangled in webs of bureaucratic immobility, including European Jews seeking escape from persecution, as well as colonial populations who set off to different parts of the world for all types of reasons – from trade, adventure, and love to much more.

So far, I have described the contingent universalization of the passport system. Despite the widespread willingness to abolish passport controls, they were retained at the behest of four countries. The history I have been describing discloses to us that, first, the passport is not merely a piece of paper that denotes the citizenship status of a person; it is also part of the process whereby mobilities are ordered and ranked on a global scale. Second, from these imperial and international discussions on the passport, it is also possible to chart the emergence of a new principle of governing global mobility. Let us now examine the principle of reciprocity.

### *B. Reciprocity: Bilateral Agreements and the Making of Migration Studies' Principle of State Sovereignty*

It has been suggested that failing the total abolition of passports, the League did the next best thing, which was to standardize movements. Turack notes, “the participants at the Conference decided that the time had not arrived for the total abolition of passports on a universal basis. As the passport remained the most conventional inter-state travel document, the Conference offered recommendations to improve it.”<sup>135</sup> Kalm similarly suggests that the League took over a process of “standardizing” human mobility.<sup>136</sup> But these efforts of standardizing also had the effect of rendering passports *more legitimate*, providing further conceptual grounds upon which colonial practices of racializing human mobility could stand. Whether these processes of improvement and standardization could address foundational problems casts a serious shadow of doubt over this system because it began to consolidate and write into international law the systems already in place. Failing to abolish the paper regime, which was known to be a proxy for race, experts went about adding cosmetic touches to the existing system. At the passport conferences of the 1920s, an enormous amount of ink, paper, and mental energy was devoted to making sense of existing regulations, smoothing over glaring inconsistencies, introducing uniformity, and a semblance of bureaucratic logic into this system. Technical experts debated how long a passport or a visa should be valid for, how much they should cost, how many pages a passport should contain, whether every page should be perforated in a special pattern, whether women travelling alone should be permitted to use their husbands' passports, the languages it should be written in, family arrangements it should mention, etc.<sup>137</sup> Over time, as Foucault might put it: “its trifling aspect fades from view”, and “a principle of explanation emerges after the fact”.<sup>138</sup> I want to suggest that this *post facto* principle is what migration studies scholars will easily recognize as state sovereignty. These nitty-gritty, bureaucratic concerns would later be consolidated into a much more coherent system that we recognize today as the normal operations of state sovereignty. Moreover,

<sup>134</sup> For a comprehensive discussion of this point, see Lake and Reynolds, *supra* note 11.

<sup>135</sup> The Passport Conference 1925 (Geneva); Turack, *supra* note 6 at 237.

<sup>136</sup> Kalm, *supra* note 108 at 7.

<sup>137</sup> League of Nations, Advisory and Technical Committee for Communications and Transit, Geneva, 18 May 1926, Recommendations [IOR/L/E/7/1187].

<sup>138</sup> Michel FOUCAULT, “We ‘Other Victorians’” in Paul RABINOW, ed., *The Foucault Reader* (London: Penguin Classics, 1991) at 294.

today, the concept of state sovereignty is invoked in all discussions about mobility rights, particularly the question of whether there needs to be fairness in the system that organizes differentiated freedom(s) of movement. Yet this system of governing only came into being during the early twentieth century through a number of legal and political developments. An oft-overlooked role of paper and the passport conferences is that they were important sites from which colonial mobility orderings leapt into international mobility orders.

From the passport conferences of the 1920s, a new international law principle was emerging to order global mobilities: a system of bilateral mobility agreements – reciprocity. This new principle would replace the older idea that freedom of movement was a natural right and that *everybody*, regardless of their race or national origin, should have similar mobility rights. As early as the 1920s, Turack notes the reciprocal removal of border formalities began to be agreed between certain European nations.<sup>139</sup> Notably, these reciprocal relations only extended to European peoples. As far as the mobility relationships between Europe and the rest of the world were concerned, these bilateral and reciprocal mobility arrangements instituted into legal practice a system that was specifically designed to mask the operations of colonial-racial power.

