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Politics and Human Rights: Reading Rancière and Arendt

Willem Jules Marx
Bard College

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Politics and Human Rights

Reading Rancière and Arendt

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
Willem Marx

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Introduction

Human rights are a perplexing subject—they are invoked in response to the most extreme crimes and injustices we confront, and also invigorating the old questions concerning the human being, what is it? I'm reminded of a story told by Diogenes Laertius: Plato, to much acclaim, had defined man: a biped without feathers. Diogenes of Sinope plucked a chicken and threw it before a crowd. "Behold Plato's man!" Thanks to Diogenes the definition was revised: man is a featherless biped with flat and broad nails.¹

In theory and in practice human rights, as well as politics, assume a definition of the human. Diogenes demonstrates that such definitions fail to encompass all humans, fail even to satisfactorily distinguish the human from other animals. Of course this doesn't mean that there aren't plenty of definitions of the human, but that, taken on their own merit, such definitions have little value. Yet when applied to questions of politics and human rights these definitions are of extreme consequence. They are made the basis for some of the most difficult and important political decisions—responding to the most urgent and sensitive events in the world, situations of life and death and graver, the definition of the human becomes decisive. A given resolution to the questions of human rights entails deciding how far the category of human extends and how humans are to be treated. There isn't an incredible resolution to this question, but there are many wrong, and very wrong, solutions, with significant and calculable repercussions.

Engaging with the question of human rights, Jacques Rancière hurls a plucked chicken into the fray of competing theories and definitions. He pokes holes in arguments and successfully

¹ Laertius, Diogenes, *Lives of Eminent Philosophers*, trans. R D Hicks. (Cambridge: Harvard University Press, 1970), 41.

confronts some of human rights' most prominent theorists, demonstrating the real and dangerous implications of a wrong or insufficient theory of human rights.

For this reason I spend my first chapter with Rancière, understanding his argument against theories of human rights, and establishing what he thinks human rights are. A central part of Rancière's take on the question of human rights is that it cannot be thought separately from politics, or, for that matter, government. This move could be considered reductive, uniting these three categories, but I believe Rancière achieves a concentration rather than a reduction. As separate categories it is possible to think rights without politics, or government without rights (there are six combinations). The reductive move is treating these categories separately, for rights, politics, and government necessarily include each other. Much of Rancière's critique of human rights focuses on exclusive thinking of this nature, which leads to a theory of human rights that is at best impotent, and at worst dangerous.

I primarily focus on Rancière rejection of Hannah Arendt's conception of human rights. This leads me to Rancière's own conception of human rights. I establish a number of his concepts, and trace the way he brings together the questions of rights, politics, and, to a lesser extent, government.

The second chapter takes Rancière's critique of Arendt seriously and attempts to situate it in, among other texts, *The Origins of Totalitarianism*. Here I take scope of the broader implications of his critique, but ultimately elaborate an interpretation of human rights in Arendt's work that escapes the grip of Rancière's arguments. This interpretation attempts to bring Arendt's discussion of rights and politics together by rethinking her ideas of rightlessness and the right to have rights.

The third chapter extends the thinking begun in the second chapter, moving further into Arendt's account of human rights and establishing its relation to the challenges of what she calls the modern world. I move away from Rancière in doing this, but he remains the background, coloring my approach to Arendt. I spend a significant amount of time in this chapter with the original conclusion to *Origins*, "Concluding Remarks," and with a speech Arendt gave honoring Karl Jaspers at his reception of the Friedenspreis des Deutschen Buchhandels in 1958. I demonstrate how ideas of belonging and of humanity influence Arendt's account of human rights, and how the idea of human rights derived from these ideas is not incompatible with the interpretation made in chapter two. I also connect human rights to what Arendt diagnoses as the collapse of authority in the modern world, and show how the problem of authority is a political problem around which the question of politics and rights coalesce.

There are no more chapters after chapter three.

Rancière's critique of Arendt and the disagreement it announces between his and her writing is the subject of a number of papers which adjudicate the relative merits of Rancière's or Arendt's side in the disagreement. In Arendt scholarship the argument ordinarily comes up as a point to move past and dismiss, often via footnote.² Andrew Schaap dedicates an essay to the critique, ultimately vindicating Rancière. Diverging slightly, I'm of the opinion that Rancière is good for Arendt, and she, likewise, for him. Each are a valuable counter to the other, and I don't find discrediting one on the basis of the other entirely plausible. But as this project is ultimately concerned, despite appearances, with a relevant understanding human rights, I would say that

² Alistair Hunt's essay in *The Right to Have Rights* is one such example.

human rights were never closer than when I approached by way of Arendt and Rancière. The intent and the method.

Chapter I

In the essay, *Who is The Subject of The Rights of Man?*, Jacques Rancière makes a broad critique of Hannah Arendt's vision of politics. Grounded in an analysis of "The Perplexities of the Rights of Man,"³ in which Arendt writes directly on the question of human rights, Rancière argues that Arendt depoliticizes human rights, and this depoliticization is no accident, but the result of glaring failures in her conception of the political. Rancière distinguishes two interconnected problems in Arendt's work: the theorization of a "state of exception" that places human beings "beyond oppression", and to the same degree, beyond politics; and an implicit endorsement and enforcement of what he terms *consensus* (one of the looming concepts in his work), a depoliticizing process which ultimately leads to an erasure of the political. Elucidating these problems, Rancière returns to the question of the political subject (a question synonymous with that of the subject of the rights of man, an identification we will return to later in the chapter) and its relation to politics in order to construct an alternate vision of rights and politics that avoids the pitfalls of Arendt's account—setting "the question of what politics is on a different footing"⁴. Thus Rancière develops his critique of Arendt into a new theory of politics. Politics, for Rancière, is a fleeting thing that has neither a "'proper' place nor does it possess any 'natural' subject"; it is "always on the shore of its own disappearance."⁵ In his account, politics is in equal parts radical and fragile, a disruptive force—interrupting established rule and order—perennially threatened with eradication. Arendt's account of rights and politics contributes to this eradication; Rancière's ultimate aim is to preserve the possibility of politics from eradication and

³ The second half of the "The Decline of the Nation-State and the End of the Rights of Man", the final chapter of the "Imperialism" section of *The Origins of Totalitarianism*

⁴ Jacques Rancière. "Who Is the Subject of the Rights of Man?" *The South Atlantic Quarterly* 103, no. 2 (2004): 302

⁵ Jacques Rancière. Davide Panagia, and Rachel Bowlby. "Ten Theses on Politics." *Theory & Event* 5, no. 3 (2001):

disappearance. The fact that he engages with Arendt is particularly intriguing because, in a different manner and from a different tradition, she is also aware that politics is threatened and is engaged in a project to preserve politics from this threat.

