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The Right to Have Rights: Escape from a Peculiar State of Nature

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MA Thesis

The Right to Have Rights: Escape from a Peculiar State of Nature



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¹ 'Before the Law', still from Orson Welles adaptation of Kafka's *The Trial*

'The indestructible is one; it is every individual human being, and at the same time it is common to everyone, hence the uniquely inseparable union of all humanity'

– Franz Kafka, *Aphorisms*²

² Kafka 2012, p. 195

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Introduction

In the preface to *The Origins of Totalitarianism*, Hannah Arendt wrote that ‘human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities’.³ This was her response to the horrors of twentieth century totalitarianism: a call for a new politics, a new all-encompassing law of human dignity. The reason for this insistence on total inclusion is central to the book and Arendt’s post-war work in general. It is the figure of the stateless person who, without a *de jure* or *de facto* nationality, finds himself outside the consideration, let alone protection, of any political principle or law.

The two great wars of the twentieth century produced a record amount of these stateless people and thus introduced a political figure that politics and political philosophy are still reckoning with to this day. The United Nations High Commissioner for Refugees (UNHCR) states that, at the end of 2021, 4,3 million *de jure* stateless people were reported to be residing in 96 countries, but ‘the figure is estimated to be significantly higher’. This discrepancy is due to a combination of factors, such as non-reporting from a number of the most populous nations and the difficulty of assessing the number of *de facto* stateless people, who technically have a passport but are effectively in the same precarious situation as the stateless. The number of ‘forcibly displaced people worldwide’ reported by the UNHCR is 89,3 million, which should give some idea about the discrepancy.⁴ Arendt regarded the term ‘displaced person’ as an invention ‘for the express purpose of liquidating statelessness once and for all by ignoring its existence’, a political decision which ‘is further revealed by the lack of any reliable statistics on the subject’.⁵ It is clear that this still applies.

The practical-political and humanitarian problem here is obvious: stateless people and other refugees live in precarity and are reliant on charity to have their most basic rights respected and needs met. The philosophical problem might be less obvious. The difficulty of theoretically reckoning with the figure of the stateless person comes from the fact that modern political and legal thinking centres around the framework of political community (more specifically the nation-state), so that those who fall outside this framework are not sufficiently considered as political subjects and holders of rights. Rights are embodied by citizens of nation-states and

³ Arendt 1951, p. xi

⁴ ‘Refugee Data Finder’, unhcr.org

⁵ Arendt 1951, p. 365

human beings are considered insofar as they are citizens. Arendt argues that is the assumption that all human beings are also always citizens of some nation-state that leads to the paradoxical situation in which human rights are unable to guarantee the rights of those who are nothing but human, i.e., the stateless.⁶

This assumption is emblematic of the deep link between membership in a political community and human rights in our political thinking, which is, as Arendt shows, first exposed by the appearance of the stateless person, precisely because he is a human being who is not also a member of a political community. As Giorgio Agamben remarks, Arendt turns ‘the condition of the countryless refugee... upside down in order to present it as the paradigm of a new historical consciousness’.⁷ This new historical consciousness dawns because the stateless person exposes the poverty of our concept of rights and politics and signals the necessity to rethink them. It is when millions of stateless people appeared, Arendt argues, that ‘we became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community...’.⁸

Though the phrase ‘the right to have rights’ seems to have been something of a throwaway line to Arendt, never returning to it after the *Origin*, the phrase has gained in prominence after being virtually ignored in the academic world for many years.⁹ It is likely because of the growing salience of the associated humanitarian refugee crises that have occurred since the 1990s that there has been such a steady growth of academic interest in the right to have rights. One section of this academic literature focuses on interpreting the right to have rights. Essentially, the question is: what is the ‘right to have rights’? The ambiguity of the phrase means it lends itself to many different interpretations. Some authors read it as a moral right that must be guaranteed through international institutions, others read it as a right to political action and some read it more cynically, as a lost right that cannot be regained.

One aspect of Arendt’s argument, however, is almost totally neglected in this secondary literature. I am referring to the stark distinction drawn by Arendt at the border of political community. Life outside of this border is a non-human, rightless animal life in a ‘peculiar state of nature’, whereas life inside of it is a human life of political equality and dignity. It is this

⁶ Arendt 1951, p. 389

⁷ Agamben 2008, p. 90

⁸ Arendt 1951, p. 388

⁹ DeGooyer 2018, p. 8

distinction, I argue, that leads to a paradoxical situation which is not adequately addressed by Arendt or the secondary literature on the right to have rights. The problem is that the right to have rights is unable to explain how this border can be crossed. The central question in thinking about the right to have rights concerns inclusion, or entry: How can those who have been excluded from political community be included again? How can society be entered from ‘the peculiar state of nature’ that the stateless find themselves in? The *paradox of the right to have rights* is that its answer to this question is reliant on itself, in the sense that one must already be a member of a political community to enjoy the right to have rights. Since the stateless are, by Arendt’s definition, completely excluded from all political communities, the right to have rights does not solve their predicament.

In this thesis, I will argue for a fruitful aporetic reading of this paradox, that results in a rethinking of the central distinctions and concepts that structure Arendt’s argument. I will do this by contrasting Arendt’s argument to Agamben’s argument regarding ‘bare life’ and sovereignty, who argues that all life is always already political, including the ‘bare life’ of the stateless. More specifically, I will argue that applying Giorgio Agamben’s understanding of political community and its relation to ‘bare’ human life to the central problem in Arendt’s argument of escaping from the ‘peculiar state of nature’ of statelessness leads to a productive engagement with the *paradox of the right to have rights*. The goal is not to solve the paradox, but to see it as an opportunity to expose implicit assumptions and rethink relevant concepts connected to Arendt’s argument. Agamben’s alternative understanding of these distinctions highlights the way they function in structuring Arendt’s argument. This is productive, I argue, in the sense that it allows us to think about political practices and claims surrounding the right to have rights in new, more inclusive ways.

In order to make this argument, in the first chapter I will present Arendt’s critique of human rights in *The Origins of Totalitarianism*, noting the most crucial aspects relating to the paradoxes of human rights, the right to have rights and the sharp distinctions Arendt draws between human and savage, politics and nature, and statelessness and citizenship. In the second chapter, I will critically discuss three categories of interpretations of the right to have rights: the normative interpretation, the *praxis* interpretation and the diagnostic interpretation. The central question here is how these interpretations relate to the paradoxes posed by Arendt’s argument and whether the phrase has any political value. I will argue that the central weakness of the secondary literature is its failure to acknowledge the distinctions that structure Arendt’s argument. In the third and final chapter, I will explore the relationship between Arendt and

Agamben through a discussion of the concept of dignity. From Agamben's perspective, the stateless and the 'peculiar state of nature' they inhabit are a product of decisions of the sovereign, so that the life of the stateless is always already a political subject. It is this transcendence of Arendt's stark distinction between the inside and outside of political community that paves the way for a new understanding of human rights politics and the right to have rights, wherein the stateless use the rights they always already have to claim the rights that are denied to them.

Chapter 1: Arendt on the right to have rights

Introduction

Arendt titled the chapter of *The Origins of Totalitarianism* (henceforth: *Origins*) which culminates in her coining of the right to have rights ‘The Decline of the Nation-State and the End of the Rights of Man’. On her account, this decline of the nation-state begins on August 4, 1914, with the start of World War I, which ‘exploded the European comity of nations beyond repair’.¹⁰ This was not so much the explosion of a well-functioning system due to external factors, as the explosion of a façade, exposing the internal contradictions and inadequacies that always hid within the frame of the European nation-state system. This exposure came by way of two newly emerged groups that resulted from the civil wars that ravaged post-war Europe: the minorities and the stateless.¹¹ These groups ‘had no governments to represent and to protect them and therefore were forced to live either under the law of exception of the Minority Treaties...or under conditions of complete lawlessness’.¹² After World War I ended and tore apart the Austro-Hungarian and Russian empires, the victors used the Peace Treaties to divide Eastern Europe up into new nation-states. In this ostensibly arbitrary process, many different peoples were thrown together into new national entities, in which some of these peoples were assigned the role of ‘state people’ whereas others were assigned the role of ‘minority’.¹³ This led to a situation in which ‘about 30 percent of their roughly 100 million inhabitants were officially recognized as exceptions who had to be specially protected by minority treaties’.¹⁴

For Arendt, the predicament of the minorities exposes the deeper problem of associating emancipation with sovereignty, and rights with nationality. This had been implied in the modern nation-state since the French Revolution ‘combined the declaration of the Rights of Man with national sovereignty’.¹⁵ The implication now made explicit was ‘that only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin.’¹⁶ The figure of the minority already makes this unbreakable bond between rights and citizenship explicit, because a permanent exception to the standard rule was required in order to accommodate him. But the

¹⁰ Arendt 1951, p. 349

¹¹ Arendt 1951, p. 351

¹² Arendt 1951, *ibid.*

¹³ Arendt 1951, p. 353

¹⁴ Arendt 1951, p. 355

¹⁵ Arendt 1951, p. 355-356

¹⁶ Arendt 1951, p. 359

true rupture occurs with the appearance of stateless people ('the most symptomatic group in contemporary politics'), a category of people who live 'outside the pale of the law'.¹⁷ Whereas minorities have a *de jure* nationality and thus belong to a political community, at least in some sense, stateless people lack even this minimal condition for political membership and thus are not included in any political community. Though someone can become stateless in several different ways, Arendt mostly mentions denaturalization. She notes several times that the Nazis took extreme care to denaturalize Jews before they were deported to the concentration camps, so that no one who was a citizen would be in the camps. The fact that the killing of the legal person was seen as a prerequisite for killing the biological person points to the precarity of the condition of statelessness. Since there is no place for the stateless in society, they are assigned to camps, whether this be internment camps or concentration camps. Arendt polemicalises: 'No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as "inalienable" those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves. Their situation has deteriorated just as stubbornly, until the internment camp-prior to the second World War the exception rather than the rule for the stateless-has become the routine solution for the problem of domicile of the "displaced persons."¹⁸ He who lives outside political community is resigned to the camp as a substitution for a homeland he does not have.¹⁹ *

Arendt argues that the stateless person is the harbinger of 'the Decline of the Nation-State' in several ways. Firstly, he cannot be repatriated or naturalized, destroying the traditional distinction between national and foreigner. Secondly, he forms an attack on 'the very structure of legal national institutions', in the sense that he lives outside of it without living under an equivalent foreign institution. This is wryly illustrated by the fact that stateless refugees can often improve their legal position by committing a crime. The stateless person is an exception for which the law does not provide, so 'it [is] better for him to become an anomaly for which it [does] provide, that of the criminal.'²⁰ Committing a crime brings the stateless refugee within the pale of the law where, even if he is imprisoned, at least he is *recognized* by the legal system

¹⁷ Arendt 1951, p. 362

¹⁸ Arendt 1951, p. 365

¹⁹ Arendt 1951, p. 371

*From here on, 'he' will be used as a neutral pronoun, rather than 'he/she' or 'they'.

²⁰ Arendt 1951, p. 374

as a criminal. As a criminal, he has certain rights: 'he is no longer the scum of the earth...He has become a respectable person.'²¹

Perplexities of the Rights of Man

Arendt's next move is to link these reflections on statelessness as a new historical political phenomenon to human rights or, rather, the paradox she sees as inherent to human rights, which was exposed by this phenomenon. This paradox was revealed when it turned out these supposedly inalienable human rights could only be guaranteed in the form of civil rights associated with membership of a nation-state. Arendt argues that this paradoxical link has existed since the conception of human rights. The Declaration of the Rights of Man by the French Constituent Assembly in 1789, proclaimed that Man, rather than God, was the source of Law. The *human* rights proclaimed therein were supposedly inalienable and could not be reduced to or deduced from any source other than man himself.²² The natural guarantor of these rights was the sovereign, seeing as his authority was based on the people's right to self-government. Here, Arendt already observes the paradox in the logic of the original authors of these human rights. Inalienable rights are ascribed to an abstract human being that does not exist. Human beings live together in community. The kind of community that could protect these inalienable human rights was one that had developed to a certain stage of civilization into a sovereign nation-state. If the savages lacked human rights, it was because their community was not sufficiently developed. The original categories of human rights were thought to be 'independent of human plurality', so that they 'should remain valid even if only a single human being existed on earth'.²³ In this sense, they apply to an abstract idea of a human individual rather than an actual person living in society. For Arendt, this is problematic because human rights only acquire meaning through interaction with other people in a community. They are artificial, social creations rather than metaphysical rights.²⁴ The existence of human rights is conditional on the historical development of civilization to a particular stage.

