Law and Linguistic Moves: Refugee Law and The Displaced Person's Commission, 1948-1950

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White's *Legal Imagination* is a magnificent work within the law and humanities canon. It has long been hailed for its interdisciplinarity and the penetrating questions it asks law students, lawyers, and scholars about the process of writing, reading, lawyering, and the legal profession. Even with its stunning interdisciplinarity, it has been less overtly influential in the field of legal history. Yet, the *Legal Imagination* has much to say to the legal historian in terms of the process of writing legal history and the questions that legal historians might bring to their work, especially for those writing about the legal profession. White emphasizes how lawyers, like all of us, use language and tell stories that are always incomplete and capable of multiple meanings. Such resounding incompleteness is especially true for legal historians who are continually analyzing archival documents which convey vastly incomplete, even false, stories. Such documents are often only fragments which can be pieced together by the historian in multiple ways, forming different stories. Using such documents, legal historians then attempt to create our own always incomplete and lacking narratives that often only gesture at the "truth." Legal historians are always trying to capture what is the unexpressed story in our primary documents. Often, it is the silences of our documents through which our stories emerge. Such stories are often illusive – a shadow or a ghost like one of those photographs of the paranormal – visible depending upon the viewer's perspective, open to interpretation, deeply ambiguous. In fact, for the legal historian who studies the history of the legal profession – what lawyers do, how they think, how they understand themselves, the myths that they tell, and who might even be considered part of the legal profession – constructing such narratives can feel Herculean. The legal historian is searching for the type of interiority and intentionality, with which the *Legal Imagination* asks its readers to engage, and which lawyers seem to fight at every turn.

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In this article, I bring a few of the many questions asked by the *Legal Imagination* to my own work on the history of U.S. immigration and refugee law immediately following World War II. In this short article, I begin to examine the United States Displaced Persons Commission established by the 1948 Displaced Persons Act and the enormous controversy that swirled and surrounded it.[1] Here, I especially pay attention to the written semiannual reports produced by the commissioners. In doing so, I expand the types of lawyers that White seems to contemplate by bringing in those who are bureaucrats and part of the administrative state.

Part of what makes the Commission and its commissioners so significant is that they literally had to imagine, create and administer an enormous and groundbreaking refugee program that ultimately allowed 400,000 European refugees, including Jewish Holocaust survivors, to resettle in the U.S. At the same time, they continually battled Congress, and strategically twisted and stretched the language of the Act in order to read out its discriminatory and antisemitic provisions – a sort of nullification by interpretation. How the commissioners used and manipulated language demonstrates many of White's primary tenets regarding the malleability of language and how lawyers employ language. Further, White contrasts the constraints that a lawyer labors under in terms of voice and what can or cannot be said within a particular arena with that of a lawmaker who can create their own rules.[2] An administrative agency or a commission is a hybrid beast, one that must function under law but that also can create rules and make decisions, often with great discretion. White also interrogates how a statute gets off of the page and affects the lives of people.[3] These are the very issues that I attempt to answer in my larger study of the Commission. Finally, this article, seeks to fill in a gap in the legal scholarship. Where numerous historians have written about DPs following World War II, this history is surprisingly missing from legal scholarship. Such absence of interdisciplinarity has resulted in the neglect of the role that lawyers, and law played.

I am cognizant that the narrative that I tell her is dramatically incomplete. Not only is my archival work unfinished (a fantasy that with more time in the archives a complete and true story will emerge). Moreover, I will probably never be able to answer White's searing inquiries into what my actors thought, how they understood what law, equity, or justice meant, what motivated them, or how their personal and professional lives were intertwined and bled into each other.[4]

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1. Admission of Displaced Persons Act, June 25, 1948, 50 U.S.C. § 1951-1963 (1946 & Supp. 2 1947-1949).

2. JAMES B. WHITE, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION 195 (1973).

3. *Id.* at 201.