The Lack and Withdrawal of Politics

It is already “certainly true”, Rancière writes in 2003, “that we are in a time of a lack of politics, of a certain withdrawal of politics”⁶. The collapse of the Soviet Union in the last decade of the twentieth century was supposed to signify the global success of democracy and the market economy and usher in a new age of peace and prosperity. Instead this period saw the rise of numerous ethno-nationalisms, acts of genocide, and the expansion, by democratic states, of sovereign power to unprecedented limits.⁷ Rancière’s lack and withdrawal of politics describes this background, but also rejects “current and widespread propositions regarding ‘the return of the political’”⁸, put forth by political thinkers like Pierre Manent. The declared *return* reasserts a division between social and political spaces, and anticipates, in the ‘return of the political,’ a ‘pure’ politics in which political space is no longer ‘contaminated’ by social space.⁹ *Withdrawal* also alludes to the work of Philippe Lacoue-Labarthe and Jean-Luc Nancy, who propose *le retrait du politique*, taking up a “position of retreat [*retrait*]” regarding politics.¹⁰ For them, this retreat is a necessary position to take in a time when political debate is reduced to almost nothing and despair or weariness characterize politics above all. But the retreat is neither a rejection nor

⁶ Jacques Rancière, "Comment and Responses," *Theory & Event* 6, no. 4 (2003): 9

⁷ Rancière, "*Who Is the Subject?*" 297.

⁸ Rancière, "*Ten Theses*," 1

⁹ Rancière, "*Ten Theses*," 1

¹⁰ Philip Lacoue-Labarthe, et al. *Retreating the Political*. (Abingdon: Routledge, 2009), 101.

an abandonment of political questions, it is the establishment of *room* or *space*, to “replay [the political’s] questions anew”, to safeguard the possibility of meaningful intervention in the questions of the political.¹¹ Rancière’s *withdrawal* of politics, playing off this *retreat* of the political, has the double significance of diagnosing the diminishment of politics in modern times and also of creating the position from which politics can be approached and theorized anew

Rancière describes two contemporary theories of politics that, following Arendt, lead to the lack of politics, ultimately contributing to its eradication and disappearance. In *Homo Sacer*, Giorgio Agamben takes up a basic distinction between two modes of human life that Arendt draws from the Greek words *zoe* or *bare life* and *bios* or *bios politikos*, *political life*.¹² Agamben uses this distinction of to conceptualize a *state of exception*, rooted in *zoe*, and develop a general theory of politics on the basis of this state of exception. Politics is characterized by this theory as the power of sovereign states over the ‘bare life’ of its subjects—a direct relationship which is the hidden root of modern democracy’s relationship to human rights. Following Foucault, Agamben correlates state power with *biopower* “a positive power of control over biological life,” as opposed to the negative, “old sovereign power of Life and Death over the subjects.”¹³ He then equates biopower with Carl Schmidt’s conception of “the state of exception as the principle of political authority.” The mark of sovereignty is thus the power to decide in situations beyond ordinary politics and legality.¹⁴ Thus the power over *zoe*, over apolitical *bare life*—biopower—is the sovereign power of states. Because human rights are meant to apply to bare life, life outside

¹¹ Lacoue-Labarthe, “*Retreating*,” 101.

¹² This distinction is established in Hannah Arendt, *The Human Condition*. (Chicago: The Univ. of Chicago Press, 1998), 97

¹³ Rancière, “*Who Is the Subject*,” 300.

¹⁴ Rancière, “*Who Is the Subject*,” 300.

the realm of the political (Agamben takes this directly from Arendt), and because modern democracy is supposed to receive its legitimacy from its adherence to human rights, it appears that the sovereign power of democracy is power over the bare life of its subjects, the state of exception. The subject becomes an apolitical subject, construed by the state in terms of its bare life. This compresses the relationship between the subject and democracy into a direct relation of sovereign power over the bare life, and as a result the state sanctioned mass murders and genocides of the twentieth century appear as the “secret of democracy”, the Holocaust as “the hidden truth of the Rights of Man”¹⁵. Agamben, following directly on Arendt’s theory around the distinction of *zoe* and *bios*, as well as her conceptualization of a state of exception in the figure of the refugee, dissolves politics into a direct relationship of state power over bare life, and simultaneously makes, “any difference [grow] faint between democracy and totalitarianism.”¹⁶ The radical crimes attributed to totalitarianism now appear as inevitable results of the relationship between sovereign power and human rights—that human rights hide the secret of bare human life, and sovereign power, the power over bare human life, hides behind the rhetoric of human rights.

The second theorist, Jean-François Lyotard, develops a theory of the *rights of others*, which follows Arendt’s idea that human rights belong to the rightless subject, “those who suffer inhuman repressions [and] are unable to enact the Human Rights that are their last recourse.”¹⁷ In this situation human rights, the paradoxical right of the rightless, become the rights of *others*, because someone else must take up their rights in order for the rights to be of use and to

¹⁵ Rancière, “*Who Is the Subject?*,” 301.

¹⁶ Rancière, “*Who Is the Subject?*,” 301.