Human rights were therefore linked to national sovereignty and emancipation from their first conception. However, this link only appeared at the moment of rupture described above, 'when a growing number of people and peoples suddenly appeared whose elementary rights were as

²¹ Arendt 1951, p. 375

²² Arendt 1951, p. 380

²³ Arendt 1951, p. 389

²⁴ Regardless of whether Man or God is invoked as an abstract basis for rights, both are metaphysical groundings

little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa'.²⁵ With the appearance of the stateless refugees, it became clear that people who lacked their own government and associated civil rights, people who were made to rely on the most basic inalienable rights they were supposed to enjoy simply by virtue of being human, were not protected by any authority or institution. It turned out that the system of human rights had worked on the assumption that every human was not just a human, but also a member of some political community. He enjoyed his inalienable human rights in the tangible form of civil rights; abstract human rights formulations were concretised in civil rights formulations that were enjoyed by virtue of membership in a particular political community. Thus, the institution that was to protect human rights was the government of a sovereign nation-state, and this guarantee was provided in the form of civil rights. The non-civilian human being was not considered, even though he should ostensibly be the exemplary subject of human rights. Human rights, if they are to be truly inalienable, are what one should be able to fall back on when all governmental protection is lost. Civil rights are the rights of a member of a political community, human rights are the rights of a human being, regardless of his membership in a political community.

According to Arendt, it is because of the assumption that every human is also always a civilian, that those who lost their civil rights lost not only 'the entire social texture into which they were born and in which they established for themselves a distinct place in the world', but also the ability to find or construct a new space. Being thrown out of one nation-state meant expulsion from the 'family of nations' and this meant expulsion from political community and political life in general. The loss of governmental protection means being 'out of legality altogether', to live in a new mode of savagery in the middle of civilized society.²⁶ When we speak of human rights, we often speak of specific human rights such as those defined in the Universal Declaration of Human Rights (i.e. the right to life, liberty and equality), but the stateless lose something more fundamental than these specific rights. In fact, one can be theoretically granted one of these rights while being rightless. The point is not that the rightless are 'deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion - formulas which were designed to solve problems within given communities - but that they no longer belong to any community whatsoever.' The plight of the stateless 'is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that

²⁵ Arendt 1951, p. 381

²⁶ Arendt 1951, p. 384

nobody wants even to oppress them.²⁷ This is, for Arendt, what entails a true loss of human rights. It is not about losing a specific right laid down in a Human Rights treaty, but about ‘the deprivation of a place in the world which makes opinions significant and actions effective.’²⁸

Awareness of the right to have rights

It is in this context that ‘we became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community...’.²⁹ This passage is obviously crucial for any coherent interpretation of the right to have rights. Without drawing any conclusions, several aspects must be immediately noted. Firstly, the right to have rights appears initially as something that is *lost* when stateless people are deprived of the right to belong to a community through their loss of a nationality. It is not positively developed as a concept: we become aware of it only when it is absent. Secondly, the right to have rights is related to ‘living in a framework’ in which their opinions and actions acquire meaning in relation to other people. Finally, the right to have rights is either closely related to or equivalent to the right to live in a community that provides such a framework. The crucial point is that the right to have rights is the ultimate human right without which other human rights have no meaning. This is because ‘its loss entails the loss of the relevance of speech (and man, since Aristotle, has been defined as a being commanding the power of speech and thought), and the loss of all human relationship (and man, again since Aristotle, has been thought of as the "political animal," that is one who by definition lives in a community), the loss, in other words, of some of the most essential characteristics of human life.’³⁰ Thus, for Arendt and Aristotle, the loss of this right is a loss of humanity.

To further illustrate this point, Arendt compares the plight of the stateless to the plight of the slave. Arendt argues that the fundamental human rights violation of slavery was that slaves were excluded ‘even from the possibility of fighting for freedom’.³¹ However, through their exploitation slaves still belonged to humanity. They had a place in society: the place of the slave. The same cannot be said for the stateless: ‘To be a slave was after all to have a distinctive character, a place in society-more than the abstract nakedness of being human and nothing but human. Not the loss of specific rights, then, but the loss of a community willing and able to

²⁷ Arendt 1951, p. 386-387

²⁸ Arendt 1951, p. 387-388

²⁹ Arendt 1951, p. 388

³⁰ Arendt 1951, p. 388

³¹ Arendt 1951, p. 388-389

guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.³² This further illustrates how central political community is for Arendt: the slave retains his dignity because he still belongs to a community whereas the stateless refugee, in some sense, ceases to be human. The connection between human dignity and the right to have rights is made explicit here. The loss of the right to have rights, the expulsion from civilized society, equals the loss of human dignity. If we recall that in the preface to *Origins*, Arendt calls for ‘a new guarantee for human dignity’, it becomes clear that there is a connection between the right to have rights and this guarantee. Someone’s dignity can only be guaranteed if he is a member of a political community. This is why the true nature of human rights is only revealed to us in the figure of the stateless refugee. Since the one true human right is the right to belong to a political community, the figure who belongs to no community finally reveals the poverty of our traditional understanding of human rights as abstract claims or properties which apply even outside of society, by virtue of the nature of man. Rather, Arendt argues, human rights should be understood as social creations, historically contingent upon the development of civilization.³³

Institution of the right to have rights

If human rights are a social construct, it follows that the right to have rights ‘should be guaranteed by humanity itself’, though Arendt is sceptical about the feasibility of this.³⁴ She notes that ‘this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, a sphere that is above the nations does not exist.’³⁵ Since international law still works within the framework of ‘a family of nations’ in which norms are created by agreements between two or more states, the central tension between human rights and sovereignty cannot be resolved in this manner. Moreover, Arendt does not believe a world government would solve the issue. This is because the problem is related to the very structure of any sovereign government, no matter its size. Violations of the right to have rights can always be justified by means-end

³² Arendt 1951, p. 389

³³ Arendt 1951, *ibid.*.

³⁴ Arendt 1951, p. 390

³⁵ Arendt 1951, p. 390-391

thinking and realpolitik: what is right is what is good for the nation-state.³⁶ Since the French revolution decoupled sovereignty from the law of Nature or God and made Man its source, this means-end thinking is inherent to the logic of the sovereign nation-state. Therefore, the issue cannot be solved by simple widening the borders of the sovereign unit so that it encompasses the whole world. Arendt ends this argument by noting that ‘it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof.’³⁷ The problem with a world government is that it does not challenge the logic of sovereignty, which is a logic of inclusion and exclusion. In other words, it does not offer the new political principle Arendt seeks.

Human and savage

At several points, Arendt equates the rightless to the savage and statelessness to the state of nature. The question of the right to have rights is a question of who is included in civilization and who is expelled to the savagery of nature. Human rights were a failure because they did not fulfil their promise of transcending this logic: ‘The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships-except that they were still human. The world found nothing sacred in the abstract nakedness of being human.’³⁸ Inalienable human rights are supposed to provide exactly for the situation in which someone is nothing but human, i.e. ‘abstractly naked’, but in reality there is no condition that is more precarious and unprotected than this. Arendt argues that this is due to the fact that the naked human is not regarded as sacred, but as a savage. The abstract, nakedly human inhabitant of the camp is a savage and the natural rights granted to him are thus the rights of a savage, rather than the rights of a human being: ‘only savages have nothing more to fall back upon than the minimum fact of their human origin.’³⁹ This leads to the strange situation where the person whose only quality is that he is human ceases to be regarded as a human being. Arendt uses the term ‘savage’ to describe this condition, but this does not mean that the rightless are personally uncivilized or animalistic, but

³⁶ Arendt 1951, p. 391

³⁷ Arendt 1951, *ibid.*

³⁸ Arendt 1951, p. 392

³⁹ Arendt 1951, p. 393

rather that they represent a regression from civilization, they represent the return of the state of nature to civilized society.

What defines the stateless savage, in contrast to the human, is that he has ‘lost all those parts of the world and all those aspects of human existence which are the result of our common labor, the outcome of the human artifice.’⁴⁰ It is precisely because they have lost the ability to contribute to and participate in the artificial world of human community that the stateless are ‘thrown back into a peculiar state of nature’.⁴¹ Arendt distinguishes between this artificial world of human creation and ‘mere givenness’: everything that is ‘mysteriously given us by birth’.⁴² The sphere of mere givenness, which relates to our bodies and natural talents, is the private sphere of friendship and love. It is based on ‘the law of universal difference and differentiation’, as opposed to the law of equality that governs the public sphere, and in civil society both are separated.⁴³ In this sense, Arendt argues the private sphere of mere givenness forms both a ‘permanent threat’ and a ‘dark background’ to the sphere of equality: ‘Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.’⁴⁴ Equality and human rights are the result of a conscious human effort to contribute to a common world together. It is the loss of access to this world and his expulsion to the differentiated world of givenness that defines the plight of the stateless. Thus, when the stateless person appears in civilized society, he is an alien who enters from a different world. This ‘alien’ realm of pure difference and individuality relates to that which we cannot change (i.e. the merely given), so that he who is merely an individual human without being a citizen ‘loses along with his right to equality that freedom of action which is specifically human’. He is ruled by necessity, everything he does is the necessary result of his given human qualities: ‘he has become some specimen of an animal species, called man.’⁴⁵ The stateless is only human in an animalistic sense, as a member of a species. He is not a full human being who can participate and contribute to the common world that is characteristic of humanity. In this sense, loss of citizenship entails, for Arendt, a loss of humanity. Being human means actively participating in the commonwealth with others as equals, making original contributions through actions and

⁴⁰ Arendt 1951, P. 393

⁴¹ Arendt 1951, *ibid.*

⁴² Arendt 1951, p. 394

⁴³ Arendt 1951, *ibid.*

⁴⁴ Arendt 1951, *ibid.*

⁴⁵ Arendt 1951, p. 395

opinions which gain significance only in interaction with others. This is why the destruction of the human in totalitarian regimes always began with the destruction of the legal person.⁴⁶ Denaturalization was the first step towards ‘total domination, which strives to organize the infinite plurality and differentiation of human beings as if all of humanity were just one individual’.⁴⁷ Turning human beings into ‘living corpses’ is conditional on their prior expulsion to the realm of mere givenness; the Nazis turned people into rightless animals before actually killing them, they created ‘a condition of complete rightlessness’ before challenging the right to live.⁴⁸ In this sense, it follows from Arendt’s argument that human beings were not killed in the camps. Those who were killed were former human beings turned into animals.

Conclusion

In conclusion to this chapter, it is important to highlight some unstated assumptions and central distinctions in Arendt’s argument, as these are the target of some of the critiques that will be discussed in the following chapters. Firstly, on Arendt’s account, human rights are historically contingent. More specifically, they come into existence when ‘civilization’ develops to a certain stage. She uses the term civilization several times, without providing a clear definition beyond this connection to human rights, which leaves us with the circular definition whereby a civilized community is a community that can guarantee human rights. Her first usage of the term is in the context of her discussion of the first conception of human rights in the Declaration of the Rights of Man and of the Citizen. Her point is that the conceivers of human rights assumed that human rights must be guaranteed in the form of civil rights and thus connected to sovereignty was because they associated human rights with the stage of civilization that they had reached with the birth of the sovereign nation-state. If ‘savages’ lacked these human rights, it was because they had not yet reached this stage of civilization.⁴⁹ So Arendt uses the term civilization to highlight the intimate and problematic connection that has always existed between human rights and the nation-state. Further on, she writes that the stateless ‘appear as the first signs of a possible regression from civilization...in a world that has almost liquidated savagery’.⁵⁰ Civilization, then, is the stage of societal development in which society has almost liquidated

⁴⁶ Arendt 1951, p. 591

⁴⁷ Arendt 1951, p. 573

⁴⁸ Arendt 1951, p. 387

⁴⁹ Arendt 1951, p. 381

⁵⁰ Arendt 1951, p. 393

savagery. Savagery is the polar opposite of civilization, and the stateless person is so troubling because he is the opposite of civilization living in the middle of civilization.

This leads to a second important aspect of Arendt's argument. She draws several stark distinctions that are closely related. She distinguishes between human and savage, between human being and animal of the human species, between savagery and civilization, between civilization and nature, between *polis* and nature and between dignity and savagery. All of these distinctions are related subcategories of the most fundamental distinction, the distinction between what is inside and what is outside of political community. Outside political community lies, as we have seen, the world of 'mere givenness', the world of savagery, where life is lived without dignity and without rights. Someone who lives outside political community is 'naked' in the sense that he has only the characteristics that he received at birth. Inside political community lies the world of equality, artificially forged through human interaction, the world of dignity and rights. Life here is more than 'naked' because, as members of a political community, people inside are more than their physical characteristics and natural talents. The distinctions Arendt draws are not unproblematic or uncontroversial, and this is somewhat exacerbated by the fact that she does not explicitly draw them.