4. The subject of the ability of Jewish Holocaust survivors to immigrate to the U.S. and the antisemitism that they faced seems particularly appropriate to a White symposium given the *Legal*

I. DISPLACED PERSONS AT THE END OF WORLD WAR II

Following the victory of allied powers in Europe after World War II, millions of people were dislocated from their home countries. This mass of people included those who fled their home countries to escape German prosecution, a vast number of people whom the Third Reich had transferred to Germany as slave labor; those who had voluntarily entered Germany to work; survivors of concentration and internment camps; and people fleeing from the Soviets and those who feared retribution for collaboration with Germany.[5] Among such people were Jews but nobody knew exactly how many Jews had survived the Reich's effort to annihilate them.[6]

Such people found themselves lumped together under the new military administrative category of Displaced Persons (DPs).[7] This new term would define and dictate the fate of millions of people. A DP was essentially a person who was temporarily outside their national boundaries and was not a national of an Axis country; or a person who had been persecuted by their home country. In part, the category determined who worthy or unworthy of help.[8]

The U.S., Britain, and the Soviet Union quickly established their respective occupation zones in Germany. There, assembly centers were created to collect DPs, feed them, house them, and ideally quickly repatriate them to their home countries. From DP assembly centers, some DPs went to DP camps which were generally organized by nationality. Vast numbers of DPs were from Poland, Latvia, Ukraine, and Lithuania. It was the allies' intent that DP camps would be temporary, considering repatriation as essential to stabilizing Europe and governing occupied territory. No one imagined that well over a million people would become long term DPs living in DP camps in the middle of Europe. Yet about a million DPs refused to be repatriated. Many did not want to return to now communist countries, others feared persecution for collaboration, and the vast majority of Jewish DPs wanted to leave Europe due to the destruction of Jewish life and ongoing antisemitism.[9]

In late 1945, large numbers of Polish Jews began entering the U.S. Zone

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Imaginations chapter on death and the use by White of a statement from Rudolf Hess, the Commandant of Auschwitz. *Id*. at 119.

5. On the composition of DPs and some DPs' refusal to be repatriated fearing communism or charges of collaboration see, HAIM GENIZIM, AMERICAS FAIR SHARE: THE ADMISSION AND RESETTLEMENT OF DISPLACED PERSONS, 1945-1952, 19-23 (1993).

6. Parts of this background section have been taken from my article, Felice Batlan, *The Displaced Persons Act of 1948 and Home-Grown Antisemitism*, 27 LEWIS & CLARK L. REV. 1057 (2024). I have not cited myself as a source but rather the original source material.

7. ANNA HOLIAN, BETWEEN NATIONAL SOCIALISM AND SOVIET COMMUNISM 42-43 (2015).

8. JAYNE PERSIAN, BEAUTIFUL BALTS: FROM DISPLACED PERSONS TO NEW AUSTRALIANS 15 (2017).

9. DAVID NASAW, THE LAST MILLION: EUROPE'S DISPLACED PERSONS FROM THE WORLD WAR TO THE COLD WAR 8-12 (2020).

in Germany. This influx was a surprise to virtually everyone.[10] Up until the late fall of 1945, the first groups of Polish Jews who arrived in the American and British Occupation Zones were Jews who had survived either concentration camps, in hiding, or as partisan fighters. Upon the war's end, many returned to Poland hoping to find family members.[11] Such survivors often learned that their families had been murdered and their property confiscated[12] Thus, those who left Poland up to late 1945 for the U.S. or British Zone had been subjected to the direct horrors of the Holocaust and, they entered DP camps alone. These are the classic Holocaust survivors that we generally think of when using the term.

By 1946, the composition of Jewish DPs began to change as Polish Jews, who escaped the German onslaught by taking refuge in the Soviet Union returned to Poland.[13] Although the Soviets sent many of these Jews to Siberia or Central Asia and they faced serious deprivations, most remained alive.[14] These survivors, somewhere between 175,000 to 200,000 Jewish people, composed the largest group of surviving Jews in Europe.[15] These newer DPs generally arrived as families and some had a modicum of property.[16]

Polish Jews, whether direct Holocaust survivors or upon return from the Soviet Union, adamantly did not want to remain in Poland. They felt threatened by a murderous wave of Polish anti-Semitism that in part stemmed from the demand of Jews to have their property returned as well as the stereotype that Jews were communists. Jews across Poland suffered fatal attacks and anti-Jewish riots in 1946 and 1947. By the summer of 1947, the number of Jews murdered by Poles exceeded 1,500. These factors pushed an increasing number of Jews, most who had been repatriated from the Soviet Union, to leave Poland and to ironically seek refuge in occupied Germany. This migration from Poland, along with Jews from Czechoslovakia, Hungary, and Romania continued through 1947.[17]

The emergence of this new group of Jewish survivors presented complex questions including whether they should be allowed into the Occupied Zones and whether they qualified as DPs entitled to assistance. President Truman, the U.S. State Department, and the military in a series of complex

10. For a firsthand description of the sudden appearance of new groups of Jewish survivors see SUSAN T. PRENTISS, AFTER THE SHOOTING STOPPED 156-62 (2004).