¹⁷ Rancière, “*Who Is the Subject?*,” 308.

protect those who suffer inhuman repressions. This establishes a right to humanitarian interference.¹⁸ Human rights, according to Lyotard, are useless to the subject of human rights, and must be taken up by powerful state actors as the rights of others, imparting a responsibility onto these power states. Human rights become “the rights of the *absolute* victim”, the rightless, and “the absolute victim is the victim of an absolute evil”¹⁹. It follows that human rights, as the rights of others, become an ethical responsibility to protect and defend an absolute victim. Enthralled by this responsibility to the victim, both the demands of justice and the crime visited up the victim are rendered absolute, “substituting for the process of a political wrong a sort of ontological destiny.” This ontological destiny pits the the absolute ethical responsibility of the state actor to achieve justice for the victim against what is now an absolute crime in accordance with the absolute victim—erasing the legitimacy of any political considerations.

In both analyses the specificity of Rancière’s approach to the political begins to emerge. Politics does not name the practice of sovereign power—the power of sovereign states is necessarily oppressive for it reduces individuals into apolitical subject. By defining them as such, the political capacity capacity for disagreement over what things are, the givens and definitions of a society, is withheld from individuals. Additionally, rights are not understood as mandates or entitlements such that they may becomes the rights of others who enforce them. Rights and politics are deeply entwined because both are activities enacted by the individual with regard to his own status. When rights becomes a mandate for the activity of others on behalf of the subject of rights, this actually forecloses the political space, in which rights are nothing else than the subject of rights’ mandate to politics.

¹⁸ Rancière, “*Who Is the Subject?*” 308.

¹⁹ Rancière, “*Who Is the Subject?*” 309.

Rancière's Critique of Arendt

In his essay, Rancière begins with the claim that Arendt, in her treatment of the Rights of Man, revived a critique first made by Edmund Burke, “that the ‘man’ of the Rights of Man was a mere abstraction because the only real rights were the rights of citizens,” but she made the revision that, where for Burke these rights were “an ideal fantasy of revolutionary dreamers”, for Arendt they are “the paradoxical rights of the private, poor, unpoliticized individual”²⁰, that is, the paradox of apolitical rights. Arendt found this paradox demonstrated in the emergence of refugees between World War I and II, an event which made the Rights of Man a “a practical political issue” for the first time.²¹ In the millions of refugees who appeared on the world stage following World War I, Arendt found, “the ‘body’ fitting the abstractness of the rights”, an abstract human, detached from any particular social or national identity. She found the paradox that, as Rancière paraphrases, “the Rights of Man are the rights of those who are only human beings, who have no more property left than the property of being human”, making them the rights of those who have no rights, “the mere derision of right”²². This formulation depends upon several assumptions, the most important being a conception of the political as dependent upon an opposition of definite spheres, a clear distinction separating what is political from what is merely private or necessary. Thus the political sphere is a distinct realm, which excludes the realm of necessity. This distinction, between a realm of politics and a realm of necessity coincides with several other distinctions: between public and private; *zoe* and *bios*; political freedom and social

²⁰ Rancière, "*Who Is the Subject*," 298.

²¹ Hannah Arendt, *The Origins of Totalitarianism*. (New York: Harcourt Brace Jovanovich, 1994), 293.

²² Rancière, "*Who Is the Subject*," 298.

freedom. The critique of the abstractness of the Rights of Man critiques their apolitical or private nature.

For Arendt, the refugees or stateless persons made human rights a practical political issue for the first time because they no longer possessed any rights as citizens. But the plight of the refugees was that, at the moment when they lost their rights as citizens, rather than being protected by their human rights, they discovered that they had no rights at all. In her analysis, Arendt makes and reiterates the claim that refugees or stateless persons are rightless. Arendt contests the distinction ordinarily held between the terms refugee and stateless person. She writes that, “the many and varied efforts of the legal profession to simplify the problem by stating a difference between the stateless person and the refugee...were always defeated by the fact that ‘all refugees are for practical purposes stateless’.”²³ Indeed, “the core of statelessness...is identical with the refugee question.”²⁴ In many cases, Arendt finds, it is preferable to be classified as a stateless person, the more extreme of the two terms, and that “people took refuge in statelessness...in order to remain where they were and avoid being deported to a ‘homeland’.”²⁵ The difference in terminology principally served as a political expedient, allowing states to recognize an individual as a ‘refugee’, rather than a ‘stateless person’, thus bearing less responsibility, because refugees were a ‘temporary’ problem, to be repatriated or naturalized, unlike their stateless counterparts. But rightless was not the particular plight of one or the other group. Refugees and stateless persons alike, suffering the loss of their home and of government protection, were threatened with rightlessness. Describing the rightless, Arendt

²³ Arendt, “*Origins*,” 281. fn, 28 quoting John Simpson “The Refugee Problem”

²⁴ Arendt, “*Origins*,” 279.

²⁵ Arendt, “*Origins*,” 279.

writes, “their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed, but that nobody wants to oppress them”²⁶. The plight of the rightless is not that they are subject to injustices, as injustices are commonly understood—committed wrongs—but that no notion of wrong, strictly speaking, any longer applies to them—“they live outside the scope of all tangible law”²⁷. The rightless suffer the unprecedented wrong of “expulsion from humanity altogether”²⁸.

The rightless person is conceived as “‘beyond oppression,’ beyond any account in terms of conflict and repression, or law and violence”, beyond politics altogether. In response to this account, Rancière says that “as a matter of fact, there were people who wanted to oppress them and laws to do this,” and that this, “conceptualization of a ‘state beyond oppression’ is much more a consequence of Arendt’s rigid opposition between the realm of the political and the realm of private life”²⁹ than a worldly fact. The conceptual category of rightlessness, which Arendt creates in an attempt to account for the situation of the refugee, is a figment of her rigid theoretical framework of politics.

Arendt’s framework, in which the rightless person exists in a state of exception, beyond politics, is her separation of the political from the private realm of necessity—the realm of strictly individual and biological concerns—in an “attempt to preserve the political from the contamination of private, social, apolitical life.”³⁰ But this separation is an attempt to preserve a ‘pure’ politics, and “ultimately makes it vanish in the sheer relation of state power and individual

²⁶ Arendt, “*Origins*,” 296.

²⁷ Arendt, “*Origins*,” 293.