The radicality of Arendt's distinctions is highlighted by her curious slavery argument. Here, it becomes clear that the connection between humanity and political community is so deep that to be expelled from political community is a fate seemingly worse than slavery. The slave retains his dignity and humanity, because he has a place in the community (though this is the lowly place of the slave), whereas the stateless loses both his dignity and his humanity at the moment of his expulsion. This comparison is curious, because the slave seems like the paradigmatic example of someone who has lost their dignity, specifically because of the freedoms taken away from him, such as the freedom to rebel. A stateless person, on the other hand, can be relatively free, with the ability at least to participate in political protests. Here, we can take Arendt herself as an example: her most prolific period of political activism came when she was stateless.⁵¹ The point here is not to argue against the morality or historical accuracy of Arendt's treatment of slavery, but to highlight how extreme her position is regarding the border of political community.⁵² Furthermore, the point is to highlight that the distinctions and categories she invokes are not uncontroversial. This is important, because the right to have rights is built upon all these distinctions in a fundamental way. The right to have rights is Arendt's

⁵¹ Ingram 2008, p. 412

⁵² This point could certainly be argued, as Lechte and Newman do: See Lechte and Newman 2013, pp. 35- 41

acknowledgment that humanity only exists inside the boundaries of a political community. To have rights, to live a dignified life, to be a part of humanity, one must be a member of a political community.

Chapter 2: What is the right to have rights?

Introduction

Arendt's discussion of the right to have rights leaves a lot to be desired and discussed. The phrase is, probably intentionally, ambiguous. Arendt tells us that the right to have rights is the right to belong to a political community. It is a right we became aware of when it was lost by millions of people. Beyond this, she does not explicitly offer any positive information as to what this right might entail, nor does she explain why she chose to phrase this idea in the way she did. This raises many questions. Can this lost right be regained or reconstructed? The word 'right(s)' is repeated. What does the first 'right' mean in relation to the second 'rights'? What does it mean to 'have' this right? Is it a 'traditional' right, that can be protected by existing (international) institutions or is it a new kind of right that does not fit in our standard legal framework? Is it supposed to be an abstract normative right, or a concrete institutional guarantee? If it must be institutionally guaranteed, what kind of institution can guarantee it? The academic literature on the right to have rights that has developed since the 1990s offers different answers and approaches to these questions. Different interpreters seek and find different purposes in the phrase and thus focus on resolving different ambiguities.

In order to make sense of all these interpretations and ambiguities associated with the right to have rights, it is helpful to organise the different interpretations into categories. This allows us to see the differences and similarities between different interpretations, particularly regarding the aspects and ambiguities of the right to have rights that they focus on. Two prominent categorisations have been made by James Ingram and Stephanie DeGooyer. Both of these authors distinguish between a normative and a performative strain in the interpretive literature. According to the normative interpretation, the right to have rights is a moral norm that must be guaranteed through international institutions. According to the 'performative' interpretation, the right to have rights comes into existence when it is actively claimed in a political performance. DeGooyer and Ingram's categorization exercises also double as critiques. Both authors are very critical of the normative interpretation, which they attribute to Seyla Benhabib, as they argue it fails to meet Arendt's central challenge regarding the connection between human rights and the nation-state. This leads Ingram to endorse his version of the performative interpretation, heavily inspired by the work of Étienne Balibar.

In what follows, I will first critically discuss Benhabib's normative interpretation. Secondly, I will discuss Ingram's version of the performative interpretation, followed by a more recent, more developed articulation of this position by Étienne Balibar. There is an interesting contrast

here, where Balibar focuses more on disruptive *praxis* as the central activity of the right to have rights, rather than simply the performance of claiming rights. DeGooyer is critical of this whole strain of ‘performative’ or *praxis* interpretations. She argues that none of these interpretations recognise that the right to have rights offers no way to enter a political community from outside. This critique leads her to the cynical conclusion that the right to have rights is always already a lost right, which I argue belongs in its own category. I call this third category the *diagnostic* interpretation, since it argues that the main function of the phrase is to serve as a diagnostic tool to understand historical developments. There is a parallel here to a different cynical reading of Arendt by Jacques Rancière: both DeGooyer and Rancière see the paradox at the heart of the right to have rights as paralysing, offering no political way out. By contrast, Ayten Gündoğdu offers an optimistic variant of the diagnostic interpretation, arguing that Arendt’s paradoxical diagnosis is meant to inspire us to think the relevant concepts anew. This chapter culminates in a discussion of the virtues of cynical readings as opposed to more optimistic readings.

The right to have rights as norm

Benhabib

Seyla Benhabib is perhaps the most prominent scholar on the meaning of the right to have rights. Her normative reading is characterised by a splitting up of the phrase. The first ‘right’ is ‘a *moral claim to membership and a certain form of treatment compatible with the claim to membership*’, addressed to ‘humanity as such’.⁵³ It urges humanity to recognize that the claimant is a member of ‘some human group’.⁵⁴ Though it is not explicitly stated, it follows that this human group is a civil/political community. Benhabib calls the second ‘rights’ in the phrase ‘its *juridico-civil usage*’.⁵⁵ It corresponds to the standard Hohfeldian picture of a right in legal theory, wherein a right always implies a reciprocal obligation on the part of another party (*A has a claim that B ϕ if and only if B has a duty to A to ϕ*). This second usage is built upon the first usage in the sense that it is only coherent in the context of membership in ‘an organized political and legal community’.⁵⁶ Having juridico-civil rights is contingent upon membership in a community where such rights can give rise to corresponding obligations for other members of this community.

⁵³ Benhabib 2004, p. 56

⁵⁴ Benhabib 2004, p. 56.

⁵⁵ Benhabib 2004, p. 57

⁵⁶ Benhabib 2004, *ibid.*

This clearly denotes the difference between both rights. Because, by definition, the first right cannot be invoked in the context of a ‘juridical-civil community’, it cannot be said to invoke a duty on some other specific party.⁵⁷ After all, such right-duty correspondence can exist only in this civil context. This leads Benhabib to the conclusion that the first right must be understood as a moral claim ‘in the Kantian sense of the term...transcending all cultural, religious and linguistic affiliations and distinctions...’.⁵⁸ It is a claim to humanity as such, and can thus invoke obligations for humanity as such. For Kant, every human being has a right ‘to be treated by others in accordance with certain standards of *human dignity* and worthiness’ (emphasis mine) which follows from the categorical imperative.⁵⁹ This ‘right of humanity in one’s person’ that every human being has corresponds to a negative duty on the part of every human being not to violate this human dignity and worthiness in others. A refusal ‘to enter into civil society with one another’ entails such a violation, which means that, effectively, ‘the right of humanity in our person imposes a reciprocal obligation on us to enter into civil society and to accept that our freedom will be limited by civil legislation’.⁶⁰ For Benhabib, then, the right to have rights is composed of this right of humanity, which must logically lead to a civil community, and the rights which define such a community. The initial moral right must be realized through specific legal institutions in a community that can give rise to obligations. Through Kant, she gives a philosophical justification for the right to have rights, where Arendt neglected to do so.⁶¹

Critique

DeGooyer and Ingram both offer several arguments against this interpretation. Most fundamentally, DeGooyer argues that Benhabib fails to reckon with the central challenge posed by Arendt: ‘In hastening to ground the right to citizenship in the quality of being human, Benhabib roots it in precisely the form that Arendt has not only shown is by itself incapable of generating any rights, but has also critiqued as a monstrous evasion of the plurality that is the condition of politics.’⁶² Arendt’s invention of the right to have rights was her response to the conclusion that human rights as such could not protect those they were made to protect. The right to have rights should be understood as a response to the paradox that human rights can

⁵⁷ Benhabib 2004, p. 58

⁵⁸ Benhabib 2004, *ibid.*

⁵⁹ Benhabib 2004, *ibid.*

⁶⁰ Benhabib 2004, p. 59

⁶¹ Benhabib 2000, p. 82

⁶² DeGooyer 2018, p. 23

only offer protection to humans when they are formulated as civil rights. I will call this the *initial paradox*. DeGooyer argues that Benhabib grounds the first right in the mere quality of being human, because it is based on membership in the human community in the most general sense. Membership to a specific political community (i.e. access to rights) is preconditional upon the moral claim to belong to humanity.

Benhabib is not unaware of this potential criticism. She explicitly notes that there is a certain tension in Arendt as well as Kant, a tension between ‘universalist moral claims concerning the obligations we owe to each other as human beings’ and ‘legal and civic particularism’.⁶³ The paradox lies in the fact that the universal, moral right to a political community must be guaranteed through inclusion in a juridical-civil community that always excludes a certain group of people, because it cannot be a world government. For Benhabib, this paradox is the result of Arendt’s insistence on the sanctity of the sovereign territorial control of every nation-state. *Contra* Arendt, then, Benhabib attempts to escape this paradox by showing that ‘cosmopolitan rights create a network of obligations and imbrications around sovereignty’.⁶⁴ She is referring to several international institutions and normative developments in international law that have emerged since Arendt’s time. Institutions that are exemplary of the ‘learning process of the nations of this world’ are the Geneva Convention, the UNHCR and the International Criminal Court (ICC).⁶⁵ In Benhabib’s terms, these institutions offer a civil-judicial expression of the rights and corresponding obligations that come into existence when someone’s moral claim to belong to humanity is recognised.

This response by Benhabib does reckon with the *initial paradox* in the sense that these international institutions offer a way to protect human rights that is not merely protected by sovereign nation-states. The problem is that it offers only an ostensible escape from the paradox. Though the institutions named by Benhabib are technically distinct from the sphere of national sovereignty, it seems like a reach to say that they constitute ‘the sphere above nations’ that Arendt invoked.⁶⁶ After all, these institutions were formed by reciprocal agreements between sovereign nation-states and can only function as long as they have the blessing of these sovereign entities. The rights they offer people are thus still guaranteed by the decisions of a sovereign nation-state. Thus, as Ingram argues, Benhabib only solves the problem posed by

⁶³ Benhabib 2004, p. 66

⁶⁴ Benhabib 2004, p. 67

⁶⁵ Benhabib 2004, *ibid.*

⁶⁶ Arendt 1951, p. 390-391

Arendt's *initial paradox* in theory, but not in practice.⁶⁷ Benhabib's argument separates human rights from nation states in theory, by interpreting the right to have rights as a moral right that must be guaranteed by international institutions, but she is practically still attached to the idea of a nation-state because these institutions are made by and consist of nation-states.

More generally, both DeGooyer and Ingram find Benhabib too optimistic about the potential of these international institutions to protect human rights. Benhabib is optimistic in the sense that she argues cosmopolitan and international institutions will naturally come to protect the right to have rights more and more.⁶⁸ Underlying Benhabib's argument is a belief in a sort of historical international learning process, in which an institutional sense of duty develops. To put it more strongly, we can state that Benhabib's invocation of these international institutions presents a problematic departure from Arendt. Optimistically arguing that international political and legal institutions will simply develop in a way that will guarantee the rights of the stateless is precisely the stubborn naivete of the idealists that, for Arendt, stood in stark contrast to the actual situation of the rightless.⁶⁹ At this point in history, it is simply not the case that these institutions are able to protect the most basic rights of the stateless. To regard the promises made by these institutions and treaties as material advancement for the cause of the rightless is to ignore the central challenge of Arendt's text. This challenge requires us to look at the actual rights the stateless have in a material sense, rather than the universal rights they have on paper.

Moreover, as Ingram notes, Benhabib places the onus of human rights protection on these international institutions and their officials. Ingram's problem with this is that it takes away autonomy from the supposed rights holders.⁷⁰ Again, theoretically, Benhabib's right holders act on their own behalf, through their membership in these international institutions which is theoretically granted to them regardless of their nationality. Practically, though, they are still reliant on powerful nation states to bring these institutions into existence and to allow them to function in a way that will actually guarantee the protection of human rights for the stateless. This issue of autonomy is central for Ingram. The history of human rights, he argues, is not a history of the benevolent bestowal of rights by powerful institutions, but a history of rights being won in hard-fought battles against these institutions.⁷¹ Insofar as Benhabib's interpretation allows for such an account of the history of human rights, it allows for it only

⁶⁷ Ingram 2008, p. 406

⁶⁸ DeGooyer 2018, p. 22

⁶⁹ Arendt 1951, p. 365

⁷⁰ Ingram 2008, p. 407

⁷¹ Ingram 2008, p. 407

within the context of already existing constitutional democracies. People struggling for rights are then seen as “actualizing” rights that already exist *de jure* but not *de facto*.⁷² Benhabib’s thinking does not extend beyond existing political frameworks and entities. This, of course, leaves open the question as to how rights come into being in lieu of an existing legal framework or political community. The reason this last point is especially troubling is because the whole point of Arendt’s right to have rights is to insist on someone’s right to practice politics when he has been expelled from political community. This problem is overlooked by Benhabib’s normative approach.