11. ABRAHAM S. HYMAN, THE UNDEFEATED 35 (1993). (Hyman who became the Jewish Adviser to the U.S. Command in Germany and Austria writes that initial estimates of Jewish survivors were somewhere between 70,000 to 100,000 but actual numbers of survivors was impossible to know in the chaos of the aftermath of war.).

12. *Id*. at 106.

13. ATINA GROSSMAN, JEWS, GERMANS, AND ALLIES: CLOSE ENCOUNTERS IN OCCUPIED GERMANY 160 (2007).

14. *Id*. at 160; PRENTISS, *supra* note 10, at 140-141.

15. GROSSMAN, *supra* note 13, at 160.

16. *Id*. at 160-161.

17. MARK WYMAN, EUROPE'S DISPLACED PERSONS, 1945-1951 144 (1998).

and at times wavering decisions eventually allowed such Jews into the U.S. Zone.[18] Technically, there was a question of whether these refugees were directly displaced due to war.[19] Representing their liminal status, such DPs were widely referred to as infiltrees. In contrast to the U.S. Zone, the British Zone initially remained closed to Jewish infiltrees.[20] Thus, the Jewish DP population in the American Zone grew exponentially. This growing group of DPs directly contradicted, the strategy and expectation that DP camps were temporary, that repatriation would occur quickly, and that the U.S. troops would be sent home. As the Jewish DP population expanded, immigration was not possible as no country was willing to accept large numbers of DPs, especially Jews. DP camps essentially became ever-expanding waiting rooms.

In contrast to Jewish DPs who were widely viewed as degraded and ungovernable, Balts including Latvians, Estonians and Lithuanians were at the top of the DP hierarchy.[21] These countries had been annexed by the Soviets and this elicited sympathy from the western allies. Balts had also been widely accepted into the German economy and thus tended to be physically healthy. Moreover, they were believed to be more educated, wealthier, cleaner, better workers, and stronger than other DPs. Some were blond and blue-eyed; thus, approaching an Aryan ideal.[22]

II. LEGISLATION REGARDING THE IMMIGRATION OF DISPLACED PERSONS

More than two years after the end of the War, the first congressional bill which would have allowed for the immigration of DPs to the U.S. was introduced in Congress. The Stratton bill would have allowed for 400,000 DPs to immigrate to the U.S. over the next four years. With the introduction of the Stratton bill, a vast reservoir of antisemitism and xenophobia came to the fore. Congressman Ed Gossett of Texas, on July 2, 1947, gave a passionate speech in the House of Representatives against the Stratton bill and in favor of further restricting immigration. He quickly printed his speech as a pamphlet entitled "A New Fifth Column or the Refugee Racket.[23] Claiming to speak for millions of Americans, he argued that the immigrant "blood" of DPs would weaken and pollute the strong blood of Americans whose immigrant roots were from Germany and Northern Europe.[24] DPs still in camps, he claimed, were the "the refuse of Europe"

18. HYMAN, *supra* note 11, at 187- 188. YEHUDA BAUER, OUT OF THE ASHES: THE IMPACT OF AMERICAN JEWS ON POST-HOLOCAUST EUROPEAN JEWRY 114-15 (1989).

19. HYMAN, *supra* note 11, at 194-95.

20. *Id.* at 195, 198-204.

21. PERSIAN, *supra* note 8, at 61.

22. *Id.* at 45.

23. Hon. Ed Gossett, "A New Fifth Column or the Refugee Racket," 1947 in Ed Lee Gossett Papers, Box 4, Folder 4, W.R. Poage Legislative Library, Baylor University, Texas.