Again, let us delve deeper into this problem by way of the discussions between India and the British Empire. Indians, who were on the receiving end of very harsh border legalities during the early twentieth century, were also quite vociferous in their demands that racial border discrimination be abolished.<sup>140</sup> In Geneva, upon the successful conclusion of the vote against the abolition of the passport system, the British delegate congratulated others on the achievement of a *solution*: “the question [of passport abolition] was eventually disposed of by the adoption of an anodyne resolution recommending that ‘the passage of frontiers should be facilitated by bilateral agreements or agreements between more than two countries’”.<sup>141</sup> Effectively, this meant that countries could continue to decide, as per their own racial or other rationales, what kinds of mobility relationships they would enter into. The inequality inherent in this system was already under a lot of international and imperial discussion. For example, all kinds of social, economic, and legal arguments were being made against the racial system of governing mobilities that was prevalent at the time. At the India Office, colonial officers struggled to explain to the Indian populace why, precisely, their freedom of movement was being hacked away. On the harsh border practices between India and Canada, one politician advised that Indians “demanded to know of the Government whether they would give them a straight answer in this connection, for if this subject is allowed to proceed as it has been doing for the last two years or so, the Hindu residents in India would boycott all Canadian goods and also debar Canadians from visiting their country”.<sup>142</sup>

An exchange between the Viceroy of India and a liberal British politician, Lionel Curtis, helps us see the power politics written into this newly emergent system.<sup>143</sup> In a 1918

<sup>139</sup> Turack, *supra* note 6 at 233. First, France, Luxembourg, and Belgium entered into treaties to abolish border formalities; this was later expanded to include the Netherlands.

<sup>140</sup> For an in-depth discussion of this point, see Lake and Reynolds, *supra* note 11. See also Munshi, *supra* note 124.

<sup>141</sup> Foreign Office Letter Correspondence between the British Under Secretary of State for Foreign Affairs, Sgt. R. Sperling, and the Secretary of State for India, 23 June 1926, [IOR/L/E/7/1187, File 133].

<sup>142</sup> W.C. HOPKINSON, (Deputy Minister of the Interior, Ottawa) Letter dating 18 June 1913 reporting on Mass Meeting Held by Indians in Vancouver on 15 June 1913, to the Secretary of State for the Colonies, “Indians in Canada”, [IOR/L/PJ/6/1395], at 60. For a discussion of this colonial reciprocity in the inter-imperial mobility relations between Australia and India, see Margaret ALLEN, “‘Innocents Abroad’ and ‘Prohibited Immigrants’: Australians in India and Indians in Australia, 1890–1910” in Ann CURTHOYS and Marilyn LAKE, eds., *Connected Worlds: History in Transnational Perspective* (Sydney: ANU Press, 2005) at 111–124.

<sup>143</sup> Lionel CURTIS, Memorandum on Asiatic Migration, 14 December 1918, [BNA/FO/608/211/2].

private letter, Curtis proposed that the full principle of reciprocity be applied as a measure of managing mobilities between India and “white” parts of the Empire. This meant barring the arrival of white British subjects on the same terms that Indians were debarred from “white settler colonies”. Curtis argued that Australians or Canadians, all of whom had active commercial interests in India and were once subjected to the same exasperating and humiliating catechisms, would quickly start pressuring their governments to remove those absurd barriers. This was also an active demand in Indian newspapers and popular culture.<sup>144</sup> By contrast, the Viceroy had other ideas. In his assessment, such a policy would only further escalate hostilities and close off any paths for asserting “friendly diplomatic pressure” as a method for future reconciliation. Accordingly, when it came time to implement the new internationally sanctioned passport rules, the Viceroy of India noted that “[p]ersons leaving India for countries requiring passports will be granted them except in the case of undesirables when reference will usually be made to countries reciprocating our practice”.<sup>145</sup> As I suggested in the previous section, the racialization of mobility during this era was tied to greater state-making processes and the inscription of inequalities in the international system of states. Nevertheless, the extent to which colonial methods and concepts of governing mobility coalesced into international law is remarkable. The effect of all this was, as Allen has put it, “the mobility of modernity was reserved for those deemed white”.<sup>146</sup>