²⁸ Arendt, “*Origins*,” 297.

²⁹ Rancière, “*Who Is the Subject*,” 299.

³⁰ Rancière, “*Who Is the Subject*,” 301.

life”³¹. A ‘pure’ politics such as this actually “depopulates the political stage” of possible political subjects, excluded by the *a priori* determination what is and is not included in the realm of politics; this determination that presupposes who is a political subject and what the subject of politics is.

Politics subsumed by state power, which rules directly over individuals, uninterrupted by political action, cannot properly be called politics or political in Rancière’s understanding. By presupposing who and what constitute the political, politics vanishes into what Rancière refers to as the logic of the *police*, which, accompanying state power, is called a process of *consensus*. Theory which conceives the political as a sphere, self contained and definite, always presupposes a “specific a way of life” that is political, thus clearing the stage of the “always ambiguous actors” who, in their very ambiguity, constitute Rancière’s politics. Their ambiguity is important because, for Rancière, political actors are not *given*, they have no specific way of life. The political actor, in the sense of someone who enacts politics, is ambiguous because this *someone* can be *anyone*, and for that reason the someone can never be determined in advance. The ambiguous actor, the anyone, is lost in the rule of state power, which preordains who is and is not a political actor. Rancière’s conception of politics coalesces around the figure of the ambiguous actor. Describing this actor, and properly understanding the relationship between this actor and the political, constitutes setting “the question of what politics is on a different footing”, asking the question of politics differently—as Rancière does this in his title: who is the subject of the rights of man?

³¹ Rancière, “*Who Is the Subject*,” 302.

“That which truly [deserves] the name” politics interrupts established power and order and governance—Rancière calls this “the practice of dissensuality and miscount”³². In thinking about human rights, Arendt:

makes them a quandary which can be put as follows: either the rights of the citizens 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. This means that they are the rights of those who have rights, which amounts to a tautology.³³

This is the perplexity and failure of the rights of man—that they don’t apply to those who need them, who have no rights as citizens, and that they do apply to those who don’t need them, who already have the rights of citizenship. As Arendt writes, “although everyone seems to agree that the plight of [the refugees] consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights”;³⁴ when it became politically necessary, as a result of the mass appearance of rightless persons, to name the rights of man, they could not be distinguished from the rights of citizens. But, as Rancière contests, this task that Arendt confronts, of *naming* a right that would properly belong to man as such, rising out of the quandary she makes of human rights, is misleading. The quandary appears legitimate and the

³² Rancière, “*Comment*,” 4.

³³ Rancière, “*Who Is the Subject*,” 302.

³⁴ Arendt, “*Origins*,” 293.

task necessary “only at the cost of sweeping aside a third assumption that would escape the quandary”³⁵. This third option repoliticizes human rights against Arendt’s depoliticization.

Framed it inside of Arendt’s quandary, Rancière writes, “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.”³⁶

This formulation, in its perplexity, initially appears akin to Arendt’s, but it behaves quite differently. The contradiction Rancière’s phrase voices is its vitality rather than its disqualification. Rancière is breaking the identity Arendt presupposes in the identification of *Man* and *Citizen* and their rights. If Arendt’s quandary stems from the conviction that there are certain rights which individuals have by virtue of being citizens and other certain rights which are given simply by being human, and that these names describe different orders of existence—specifically that the subject of human rights, Man, is a subject of human rights precisely because he *is not*, or is no longer, a subject of the rights of citizens—and that rights can be named and possessed in a definite sense at all, because the possessor of rights also possesses an identity that entitles him to said rights—the identity of man or citizen—then Rancière’s formulation breaks with all these convictions, and thus escapes Arendt’s quandary. Simply put, Arendt implies a subject that is, “at once the source and bearer of...rights and would only use the rights that she or he possesses.”³⁷

³⁵ Rancière, “*Who Is the Subject?*” 302.

³⁶ Rancière, “*Who Is the Subject?*” 302. Rancière uses the word ‘have’, deliberately taking up and forcing contradictions in the terminology of Arendt’s conception of rights. Rights are not *had* for Rancière and he uses this way of speaking about them nowhere else.

³⁷ Rancière, “*Who Is the Subject?*” 302.

Rancière's Rights

Rancière's subject, on the other hand, at once has the rights he doesn't have, and doesn't have the rights he has. This is a conflict not a paradox. It acknowledges the disparity between "appearance and reality or law and fact"³⁸, that while it may *appear* that everyone has certain rights, in *reality* there are those from whom these rights are withheld. But the statement also disputes the effectivity, or meaning of this withholding, for, "they *have* the rights that they *have not*," the withholding is flouted and the rights are possessed all the same. There is a disparity, a gap in human existence—facts and reality present a different situation than is presented by appearances and laws. In accordance with the disparity or gap between the apparent and the real, between law and fact, is a double existence of rights. First there are "written rights...inscriptions of the community as free and equal...part of the configuration of the given," even though the reality of a situation may belie these inscriptions. The inscriptions are the universal declarations of rights, starting with the Declaration of Independence and Le Declaration des Droits de l'Homme et du Citoyen in the eighteenth century, that declare the existence of a right quite apart from the real instantiation of said right. Understood in one sense, the abstractness of these declarations of rights, the flagrant discontinuity of law with fact, would reveal a failure or deficiency of the right due to its inability to take reality into account, as in Arendt's account of the Rights of Man. Rancière specifically avoids this response. Instead, these "written rights" are not evaluated by their efficacy or adequate representation of reality, but, in themselves, exist as part of the *given*, and "what is given is not only a situation of inequality. It is also an inscription, a form of visibility of equality"³⁹. The importance of these "written rights" is not their efficacy or

³⁸ Rancière, "Who Is the Subject," 306.

³⁹ Rancière, "Who Is the Subject," 303.

their description of reality but the gesture they make, towards the possibility of equality. Their existence is the contradictory existence of equality and justice even in situations of deep injustice. This existence establishes the gap previously referred to, between appearance and reality—giving equality in situations of inequality, and justice in times of injustice. The establishment of this gap reveals a discontinuity between the reality that limits rights and a reality in which these rights are without limit. The inscription of equality, which establishes the double reality of this gap, is, for Rancière, akin to the possibility of equality.

