

Introduction

The sovereign declaring war can neither detain the persons nor the property of those subjects of the enemy who are within his dominions at the time of the declaration. They came into his country under the public faith. By permitting them to enter and reside in his territories, he tacitly promised them full liberty and security for their return. He is therefore bound to allow them a reasonable time for withdrawing with their effects; and if they stay beyond the term prescribed, he has a right to treat them as enemies, – as unarmed enemies, however.¹

What This Book Is About

This book is a world history of what it meant to be an alien, and in particular an enemy alien, in the First World War, against the background of the interstate conflicts and evolution in international law that occurred over the nineteenth century. It tells the story of the many ways in which belligerent countries, when faced with real or alleged threats to their security, territory, borders and sovereignty, mobilized populations along the member/non-member divide and redefined the very grounds of inclusion and exclusion. Enemy aliens – in other words, civilians of enemy nationality who found themselves in the wrong place at the wrong time, in a world where establishing who was a citizen and who was not grew more crucial every day – were at the core of that redefinition.

On the eve of the First World War, governments, parliaments and armies that had to deal with such aliens could rely on a multi-layered system of laws of war, customary practice and humanitarian attitudes intended to make armed conflict more “civilized.” This system was a result of more than a century of discussion among international lawyers from Europe, North and South America and, to some extent, Asia. At the root of this system, in the words of the American legal scholar Edwin M. Borchard, was the idea of a “minimum standard [of rules] below which a state cannot fall without incurring the responsibility to one or more of the other members of the international community.”²

2 Introduction

This idea emerged, in turn, from the interaction between different historical developments: a) the Enlightenment's language of fundamental human rights;³ b) the belief that restraints and limitations on violence were a natural consequence of the process of civilization⁴ that governed nineteenth- and early-twentieth-century international relations; c) the emergence of a positive international law distinct from natural law;⁵ and d) the behavior of warring states toward enemy aliens in the string of interstate conflicts that culminated in the First World War, which gave jurists, politicians and diplomats much food for thought.

The following chapters focus on the discrepancy between the theory of "humanizing" war and guaranteeing the rights of foreigners on the one hand, and the practices of belligerent states on the other. They explore the process of convergence and divergence in the various countries' policies and their implementation, the cross-fertilization and transfers between legal cultures, and the appearance of new regimes of citizenship and property. My research thus sheds light on the increasing involvement of civilians in nineteenth- and early-twentieth-century conflicts: the emergence and impact of compulsory conscription, the management of peoples and populations, the changing relationship between the individual and the state, and evolving policies of migration control. The rights of non-citizens, in particular their right to move freely, to own and dispose of their property and enjoy the protection of international law, take center stage.

It is impossible to understand the conflicts that broke out after the French Revolution without taking into account the crucial role of international law in both their origin and development. Such law became increasingly central during the nineteenth century, as it impregnated narratives, decision-making, policies and practices.⁶ War itself, and war-related narratives were filtered through the ideas of jurists as well as shaped by them; just as from the 1860s onward, they were shaped by international conventions and regulations.⁷ French, German and US politicians and diplomats invoked international law during the Franco-Prussian War; Russians resorted to its language and to that of whumanitarian intervention during the conflict with the Ottomans in 1877–1878; Japan and the Ottoman Empire appealed to such norms and to the language of civilization to justify and legitimize their choices during the conflicts in which they participated. Hence, when the First World War broke out, international law, as Isabel Hull observed, had a "central place [...] in forming war policy, justifying that policy to neutrals, judging one's enemies, and measuring the existential danger they posed."⁸

The question of enemy aliens obviously represents only one aspect of this process, but it was a significant one. In fact, the very concept of an

enemy alien emerged in its modern form, defined by its connection with citizenship and the nation in arms, during the French revolutionary wars and experienced twists and turns in the various interstate conflicts that followed. But it was during the First World War that the gap between the theory, encapsulated in the words enunciated in 1758 by the Swiss diplomat Emer de Vattel that serve as an epigraph to this introduction, and the practices of the belligerent states widened dramatically.

The First World War: A Watershed

During the conflicts that took place between the French Revolution and the Balkan Wars, states resorted to expelling enemy aliens and confiscating their property, but targeted only a few people. The small number of foreigners within the territories of the belligerent countries and the lack of a widespread system of compulsory conscription made the need to act against them less urgent and fears of the danger they posed less widespread among the population.