Once upon a time, philosophers considered rights of movement to be natural and innate to all of mankind. In the 1920s, however, a new principle for governing mobilities was emerging – reciprocity. Just as Mongia did, we can recognize that, far from being based upon any fair or equal relations of exchange, it was fundamentally a colonial reciprocity.<sup>147</sup> The new idea of reciprocity furnished conceptual legitimacy to the imperial practices already underway. It did not function with the noble aim of treating everybody equally but created a legal principle under which unequal mobility relations could be conducted without contestation. What did this principle of reciprocity look like as it related to mobility relations between “white” and “non-european” societies? It spelt the continuation of racialized mobility governance, now expanded into everyday practices of passports legitimated by international law. The new mobility order maintained a formalistic façade and insistence on equality but, at the same time, produced racialized effects. What Du Bois had once described as “the global colour line” thus began to be rendered tangible, at least partially, as a global paper line.<sup>148</sup> Once the League’s process of

<sup>144</sup> See note 106 above.

<sup>145</sup> Viceroy of India Telegram, 6 February 1920, Proposed Passport Legislation for Regulating Entry into and Egress From India, Indian Passport and Visa Regulations, [IOR/PJ/8/738].

<sup>146</sup> Allen, *supra* note 143 at 124.

<sup>147</sup> Mongia, *supra* note 12 at 552. See also Mongia, *supra* note 57.

<sup>148</sup> Du Bois, *supra* note 110. As Du Bois explained in the early twentieth century, racism was a *global* problem. In their *tour de force*, the historians Lake and Reynolds expanded on this metaphor to show how the transnational politics of racial hatred were instrumentalized to create “white men’s countries” at the *fin de siècle*. See Lake and Reynolds, *supra* note 111. Today, passports, papers and the legal statuses and positionalities arising from these (such as citizen, national, migrant labourer, tourist, temporary resident, etc.) not only shape how we navigate and experience mobility but also expose us to varying degrees of vulnerability to state-sanctioned violence. Indeed, passports and papers are key legal tools from which we draw lines and divide humanity today. In government policy and even certain academic quarters, there remains a steadfast insistence that paper discrimination is necessary, that it does not constitute racial discrimination, and that it is not racist. There is, however, a mounting understanding that migration policies the world over are deeply racialized. For two opposing views on whether visa policies discriminate on race, see Maarten DEN HEIJER, “Visas and Non-Discrimination” (2018) 20 *European Journal of Migration and Law* 470; Andrew ROSENBERG, “Racial Discrimination in International Visa Policies” (2023) 67(2) *International Studies Quarterly*, online: <https://doi.org/10.1093/isq/sqad032>. For a discussion of how “arbitrary visa regimes, immigration controls and liberal modes of transnational incarceration” feed

standardizing and universalizing the passport began, it was gradually rendered a more legitimate practice. And the inequalities inherent in the system became scripted as a natural way of moving.