The other form of rights Rancière names is “the rights of those who make something of that inscription”⁴⁰. If the written form of rights is *given* and therefore passive, this form of rights is active. But this form of rights is not characterized by mere “use”—the active demonstration of *given* rights—it also includes the building of a case “for the *verification* of the power of the inscription”⁴¹. Building a case for verification actualizes the possibility latent in “written rights”. *Verification* is not the mere use of written rights, because such uses happen all the time and are often overlooked, intentionally as much as not. Absent the verification, uses may simply be exceptions that exempt certain individuals from the rule and leave the rule itself, the general conditions, unchanged. The difference between the use of inscribed rights and the verification of the power of the inscribed rights is the difference between trespassing on private land without being noticed (having the right to be where one does not have the right to be) and trespassing while simultaneously drawing attention to the act of trespassing in order to demonstrate that the designation of the land as private is contingent and superficial, that one has the right to be on the land even though it is private and one supposedly does not have the right to be on it, and that

⁴⁰ Rancière, “*Who Is the Subject?*” 303.

⁴¹ Rancière, “*Who Is the Subject?*” 303. My italics.

things could be entirely otherwise—the land is private by design not by nature. That is, the act of trespass is accompanied by a declaration which proclaims that the trespass should not be viewed as such, that the rules which designate private and public should be changed so that what is considered trespassing would no longer be considered as such. The justification for this claim, the proof of this its legitimacy, is in the act itself, which shows that rule does not reflect a necessary reality but a contingent and superficial one. The verification demonstrates “the mere contingency of equality.”⁴² Thus, a case for the verification of the power of written rights necessarily includes the use of rights, but more specifically, is an argument against the situation of injustice in which certain rights are invalid by demonstrating a situation in which these rights are valid, or can be. The use of rights can demonstrate whether rights are, in reality, confirmed or denied, but the case for verification demonstrates what this confirmation and denial mean—that injustice and inequality are perpetuated by the denial of rights, and that equality and justice can be given, and, in at least one sense, they already are given, demonstrated in the use of withheld rights. The activity of verifying thus manifests a dispute in reality, “a division in the ‘common sense’”⁴³ of reality which, although denying the existence or validity of certain rights, cannot erase them from “the configuration of the given”. Claude Lefort describes this when he says “power may deny right, but it is incapable of depriving itself of its reference to it.”⁴⁴ Rights can be enacted even in their denial. This is the dispute manifest in Rancière’s phrase “the Rights of

⁴² Rancière, Jacques. “*The Thinking of Dissensus: Politics and Aesthetics*.” In *Reading Rancière: Critical Dissensus*, ed. by Paul Bowman and Richard Stamp (New York: Bloomsbury, 2011), 4.

⁴³ Rancière, “*Who Is the Subject*,” 304.

⁴⁴ Lefort, Claude “Politics and Human Rights” *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, ed. John B. Thompson. (Cambridge: MIT Press, 2010), 254.

Man are the rights of those who have not the rights that they have and have the rights that they have not”.

In a back and forth movement between the inscription of rights and the use and verification of these rights, it can be demonstrated that even the denial of rights cannot prevent these rights from being enacted. People *can* have the rights they have not. Thus rights are not objects that can be possessed, simply taken away or bestowed. Rather, a right is a divided thing, always split between its written existence and practical use; as such, it escapes possession. The doubling of right (in the two forms of rights) means that a right always exceed the establishment of its existence because it is established to the extent that it is limited. A right can be demonstrated or enacted, performed or instantiated, by a bridging of the two forms, a back and forth activity between the existence of written rights and a polemical argument for the validity of these written rights, a case to verify the power of the written rights. This demonstrates, not merely that certain rights are legitimate, but that the power of rights always exceeds the boundaries of equality constructed by a society. The verification of the power of written rights verifies that the power of these rights exceeds the facts or reality of a society and actually applies to groups who are supposed to be outside the power of these rights.

What is described here as the building of a case for the verification of inscribed rights can be thought of as the making visible, or manifesting, of the gap between appearance and reality, law and fact, that is established by the simultaneous existence of inscriptions of right that give equality, and of a reality in which this equality does not exist. Verification is alternately described as an enacting, a staging, a manifesting, or a putting to the test. It shares many characteristics with theories of civil disobedience, but is distinct, and is one of the essential elements of

Rancière's theory of rights and politics, because in the verification an equality that was previously does not exist in reality is manifested in reality—it is an interruption in which something is brought into the world that previously was not there. It does not simply break rules in a negative sense, but positively creates a different situation in which different rules apply. Crucial to this manifestation is the perception others, and the obvious drawback is that the manifestation can always be perceived in the two ways described: negatively, as there mere breaking of rules, as an infraction warranting of punishment, and positively, as the affirmation of equality and of given inscriptions right, bringing the possibility of a new law into the world. Inevitably the manifestation accrues both perceptions, one could not exist without the other. But it is clearly insufficient in situations of inequality and in questions of human rights to simply say that the demonstration of equality, the use of rights, will be seen both positively and negatively. These situations are anything but ambivalent, so the question must be: how can the positive perception of the manifestation equality can overwhelm the negative perception? Posing such a question in the abstract is difficult because an answer to it must deal in the contextual details of a situation—nonetheless the true significance of the act of verification is that it manifests a disagreement where there had previously been none. Whether this disagreement is perceived as such cannot be guaranteed, but the manifestation of the disagreement insists on a response. This engagement—even in the negative—creates what Rancière would call a space for politics, and creates a new dialogue by virtue of the new engagement.

To be outside the scope of rights, outside the realm of equality or freedom, is to be outside the realm of politics, in what would be called the private or the realm of necessity. But freedom and equality are what Rancière calls *political predicates*—“open predicates: they open

up a dispute about what they exactly entail and who they concern in which cases”—which means that politics is always concerned with “the sphere of implementation for these predicates”, bringing back into question the line demarcating the extensions of the realm of politics, and the identification of those who political and those who are not, questioning the boundaries which separate and distinguish one human from another on the basis of their qualification to take part in politics.⁴⁵ By limiting the extent of politics to a specific sphere, the extent of freedom and equality are also limited to this domain. But for Rancière, politics is the fight over these limits, not the institution of a stable sphere in which they are protected.