The right to have rights as praxis

Ingram

The search for a human rights politics that respects the autonomy of the rights holder leads Ingram to a different interpretation of the right to have rights. In general, his argument is structured as a progression through different interpretations of human rights politics, in which each interpretation is a response to the weaknesses of the former. He starts out from an interpretation that we will not discuss here: the Weberian interpretation, in which the right to have rights is effectively a right for more powerful states to intervene in weaker states that fail to protect the human rights of those on their territory.⁷³ Obviously, this interpretation suffers from the same autonomy problem as the normative interpretation, but on a deeper level. Thus, it can be safely dismissed here without further discussion. In the context of this thesis, it barely qualifies as an interpretation of the right to have rights, because it does not even begin to explore the tension between national sovereignty and universal human rights. It simply and explicitly offloads the responsibility to guarantee rights onto another nation-state. Benhabib solves this issue in theory, but not in practice. The performative interpretation, Ingram argues, offers a conceptual as well as a practical-political solution to this issue.

This interpretation aims ‘to show how human rights can be understood as a practice and process whose means and end are the realization of equal freedom and dignity and yet can potentially go on beyond the confines of a state.’⁷⁴ Ingram starts out from Arendt’s call for a new guarantee for human dignity ‘which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain

⁷² Ingram 2008, p. 407

⁷³ Ingram 2008, p. 403

⁷⁴ Ingram 2008, p. 408

strictly limited, rooted in and controlled by newly defined territorial entities'.⁷⁵ He uses this quote to illustrate that there is a desire in Arendt's coining of the right to have rights to create some kind of positive protection of human rights. In other words, there is a 'cosmopolitan strain' in Arendt's work that seeks some sort of international institutional protection for the right to have rights. As we have seen, however, the solution of a world government is explicitly rejected by Arendt.⁷⁶ Ingram calls Arendt's argument here 'peculiar', because it does not explicitly explain why a *world* government would tend to exclude a certain part of the population. He finds the solution to this peculiarity in other Arendt texts, concluding that 'the problem with the "liberal notion of a World Government" from Arendt's perspective is not that it is global, but that, like the Hobbesian state, it exercises power over people (or nations) rather than being constituted by them, out of "the full force of their power."⁷⁷ It is the form of sovereign government in general, rather than its scale, that is the problem. It is politics as power exercised from above, rather than 'generated from below', that troubles Arendt.⁷⁸ Such politics do not respect the autonomy of the individual. As Ingram notes: 'for Arendt, the *meaning* (*Sinn*) of politics is freedom', rather than the pursuit of some particular end.⁷⁹

In contrast to the pursuit of ideals, for Arendt, politics is *activity*: 'the practices of interaction and mutual recognition, conflict and cooperation, through which people construct a common public-political sphere'.⁸⁰ On this view, rights are actively created from the bottom-up, rather than guaranteed from the top-down. Here, the right to have rights must be understood as the right to participate in the sphere of human artifice that is politics. In this sphere, equality is actively forged by people interacting with each other in different ways. Rights are formed in these interactions of mutual recognition, rather than through imposition from a moral or legal authority. Ingram affirms Étienne Balibar's statement that Arendt's right to rights is a right to politics.⁸¹ The 'new political principle' Arendt seeks in the preface to *Origins* is thus found in this political sphere of freedom and it is this sphere that stands above the nations to guarantee human dignity. Ingram argues that this interpretation trumps Benhabib's because it grounds the right to have rights in the autonomy of the individual practicing politics. The individual does not rely on any institution or person 'above himself' to guarantee his rights.

⁷⁵ Arendt 1951, p. xi

⁷⁶ Arendt 1951, p. 391

⁷⁷ Ingram 2008, p. 409

⁷⁸ Ingram 2008, *ibid.*

⁷⁹ Ingram 2008, *ibid.*

⁸⁰ Ingram 2008, p. 410

⁸¹ Ingram 2008, p. 410

Balibar

This performative interpretation is further developed by Etienne Balibar in a later text. For Balibar, the focus is on *praxis* rather than performance, but the central point is still that politics must be understood as an activity. Balibar places the groundlessness that troubled Benhabib at the very centre of his interpretation of Arendt.⁸² He poses the question: ‘How is it possible at the same time to reject the idea that there are fundamental human rights... in theory and to place an intransigent politics of the rights of man at the very heart of the democratic construction?’⁸³ In other words, he is asking how Arendt responds to the *initial paradox* without relying on a foundation for human rights? How can human rights be central to democracy if they are unfounded? Crucially, this question is not posed by Benhabib, whose response to the ostensible groundlessness is to search for a ground. For Arendt, the Rights of Man are invented at moments of revolution, rather than (re)discovered from some metaphysical source. It is in this sense that they are groundless: they have no *a priori* essence, but are a historically contingent human creation.⁸⁴ On this basis, Balibar identifies human rights with a ‘practice (or a pure activity)’.⁸⁵

Balibar calls Arendt’s initial paradox ‘Arendt’s theorem’, and he reads it as a *reductio ad absurdum*, wherein ‘the impossibility of the consequence refutes the theoretical premise’: i.e., the actual rightlessness faced by stateless when they were reduced to their naked humanity, refutes the universalistic claims made by nation-states in human rights declarations.⁸⁶ This theorem proves that ‘if the abolition of civic rights is also the destruction of human rights, it is because in reality the latter rests on the former and not the reverse’.⁸⁷ For Balibar and Benhabib alike, rights can only exist within a context in which they give rise to reciprocal obligations. Rights only exist in the common world of human artifice. But this reciprocity inherent to the notion of a right does not lead Balibar to Benhabib’s conclusion that the right to have rights must be a moral imperative to humanity as such. Rather, it means that outside of these reciprocal communities, there are no human beings. There is a lot of support for this interpretation in Arendt’s text, as discussed in the previous chapter. At multiple points, she insists that the rightless are equivalent to savages, and that they are expelled from humanity because they are deprived of their capacity to act in distinctly human ways. If the loss of civil rights is equivalent to loss of the status of humanity, it must be the case that human beings only exist through their

⁸² Balibar 2014, p. 166

⁸³ Balibar 2014, *ibid.*

⁸⁴ Balibar 2014, p. 168

⁸⁵ Balibar 2014, *ibid.*

⁸⁶ Balibar 2014, p. 171

⁸⁷ Balibar 2014, p. 171

rights. Since the reciprocal logic of these rights is only coherent within a community, this means human beings are invented at the moment rights are invented. The problem is that these institutions ‘by means of which individuals become human subjects by reciprocally conferring rights on one another’ are also a threat to their existence.⁸⁸ The question is, then, how such an institution can guarantee the right to have rights and avert this threat.

To answer this question, Balibar refers to Arendt’s engagement with the ancient Greek term *isonomia*, which he firstly defines as ‘an institution by which individuals confer rights on each other in the public sphere, starting with the right to speak on a footing of equality...which allows them to claim or legitimize all the others and is thus the concrete anthropological figure of the right to have rights’.⁸⁹ We have already seen that Arendt insists equality is born in such institutions of human artifice: it is actively forged by interactions in political community, not recovered from a state of nature. The novelty in Balibar’s text is that he stresses that there must be ‘an imprescriptible moment of *an-archy* that has to be constantly reactivated’ at the origin of such a political community or institution, if it is to be called properly *political* and thus able to guarantee the right to have rights.⁹⁰ This turn is best explained by contrasting it to the version of legal positivism Balibar reads in opposition to Arendt. Balibar conceives of a sort of extreme, almost caricatural version of legal positivism, whose guiding principle is the tautology: ‘the law is the law’. This philosophy automatically regards the laws produced by a political community as universal, imperative and absolute, thus activating an unconditional obligation of obedience for its citizens.⁹¹ Balibar argues that Arendt does not regard such obedience as legitimate. If obedience is to be legitimate, there has to be the possibility of disobedience.⁹² This is not disobedience in the vain of individual acts like those of Rosa Parks, but a more organized form of disobedience: ‘it is a matter of collective movements that, in a highly determinate situation with objective limits, abolish the vertical form of authority in favor of a horizontal association so as to recreate the conditions of free consent to the authority of the law.’⁹³ By calling into question the assumed legitimacy of obedience, this form of disobedience reactivates this legitimacy in the sense that it offers a new chance to affirm the authority of the law, which is given a new meaning. This anarchic moment of disobedience ‘returns judgment’ to the

⁸⁸ Balibar 2014, p. 173

⁸⁹ Balibar 2014, *ibid.*

⁹⁰ Balibar 2014, p. 175

⁹¹ Balibar 2014, p. 179

⁹² Balibar 2014, *ibid.*

⁹³ Balibar 2014, p. 176

citizenry, who have the opportunity to make a new judgment on the rights and obligations they think would make for a legitimate law or authority that they would then have to obey.

This disobedience is a form of *praxis*. It is an active calling into question of the legitimacy of the law. Balibar writes that this problem of ‘incorporating into institutions their opposite’, i.e. building disobedience into a structure of obedience, building an-archy into *archè* (authority), is treated by Arendt as a challenge.⁹⁴ This is important: Arendt treats this paradox as a challenge, rather than resigning herself to the ambivalence of the nation-state (i.e. it is the guarantor and the destroyer of rights), she conceives of the right to have rights in the form of the right to disobedience. This must not be understood as a *formal* right in the constitution of a sovereign nation-state, but as a *practice* of disobedience that is guaranteed in the *material* constitution of a political institution.⁹⁵

Balibar describes this account of the groundlessness of rights as an ‘antinomic conception’, which does not necessarily mean it is paradoxical. It is antinomic in the sense that it combines a negative thesis, that the destruction of the rights of the stateless shows the absurdity of claims of their universality by nation-states, and a positive thesis, that a principle of disobedience ‘at the heart of obedience itself’ is the condition for the existence of a community of rights (i.e. the *political*).⁹⁶ Thus, rights are groundless firstly in a negative sense: they lack the universal grounding that was claimed for them by nation-states. But they are also groundless in a second, positive sense: rights and obligations are always open to challenge in an active moment of disobedience, so they lack a permanent grounding. This antinomy is how Balibar answers the question posed at the start: fundamental human rights have no value because they are groundless in the negative sense, yet they lie at the heart of the democratic construction in the positive sense. Rather than paralysing each other in a paradox, these theses interact in a more productive way, so that the negative groundlessness of the first thesis necessitates the positive groundlessness of the second thesis as its solution. In this sense, the opportunity for *praxis* that lies in the principle of disobedience is Balibar’s response to Arendt’s initial paradox. It offers a moment of disruptive activity that can throw all political connections, rights and obligations into question and thus birth new rights and obligations. It does not simply ground this moment in the power of the state itself, like the normative interpretation. It grounds it instead in a disruption of the state that is still internal to the state itself. Thus, the right to have rights is not

⁹⁴ Balibar 2014, p. 178

⁹⁵ Balibar 2014, p. 186

⁹⁶ Balibar 2014, p. 178

simply grounded in the quality of being human, it is grounded in the human potential to act politically, while still being rooted in and controlled by ‘newly defined territorial entities’, as Arendt envisioned when she called for a ‘new political principle’.⁹⁷

It is with these new territorial entities, political communities founded on a principle of disobedience, that Balibar departs somewhat from Ingram’s performative interpretation. Though there is a strong relationship between both interpretations (and Ingram cites an older Balibar text multiple times)⁹⁸, Ingram’s interpretation focuses purely on the performative actions of mutual recognition that constitute politics. His point is to show that a right to such action, vested in the autonomy of each individual, solves the initial paradox. This is in line with Balibar, but what is lacking in Ingram’s text is the specific connection to the constitution of the political community or institution. The political sphere of interactions of mutual recognition is connected to a specific political community or institution, which must guarantee its existence and its openness to new forms of interaction by new people through an active right to disruptive disobedience. Related to this last point, what we find in Balibar’s text is something more than what DeGooyer calls a ‘performative’ right that is brought into being by its articulation.⁹⁹ The right to have rights as *praxis* is more disruptive: disobedience calls into question the very basis for obedience, rights and obligations in a particular community. Insofar as this can be seen as a performance, it should not be conceived of as one person on a stage demanding his right, but a collective disruption of the stage itself, which will alter the way the stage can be entered in the future.