24. *Id.* at 1.

consisting of "bums, criminals, black-marketeers, subversives, revolutionists, and crackpots."[25] Moreover, Gossett denied that Jews wanted to leave Europe due to antisemitism and refuted the existence of post-war European antisemitism or the occurrence of Polish pogroms.[26] The very idea of letting in more Jewish DPs was an affront to the nation's Christianity and identity. He posited that the Stratton bill itself was the product of Jewish propaganda promulgated by Jewish organizations.[27] As Gossett led opposition in the House, Republican Senator William Chapman Revercomb from West Virginia led it in the Senate. Revercomb chaired the Senate Judiciary Subcommittee on Immigration. He was a deep conservative and anti-New Dealer who had long opposed immigration.[28] He asserted, that "Many of those who seek entrance into this country have little concept of our form of government. . . . Many of them come from lands where communism has had its first growth and dominates the political thought and philosophy of the people."[29] The argument that DPs were communists was an ongoing trope. Such language had a great deal of power tapping into a long running fear that immigrants posed a threat to the heart of the nation and democracy and that they could never assimilate. Moreover, communism was code for Jews and as multiple legislators pointed out, nobody wanted the Jews.[30]

Both Revercomb and Gossett were lawyers turned politicians and in their vast hyperboles, xenophobia, and antisemitism, they exercised a type of legal imagination and rhetoric that spewed hatred and stroked populist fears. Gossett especially engaged in a rhetoric of intense conspiratorial antisemitism and his supporters wrote letters that flirted with violence against Jews. Vast numbers of Americans believed that all DPs were Jews and capable of destroying America.[31] This provokes the question of how as a historian does one understand lawyers turned politicians who peddled in lies? Did these men believe what they said and wrote or were they pandering to the electorate? Does it matter that they were lawyers? Perhaps this made them particularly adept at manipulating words and truth and provided them with an air of authority.

Eventually after much haggling and compromises, Congress enacted the 1948 Displaced Persons Act.[32] The Act provided for admitting 200,000 DPs over two years with a 40% preference for those from "Annexed States," and

25. *Id.* at 4.
26. *Id.* at 4.
27. *Id.* at 6.
28. NASAW, *supra* note 9, at 300.
29. LEONARD DINNERSTEIN, AMERICA AND THE SURVIVORS OF THE HOLOCAUST 140 (1982), citing The New York Times, Dec. 31, 1946, p. 6.
30. *Id*. at 141.
31. *See* Batlan, *supra* note 6.
32. Displaced Persons Act, *supra* note 1, § 1952 (b), § 1955 (a).

30% for agricultural workers.[33] Crucially only those who had entered Germany, Austria, or Italy as of December 22, 1945, were eligible.[34] The Act also required that each immigrant be sponsored by an American citizen or an eligible voluntary organization, that a D.P had a job waiting; and that such D.P would not take employment or housing way from another person.[35] Finally, the Act called for the creation of a DP Commission.[36]

As virtually everyone understood the legislation was antisemitic carefully drafted to drastically limit the number of Jews who could qualify for DP visas.[37] Fascinating is that the actual language of the Act never mentions Jewish DPs. Rather, such exclusions were accomplished through the careful creation of categories of nationalities, occupations, and dates intended to exclude Jews. Thus, categories that appeared neutral were not. Rather, the Act was deeply coded. White writes that the drafting of a statute can be likened to a game in which the drafters set forth the rules.[38] Here, at least for some in Congress, the game was to exclude as many Jews as possible without mentioning the word "Jew."

The Truman administration, the State Department, and others objected that the 1945 date was arbitrary. By choosing such a date the Act drastically limited the eligibility of Jewish DPs to immigrate.[39] Likewise, only a tiny number of Jews were agricultural workers approximately 3.7% in the U.S. Zone and 6% in the British Zone. Finally, the great preference for Balts also limited visa eligibility for Jews, as the majority of surviving Jews were Polish.[40] Lawmakers cloaked these provisions as necessary to protect America against Communism and to separate out who was a legitimate refugee.[41] This question of the legitimate versus illegitimate refugee still haunts immigration and asylum law.