The First World War brought about a dramatic change. Countries made use of a complex system of provisions – expulsion, deportation, internment, denaturalization, sequestration, confiscation – targeting civilians of enemy nationalities (and their property) on a massive scale and then also internal ethnic or religious groups because they considered all these subjects potentially dangerous or untrustworthy. The 1840 prophecy by Alexis de Tocqueville was, thus, confirmed: “All those who seek to destroy the liberties of a democratic nation ought to know that war is the surest and the shortest means to accomplish it.”⁹ From that perspective, the First World War proves an excellent case in point.

The dilemma of balancing security and liberty emerged as a particularly tricky and difficult one to solve, especially in liberal-democratic societies. The trading of liberty for national security – with limitations on freedom, discrimination between citizens and non-citizens, and persecution of internal national, ethnic or religious groups – shook the very principles on which these societies were based, highlighting their vulnerability. Universal compulsory conscription aggravated the dilemma. Males aged between 15 and 50, if on the territory of the enemy, had to be prevented by any means from enlisting in their own national armies.

The other novelty brought about by the First World War concerns international law. In the end, the conflict destroyed confidence in the idea that “civilized” countries could fight a humanized war by sticking to rules that diplomats, lawmakers and politicians discussed in international conferences and agreed upon in conventions and multilateral treaties. Yet, the legal discourse continued to dominate the scene for its whole

4 Introduction

duration. As long as there were violations, they had to be explained and justified, at least on the rhetorical level. Therefore, countries that had all contributed to the emergence of international law now continued to extol its virtues, yet accelerated the crisis around it as they violated it in all sorts of ways to maintain sovereignty and as they chose retaliation over respect for fundamental rights.

In resorting to the rhetoric of public emergency and the constitutional tool of the state of exception, states took and implemented extraordinary measures that impacted on the relationships between them, since they violated treaty obligations, international law and the conventions dictating the “civilized” conduct of war. But the measures also affected and transformed the internal life of these states and their relationships with their own subjects, as they enormously expanded the power of governments over people, broadened the scope of the administration over the judicial system, and bore witness to the emergence of a blood-based conception of citizenship and national belonging.

States lumped together citizens or subjects of enemy nationality, and then citizens or subjects of the same ethnic origin as the enemy, regardless of their legal status, in a special category – enemy aliens – and made them the target of innumerable specific provisions. These reversed the idea that had emerged during the nineteenth century, namely that every state was compelled to treat aliens in compliance with the principles of the law of nations and to grant them equality with its own citizens before the law as far as the safety of the person and property were concerned.

The measures affected individual entitlements and in particular one of the supposed pillars of the liberal state – that is, property rights – calling into question the belief in the inviolability of private property. They also led to a refashioning of the very relationship between citizenship rights and obligations. People’s legal status became even more contingent and uncertain, as a result, for instance, of the introduction of the principle of denaturalization. States at war preferred to deal with collective categories rather than individuals. Aliens were assigned a unique identity and seen merely as members of their respective ethnic/national or religious group (and, after the 1917 revolution, their socio-economic class). Only on rare occasions did countries draw distinctions along gender and age lines.

These practices violated fundamental rights that foreigners had enjoyed in many countries, including free speech, freedom of travel, freedom to acquire, own, sell and transfer property, to file a lawsuit, to fair trial, to privacy and even to enjoy welfare provisions. These had been available to them on the basis of bilateral treaties, international conventions and legal tradition, and were therefore independent of membership of a state.

It is worth stressing that the policies against enemy aliens were not a consequence of the stalemate of the war, nor of its increasing violence and “brutalization.”¹⁰ Governments took actions against such people, almost everywhere, in the very first few weeks of the conflict, when the belief that it would be brief was still widespread, out of fear that these civilians could help and support their home countries. Then, as the war progressed, these rights became an exclusive prerogative of those whose citizenship status was consistent with their ethnic or national origins. Ethnicity, nationality, religion (and, after the Bolshevik revolution, also class) became decisive factors in determining the dangerousness of a person or a group and, accordingly, their access to fundamental rights. There were, of course, many differences among countries, but they usually concerned implementation, rather than the measures themselves.