Critique

DeGooyer ‘does not fundamentally disagree’ with Balibar’s interpretation, but finds it ‘too forcefully affirmative’, as it does not fully reckon with the paradox of the right to have rights itself.¹⁰⁰ The problem, according to DeGooyer, is that the ‘performance’ of a right requires an audience. A performed claim can therefore only be granted if the claimant is already part of a political community: ‘the very right to inclusion has inclusion as its precondition’.¹⁰¹ Though DeGooyer does not state this explicitly, it thus seems there are two paradoxes at work in her analysis. There is the *initial* paradox, which is Arendt’s explicit argument: universal human

⁹⁷ Arendt 1951, p. ix

⁹⁸ And translated Balibar 2014 into English

⁹⁹ DeGooyer 2018, p. 23

¹⁰⁰ DeGooyer 2018, p. 24

¹⁰¹ DeGooyer 2018, p. 25

rights can only be guaranteed in the form of civil rights. As we have seen, the normative interpretation fails to deal with this paradox. The *praxis* interpretation reckons with this *initial* paradox, at least to some extent, because it grounds access to human rights in an anarchic political practice rather than in institutions constituted by nation-states. Then there is a second paradox, which I will call *the paradox of the right to have rights*. The *praxis* interpretation falters on this paradox, because it does not explain how this disruptive practice can grant access to a community when one is not already a member of this community. In general, this leads DeGooyer to the conclusion that both interpretations are too optimistic: both the normative and the performative interpretations ‘avoid the active uncertainty in Arendt’s thinking about how the rightless can lay claim to a community from which they have been wilfully excluded.’¹⁰²

DeGooyer’s introduction of *the paradox of the right to have rights* marks the first acknowledgment of the importance of Arendt’s fundamental distinction between the inside and the outside of political community in this discussion on the definition of the right to have rights. The distinction enters the discussion in the form of a fundamental problem. It stands at the root of a troubling paradox, because the paradox concerns the issue of crossing the border of political community from the outside. This only becomes an issue because, as we saw in chapter 1, Arendt draws such a sharp distinction between the two sides of this border. This raises several questions. How can someone who has been expelled to the ‘peculiar state of nature’ and savagery outside the borders of political community be included into a community of rights again? In Balibar’s terms, the question posed by DeGooyer’s paradox is: how can a principle of disobedience serve to re-include those who have been expelled into a political community? How do the anarchic moments of disobedience open up the borders of political community to let those who have been cast out in? One searches in vain for an explicit response to this question from Benhabib, Ingram or Balibar. Arendt’s fundamental distinction is simply not acknowledged by these authors. Interestingly, Ingram seems to note the issue when he concludes that human rights politics understood as activity is ‘internal to politics, at once its effect and its precondition, one of its main objects and one of its most important results.’¹⁰³ He does not, however, recognize the paradoxical nature of this statement, wherein the object and result of human rights politics are equal to their precondition. There is a circular logic at work:

¹⁰² DeGooyer 2018, p. 25

¹⁰³ Ingram 2008, p. 410-411

one must always already be a member of a political community to become a member of a political community.

If we are to find an answer in Balibar's argument, it seems it must lie in the disruptive effect of disobedience. After all, the point of disobedience is to 'reactivate' the legitimate obedience in a political community through a new judgment on the part of the people, who must provide their consent. At the same time, the disruptive moment brings into existence new rights and obligations, changing the relationships between members of the community. Insofar as the right to disobedience is built into the constitution of an existing political community, it is difficult to imagine how it can be invoked by people outside of this community. The disruptive moment of reactivation leads to a new judgment on the part of members of the community, but how do those outside of the community figure into this? It is certainly conceivable that a stateless minority would cause a disruption to a political community that would cause a realignment that would include them in that community, but it is not clear how such a disruption could be based on a right in a constitution that they are not a party to. The problem remains that the right to have rights is built into the constitution of the community which is supposed to guarantee it. It is important to note that this is a problem for other variants of the *praxis*-interpretation, too. Isaac, for example, writes about 'Arendt's vision of the politics of human dignity' as a 'bottom-up' politics which is vested in 'neither the nation-state nor the international covenant or tribunal'.¹⁰⁴ When he concludes that 'there is no single community, or single category of citizenship, that can once and for all solve the problem of human rights in the late modern world', we should rather say that it is unclear how such a politics can solve these problems even temporarily.¹⁰⁵ Insofar as these politics are entirely detached from existing political and legal institutions, it is unclear how they can gain access to them. Insofar as these politics are attached to these political and legal institutions, it is unclear how those outside these institutions can make use of them. We must conclude that, while the potential to find a solution to the *paradox of the right to have rights* seems to exist in the *praxis*-interpretation, there is no explicit response to it. As it stands, the *praxis*-interpretation does not address this central issue, because there is no acknowledgement of the implicit border that the right to have rights must help to cross if it is to guarantee the human dignity of the stateless. The question is whether this conclusion forces us to resign ourselves to DeGooyer's cynicism.

¹⁰⁴ Isaac 1996, p. 70

¹⁰⁵ Isaac 1996, p. 71

The right to have rights as diagnosis: paralysis or optimism?

Paralysing cynicism

Because DeGooyer does not see a way out of Arendt's double paradoxical bind, she gravitates towards a more cynical reading of the right to have rights. Focusing on Arendt's initial comment that we became aware of the right to have rights only after it was lost by a significant group of people, DeGooyer argues that the right to have rights must be understood as 'the right we have always already lost and which humanity cannot reclaim'.¹⁰⁶ Curiously, she finds further support for this interpretation in the order of Arendt's argument in *Origins*. Because Arendt introduces the right to have rights *before* she discusses Edmund Burke's fatalistic critique of human rights ('Burke holds that positive, historical rights have always already rendered the Rights of Man redundant'¹⁰⁷), DeGooyer concludes that Arendt considers the right to have rights 'a lost cause'.¹⁰⁸

Arendt's point, according to DeGooyer, is that since the right to have rights has already been lost, the only point now is to discover how we lost it. The right to have rights is not a phrase that has practical-political value, it is not a challenge that we must phase by trying to guarantee it for stateless people. The point of the invocation of the phrase lies merely in the discovery of its loss. The right to have rights is not a solution to, but a diagnostic tool to help us understand 'rightlessness and the profoundly new power conditions of the twentieth century.'¹⁰⁹ It is 'more of a thought experiment than a solution to a problem.'¹¹⁰ It allows us to think about the conditions that must be met for politics to be possible and, conversely, the way in which these conditions can be destroyed. Arendt's argument then becomes a Hobbesian state of nature tale told in reverse: when people are denied the right to have rights, they are 'thrown back into a peculiar state of nature', turned into savages, animals of the human species.¹¹¹ As we have seen in chapter 1, DeGooyer is right to point out that Arendt is profoundly sceptical of the capacity of nation-states, international organisations, a hypothetical world government or even 'humanity itself' to guarantee the right to have rights. This scepticism is central in DeGooyer's analysis. After all, she argues, it was humanity itself that caused the rightlessness it now cannot repair.¹¹² Nation-states, prime examples of the product of human artifice, carry a deep

¹⁰⁶ DeGooyer 2018, p. 27

¹⁰⁷ DeGooyer 2018, p. 30

¹⁰⁸ DeGooyer 2018, p. 32

¹⁰⁹ DeGooyer 2018, p. 33

¹¹⁰ DeGooyer 2018, p. 35

¹¹¹ DeGooyer 2018, p. 36

¹¹² DeGooyer 2018, p. 34

responsibility for the ‘end of the Right of Man’ in Arendt’s analysis. The logic of ‘a family of nations’ makes the stateless rightless as soon as they lose the protection of one of these nations.

Jacques Rancière, like DeGooyer, reads Arendt as a cynic for posing the right to have rights as a paradox. He writes that Arendt poses the Rights of Man and of the Citizen as a ‘quandary’: ‘Either the rights of the citizen are the rights of man—but the rights of man are the rights of the unpoliticized person; they are the rights of those who have no rights, which amounts to nothing—or the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen of such or such constitutional state.’¹¹³ This means human rights are ‘either a void or a tautology’, because they are either always the human rights of the stateless (i.e. the bare human) or the rights of the member of a political community (i.e. the citizen). In neither case do they serve any value. This is a different formulation of the circular *paradox of the right to have rights*, but the issue is essentially the same: human rights are either equivalent to the rights of those who are already a part of a political community, or they are the groundless (in a negative sense) rights of those who are outside of political community. Rancière finds this formulation cynical because it appears to offer no way to bridge the gap between those who have no rights and those who already have rights, i.e. it appears to offer no way to enter a political community from outside.

What is interesting for our purposes is Rancière’s response to this perceived cynicism. He argues that Arendt ignores a third assumption: ‘The Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not’.¹¹⁴ This cryptic formulation holds Rancière’s solution to bridging the gap between man and citizen. He argues that rights exist in two forms: firstly, as written rights and secondly, as ‘the rights of those who make something of that inscription’.¹¹⁵ Politics happens in the gap between these two concepts of rights. ‘Man’ and ‘Citizen’ are open ‘political predicates’ that are meant to be challenged, disputed, called into question. Thus, when Arendt assumes that rights and equality belong to political community, she is ‘sorting out the problem in advance’, without recognizing the disruptive potential of political action. Rancière calls such a disruption a *dissensus*. When, during the French Revolution, women’s rights activist Olympe de Gouges stated that ‘if women are allowed to go to the scaffold, they are entitled to go to the assembly’, she was dissenting to the assumed border between bare life and political life.¹¹⁶ She was demonstrating that women

¹¹³ Rancière 2004, p. 302

¹¹⁴ Rancière 2004, p. 302

¹¹⁵ Rancière 2004, p. 302-303

¹¹⁶ Rancière 2004, p. 303

did not have the rights they were supposedly granted in the Declaration of Rights, because they could not participate in political life. She was also demonstrating that women did have these rights that were denied to them, by publicly protesting.¹¹⁷ Thus, through dissensus, these women showed that ‘The Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not’, bringing together the world of politics with the world of bare life. In this sense, ‘there is no man of the Rights of Man’, the point of these rights ‘lies in the back-and-forth movement between the first inscription of the right and the dissensual stage on which it is put to test.’¹¹⁸ These rights belong to those who claim them through political action, not to a predetermined group of citizens. This is Rancière’s way out of the ‘vicious circle’ of Arendt’s paradox.¹¹⁹

Two things are especially noteworthy about Rancière’s analysis. Firstly, though he starts out from a profoundly cynical reading of Arendt, he ends up with a solution that is roughly equivalent to the *praxis*-interpretation we have been analysing. The point of dissensus is very similar to Balibar’s disruption and Ingram’s political action. The right to have rights is read as the right to an active claim to participation in politics. Furthermore, there is a disruptive element in the way dissenting groups call into question the very boundaries of the political framework. It follows from this equivalence that Rancière sees the *praxis*-interpretation as a response to the *paradox of the right to have rights*. An interesting contribution he makes in this regard is that *dissensus* involves the active calling into question of the border between ‘bare life’ and ‘political life’. Rancière’s human rights politics, then, involve an active transcendence of Arendt’s fundamental distinction. It is this acknowledgment of and challenge to Arendt’s distinctions that was completely missing in Benhabib, Ingram and Balibar. Rancière’s argument highlights how important it is to grapple with these distinctions and related questions of inclusion and exclusion if the gap between man and citizen is to be bridged. Secondly, Rancière does not mention or discuss the right to have rights. This is especially noteworthy because of his quick dismissal of Arendt as a cynic who paralyses any discussion of human rights. Seeing as Rancière ends up coming to a similar interpretation of human rights politics as many authors who *do* explicitly invoke the right to have rights, it seems this cynical reading of Arendt comes at the cost of ignoring the emancipatory potential of the phrase. Taken together, these two points

¹¹⁷ Rancière 2004, p. 304

¹¹⁸ Rancière 2004, p. 306

¹¹⁹ Rancière 2004, p. *ibid.*

suggest that Arendt's circular paradox does not necessarily have to lead to cynicism, and that it is important not to overlook the right to have rights in overcoming this.

DeGooyer's cynicism is more profound than Rancière's, in the sense that she sees no potential for political change in general. For her, the right to have rights is always already lost, and can only serve as a tool in understanding how we lost it. What is curious about her argument is that, though she does not ignore the right to have rights, she dismisses it mostly based on the order of Arendt's argument. Arendt's most cynical move, for DeGooyer, is introducing Burke's fatal critique of human rights *after* she has discussed the right to have rights. This is certainly not the most charitable reading of Arendt's argument, especially if we look at the entire chapter. A large part of the chapter is spent arguing for the importance of access to a political community, not only in the context of the historical loss of this access in the twentieth century, but in a more general sense. The right to have rights must be guaranteed if politics are to survive.

Moreover, it would be difficult to understand Arendt's famous call for a 'new political principle' in the preface if she had no faith in such a principle actually coming into existence. Why would Arendt repeatedly stress, in multiple texts, the importance of such a new principle bound to a new territorial entity, if she did not mean for the right to have rights to play a concrete political role in the future? DeGooyer is correct in pointing out Arendt's scepticism about the ability of existing political institutions, a hypothetical world government or even 'humanity itself' to protect the right to have rights. This is an important part of her argument that must always be recognized. But this recognition should not be equal to an acceptance that the right to have rights has been lost and can never be regained. Though Arendt is sceptical, she is never as explicitly, fatalistically cynical as DeGooyer. We cannot simply conclude from the order of Arendt's argument that all that came before must be forgotten.

Whatever the conclusion of these discussions on the feasibility of guaranteeing the right to have rights, it is clear that the fundamental question that decides whether we must resign ourselves to cynicism is how we respond to the paradoxes posed by Arendt.