### C. Did the “Paper Revolution” Give a New Life to “Race”?

In the long history of human mobility, paper is a relatively recent prerequisite for travel. Alongside the use of paper is also the idea of legitimate and illegitimate movements. I suggest that “fetish” is a helpful term in thinking about this system.<sup>149</sup> In this paper, I advance an understanding of a fetish object as “a magical charm or enchanted [o] bject”.<sup>150</sup> In this final section, I want to pose a provocation by asking whether the passport is a fetish object of a raced Eurocentric modernity. Thus far, I have outlined the intersecting international, imperial, and national histories of the passport. During the long durée of colonialism, race became an important detail through which mobilities were organized. By the 1920s, the passport emerged as colonial governments’ answer to the charge of racial discrimination. They presented paper requirements instead of race as *the solution* to the widespread allegation that racial discrimination was an invalid ground for mobility discrimination. Race, in other words, became transcoded onto paper. Over time, this ignoble origin has been forgotten, and the passport has become established as a kind of sacrosanct travel document, testifying to some truth held inside the body of its bearer. What did imperial powers have to say about these new tools? See, for example, this caution contained on the last page of the passport designed in 1921:<sup>151</sup>

#### CAUTION

This passport is a valuable document, and should not be allowed to pass into the possession of any unauthorised person. If lost or destroyed, the fact should be immediately reported to the Passport Office, London, or to the nearest British authority, and to the local police authorities. New Passports can only be issued in such cases after exhaustive enquiries.

into the general problem of the global colour line, see Alexander ANIEVAS, Nivandi MANCHANDA, and Robbie SHILLIAM, “Confronting the Global Colour Line: An Introduction” in Alexander ANIEVAS, Nivandi MANCHANDA and Robbie SHILLIAM, eds., *Race and Racism in International Relations* (London: Routledge 2015) at 10; for a discussion of how precarity is enabled via the production of legal, illegal and other migration statuses, see Vicki SQUIRE, “Migration and the Politics of ‘the Human’: Confronting the Privileged Subjects of IR” (2020) 34 (3) *International Relations* 290, at 293.

<sup>149</sup> The term “fetish” was coined by the French philosopher Charles de Brosses in his 1760 book *Du culte des dieux fétiches: ou Parallèle de l’ancienne religion de l’Égypte avec la religion actuelle de Nigritie*. European enlightenment thinkers came to describe a fetish as the “backward” belief of certain primitive peoples, particularly Africans, that a material object such as a statute or stone could be imbued with supernatural powers. Hegel famously picked up this idea in his work when he justified the inferiority of African peoples based on their religions. Georg W. F. HEGEL, *Lectures on the Philosophy of History* (London: Bell, 1894), at 98. To be clear, in this paper, I am not using the understanding of the term as later developed by Sigmund Freud into psychoanalytical theory but the idea of the fetish as deployed in intellectual history, anthropology, and new materialities research. As Lacano puts it, “We are literally surrounded by fetishes, that is to say, by objects endowed with qualities pertaining to human relationships.” Fetish objects can seem natural and familiar but contain a mysterious quality or power that influences how we order and navigate human relationships. See Alfonso M. LACONO, *The History and Theory of Fetishism* (Basingstoke: Palgrave Macmillan, 2016) at 1–2.

<sup>150</sup> D. KRIER and M. WORRELL, “Totems, Fetishes, and Enchanted Modernity: Hegelian Marxism Confronts Idolatry” (2018) 17(1) *Logos: A Journal of Modern Society and Culture*, online: <https://logosjournal.com/2018/totems-fetishes-and-enchanted-modernity-hegelian-marxism-confronts-idolatry/>.

<sup>151</sup> Specimen of a British passport provided to India in 1921. League of Nations, International Passport Conference 1926 (3 January 1925–16 August 1929) [IOR/L/E/7/1423 File 7110].

But what is so special about a passport? On face value, it is *merely* paper – a little booklet decorated with ornaments and regalia of the state. It also contains shiny stamps, embellishments, and fairly trivial pieces of information about a person (their date of birth, eye colour, strings of numbers, and so on). Yet, altogether, these things amount to something quite profound. They communicate certain “truths” about a person: their history and place in the world. The concept of citizenship, which is allotted quite randomly to human beings, then becomes ritualized in this book, which informs where people can live, where they can work, what kinds of wages and life experiences they will be subject to, whether they can leave the country in which they were born, and whether they can expect to be welcomed somewhere else. As far as the organization of human mobilities is concerned, these little books endow some people (as if by magic) with rights of smooth movement. Others may well drown in the sea, but by the logic of papers, passports, visas *etc.* they will not be allowed safe passage or movement rights. It is as if the passport is a fetish object *par excellence* of modern mobility governance – it extolls the embrace of a person by power.