The numbers involved were great because the First World War broke out at the peak of an era of massive migration: in the previous decades, millions of people had moved within Europe, across the Atlantic and Pacific, and to Africa.¹¹ In the past, many countries had welcomed foreigners: especially those with a cultural and religious background similar to that of the indigenous population had been welcomed and allowed to settle. Some states had offered clear paths to naturalization, others not. Migrants had not always given up their nationality: often the rights attached to the new citizenship were few, and changing nationality was not convenient. As a result of different policies and factors, rates of naturalization were low in Europe and high in North and South America. But, throughout the world, there were also many recent immigrants who had not had the time to fulfill the requirements to apply for naturalization, or colonizers who had no interest at all in giving up their privileged nationality. Thus, when the war began, in Europe there were millions of foreigners who had resided for years in the belligerent countries and their colonies and Dominions without, however, enjoying legal local membership.

Some of these foreign subjects were transient tourists, students, missionaries, seasonal workers or merchants; but, in most cases, they had been residents for many years. Some even had been born in the country, while others had married a national, acquired nationality papers or were in the process of obtaining them. Many owned houses, land or businesses and, of course, spoke the local language. Regardless of their personal stories, feelings, ideas and sense of belonging, the outbreak of hostilities transformed them into enemy aliens accused of posing a threat. Rather than evaluate the activities and position of each individual, allow them to leave or expel them after granting them sufficient time to gather their effects and settle their affairs, almost all the countries at war decided to

6 Introduction

render harmless everyone who had an even slight connection to an enemy country, presuming that they were more loyal to their origins than to the country in which they worked and lived, and of which they had become, or wanted to become, nationals.

The number of foreigners who happened to be in the wrong place at the wrong time continued to rise as new states joined the conflict. The participation of countries of immigration like Canada, the United States and Brazil helped escalate the quantity of enemy aliens potentially affected by the measures.

Governments often acted under the spur of street protests and the nationalistic press. The popular reaction took many forms – complaints, informing, reporting, acts of vandalism against enemy aliens' properties (shop-window smashing, the pillaging and burning of shops and houses belonging to enemy aliens), verbal abuse, the hunting down and lynching of alleged spies and enemies on the streets, frequently only on the basis of a rumor, which frequently turned out to be false, or a fit of collective public hysteria.

Within a year of the start of the war, governments had almost resolved the thorny problem of enemy aliens. Thousands – men of military age in particular, but also women and children – had been interned in camps or confined in remote areas. Yet other thousands had been repatriated or were waiting for repatriation or exchange in the limbo of a transit camp in a neutral country. The sequestration of enemy property was gaining momentum. Anti-alienism, however, did not subside. It was regularly re-activated by the explosion of crises with international repercussions, such as, for example, the sinking of the *Lusitania*; it expanded well beyond the category of enemy aliens.

As the war dragged on, hardships such as food shortages transformed even “friendly” and “neutral” aliens into targets of nationalist public opinions and governments. For example (the actual list is much longer), public opinion accused “Russian” Jews in France or Britain of profiting from their particular status as “political” refugees to avoid enlistment; it blamed Italians, Spaniards and Belgians for stealing the jobs of citizen-soldiers; and denounced Swiss merchants and entrepreneurs for unfair competition or for being Germans in disguise. And, soon, origin and descent trumped nationality. Transformation into potentially disloyal, treacherous spies, “enemies within” ready to transmit valuable information or to commit acts of sabotage against their own country, also affected naturalized citizens.

Anti-alienism was a global phenomenon, affecting Europe, Asia, Africa, Oceania and the Americas with widely varying degrees and scales of violence. It operated in nation-states and multi-ethnic empires,

in liberal democracies (as the discussion so far details) and authoritarian regimes. But, from the very beginning, the war particularly catalyzed anti-alien-inspired acts in multi-ethnic empires. The war exposed the vulnerability of authoritarian multi-ethnic empires, as it made governments raise questions about the loyalty of their own subjects, triggering internal tensions among nationalities and ethnic groups. Centuries-old suspicions based on origin, religious belief, former nationality, language or an alleged affinity with the enemy unleashed violence, including anti-Jewish pogroms in the Russian Empire and the Armenian genocide in the Ottoman Empire.