Optimism

Ayten Gündoğdu focuses on precisely this issue. In her text *'Perplexities of the rights of man': Arendt on the aporias of human rights*, she discusses several ways to respond to the aporias posed by Arendt. Aporia comes from the Greek word *aporos*, which 'literally means 'without passage', and denotes an uncrossable and untreadable path, or an impasse'. Thus, the aporia is

‘conventionally understood as a paralysing structure blocking the way and setting obstacles to thinking’.¹²⁰ Gündoğdu’s argument is that Arendt’s aporetic thinking differs from this conventional understanding, because it sees paradoxes and perplexities as an opportunity to think concepts anew, rather than as paralysing impassés that signal an ‘inevitable destiny’.¹²¹ Arendt’s paradoxes are not meant to show, as Rancière writes, that human rights are ‘either void or tautological, but instead to open a critical space for their reevaluation’.¹²² They are meant to critique precisely the passive acceptance of boundaries and frameworks that Rancière is also critiquing, to highlight that human rights lose their meaning in the absence of active ‘practices of scrutinizing our conventional assumptions’ about them.¹²³ The groundlessness of human rights appears as an opportunity to rethink them in light of new challenges, such as the statelessness birthed in the twentieth century. It is through paradoxes that Arendt critically discusses the relationship between human rights and the political institutions that must guarantee them. This allows her to argue on the one hand that abstract human rights require ‘intersubjective guarantees that can have some relative permanence only within an institutional structure’, while arguing on the other hand that this very institutional structure is a great threat to this guarantee.¹²⁴ Aporitic inquiry is a way to constantly re-evaluate the balance that has been struck between these two sides of the argument. This issue of guaranteeing human rights can never be permanently resolved, but this does not mean that it is unfruitful to investigate the ways in which it can be ‘relatively permanently’ resolved. The perplexities, paradoxes and contradictions that are confronted in these investigations are precisely the perplexities, paradoxes and contradictions that will be confronted by people actually claiming, exercising and debating these rights.¹²⁵ No doubt, these issues are complex, but aporetic inquiry treats them like a challenge rather than a dead end or a ‘perpetual ensnarement’.¹²⁶

The right to have rights, then, is a rearticulation of human rights, invoked by Arendt precisely in order to ‘reset the question of human rights in order to think it anew’.¹²⁷ It is a response to the initial aporia that Rancière argued paralysed Arendt’s analysis and an example of the way aporetic thinking can lead to new understandings of concepts. This is why, as Gündoğdu remarks here, it is particularly ‘conspicuous’ that Rancière completely ignores the right to have

¹²⁰ Gündoğdu 2011, p. 8

¹²¹ Gündoğdu 2011, p. 6-7

¹²² Gündoğdu 2011, p. 9

¹²³ Gündoğdu 2011, *ibid.*

¹²⁴ Gündoğdu 2011, p. 13

¹²⁵ Gündoğdu 2011, p. 14

¹²⁶ Gündoğdu 2011, *ibid.*

¹²⁷ Gündoğdu 2011, p. 18

rights in his analysis of Arendt.¹²⁸ Finally, Gündoğdu leaves us with a fascinating alternative articulation of the right to have rights from the British version of *Origins, The Burden of Our Time*: ‘The Rights of Man can become implemented only if they become the prepolitical foundation of a new polity, the prelegal basis of a new legal structure, the, so to speak, prehistorical fundament from which the history of mankind will derive its essential meaning in much the same way Western civilization did from its own fundamental origin myths.’¹²⁹ This rearticulation stresses two important aspects. Firstly, it underscores Arendt’s relative optimism regarding the future guarantee of the right to have rights through a new form of political community or legal structure. It is clear in this articulation that the right to have rights is not meant to be *merely* a diagnostic tool, but also a call for a new kind of politics. Secondly, it is Arendt’s most explicit statement of the *paradox of the right to have rights*, in that it stresses the fact that the right to have rights must be the ‘pre-political, pre-legal, prehistorical basis’ for the community which is to guarantee it.

Conclusion

We can read Gündoğdu firstly as arguing for an optimistic variant of the diagnostic reading, in the sense that Arendt’s aporetic mode of inquiry is used as a critical tool to scrutinize the problems with the application of human rights ‘in the real world’. On this reading, it offers an antidote to DeGooyer’s more cynical diagnostic reading, because it offers not only a diagnosis but also some kind of cure. Diagnosis of the problem is not a moment of paralysis beyond which we cannot think, but the starting point of a productive rethinking of the concepts that seem to cause this paralysis. More importantly, however, we can read Gündoğdu in tandem with the *praxis*-interpretation as offering a productive way to engage with Arendt’s paradoxes. Gündoğdu reads the right to have rights as the outcome of an aporetic reading of the issues that plague human rights, theoretically and practically. The next step is to imagine, as we have been doing in this chapter, what such a right might look like. If we take the *praxis*-interpretation as a promising start in this regard, we must reckon with its central paradox or *aporia*.

The point of linking this to Gündoğdu’s argument is that it allows us to approach the *paradox of the right to have rights* in an aporetic way, by viewing it as an opportunity to think anew all concepts related to the *praxis*-interpretation and the paradox that seems to paralyse it. This

¹²⁸ Gündoğdu 2011, p. 18

¹²⁹ Arendt 1951a, p. 439 as cited in Gündoğdu 2011, p. 18

involves specifically a rethinking of the conceptual distinctions and boundaries that are presumed by Arendt, Balibar and Ingram. It is when we begin to question these distinctions that their full implications appear to us most clearly. If Arendt's aporetic inquiry into the *initial* paradox exposes the full implications of traditional human rights thinking and leads to a rethinking of the way human rights actually function, culminating in the right to have rights, then an aporetic inquiry into the *paradox of this right to have rights* must lead to a rethinking of political community itself.

Chapter 3: Rethinking political community

Introduction

If we are to follow Gündoğdu and read the *paradox of the right to have rights* as a productive aporia, we must be clear about its origins. This is why the title of this chapter refers specifically to a rethinking of *Arendt's* understanding of political community. It is Arendt's traditional conception of political community that leads us to the paradoxical conclusion that the right to have rights must serve as a precondition for any community that would be able to guarantee it. This conclusion follows from the sharp distinctions drawn by Arendt (as outlined in the conclusion to chapter 1); she assumes that there are binary distinctions between political community and nature, between human and savage, between private and public, between equality and 'mere givenness'. In other words, it is due to the assumption that the borders of a political community separate it from a savage 'outside' that we feel the right to have rights must explain how the gap between this excluded outside and the inside can be bridged. Without this distinction between 'inside' and 'outside', which Arendt expresses in several ways, the paradox could not exist, because there would be no outside from which to enter political community. These assumed distinctions have deep roots in western political philosophy, going back to Aristotle, which might explain why Arendt invokes them without explicit justification, presuming their validity. It might also explain why discussion of these distinctions is almost completely absent from the secondary literature on the right to have rights. The point of this chapter, however, is not to conduct a genealogy of these distinctions, but to conduct an aporetic inquiry into the paradoxes that follow from them. This requires an alternative understanding of political community, as an alternative can highlight the assumptions that underlie Arendt's account and the way they ostensibly paralyse our thinking about the issue.

Such an alternative can be found in Giorgio Agamben's radical departure from this tradition of western political philosophy. He problematises its stark distinctions by arguing, inter alia, that all life is always already political. There are deep connections between the work of Arendt and Agamben, which have been explored by many authors. Both Arendt and Agamben are concerned with questions of political community and its boundaries, the related boundary between humanity and non-humanity, and, most crucially, the question of 'bare', or naked life in this context. In some sense, Agamben considers Arendt's work on totalitarianism as his point of departure.¹³⁰ Interestingly, these connections are rarely explored in the literature on the right to have rights. Two authors who do explore these connections between Arendt and Agamben

¹³⁰ Agamben 1998, p. 6

in the context of human rights politics are Lechte and Newman. They argue that Agamben's approach is more fruitful, precisely because his argument transcends the central distinctions of Arendt's argument. If the life that Arendt calls savage is always already considered political and therefore, in some way, part of a political community, it becomes easier to imagine their inclusion as full members. The border between nature and politics, between non-political life and political life, is transcended through Agamben's rethinking of political community. This reframes the entire issue. The problem is no longer a problem of bridging the gap between nature and politics or crossing the border between savagery and civilization. The problem is how to protect those who have lost the right to have rights from 'the politics of facts', which reduces them to what Arendt would call their 'mere givenness', by considering them as the bearers of rights rather than just as biological bodies.¹³¹ The difference is that, for Agamben, the stateless are reduced to their 'mere givenness' by and within the logic of the nation state.

In order to productively explore the differences and similarities between Arendt and Agamben, we must first shortly return to Arendt. More specifically, we must return to Arendt's association of dignity with humanity, since it illustrates the way she draws the border between politics and nature and between human and non-human. This also serves as a bridge to Agamben, who problematises this distinction through his discussion of the *Muselmänner* in concentration camps, who, he argues, lose their dignity while retaining their humanity. The *Muselmann* is an example of the figure of *homo sacer*, 'bare life' included in a political community through its exclusion. Agamben argues, essentially, that *homo sacer* and the state of nature he lives in are a product of sovereignty, i.e. both concepts are always already political. This offers a different perspective on human rights and the right to have rights, which we will explore through Lechte and Newman's argument for an Agambenian human rights politics, wherein those who have lost the right to have rights must recognize the capacity for political action which they always already possess, because they are always already political subjects. I will compare this to the *praxis* interpretation, which is not discussed by Lechte and Newman.

¹³¹ Lechte and Newman 2013, p. 18

Dignity

A new guarantee for human dignity

We should recall that the ‘new political principle’ Arendt calls for in the preface to *The Origins of Totalitarianism*, is supposed to specifically guarantee ‘human dignity’. As illustrated above, it becomes clear from the structure of her argument that this guarantee should come in the form of a right to have rights. This means that the right to belong to a political community is supposed to guarantee human dignity and that no human dignity can exist outside of such a community: ‘Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his *human dignity* (emphasis mine)’, because ‘only the loss of a polity itself expels him from humanity.’¹³²

Christoph Menke argues that, for Arendt, human dignity forms a qualified, privileged form of human existence, associated with the faculties of speech, judgment, and action, which can only be exercised in relation to others.¹³³ Dignity, in other words, is not a quality which is bestowed upon us by birth. It must be actively forged and guaranteed in an artificial community. A dignified existence should be considered a privileged form of existence because, for Arendt, it is the ‘natural’ form of existence that is proper to human beings. In this sense, what the right to have rights grants is access to an *actual* human existence, a life lived with dignity. Of course, this excludes all life outside of these communities by definition, so that, paradoxically, ‘natural’ human life takes place only inside the artifice of political community. The right to have rights then has an objective quality to it, since it gives people access to what is *naturally* right for them.¹³⁴ A properly human life is a life of dignity, lived in a political community that renders ‘opinions significant and actions effective’.¹³⁵ Outside of the sphere of dignity, there is only savagery. As Isaac notes, ‘the theme of dignity remains constant’ throughout Arendt’s work on the stateless.¹³⁶ Every distinction Arendt makes between the political and the natural, between the sphere of equality and the sphere of necessity, between human and savage, must be read with this idea of dignity in mind. The rightless savage lives a life of necessity, rather than a life of dignity, and thus does not qualify as a human being.