From a positivist, Eurocentric reading of international law, the decolonization era marked the decisive end of race and colonialism. Such a view assumes that these old racial logics of mobility governance have mostly disappeared today and that modern mobility bureaucracies (passports, visas, visa-waiver regimes, *etc.*) simply reproduce greater ideals of hospitality, sovereignty, and the social contract in a fair and just manner. Indeed, freedom of movement has been rightly described as a foundational right in the liberal canon.<sup>152</sup> How is it, then, that this supposedly universal right is readily available to a few and largely unavailable to the majority of the world? Most people can even accept that this system sometimes produces questionable outcomes, but on the whole, as Graeber suggested, these are assumed to be the fault of individual people – not the system itself.<sup>153</sup>

*Contra* such narratives, I have been suggesting that the universalization of the passport via the League of Nations did not institute an objective method of governing mobility but translated the rationales of colonial governments into international law. The 1920s paper revolution, as organized by the League, can find its roots in older methods of controlling labour, economic development, and, of course, racial power and domination. Increasingly, it is recognized that the racial organization of the colonial era continues to structure the present in important ways. The history of the passport is one such strand in the much larger story of the afterlives of race in the international order. We know that passports were invented as close proxies of race in the early twentieth century. Nearly two hundred years ago, Blumenbach introduced a noxious new idea into science: different races of man could be ranked.<sup>154</sup> Today, it is quite common for passports to be ranked.<sup>155</sup> In most passport rankings, visa-free or “visa on arrival” entry is the system upon which value is placed. Given the contemporary use and abuse of the passport (or citizenship) as the chief means whereby we decide *who* can be a normative, rightful bearer of freedom of movement, a more troubling portrait of race and international order comes more clearly into view. Commentators speak of a passport or mobility apartheid to describe the present state of affairs.<sup>156</sup>

<sup>152</sup> Satvinder S. JUSS, “Free Movement and World Order” (2004) 16(3) *International Journal of Refugee Law* 289.

<sup>153</sup> Graeber, *supra* note 25 at 48.

<sup>154</sup> Stephan. J. GOULD, “On Mental and Visual Geometry” (1998) 89 *Isis*, at 502–4.

<sup>155</sup> Henley & Partners calculates the world’s most powerful passports each year and publishes them on their website. For a scholarly discussion of passport rankings, see Mau *et al.*, *supra* note 29.

<sup>156</sup> Dimitry V. KOCHENOV, “Ending the Passport Apartheid: The Alternative to Citizenship is No Citizenship – A Reply” (2021) 18(4) *International Journal of Constitutional Law* 1525; Catherine BESTEMAN, “Militarised Global Apartheid” (2019) 60 (19) *Current Anthropology* 92.

Huber notes that in the early twentieth century, it became impossible for non-white people to move across the Suez region without “freedom papers”. The freedom to roam the world for the vast majority of the world comes from integration/immigration to rich countries. Citizenship of certain countries also comes with related assumptions about the moral economy of labour in global value chains and belonging to a global hierarchy. No sooner had Asians, Africans, and others raised the demand that mobilities should not be governed on the basis of race, an entire family of new governance doctrines and practices emerged to justify the same system. The paper revolution that began in the 1920s gave rise to a technical, bureaucratic management of mobility that was underpinned by the racial colonial rule of difference. For Graeber, the most profound legacy of bureaucracies in the past two hundred years is that they lend a veneer of common sense and legitimacy to certain modes of organizing political life while obscuring their irrational foundations and ends.<sup>157</sup> Far from turning an eye to the long history of colonial exploitation that racialized the international order, the passport regime of the 1920s offered only superficial redress to the charge of racial discrimination. Behind the façade of procedural value, I suggest that the paper governance of mobility itself practices a kind of godly reverence to papers.