President Truman, who supported the ability of DPs to immigrate to the U.S. and who had long been urging Congress to pass an act, came close to vetoing the law. He characterized it as, "flagrantly discriminatory," and as "mock[ing] of the American tradition of fair play."[42] He further opined that it created "a pattern of discrimination and intolerance wholly inconsistent with the American sense of justice." He specifically emphasized that the bill "discriminates in a callous fashion against displaced persons of the

33. *Id.*
34. *Id.* § 1951 (c).
35. *Id*.
36. *Id.* § 1957.
37. DINNERSTEIN, *supra* note 29, at 171.
38. WHITE, *supra* note 2, at 197.
39. DINNERSTEIN, *supra* note 29, at 171.
40. NASAW, *supra* note 9, at 411.
41. *Id*. at 411-12.
42. Statement by the President Upon Signing the Displaced Persons Act, June 24, 1948 at the American Presidency Project, https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-the-displaced-persons-act

Jewish faith."[43] He explained that the cutoff date would have the effect of making 90% of DPs ineligible as well as many Catholics.[44]

Unlike, the relatively well-drafted (or perhaps one might say somewhat honest) statutes that White discusses in the *Legal Imagination*,[45] Congress in their disagreements, in their sloppiness, perhaps even with intentionality, left such large gaps in the 1948 Act that a truck could have been driven through it. The Act thus becomes a case study in how an administrative commission, in part through interpretation or what White might call translating and wordsmithing was able to go far beyond the boundaries of legislation to negate, even readout, the Act's discriminatory provisions and restrictions. On the one hand, this might be seen as the administrative state running amok. On the other hand, it points to a commission that refused to enforce discriminatory legislation and did its best to work with legislation that lacked crucial detail and did not map onto the on the ground realities. Returning to White's statue drafting as game analogy, the commissioners in their interpretation of the Act were willing to play their own game, one quite different than what some in Congress imagined.[46]

III. THE DISPLACED PERSONS COMMISSION

The Act required the President to appoint a Displaced Persons Commission, charged with administering the Act. President Truman chose a Catholic, a Protestant and a Jew. Thus, the commissioners would represent each of the three major religious groups of DPs. This selection was intended to counter the discrimination of the Act and to demonstrate that the administration itself would not engage in religious discrimination. The first Chair of the Commission, Ugo Carusi, was the son of Italian immigrants. After attending law school, he spent much of his career working in the state and federal government. Before his commission appointment, he was a special assistant at the State Department studying the DP situation in Europe.[47] Harry Rosenfield, the son of Jewish Eastern European immigrants had spent years as a New Deal attorney with the Federal Security Administration.[48] The third member of the Commission was Edward M. O'Connor a social worker who had served as the Director of the National Catholic Welfare Conference and was chairman of the Committee on Displaced Persons of the American Council of Voluntary Agencies. The commissioners were deeply sympathetic to the DP situation and brought

43. *Id*.
44. *Id*.
45. WHITE, *supra* note 2, at 198-199.
46. *Id*. at 197.
47. Ugo Carusi Biography, VERMONT HISTORY, https://vermonthistory.org/documents/findaid/carusiugo.pdf
48. Harry Rosenfield Oral History Interview, TRUMAN LIBRARY (1980), https://www.trumanlibrary.gov/library/oral-histories/rosenfld.

enormous expertise working with and within the bureaucratic state. The Commission was appointed during a Congressional recess. Thus, the Senate did not immediately vote upon their controversial confirmation.[49]

What soon became clear is that the commissioners refused to fully enforce the discriminatory provisions of the Act and did a great deal to read out such provisions as un-American, illegitimate, unintended and at odds with the purpose of the statute. Using another analogy from White, if Congress were architects, the Act a blueprint, and the commissioners builders, the Commission erected a quite different edifice.[50]