¹³² Arendt 1951, p. 388-389

¹³³ Menke 2014, p. 338

¹³⁴ Menke 2014, p. 340

¹³⁵ Arendt 1951, p. 387

¹³⁶ Isaac 1996, p. 67

The dignity of the Muselmann

Dignity is also an important theme in the work of Giorgio Agamben. In several texts, Agamben discusses the figure of the *Muselmann* (literally: the Muslim in Yiddish): ‘The so-called *Muselmann*, as the camp language termed the prisoner who was giving up and was given up by his comrades, no longer had room in his consciousness for the contrasts good or bad, noble or base, intellectual or unintellectual. He was a staggering corpse, a bundle of physical functions in its last convulsions.’¹³⁷ This *Muselmann* is the most extreme example of what life is reduced to in the Nazi concentration camps. He is man turned into ‘walking corpse’, a being Primo Levi says ‘one hesitates to call...living’.¹³⁸

What interests Agamben in this figure is the fact that he calls all distinctions between humans and non-humans, between the living and the dead, into question. The *Muselmann* raises many questions: ‘What does it mean for a human being to become a non-human?’¹³⁹ What does it mean to be human? How can we distinguish between humans and non-humans who resemble humans? Many of the concentration camp witnesses Agamben cites, most explicitly Bruno Bettelheim, consider the *Muselmann* to be non-human, precisely because he has lost his dignity in the most fundamental sense, by being reduced to his most basic biological functions.¹⁴⁰ For them, the distinction between human being and *Muselmann* is formed by the ‘point of no return’ at which dignity is lost, because ‘freedom is abdicated’ and ‘all traces of affective life’ are lost.¹⁴¹

For Agamben, the search for a paradigmatic point that will allow for a distinction between humanity and non-humanity misses the true challenge posed by the *Muselmann*.¹⁴² In what Lechte and Newman describe as a ‘literal resurrection’¹⁴³, Agamben writes that ‘the *Muselmann* is the site of an experiment in which morality and humanity themselves are called into question.’¹⁴⁴ Dignity and respect have no meaning with regards to this ‘limit figure’. To state that the *Muselmann* is paradigmatic of a threshold beyond which one ceases to be human ‘would be to accept the verdict of the SS and to repeat their gesture’.¹⁴⁵ Thus, Agamben brings the *Muselmann* back into the sphere of humanity, but in a very particular sense. The *Muselmann*

¹³⁷ Améry 1980, p. 9 as cited in Agamben 1999, p. 41

¹³⁸ Levi 1986, p. 90 as cited in Agamben 1999, p. 54

¹³⁹ Agamben 1999, p. 55

¹⁴⁰ Agamben 1999, p. 56

¹⁴¹ Agamben 1999, p. 56

¹⁴² Agamben 1999, p. 58

¹⁴³ Lechte and Newman 2012, p. 4

¹⁴⁴ Agamben 1999, p. 63

¹⁴⁵ Agamben 1999, *ibid.*

has ‘moved into a zone of the human where not only help but also *dignity* and self-respect have become useless (emphasis mine).’¹⁴⁶ The uselessness of the concept of dignity in understanding the *Muselmann* and related questions concerning the distinction between humanity and non-humanity shows, for Agamben, that it is not a genuine ethical concept, ‘for no ethics can claim to exclude a part of humanity, no matter how unpleasant or difficult that humanity is to see’.¹⁴⁷

On this view, Arendt’s insistent usage of the concept of dignity is problematic because it excludes a part of humanity from ethical consideration. For Agamben, the ethical concept of dignity died in Auschwitz.¹⁴⁸ Arendt and Agamben concur on the point that the human beings in the camps were reduced to a ‘bare life’ of biological necessity. They also agree that dignity cannot lie in simply belonging to the human species.¹⁴⁹ For Arendt, this is because dignity characterises a qualified form of life, elevated above simple belonging to the human species. For Agamben, it’s because the *Muselmann* shows us that dignity is not a meaningful concept when speaking about some members of our species. Thus, what they disagree on is the relation between these concepts of bare life and dignity. *Contra* Arendt, Agamben argues that the *Muselmann*, as the most extreme expression of this bare life, shows that it is possible ‘to lose dignity and decency beyond imagination’ and still be a human being. The *Muselmann* is the exemplar of a human life lived without dignity. He stands, therefore, not at the threshold between humanity and non-humanity, but at the threshold between dignified life as we knew it before the camps and a new ethics ‘of a form of life that begins where dignity ends.’¹⁵⁰ Clearly, then, Agamben is opposed to the language of dignity when it comes to analysing the ‘bare life’ of the camps. It is not adequate to describe the condition of the people in the camps as ‘those who have lost their dignity’ or ‘those who have lost their humanity’, because they represent a new form of life that renders such distinctions meaningless. It is important to explore this point further, as it lies at the heart of Agamben’s radical rethinking of the relationship between political community and nature, in which public and private become indistinct.¹⁵¹

¹⁴⁶ Agamben 1999, p. 63.

¹⁴⁷ Agamben 1999, p. 64

¹⁴⁸ Agamben 1999, p. 69

¹⁴⁹ Agamben 1999, p. 69.

¹⁵⁰ Agamben 1999, *ibid.*

¹⁵¹ Lechte and Newman 2012, p. 3

Homo sacer

Zoë and bios

The *Muselmann* can be considered the most extreme appearance of the central protagonist of Agamben's decades-spanning philosophical project *Homo Sacer*. *Homo sacer* is an archaic Roman legal figure who 'may be killed and yet not sacrificed' and is central to Agamben's understanding of modern politics.¹⁵² *Homo Sacer* is bare life included in political community through its exclusion, in the sense that he is taken into consideration by politics only in his capacity to be killed without punishment. The initial parallel to Arendt is clear: the stateless person lives a 'bare life', a purely biological existence that is excluded from political community. Arendt literally writes about the stateless person's 'abstract nakedness of being human and nothing but human'.¹⁵³ To fully explore the relationship between Agamben's *homo sacer* and Arendt's aporia, we must reconstruct Agamben's argument. In doing so, it is important to recognize that Arendt and Agamben are often talking about very similar concepts in different terms.

Like Arendt, Agamben starts out from the ancient Greek distinction between *zoē* and *bios*. *Zoē* is 'the simple fact of living common to all living beings', whereas *bios* is a qualified form of life, i.e., for our purposes, a political life as opposed to a merely biological life.¹⁵⁴ In Arendt, we find the same distinction in her juxtaposition of the savage life of necessity outside of political community and the qualified, dignified, *human* existence inside political community. For Agamben, it is 'the inclusion of *zoē* into the sphere of the *polis*-the politicization of bare life as such', which 'constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought.'¹⁵⁵ This inclusion signals the beginning of the era of biopolitics, and it is this perspective that Agamben finds completely lacking in Arendt's analysis. For Arendt, the two forms of life are always completely separate and there is no relationship between political community and bare life, whereas for Agamben, it is impossible to understand one without the other.¹⁵⁶ Bare life is the product of sovereignty and is intimately linked to its constitution.

¹⁵² Agamben 1998, p. 8

¹⁵³ Arendt 1951, p. 389

¹⁵⁴ Agamben 1998, p. 1

¹⁵⁵ Agamben 1998, p. 4

¹⁵⁶ Agamben 1998, p. 6

Sovereignty

Agamben's understanding of sovereignty relies heavily on Carl Schmitt: the sovereign is he who decides on the state of exception, i.e. he who can suspend the validity of the legal order for the sake of some public good.¹⁵⁷ Agamben defines the exception as 'a kind of exclusion'.¹⁵⁸ The crucial point is, however, that the excluded is not therefore completely unrelated to the rule it is being excepted from. On the contrary, 'the rule applies to the exception in no longer applying to it, in withdrawing from it.'¹⁵⁹ The exception forms an inclusive exclusion: the excluded is included in the rule through its exclusion. Sovereignty, then, is defined by such an exception in the sense that it excludes the outside through a suspension of the validity of its own juridical order. The suspension of the rule 'gives rise to the exception', the only relation between the sovereign and the exception is that the rule ceases to apply to it.¹⁶⁰ The difficulty and opaqueness of this conceptualisation seems to be intentional: 'What emerges in this limit figure is the radical crisis of every possibility of clearly distinguishing between membership and inclusion, between what is outside and what is inside, between exception and rule.'¹⁶¹ This relationship of inclusionary exclusion is what Agamben calls the ban and it explains how life (as *zoē*) is included in the law. He who is banned (for our purposes, the stateless), is not simply excluded, but *abandoned* by the law, which means he is 'exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable'.¹⁶² He is neither inside nor outside of political community. At the threshold at which he lives, in the zone of indistinction, distinctions cease to be meaningful.

Agamben further argues that there is an equivalence between the state of exception which defines sovereignty and the state of nature. The Hobbesian state of nature, the war of all against all,¹⁶³ 'survives in the person of the sovereign'.¹⁶⁴ The sovereign incorporates this state of nature, in which there is no law, into society in the form of the state of exception, in which the law suspends its own validity. This means that, in Agamben's reading of Hobbes, there is no 'spatiotemporal disjunction' between the state of nature and the sovereign order.¹⁶⁵ Society does

¹⁵⁷ Agamben 1998, p. 15

¹⁵⁸ Agamben 1998, p. 17

¹⁵⁹ Agamben 1998, p. 18

¹⁶⁰ Agamben 1998, *ibid.*

¹⁶¹ Agamben 1998, p. 25

¹⁶² Agamben 1998, p. 28

¹⁶³ Further on, Agamben writes: 'It is not so much a war of all against all as, more precisely, a condition in which everyone is bare life and a homo sacer for everyone else.' (Agamben 1998, p. 106)

¹⁶⁴ Agamben 1998, p. 35

¹⁶⁵ Prozorov 2009, p. 332

not emerge out of nature and the state of nature is not its precondition. Rather, as Prozorov argues, Agamben sees the state of nature as the product of sovereign power.¹⁶⁶ An invocation of the state of exception is thus always a ‘return to nature’, but this nature is a product of politics which cannot be understood as external to it. The state of exception is a ‘zone of indistinction’, in which it becomes impossible to distinguish between ‘exception and rule, nature and law, outside and inside.’¹⁶⁷

If we compare this account to Arendt’s understanding of the state of nature and its relationship to the political, we begin to see how radical Agamben’s rethinking of political community is. The ‘peculiar state of nature’ of mere givenness that Arendt explicitly distinguishes from political community, the creation of human artifice, now becomes a product of the artificial decisions of this political community. In Arendt’s terms, Agamben includes nature and its savage form of life into the sphere of politics and dignity through the relation of inclusionary exclusion. The stateless are not defined by their complete exclusion from the political sphere, they are *abandoned* by their political community: they live in a constant state of exception/nature. The law applies to them only in the sense that it does not apply to them. They are produced by the sovereign through his invocation of the state of exception. If the stateless live in a ‘peculiar state of nature’, this is because they live in a sovereign state of exception.

The relationship between the sovereign and the bare life of the stateless becomes more explicit in the figure of *homo sacer*, he who may be killed without punishment, but may not be sacrificed. *Homo sacer* is thus doubly excluded: he is excluded from the sphere of religion through the impossibility of his sacrifice and he is excluded from the sphere of politics through the legality of his murder. Of course, this double exclusion also entails a double inclusion or capture: ‘*homo sacer* belongs to God in the form of his unsacrificeability and is included in the community in the form of being able to be killed.’¹⁶⁸ This double inclusionary exclusion makes him, for Agamben, the ‘originary figure of life taken into the sovereign ban’.¹⁶⁹ Excluded from both the sphere of the profane and the sphere of the divine, he is captured in ‘the first properly political space of the West’, the sphere of sovereignty.¹⁷⁰ *Homo sacer*, then, can be defined as bare life included in the juridical order, with respect to whom all men can act as sovereign, whereas the sovereign is he ‘with respect to whom all men are potentially *homines sacri*,

¹⁶⁶ Prozorov 2009, p. 335

¹⁶⁷ Agamben 1998, p. 37

¹⁶⁸ Agamben 1998, p. 82

¹⁶⁹ Agamben 1998, p. 83

¹⁷⁰ Agamben 1998, p. 84

because through the state of exception he has the ability to decide on who is captured within the sovereign ban.¹⁷¹ The bare life of *homo sacer* is thus not the same as pure biological life (i.e. *zoē*), but it is *zoē* as captured in the sphere of sovereignty. This means that bare life is political from the start.

Human rights

It is this inscription of bare life into the political that Agamben finds totally lacking in Arendt's writings on totalitarianism.¹⁷² From Agamben's perspective, the political inscription of bare life into the state order is the central phenomenon of modern biopolitics, whereas Arendt staunchly argues that bare life is completely separate from politics. Agamben argues that every right and liberty that was won by people in conflict with the state order was 'double-sided' in the sense that it coincided with a further capture of the individual in the sovereign order.¹⁷³ Human rights declarations, then, 'represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state.'¹⁷⁴ Since, as Arendt observed, human rights are ostensibly granted to an abstract human with no political associations, the other side of this granting is the inscription of this abstract life into the sovereign state order. In other words, human rights declarations present the explicit entry of *zoē* into the political sphere. Bare life, in its nakedness, is thus 'protected' while also being exposed to the constant danger of being caught in the sovereign exception.¹⁷⁵ Modern sovereignty, for Agamben, is based on this inclusion of bare life. It is birth, the start of unqualified, biological life which 'becomes...the immediate bearer of sovereignty'.¹⁷⁶ Refugees (who, for Agamben, are equivalent to the stateless) represent a rupture from this logic, in the sense that they break down 'the continuity between man and citizen, *nativity* and *nationality*.'¹⁷⁷ They bring the originary fiction of the human rights declarations on which sovereign nation-states are founded into crisis, because they are a form of bare life that is not a citizen.¹⁷⁸ A separation thus takes place, wherein human rights are increasingly used outside of the context of citizenship to represent the bare life of refugees and minorities. In this new context, the rights are depoliticized into a form of humanitarianism or

¹⁷¹ Agamben 1998, p. 84

¹⁷² Agamben 1998, p. 120

¹⁷³ Agamben 1998, p. 121

¹⁷⁴ Agamben 1998, p. 127

¹⁷⁵ Lechte and Newman 2012, p. 10

¹⁷⁶ Agamben 1998, p. 128

¹⁷⁷ Agamben 1998, p. 131

¹⁷⁸ Agamben 2008, p. 93

charity. This separation is only a further indication of the crisis represented by the refugee, as is made clear by the inability of both nation-states and humanitarian organisations to adequately confront the issue.¹⁷⁹ It only furthers the ‘isolation of sacred life at the basis of sovereignty’, because it considers the stateless as a group that possesses rights that are distinct from the rights of a citizen. Human rights become the rights of *homo sacer*, the rights of those captured in the state of exception.¹⁸⁰ Agamben ends this discussion with his most explicit call for a political solution to the issue of sacred life: ‘The refugee must be considered for what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state, from the birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights.’¹⁸¹ The goal is, partly, to conceive of a human rights politics that does not separate bare life.