Since the 1920s, passports and citizenship have become the main tools through which mobilities came to be ordered. The emergence of the passport as a special object of mobility governance marks the beginning of our present era, where observers note it was possible to claim that there was no racial discrimination, only legitimate paper requirements and technicalities.<sup>158</sup> A passport is today considered *prima facie* proof of citizenship. Yet neither the concept of citizenship nor the material object, the passport, can actually justify why certain groups of people should be entitled to a better quality of life, more opportunities, and freedom(s) of movement based on a birthright lottery.<sup>159</sup> Accordingly, it is maintained that the passport (and citizenship) gave a new lease of life to the older, more fiercely contested vocabulary of race.

<sup>157</sup> Graeber, *supra* note 25. These are intimately tied to the reproduction of colonial privilege, and the ongoing violence of the border cannot be divorced from methods of exploiting and disciplining human labour. Nicholas De GENOVA and Nathalie PEUTZ, eds., *The Deportation Regime: Sovereignty, Space and the Freedom of Movement* (Durham: Duke University Press, 2010), Chapter 1. See also Amy NIANG, “The Slave, the Migrant and the Ontological Topographies of the International” (2020) 34(3) *International Relations* 333.

<sup>158</sup> See, for example, Mongia, *supra* note 12 and Achiume, *supra* note 12, at 449.

<sup>159</sup> Ayelet SHAHCAR, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009) at 1–18. For a more recent and nuanced discussion of how it is not possible to compare the citizenships of rich, highly militarized and powerful states of the world to those of smaller, less powerful countries see Dimitry KOCHENOV and Justin LINDEBOOM, eds., *Kälin and Kochenov’s QNI (Quality of Nationality Index): An Objective Ranking of the Nationalities of the World* (Oxford: Hart Publishing, 2020) at 9–33. In mobility governance, see Achiume, *supra* note 32 at 1514 for a discussion of how certain nationalities get singled out for harsher treatment since they have come to represent the “archetype of third world migrants”. This ties into the question of how, on the one hand, rich and powerful Northern states want to make it harder for excluded persons to gain access to their jurisdictions via the rhetoric of illegal migration, human smuggling, sham marriages, and so on. At the same time, given the central role of citizenship in shaping life chances and reproducing inequality on a global stage, it is hardly surprising that the desire not to be treated as a second-class human animates numerous migration patterns. See Yossi HARPAZ, “Citizenship and Residence Rights as Vehicles of Global Inequality” in Dimitry KOCHENOV and Kristin SURAK, eds., *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge: Cambridge University Press, 2023) at 284. Harpaz argues that given the instrumentalization of citizenship to maintain global inequality, it is hardly surprising that those born into lower-ranking citizenships will seek to upgrade their status through whatever means available.



#### IV. People, Paper, and Power: What Can this History of the Passport Tell Us?

One might be forgiven for assuming that a passport is *merely* an identity document, a piece of paper that proves that its bearer is a citizen of a particular nation. The conventional Eurocentric story of the passport declares that it was introduced as a temporary emergency measure in the First World War. Instead of being dismantled, it gained a life of its own. As far as international law was concerned, it is suggested that international law went about standardizing and improving the system once it became apparent that the inter-war cosmopolitan desire for the abolition of this system could not be practically realized. Concurrent to this is the broader idea that principles of free movement declined in favour of sovereignty during the early twentieth century. In other words, there is a staggering disjuncture between the theory and practice of freedom(s) of movement today. While the high principles that narrate the origins of our mobility order are studied and debated extensively, they do not say much about the everyday practices by which human entitlements to move across the Earth's surface are actually distributed. At the same time, we live in an era of gross mobility injustice. As far as the theoretical literature is concerned, we are left primarily wondering how the paper regime of mobility governance ties into more abstract ideals of hospitality, refuge, and wanderlust – humanity's supposedly universal inclination to travel and know the world.