The number and categories of perceived enemies multiplied. This multiplication depended on the militarization and mobilization of ethnicity, that is, what Mark von Hagen has called “the politicization of ethnic differences and the overlaying of an ethnic or national dimension to many otherwise non-national political, economic, and social conflicts.”¹²

Enemy aliens were only a small portion of the millions of refugees, deportees, expellees and displaced or massacred people who were victims of the war as well as of the decisions of governments and armies. However, policies against them became part and parcel of the demographic engineering that took place during the conflict and that continued in its aftermath. By removing internal and external “aliens,” governments tried to “simplify” their societies by making them homogeneous – an attempt that was just as cruel as it was inane.

Albeit to different extents, and with some interesting exceptions, in Germany, France, the British, Russian, Austro-Hungarian and Ottoman Empires, Bulgaria, Italy, Japan, Brazil and the United States, governments and bureaucracies ignored the “instructions” laid down by the law of nations on the treatment of citizens of enemy nationality and their property (movable, immovable and intellectual). In their place, they issued decrees and implemented measures that eventually merged into a model of behavior in many respects independent of the degree of liberalism of the governments and societies that adopted them. Differences in implementation did not call into question the emergence of a general model.

These measures did not materialize out of thin air. Rather, their roots lay in developments that had been underway since at least the 1880s, such as the already mentioned migration boom, which had started to provoke intense reactions, sharpened by the expansion of welfare provisions and political enfranchisement.

In many countries, the three decades preceding the war witnessed intense legislative activity aiming at reducing the number of migrants, selecting them on racial, political and religious bases, controlling

8 Introduction

borders, keeping colonial subjects distinct from citizens and making sovereignty more effective.

The parallel emergence of territoriality and of the idea that the state ought to be coherent and homogeneous within its borders¹³ were the rationales for many of the changes during this period. Among them there were the rewriting of citizenship laws, the restrictions on naturalization procedures, the passing of acts regarding aliens, the introduction of passports and various forms of personal identification, the ever-stricter control of migration movements¹⁴ and the increasing number of expelled undesirable individuals.¹⁵ Moreover, states introduced legal tools to reshape the composition and distribution of the population, such as, for example, the population exchanges legally sanctioned at the end of the Balkan Wars.¹⁶

In particular, anti-alienism had its antecedents in the idea – already in place in the European countries affected by the first wave of mass migration – that “aliens” constituted a threat to security, welfare and national integrity. In the second half of the nineteenth century, debates on nation and loyalty, demographic decline and miscegenation, purity and fear of degeneration, race and eugenics burgeoned. At the same time, mass migration and changes in the job market on the one hand, and the increase of public welfare provisions and expansion of colonial empires on the other, raised the question of who was entitled to access the emerging welfare benefits, who was a citizen and who was a subject. Governments thus felt impelled to strengthen the boundary between inclusion and exclusion, adopting strong policies of either assimilation or expulsion, as well as border controls.

The novelty, the scale and the scope of the measures taken against enemy aliens during the First World War were unprecedented, and soon became an issue of contention among the legal scholars who debated the problem on both sides. Many wrote articles and essays, either criticizing the choices made by their own governments or endorsing them and providing them with legitimization narratives. The distinction between *enemy* and *enemy alien* was not always straightforward, in part because it depended on the juridical tradition of the country in question; and there was no convention on enemy aliens or the protection of civilians in wartime. So, these scholars played an important role in the attempt to lay the basis for defensible policies. Sequestration and confiscation of enemy property, dual citizenship, naturalization and denaturalization were among the most controversial issues, while they paid less attention to detention, internment, deportation and, in general, to the harm done to people’s bodies and personal liberties. (Internment and detention were, though, the focus of the interest of non-governmental humanitarian organizations such as the Red Cross or the YMCA.)