Rancière often returns to the example of Olympe de Gouges who published the *Déclaration des Droits de la Femme et de la Citoyenne* in response to the *Déclaration des Droits de l'Homme et du Citoyen* during the French Revolution. She declared that “if women are entitled to go to the scaffold, they are entitled to go to the assembly”. Women could be, and were, executed for political crimes such as treason, for being enemies of the revolution, but were disbarred from participation in political life because of their role in domestic life. They belonged to the private sphere and thus were deemed unfit for “the purity of political life.” Olympe de Gouges’s declaration pointed out this paradox and manifested the confrontation between its two realities: the one in which women belonged to the private sphere, were unfit for politics and unequal to men, and the other in which they were as equal as men. Forcing these two situations together reveals the gap in reality. The product of this demonstration is the *making* Rancière refers to when he says that the second form of rights are “the rights of those who make something of that inscription”—Rancière calls this activity *dissensus*.

⁴⁵ Rancière, “*Who Is the Subject*,” 303.

Dissensual Politics

Rancière thinks of politics “under the concept of dissensus,” the practice of dissensuality and miscount, in order to set the question of what politics is on new footing.⁴⁶ If politics is a form of dissensus, it must be clarified that dissensus refers to both the activity of politics or political action, what a political subject does, and the subject of politics, what politics is about. The former of these is already articulated in the conception of the twin existence of rights. A right is not a tangible whole, there is always an argument over what a right is, who it applies to, where and under what circumstances. The activity that bridges the two forms of rights,, the case for the verification of the power of written rights—which demonstrates that they actually apply to those they aren’t supposed to apply to (those outside the realm of the political)—is the staging of a dissensus. It makes visible the disjunction, the existence of two orders of existence in one order. Rancière calls this “a division in the ‘common sense’: a dispute about what is given, about the frame within which we see something as given”, and more succinctly “the putting of two worlds in one and the same world.”⁴⁷ The concept of dissensus attends to disagreements and divisions in every ruling and ordering of society. Dissensual politics deals with these disagreements and makes them visible—not as a conflict of interest between groups but as a conflict “concerning the common”⁴⁸—without settling them. The question is not of which groups deserve what within a given common, not that an underprivileged group should be given some

⁴⁶ Rancière, “*Dissensus*,” 1.

⁴⁷ Rancière, “*Who Is the Subject*,” 304.

⁴⁸ Rancière, “*Dissensus*,” 4.

additional privilege or other, but that this group is excluded from access to the common by virtue of the rules that govern its very configuration. The common is “a specific world, a specific form of experience in which some things appear to be political objects, some questions political issues or argumentations and some agents political subjects”⁴⁹. The common describes the specific hierarchies, givens, and rules of a society. Politics is the “configuration” and reconfiguration of this specific world by means of presenting the existence of other possible *worlds*, different configurations of what counts as political. If a conflict is presented as a issue of private interests then it has no bearing on equality or inclusion in the political, on the organization of the common. A conflict over private interests might augment the distribution of privileges, a slight increase in wages or working conditions, but the common will remain unchanged, the general limits of inclusion, what and who counts as political—which, at its most basic level is a question about “who speaks and who does not speak”⁵⁰. Indeed the augmentation resulting from questions concerning private interests are not political, for they leave untouched the question of equality, and can spoken of best as appeasements which the equal dole out to the unequal, the political persons dole out to the apolitical persons.

If, instead of acting on behalf of a private interest, if a laborer does not act as a laborer, but instead acts as a legitimate political subject, he demonstrates that he is political, even if he is excluded from the political. De Gouges, in framing her conflict as a political conflict, revealing an exclusion in politics rather than demanding a particular interest, acted in just this way.

Dissensual action makes visible a basic division and transgresses it, showing that it need not be.

It’s “positive content is its dismissal of any difference between those who ‘live’ in such or such a

⁴⁹ Rancière, “*Dissensus*,” 7.

⁵⁰ Rancière, “*Dissensus*,” 2.

sphere of existence, between those who are or are not qualified for political life”⁵¹. In this sense, the measure of politics is equality and the basic criteria of political action is enacting the mere contingency of equality, that the equality manifested in a society is dependent on the society’s particular configuration, the naming of some things and people political and others not. Politics demonstrates that this configuration, the scope of equality and the extent of the political, could be completely different.

The boundaries which designate what the extent of equality, the common, is, is the subject of dissensual politics. Political action makes visible the gap between the reality of rights and their inscription, makes visible both the world that withholds rights and a world that does not—a world whose common is expanded—and constructs a polemic against the former on the basis of the latter. Politics “consists in blurring the boundaries” of equality and the common.⁵² All of this depends upon dissensus’s basic assumption, or insight, of a doubling, an excess, a division. Because rights do not exist in only one form, they cannot be withheld. Because there are internal and hidden divisions in a society, different configurations of a society can be made visible to contest the existing one. Addressing the question of the political subject under the concept of dissensus leads Rancière to two other doublings, the identification of another gap.

The Subject of Politics and the Count

Concerned with the “rejection of every difference that distinguishes between people who ‘live’ in different spheres of existence”, with re-partitioning the boundaries inscribed by different

⁵¹ Rancière, *Who Is the Subject?* 304.