The Commission was required by the Act to produce semi-annual and annual reports. These reports allowed the commissioners to craft their own narrative of the Act's meaning, purpose, and history; and legitimize their visions, actions, and interpretations of the Act. Such reports where one means of putting Congress, the executive, the commission, and the public in dialogue with one another. The commissioners first report grounded their work and the U.S.' obligation of accepting refugees as rooted in the founding fathers. "It has been a traditional principle of this Government since its inception that our country is, in the language of George Washington, 'more and more a safe and propitious asylum for the unfortunate of other countries."[51] In contrast, the commissioners proclaimed that the Act, as written, with its discriminatory provisions, "Flaunt the highest ideals and best traditions of American democracy at a time when it is of utmost importance in world affairs to hold such ideals high."[52] The use of such language seeped the commissioners' work as the supposedly righteous and legitimate continuation of U.S. policy and the traditional and historic mission of the U.S to provide asylum. Importantly, in contrast to the anti-communists in Congress who saw the Act as opening the doors to communists and subversives, the Commission proclaimed its own mission as deeply patriotic, as engaging in the supposedly true and enlightened path intended for the U.S., and as providing a bulwark against the communist Soviet Union at the height of the Cold War. The U.S, as implied by the commissioners, was assuming and continuing its appropriate role as a beacon to the Western world. With such language, the commissioners engaged in storytelling seeking to legitimize itself and what would become its broad and perhaps even distorted reading of the Act.

Early on, the commissioners wrote that the Act "fails in several very important respects to meet its basic purpose."[53] It warned that the provisions

49. *Id.*

50. WHITE, *supra* note 2, at 199.

51. THE DISPLACED PERSONS COMMISSION, FIRST SEMIANNUAL REPORT TO THE PRESIDENT AND CONGRESS 3 (Washington D.C. Government Printing Office, 1949), 3.

52. *Id*. at 39.

53. *Id*. at 55; THE DISPLACED PERSONS COMMISSION, THIRD SEMIANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS 2 (Washington D.C., Government Printing Office, 1950).

providing for discriminatory priorities and preferences could overwhelm the purpose of the Act and affect the functioning of the Commission. Significantly, the commissioners viewed the Act as primarily having "humanitarian objectives" that were, it claimed, at odds with discrimination and the various measures within the Act intended to limit eligibility.[54] Multiple times, the commissioners emphasized the "humanitarian spirit" of the Act and its "highly laudable objectives."[55] Thus, the commissioners saw the statute as at odds with itself – as internally contradictory. As the commissioners implied humanitarians and discrimination could not coexist. Of course, the commissioners could not acknowledge that discrimination and American democracy had long coexisted, perhaps even fed one another, in the U.S.

The commissioners claimed that the Act was evidence that the "American people" wanted to "play its part in the international solution" of helping those uprooted from their homes by war.[56] It thus constructed a narrative in which the Act failed to accurately reflect the popular sentiment of Americans. In contrast, in minimizing the Acts discriminatory provisions, the commission was rightfully carrying forth the actual desires of Americans. Of course, the creation of a unified "American people" was a rhetorical and linguistical device that blanketed over the significant divisions and polarization of Americans' receptivity to European, especially Jewish, refugees.

As the commissioners wove this story for strategic purposes, one also must recognize that it was simply a story and not the actual history of immigration law. In truth, throughout much of the nineteenth and twentieth century, U.S. immigration law had been deeply racist and seeped in white supremacy. Nor could it possibly be referring to the horrendous record of the U.S. in accepting Jews fleeing Hitler's Europe.[57] Rather, what the commissioners were keying into was the important yet ersatz, one might even use the word "poetic," history that could construct an America that actually did admit the poor, the hungry, and those earning to be free as Emma Lazarus' poem so aptly put.[58] Yet ironically, as the commissioners knew well, it was the democratic process that produced the discriminatory provisions of the Act as well as the long history of deeply racist immigration laws– something that the commissioners could never admit. The language, tropes, and discourses that the commissioners used did considerable work

54. FIRST SEMIANNUAL REPORT, *supra* note 51, at 20, 36, 55.

55. *Id.* at 55.

56. *Id*.

57. For a discussion of white supremacism, discrimination, and U.S. immigration policy see Felice Batlan, *Broadside for the Trump Era: Building a Regime of Restrictive Immigration Laws, 1840-1945*, at https://www.historiansforpeace.org/wp-content/uploads/2018/08/Batlan-immigration.pdf; Felice Batlan, *Déjà Vu and the Gendered Origins of the Practice of Immigration Law: The Immigrant's Protective League*, 36 L. & HIST. REV. 713 (2018).

58. EMMA LAZARUS, THE NEW COLOSSUS (1905), https://poets.org/poem/new-colossus.

in attempting to negate and delegitimatize the discriminatory provisions of the Act while also producing a useful but imaginary history.