This paper intervenes into the simplistic Eurocentric narrative of a rise and fall in principles of free movement and inserts an engagement with people, paper, and power. I have argued that the birth of the passport as a universal document of mobility governance did away with the idea that freedom of movement or a right to hospitality was owed to everyone. In its place, a system was instituted that ranked human mobility on the basis of national origins. The relatively old idea that *all* human beings have a natural and healthy propensity to travel, trade, and traverse the Earth's surface faded away, and in its place rose a system that selectively extends hospitality and welcome to some while automatically condemning the vast majority of the world's people as suspicious or undesirable. To suggest that, over the long development of international law, there was a general rise and fall of free movement misses the quite spectacular history of racialized and colonial mobility controls that emerged in the early twentieth century. Rather, while there was a rise and rise in free movement for *some*, growing constraints were placed on the majority of the world.

My argument proceeds by exploring the functional development of transit and communications via the League's passport conferences. I have called my intervention a TWAIL-genealogy approach because, rather than seeking the origins of our modern mobility order in the high principles of sovereignty, hospitality or liberty, I have taken as central the more lowly and mundane practices through which human mobilities have been historically organized. Building upon TWAIL historiographic insights, I have taken the colonial encounter as a fruitful site for understanding how international law has been involved in the making of hierarchies of mobile subjects. As Section 2 highlights, the 1920s were, after all, the apogee of scientific racism, and the League of Nations was centrally concerned with ordering racial contact across the colonial divide. Section 3 has shown that the racialized logic of papers and passports is not fully captured by the conventional story of standardization. Certainly, paper requirements physically hindered the movements of colonial populations and embedded them into a hierarchy of labour and economic relations. However, the oft-ignored principle of reciprocity in mobility relations emerged precisely to legitimize these contested practices. Despite the League's paternalistic rhetoric of protection of natives, it simply reproduced colonial order-making techniques as international law. The cosmetic touches that the process of standardization and the principle of reciprocity added to the charge of racial discrimination can hardly be said to have dismantled the problem – they only thinly disguised it.

In line with recent scholarship that has highlighted that racism is endemic to the international system, I have shown how the governance of mobility is intimately tied to practices of race and racialization on a global level. The charge of racial discrimination that was raised in the late nineteenth and early twentieth centuries continues to chart through the international order via passport and citizenship hierarchies. These hierarchies are often assumed to exist as just a natural state of affairs, even though most casual observers recognize they are unjust. I suggest that these are not unfortunate by-products of a rational order but, rather, reveal to us the inherent function and violence of our system. The passport carries forward the afterlife of the racialized standard of civilization in mobility governance and, in this reading, is the central tool for understanding Eurocentric conceptions of human mobility today. The passport regimes of today severely limit the mobilities of people from the Global South. More problematically, Eurocentric understandings of their history and a positivist application of rules offer no tools for resistance or imagining international law *otherwise*. As marginalized people on the move are faced with ever-more obscene violence, we need to ask tough questions about how far existing legal frameworks can be pushed to guarantee dignified entitlements of moving across the Earth's surface. Likewise, as the world moves from paper to the digital governance of mobilities, international lawyers ought to be ever warier of how arguments about procedural simplification might exacerbate existing lines of inequality.

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## Annex: League of Nations Covenant, Article 23<sup>160</sup>

### ARTICLE 23

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

- a. will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;
- b. undertake to secure just treatment of the native inhabitants of territories under their control;
- c. will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
- d. will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;
- e. will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;
- f. will endeavour to take steps in matters of international concern for the prevention and control of disease.

<sup>160</sup> *The Covenant of the League of Nations*, Article 23, 10 January 1920, online: <https://www.un Geneva.org/en/about/league-of-nations/covenant>.

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