⁵² Rancière, *Dissensus*, 4.

spheres (literally with “the disagreement about what politics is”⁵³), politics opens the *political sphere*, the space of equality, to include more subjects. As such the term sphere falls away—Rancière writes that politics, “is not a sphere but a process”⁵⁴. This process is the verification, the back and forth movement, the staging or enacting of a dissensus which intervenes in the exclusion of spheres. The process puts “two worlds in one and the same world” and questions the boundaries of a given world, and leaves open the question of *who* can engage in this process, who is the subject of politics. Rancière’s answer to this question is *anyone*, anyone can become a political subject, which he elaborates by conceiving of two different doublings: the doubling of the population, the “separation of the whole of the community from itself” articulated in Rancière’s concept of the “count”; and the doubling of the individual who becomes a political subject himself, what Rancière calls “the process of subjectivization.”⁵⁵

The count also establishes a people. Counting is a way of including individuals in the common of a community. The *included* and the *counted* are the same, and inclusion is the basis for the recognition of equality—being counted is coextensive to being a subject of politics. But every count also creates an ‘uncounted’, a population of individuals who are excluded from the common, from the people, and from politics and equality. A “division between those who are worthy or not worthy of doing politics”⁵⁶ is inscribed in the very process of counting. Attending to the division inherent in counting—that every count produces a *counted*, or included, population and an *uncounted*, or excluded population—Rancière concludes that there are two ways of counting, doubling the form of counting in order to (ac)count for the doubling of the

⁵³ Rancière, “*Dissensus*,” 4.

⁵⁴ Rancière, “*Who Is the Subject*,” 305.

⁵⁵ Rancière, “*Who Is the Subject*,” 302.

⁵⁶ Rancière, “*Who Is the Subject*,” 306.

population (the counted and the uncounted). Rancière writes, “the people is a name for two opposite things: *demos* and *ethnos*”, names which coincides with two opposite ways of counting the people—the *political* count and the *police* count. *Ethnos*, the police count, names the people “as a given body opposed to other such bodies”, an exclusive identification wrought by a shared characteristic—nationality, birth, origin, religious affiliation; *demos*, the political count, names the people “conceived as a supplement to the parts of the community—what I call a count of the uncounted.” This is a count of the people that ignores identification with one group or another, ignores the qualifications of birth or wealth, “mere contingencies,” from which hierarchy and the division between those worthy of doing politics and those who are unworthy of it, spring.⁵⁷

The count of the uncounted creates an “empty” and “supplementary part...that separates the political community from the count of the parts of the population”⁵⁸. The police count, which counts the population as the sum of its parts, is not overruled but the count of the uncounted—it is supplemented by this additional count. Political action puts two worlds in opposition to one another, making visible the gap between law and fact, and at the same time “opposes two counts,” making visible the gap between the counted and the uncounted. In this process of making *visible*, it is shown that the uncounted are actually counted, even though they are not counted within the police count, and are thus part of the common and worthy of politics.

⁵⁷ Rancière, “*Dissensus*,” 5.

⁵⁸ Rancière, “*Who Is the Subject*,” 305. The notion of an empty part, Rancière’s power of anyone, is drawn from Claude Lefort’s notion that modern democracy inaugurates a “the new position of power,” such that “the locus of power becomes an empty place”. This creates a system in which power “cannot be occupied”, and “only the mechanisms of the exercise of power are visible”. Rancière also echoes this in his replacement of the subject with the process of subjectivization.

See Lefort, Claude. “The Question of Democracy.” *Democracy and Political Theory*. (University of Minnesota Press, 1988), 16-17

But the count of the uncoun­ted, the demos, “is not given once and for all,” not definitely established in a distinct sphere as is the ethnos, the count of the police. The count of the uncoun­ted is the “ongoing process of differentiation from the ethnos,” continually interrupting the ethnos with reassertion of the demos.⁵⁹ Police logic ousts “surplus subjects and [replaces] them with real partners, social groups, identity groups”—defined subjects existing in and belonging to definite spheres. Thus it constantly threatens to oust the demos, constituted, not by *real* partners, but by *anyone*. Politics always takes place in these police spaces because it is the activity of contesting them—politics has no proper place of its own. The demos asserts itself against, and from within, the definite identification of the police.

The empty and supplementary part of the count of the uncoun­ted, separated from the people counted as the sum of their parts, includes anyone specifically as *anyone*. A political subject is not a given individual, but the *process of subjectivization*, which anyone can perform. The count of the uncoun­ted is not a prescriptive count, as the police count is, but an empty count—meaning that it is open to anyone because no group or individual is inscribed in it. It creates a surplus identity that can be taken on or performed in the process of a political argument. The surplus identity is simply the identity of one who has been counted, included, which is opened to the *uncoun­ted* by the *count of the uncoun­ted*. The surplus identity is in excess of the identities counted by the police, and thus calls into question the validity of that count and who is included in it. The process of subjectivization is the process of taking on, enacting, a surplus name at the same time as, inevitably, enacting the police name, and bridging the gap between the two names, the two counts of the population, making both visible. This act disputes the police count’s claim

⁵⁹ Rancière, “*Dissensus*,” 5.

to have included the whole of the population—to have accounted for every definite identity—by confronting it with the excess, litigious identity of the uncounted. “The political supplementation...the ‘power of anyone’” confronts the functioning power of states, predicated on the unequal order of the police count, and disputes it by manifesting the unaccounted for, the excluded who nonetheless cannot be silenced.⁶⁰ The ‘power of anyone’ disrupts the police count, which insists on *anyone* being *someone*, on sweeping aside excess names so that everyone *has* a definite identity and exists in a demarcated sphere, thus reducing politics—the blurring of the boundaries separating spheres and identities—to nothing. The police vision, in which there is no doubling, in which law and fact are identified, where law is “identical to the natural life of society,” dissolving the divisions inherent in human existence, is what Rancière calls *consensus*.⁶¹ Consensus is the aim of police logic and the opposite of dissensus—it reduces everything to one definite identity and one proper place, “plugging the intervals and patching the possible gaps between appearance and reality or law and fact.”⁶² For Rancière consensus is not a manner of “settling political conflicts by forms of negotiation and agreement”, it is the reduction of substantive, political, disagreement to the “adjustment of interests” between social groups, negotiated by experts.⁶³ The basic question of who and what are included and excluded in the common, the question of equality is erased by consensus. Consensus “[attempts] to get rid of politics.”⁶⁴

⁶⁰ Rancière, “*Dissensus*,” 6.