The commissioners thus had to engage in a linguistic alchemy to effectuate their own vision of the Act and how it would play out on the ground. At moments words and definitions became narrow and precise and at other times the commissioners stretched words and language well beyond Congresses' intent. In a White-like fashion, the commissioners recognized well the ambiguity of language and categories, and skillfully exploited them in a series of lawyerly moves.

The commissioners labeled the 1945 cutoff date as "arbitrary" and claimed that there were roughly 130,000 to 135,00 otherwise qualified DPs made ineligible due to the cutoff date.[59] The Act, however, did not specify what evidence was required to demonstrate entry into Germany, Austria or Italy by 1945. Thus, the commissioners found that it had significant discretion regarding what would constitute evidence of entry. The commissioners adopted a policy that permitted a statement or affidavit of a third party that attested to a person's entry before December 1945 as constituting *prima facie* evidence of a DPs presence within the area.[60] This proved to be an incredible bonanza. For Jews and others who had survived the war, finding a sympathetic person to make such a statement was not difficult.[61] This was a creative and lawyerly move that mitigated the discriminatory impact of the Act.

One of the most antisemitic clauses of the Act was the requirement that 40% of visas be allocated to DPs from countries that had been de facto annexed by a foreign power.[62] Congress clearly had been referring to the Baltic countries which the Soviets had annexed. This included Latvia, Estonia, and Lithuania but there were few Jewish survivors from such countries. In its first report, the commissioners claimed that the meaning of "De Facto Annexed Country" was "so uncertain" and so open to interpretation that it could not provide a "satisfactory definition."[63] Likewise it asserted that a narrow and discriminatory definition would create "conflicts with the humanitarian objectives of the Act."[64] Working closely, really hand-in-hand, with the State Department, the commissioners helped create and then adopted the State Department's definition of Annexed Countries. Annexed Countries now, in part, included Estonia, Latvia, Lithuania, Northeastern East Prussia, Southern East Prussia, Danzig, German territory East of the Oder and Western Neisse Rivers, and Former Polish territory east of the 1945 USSR boundary. Moreover,

59. FIRST SEMIANNUAL REPORT, *supra* note 51, at 15-16.
60. NASAW, *supra* note 9, at 444.
61. *Id*., 444, 448-449.
62. Displaced Persons Act, *supra*, note 1, § 1952 (b); NASAW, *supra* note 9, at 411.
63. FIRST SEMIANNUAL REPORT, *supra* note 51, at 19-20.
64. *Id*. at 20.

nationality was expanded to mean both a place of birth or citizenship. This complex geopolitical sleight of hand significantly increased the number of DPs including Jews, who could be classified as from an annexed country.[65] Previous to this expanded definition, approximately 30% of DPs came from annexed countries. After adoption of the expanded definition, 47% to 48% percent of visas went to those from Annexed countries. Moreover, the commissioners decided that the head count of both those from annexed countries and agriculturists would be tallied not on a weekly, monthly, or even annual basis but rather at the end of the two year program.[66] Of course, by that time, it would be too late for Congress to undo what had been done.

As White might ask who was the audience for the Commission's numerous reports? In fact, historians often ask the same vexing question which is difficult to answer with any precision. Certainly, Congress and the Capitol Hill staff was part of their audience and the commission reports, filled with facts and figures, served as one way in which the commission engaged in dialogue with Congress and created a record of how the requirements of the Act hindered its progress. By 1949, a new house bill had been introduced to amend the Act which would eliminate most of the discriminatory provisions and increase the number of visas available for an additional 200,000 refugees.[67] Thus, these reports served as one mechanism of lobbying Congress while also providing evidence for the many organizations interested in amending the Act.

The six public reports of the commissioners are filled with the number of DPs issued visas, DPs countries of origin, their ages and occupations, the number of boats sailing, the complex process used to determine eligibility, ships transporting DPs, and the resettlement process after DPs reached their destination. Such factual information was necessary to convey the complex work of the commission and to both demonstrate its successes and the need to amend the Act. Absent, however, are any personal stories of DPs. Such stories were often told in various newspapers and magazines and were an important part of trying to humanize DPs rather than seeing them as an undifferentiated mass.[68] Why were such stories missing from the reports? Perhaps it was due to the commissioners' desires to appear as objective experts and high level administrators immersed in the expert's language of statistics. In may also have been due to the commissioners' own inability to see DPs as individuals, with their own stories, rather than a mass of bodies that needed to be processed, transported, and resettled. In these reports the commissioners were using their professional personas and voices that

65. THE DISPLACED PERSONS COMMISSION, SECOND SEMIANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS 13-14 (1950).

66. *Id*. at 12; NASAW, *supra* note 9, at 446-452.