Agamben and the right to have rights

As discussed in the conclusion to the second chapter, an aporetic reading of the *paradox of the right to have rights* must find in its contradictions the opportunity to think the relevant concepts anew. What remains now, then, is to explore the ways in which Agamben’s radical rethinking of political community and human rights can shine a new light on the paradoxical necessity of inclusion in a community as the precondition for entering such a community. Agamben is certainly not explicit about this issue. What he is explicit about is his problematisation of some of the central relevant distinctions that underlie Arendt’s argument. It is clear that both writers are concerned with many of the same issues: the border between humanity and non-humanity, the inclusion and exclusion of bare life from the political sphere and the issue of statelessness more generally. The central difference between both is that, for Agamben, all life is always already political. Bare life is included in the political sphere through its exclusion. For Agamben, the *Muselmann* is a political subject. For Arendt, he is a savage.

Lechte and Newman argue in their book, *Agamben and the politics of human rights*, that it is this difference that makes Agamben’s approach more fruitful than Arendt’s. They argue that ‘a transcendence of the original *zoē/bios* distinction’ is necessary to conceive of a politics of human rights that can overcome the challenges posed by Arendt and others, and they feel that

¹⁷⁹ Agamben 1998, p. 133

¹⁸⁰ Agamben 1998, p. 134

¹⁸¹ Agamben 1998, *ibid.*

such a transcendence is only possible through Agamben.¹⁸² The central problem to be overcome is that ‘political life is dominated by the fact of situations’, rather than the transcendence of rights.¹⁸³ This distinction is very similar to Arendt’s distinction between the sphere of the merely given and the sphere of human artifice. The point, for Lechte and Newman, is that the dominance of the state of exception centralises the merely given facts, so that the human being is considered as a biological body, rather than as a bearer of rights. They argue that Arendt cannot solve this issue because she considers only those outside of this state of exception to be fully human.¹⁸⁴ Arendt’s argument functions wholly within the logic of the *zoē/bios* distinction: one belongs either to the category of bare, non-political life or to the category of dignified political life. This excludes the stateless by definition from the transcendent sphere of rights and renders their access to human rights inconceivable.

Curiously, Lechte and Newman ascribe to Arendt an attachment to the sovereign nation-state as the protector of human rights.¹⁸⁵ One of the great weaknesses of their argument is that, in this context, they do not consider the *praxis* interpretation of the right to have rights at all. They equate the right to have rights to the right to belong to a sovereign nation-state and thus conclude that Arendt sees no possibility for the existence of human rights outside the nation-state. As discussed above, this is not the dominant position in the secondary literature, nor does it follow clearly from Arendt’s argument. Lechte and Newman are right to point out that Arendt’s rigid distinction between politics and nature leads to the ‘cruel circularity’ we have been calling the *paradox of the right to have rights*, ‘whereby stateless people are trapped in an ontological (and real) no-man’s land between humanity and non-humanity.’¹⁸⁶ One can only campaign for the right to have rights if one is already recognized as a human being. They are also right to point out that the concept of the human outside of the polis must be addressed before the right to have rights can ‘make sense’.¹⁸⁷ However, they are mistaken in their refusal to discuss the *praxis* interpretation, because it deals with precisely this problem. Lechte and Newman’s stated goal is ‘to rethink the politics of human rights...while at the same time avoiding the trap of simply resituating rights within the traditional categories of citizenship and the public space.’¹⁸⁸

¹⁸² Lechte and Newman 2013, p. x

¹⁸³ Lechte and Newman 2013, p. 18

¹⁸⁴ Lechte and Newman 2013, *ibid.*

¹⁸⁵ Lechte and Newman 2013, p. 29

¹⁸⁶ Lechte and Newman 2013, p. 33

¹⁸⁷ Lechte and Newman 2013, p. 33

¹⁸⁸ Lechte and Newman 2013, p. 97

The way Lechte and Newman deal with this ‘cruel circularity’, is by referring to Agamben’s account of inclusion and exclusion. *Homo sacer* is excluded in the sense that he is trapped outside the law in the state of exception, excluded from the polity, but it is through this exclusion that he is included. He is expelled to the Arendtian realm of necessity, but this realm is also always related to the political sphere of freedom.¹⁸⁹ Even in this expelled form, bare life is always, in some sense, a *form* of life (*bios*).¹⁹⁰ This is because bare life is always a product of sovereign power. The sovereign produces the state of nature (i.e. the state of facts, of mere givenness) in the form of the state of exception and captures bare life. To be excluded from political community, then, is not equivalent to being expelled from humanity. Understood in this sense, there is no more paradoxical gap between an outside and an inside that must be bridged, since the stateless person is always already included in political community through his exclusion. He does not have to ‘enter’ the sovereign from outside. While this might be a conceptual solution to the *paradox of the right to have rights*, it is unsatisfactory when considered by itself, as it simply moves the problem to a different level of argumentation. Instead of worrying about entering political community from outside, we must now worry about the way the stateless person can escape his predicament as *homo sacer*, how he can escape the state of exception to fully enter the society he is technically included in. In some sense, the question is still how the stateless can be granted access to the transcendent realm of rights. Even if they are already technically included in this realm, their predicament is still characterised by the fact that they are not considered as the bearers of rights: they are not full members of the political community. Thus, Agamben is right to point out that all life is always already political: we have, in Lechte and Newman’s terms, ‘transcended the *zoē/bios distinction*’. But this is only half of a solution to our quandary. What is required is an account of a politics of human rights.

A politics of human rights

In constructing such a politics of human rights, Lechte and Newman rely heavily on Rancière’s critique of Arendt. As discussed above, the interesting aspect of this critique is that, though it starts out as a cynical reading of Arendt, its conclusion can be tentatively categorized as a variant of the *praxis*-interpretation. This aspect is discussed by Rancière, nor Lechte and Newman. Rancière, like Agamben, problematises the distinction between *zoē* and *bios* through his concept of dissensus. Dissensus, through the enactment of rights by a group deemed not to

¹⁸⁹ Lechte and Newman 2013, p. 63

¹⁹⁰ Lechte and Newman 2013, p. 104

have these rights, ‘forces a relation of equality between those who are politically qualified...and those who are deemed not to be’.¹⁹¹ Read through Agamben, the distinction between *zoe* and *bios* disappears completely, so that dissensus is not a fight for inclusion, as no-one is technically excluded. This means dissensus involves people acting out the rights that they always already had.¹⁹² On this reading, ‘to be human is to be an activist – one who can engage in political action’.¹⁹³

If bare life signals the total autonomy of sovereign power over life, life as a form of life (*bios*) signals its weakness.¹⁹⁴ It follows that if all life is, in some sense, qualified, transcendent life, there is a central weakness in the construction of sovereign power, because it is life that has the potential to escape its capture. Sovereign power is characterised by its insistence on ‘defining the human as nothing more than a fact’, on denying the freedom of a transcendent human life by always capturing life as bare life.¹⁹⁵ It operates within a logic of inclusion and exclusion.¹⁹⁶ Thus, to oppose this logic by transcending the distinctions between *bios* and *zoē*, between nature and politics, between human and savage, the dissenting simply act with the freedom and equality that they always already had, insofar as their life was always a form of life (*bios*). Even the distinction between bare life and qualified life is thus transcended or erased, because bare life, too, acts with the transcendent qualities of freedom and equality it always already possessed.

The parallel between the politics proposed by Lechte and Newman and the *praxis* interpretation is obvious. We can read the *praxis* interpretation as people acting on the right to disobedience they always already possessed. The paradox that plagued the *praxis* interpretation lay in the problem of granting the right to a moment of disobedient anarchy, which was grounded in a specific community, to those who are not already a part of this community. If we follow Lechte and Newman and their invocation of Rancière, this paradox is resolved by placing the quality of disobedience at the heart of the human condition. To be human, on this account, is to be able to disobey, to disrupt the *status quo* in a moment of anarchy that calls into question the juridico-political order.

¹⁹¹ Lechte and Newman 2013, p. 116

¹⁹² Lechte and Newman 2013, p. 116-117

¹⁹³ Lechte and Newman 2013, *ibid.*

¹⁹⁴ Lechte and Newman 2013, p. 164

¹⁹⁵ Lechte and Newman 2013, *ibid.*

¹⁹⁶ Lechte and Newman 2013, p. 172

To have the right to have rights is to actively claim the rights one has been denied in a disruptive political practice. Since everyone is a political subject, escape from the ‘peculiar state of nature’ of statelessness can be achieved through coordinated *praxis*, an active political performance of the rights already possessed by the stateless, insofar as they were always already a form of life. It is precisely this disruptive element that makes the *praxis* interpretation thus understood a conceivable response to the *paradox of the right to have rights*. Theoretically, the paradox is resolved because all life is already considered political. Practically, the disruptive performance in which the excluded claim the rights which they always already possessed offers a conceivable way to make this theory a political reality. Without this practical element of disruption, we would be back at square one, since this would simply ground the guarantee of human rights in the mere quality of being human. This is why it is important to stress the fact that *praxis* must always be an active process. Every human being has the potential to enact his right to have rights, but he has to actively use the equality and freedom that he already has to claim the distribution of rights and duties that has been denied to him. In this sense, *praxis* involves an active calling into question, or, rather, an active denial of the border between ‘bare life’ and ‘political life’. The stateless person who disrupts the juridico-political *status quo* is not merely claiming that he has the right to have rights, he is demonstrating that he always already possessed this right, that he was always already a bearer of rights rather than a mere biological body.

Conclusion

The application of Agamben's perspective to the central problem in Arendt's argument of escaping from the 'peculiar state of nature' leads to a productive exploration of the aporia, in the sense that it allows us to rethink the relevant political concepts and consider ways to move beyond the ostensible paralysis caused by *the paradox of the right to have rights*. By broadening the scope of the political and considering the ways in which all life is related to political power, we discover a new way of understanding political *praxis* as it relates to the right to have rights. Those who, in Arendt's terms, live in a peculiar state of nature are still the bearers of certain rights and thus carry the potential to be active political actors. The argument of this thesis was successful insofar as it rethought these concepts and distinctions in the context of the right to have rights. By considering the issues raised by Arendt's paradoxical argument from another perspective, we discovered that these paradoxes are not necessarily paralysing, that we can think through them towards new solutions.

It is, however, important to be careful in our conclusions. As Isaac concludes, the politics we have been discussing are 'hardly a matter of mere academic interest'.¹⁹⁷ It is deceptively easy to declare a problem solved because it has been solved in theory, but reality is often different. It is easy to declare that the stateless 'always already possess' certain rights, and that they can enact their right to have rights simply by recognizing this and disrupting the status quo. To put it bluntly, it would be much more difficult to say this to an actual refugee in the Moria camp. The reality of stateless life is one of political oppression, discrimination and random brutality. Many refugees are simply worried about living to see another day. Even though, as we have argued, they are political subjects, they may not think about politics in the terms that we have been using too often. This is because such thinking is in some ways a luxury that comes with safety and certainty. Even if it is true, as we have argued, that the stateless are always already the bearers of certain rights, it is still very difficult to conceive of a path along which they might use these rights in an effective manner to permanently transcend their status as *homines sacri* and enjoy all the right of a full member of political community. They are caught in the oppressive logic of the sovereign. If, as happened at Moria, they burn down their camp, a new camp will be built for them. One refugee who witnessed the fires describes this dilemma poignantly: "Behind us was fire...and in front of us was police."¹⁹⁸

¹⁹⁷ Isaac 1996, p. 72

¹⁹⁸ Markham 2022

For these reasons, it is important to be modest about the potential of an academic thesis on this subject. This thesis is a contribution to the academic debate surrounding the right to have rights. Its contribution lies, firstly, in a clarification of the terms of the debate, especially the concepts and distinctions invoked by Arendt. Secondly, and related to this first point, it highlights the importance of acknowledging these distinctions and discussing them in a critical manner. This is a perspective that is sorely lacking in the secondary literature on the right to have rights, which leads to unresolved paradoxes. Thirdly, it shows the potential of applying an Agambenian perspective to these distinctions and the paradoxes that flow from them. In many ways, the full implications of the distinctions drawn by Arendt only become fully clear once we apply this alternative perspective. Finally, then, this thesis can serve as a suggestion for further research in this direction. The intersection between Arendt and Agamben is broad and complicated, and in the context of the right to have rights, it is almost totally unexplored.

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