Between 1915 and the early 1920s, scholarly journals such as *The American Journal of International Law*, the *Journal du droit international*, the *Revue générale de droit international publique* or the *Zeitschrift für Völkerrecht* published a huge number of articles on topics that had not been envisaged or regulated by any of the international conventions signed in the previous decades. Norman Bentwich, Edwin M. Borchard, George Cohn, Edouard Clunet, Amos S. Hershey, Hermann Klubanski, Josef Kohler, Boris Nolde, Ronald Roxburgh, Ernest M. Satow and Jules Valéry were among those who paid particular attention to the issue of enemy aliens, and especially to the policies against them that impinged on private law. However, for the amount of information provided and its comparative range, none of their many works could be compared with those written by James W. Garner. Starting in 1915, Garner, a legal scholar and political scientist at the University of Illinois, Chicago, published a series of articles in the *American Journal of International Law* under the general heading “Some questions of international law during the European War.” Three of these were devoted to the “Treatment of Enemy Aliens,” and they appeared in the 1918 and 1919 issues of the journal.¹⁷

Garner’s articles and his treatise (in two thick volumes) still stand out as the best analysis of the role played by international law during the First World War and as the most thorough survey of the treatment of enemy aliens by belligerent countries. They are thus the unavoidable starting point for any transnational history of the subject that aims to restore international law to its eminent and crucial position.¹⁸ However, even this magisterial study has limits. Like many of his contemporaries, Garner focused on the Western Front. Even though the Austro-Hungarian, Russian and Ottoman empires played a crucial role in the war and were among the signatories of the Geneva and Hague Conventions, they did not enter his comparative picture. Similarly, he ignored Eastern and South-Eastern Europe, as well as the colonies and Dominions of the European empires, and the whole of Asia. Besides, in line with the sensibilities of the times, Garner did not study the implementation of the policies and their effects on the lives of the victims, nor did he see the complex gender dimension of the problem. Not considering the many women who were categorized as enemy aliens, Garner thought that the issue was mainly a male one, which could be explained by “the changed conditions resulting from the presence of large number of [...] reservists, in the territories of the various belligerents at the outbreak of the war.”¹⁹ Since he published the results of his research during and immediately after the conflict, he could not look at the continuing consequences of the policies to which it gave rise in its aftermath, and their impact on post-war legislation.

10 Introduction

As the war progressed and new countries joined the Entente in 1915, 1916, 1917 and 1918, the Central Powers had to deal with new groups of enemy aliens, including Italians, Romanians, Portuguese, Chinese, Brazilians and US citizens. Boundaries between the categories of *aliens*, *enemy aliens* and *internal enemies* soon became even more blurred. Especially in multi-ethnic empires, where suspect nationalities, religious groups and, in general, people accused of being disloyal to the state outnumbered enemy foreigners, it was difficult, for example, to distinguish an enemy alien by citizenship from an enemy alien by descent.

Nationalism and collectivist ideologies played an important role in defining the way in which governments and armies took the opportunity presented by the war to settle accounts with enemy aliens (and internal enemies now defined as aliens). Policies against such people accompanied mobilization and helped boost it. Waving the banner of patriotism, anti-alien public opinions and governments occupied the entire political scene. They marginalized alternative narratives, successfully silenced almost any form of opposition, such as pacifism or universalism, and obliterated the outcomes achieved by internationalism, especially in the legal domain and economic globalization.

Anti-alien discourse was not only about security but also about hegemony and sovereignty. From this point of view, it is extremely fruitful to look at the economic policies that targeted the property of enemy aliens and internal enemies. Campaigns aimed at the economic exclusion of such people were launched in different countries and pursued with varying degrees of enthusiasm and intensity. Restrictions on freedom, removal, displacement or internment were often preconditions for attacking property rights.

Notwithstanding the general “bourgeois,” liberal agreement on the illegitimacy of any assault on these rights – an agreement that united liberal democracies and authoritarian states – governments and armies implemented a wide range of measures against people they deemed to be enemy aliens, ranging from boycotts of foreign goods and shops to sequestration, expropriation and eventually confiscation and liquidation of property. Industrialists, commentators and politicians maintained that the war was an excellent opportunity to “purge” the entire economy, taking everything – public utilities, insurance companies, land, assets, patents, firms, banks – out of alien hands. The endeavor to eliminate any foreign presence and competition thus became part and parcel of the state’s attempt to take control over the economy. Sequestrations and liquidations prepared the ground for policies such as autarchy, forced nationalization and collectivization. These became more stringent in the former Russian Empire immediately after the Bolshevik Revolution²⁰