67. SECOND SEMIANNUAL REPORT, *supra* note 65, at 44.

68. Batlan, *supra* note 6.

seemed to prevent them from speaking in a more emotional and human-based language. Strangely, their "humanitarianism" lacked individual humans.

By 1949, the Senate judiciary committee was already investigating the Commission for its failure to abide by the Act and held multiple hearings.[69] Richard Arens was the attorney questioning witnesses. He was an avid anti-communist who would become most famous for his activities as staff director of the House on Un-American Activities Committee during the late 1950s.[70] The transcripts of his investigation into the Commission were a blueprint for later HUAC hearings. Aherns attempted to establish that the Commission had allowed tens of thousands of DPs into the country on fraudulent documents, that its interpretation of various provisions of the Act were intentionally wrong, that communist agents had been allowed to enter the country, and that in general the commissioners and its staff had been disloyal Americans. In a certain sense, the stigma of Jewish DPs, including the fear that they were Communists, tainted the Commission itself. Much of this was done by innuendo.[71] During Harry Rosenfield's testimony, Rosenfield and Ahearn circled and circled each other such that it was unclear who exactly was the witness as they dueled over the meaning of words. This was a complex dance of lawyers, which deserves further investigation.[72]

As a result of the hearings, the Commission was required to put in revised procedures to immediately comply with the 40% Annexed Country requirement and the 30% agricultural requirement. In its next annual report, the commissioners stated that such new procedures had resulted in fewer visas being issued and that DP arrivals in the U.S. had materially dropped.[73] Moreover, the commissioners criticized the Senate investigation as disrupting the work of the commission.[74]

Finally in June of 1950, Congress amended the Act to eliminate some of its most discriminatory features. By 1950, the fear of hordes of Jewish DPs entering the United States had substantially been reduced as many Jewish DPs went to Israel after its founding. The 1950 Act was also a great deal more concerned with those fleeing from Communism than those persecuted

69. *Hearings Before the S. Subcomm. on the Judiciary*, 81st Congress (1950) (testimony of Harry N. Rosenfield).

70. Obituary of Richard Arens, WASHINGTON POST (Oct. 27, 1969), https://ia601309.us.archive.org/30/items/nsia-HouseUn-AmericanActivitiesCommittee/nsia-HouseUn-AmericanActivitiesCommittee/House%20Un-American%20Activities%20Committee%2019_text.pdf.

71. A sample of such hearings include, *Hearings Before the S. Subcomm. on the Judiciary*, 81st Congress (1950), vol. 37 H.R. 4567; vol. 38 H.R. 4567; vol. 39 H.R. 4567.

72. Testimony of Harry Rosenfield, *supra* note 69.

73. THE DISPLACED PERSONS COMMISSION, FOURTH SEMIANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS 1 (Washington, D.C. 1950).

74. *Id.*

by the Nazis.[75]

Employing a White-like analysis, even in this short article, has been useful in focusing on the language and discourse the commission employed and how the commissioners so intently played with language to try to nullify and erase the various discriminatory provisions of the 1948 Act. The article also points to the crucial role that lawyers and legally trained politicians played and how, for better and for worse, they all exercised a type of legal imagination which at its worst produced antisemitism, xenophobia, and communist conspiracies, and at its best a form of progressive liberal innovation. One is also compelled to deeply contemplate how new linguistic categories such as "D.P.," "infiltree," and "Annexed County", functioned to categorize and dictate the lived experiences of so many refugees. The history of the Displaced Persons Act and the Commission, as White might tell us, reflects the very messy process of statute making in a democracy. Yet, perhaps where a White-like analysis and the legal historian's methodology might differ, is that the legal historian ultimately must contextualize words, documents, stories, and memories within a larger deeply historically situated story on both the macro and micro level; and for that I must return to the archives.

75. *Id.* at 16.