⁶¹ Rancière, “*Who Is the Subject*,” 306.

⁶² Rancière, “*Who Is the Subject*,” 306.

⁶³ Rancière, “*Who Is the Subject*,” 306.

⁶⁴ Rancière, “*Who Is the Subject*,” 306.

Democracy and Politics

Political dissensus is a theory of democracy. For Rancière, “democracy is not a political regime... democracy *is* the regime of politics in the form of a relationship defining a specific subject,”⁶⁵ that is, democracy is not one form of political organization among others, it is the only *political* form of organization. The democratic subject is the subject “who partakes ‘in ruling and being ruled’”, a subject defined by the by a relationship to rule, or power, that ruptures any correspondence between *rule* and *qualification to rule*. Democracy identifies the *demos*, the *count of the uncounted*, the *empty part* separated from the population, with *anyone*—a subject devoid of any qualification to rule, equally qualified to rule as to be ruled precisely because it lacks all qualification. This “[grounds] politics in the action of supplementary subjects that are surplus in relation to any (ac)count of the parts of society,” and grounds democracy in the equality of ruler and ruled.⁶⁶ The process of subjectivization, the subject of politics, is identified with democratic process, and democracy is identified with the political supplementation that confronts the functioning of state power with the power of anyone, “which grounds [democracy] at the cost of disrupting it”⁶⁷. Democracy is disruptive because politics are disruptive, and democracy is the organization founded on this disruptive power, politic or the power of anyone. Democracy is organized around political dissensus, opening up the gap in which *anyone* can become the subject of politics.⁶⁸

⁶⁵ Rancière, “*Ten Theses*,” 5.

⁶⁶ Rancière, “*Ten Theses*,” 6.

⁶⁷ Rancière, “*Dissensus*,” 6.

⁶⁸ This conception of democracy brings Rancière very close to the work of Claude Lefort. Lefort finds “a new relationship to the political” in modern democracy—animated by the conflict between state power, which is based on the division of interest groups and benefits from moderating between these strictly identified groups, and the demands for rights, which invoke principles and force the state to respond “according to the criteria of the just and the unjust and not only of the permitted and the forbidden.” Lefort, “*Politics*,” 257.

Rancière discusses rights and the subject of rights in the same terms as he discusses the political and the subject of politics. Freedom and equality are the subject of both rights and politics. Rancière is able to conflate rights and politics in this way because of his attention to democracy, and his identification of democracy with politics. The principle of democracy, its exceptional characteristic, is the affirmation of the demos, of “the whole of those who are nothing, who do not have specific properties allowing them to exercise power”⁶⁹. In effect, this is the affirmation of a radical equality, of the equality of anyone with anyone. Certainly there are differences between people, this is the basis of the police logic which is contested, not erased, in democracy. The radical equality of democracy is the acceptance of a basic capacity of anyone to be political. Because “democracy is *the* institution of politics”⁷⁰, the universal measure of politics is equality⁷¹. Equality is not a rule or *arkhê*, that governs politics, rather it is the presupposition of the principle of democracy, a “supposition that must be verified continuously” by politics.⁷² Thus politics can be thought of as the practice of inclusion, always animated by a division: the included and the excluded; freedom and oppression; equality and inequality. Dissensus contains and articulates this essential division as well as the process of bridging it.

This coincides with the discourse of right because rights, in their many specificities and varied forms, are always affirmations of equality. To that extent, the pursuit of rights always manifests the division between equality and inequality, freedom and oppression. In this model the question of politics becomes identical with the question of rights—the subject of politics

⁶⁹ Jacques Rancière, and Davide Panagia. "*Dissenting Words: A Conversation with Jacques Rancière.*" *Diacritics* 30, no. 2 (2000): 124

⁷⁰ Rancière, "*Ten Theses*," 5. Rancière's italics.

⁷¹ Rancière, "*Dissensus*," 4.

⁷² Rancière, "*Dissensus*," 15.

identical to the subject of rights. Thus the question: “who is the subject of the Rights of Man?” garners the same response as the question of who is the subject of politics—indeed Rancière writes that the “the question of the Rights of Man—more precisely, the question of their subject...is the subject of politics as well.”⁷³

The names which are specifically invoked in the declaration of rights—man and citizen—are thus political names. The process of subjectivization which manifests the difference, the gap, between two worlds or social orders, is specifically conceived of as taking place between the names *man* and *citizen*. The difference between these very names “is the opening of an interval for political subjectivization”—they are political names, that is, surplus names, “whose extension and comprehension are uncertain and which open for that reason the space of a test or verification⁷⁴”. The names man and citizen concentrate within themselves the doubling of the count and the doubling of rights—through these political names an ambiguous actor, anyone, can enact the process of subjectivization by demonstrating their simultaneous inclusion and exclusion as both a man and citizen. The power of the Rights of Man is in the gap between these two names.

Arendt’s ‘Pure’ Politics

At the center of Rancière’s conception of politics and the Rights of Man is the power of doubling. It is the dissensual insight that no order of things is given in the singular, because there is a “difference between sense and sense: a difference within the same,”⁷⁵ there is always a

⁷³ Rancière, “*Who Is the Subject*,” 302.

⁷⁴ Rancière, “*Who Is the Subject*,” 304.

⁷⁵ Rancière, “*Dissensus*,” 1.

division in the equality of human affairs. This difference is the precondition for politics, and to reduce it is to attempt to eradicate the political. Politics cannot be deduced from any common capacity or nature of man—Aristotle’s attempt, describing man as a political animal by reason of his capacity of speech already covered over a difference between speech and speech, the unintelligible cries of necessity being separated and considered less human than the articulated speech that bares on freedom and justice, a difference he instituted, and Arendt revived in the distinction between *zoe* and *bios*.⁷⁶ Rancière’s critique of Arendt documents how her account of the Rights of Man, which is endemic to her account of politics in general, not only fails to recognize the political significance of this division or doubling—fails to see politics as the process that manifests and disputes the legitimacy of this division—but actively suppresses the division, the doubling. This suppression is embodied in Rancière concept of *police*, *consensus* and of *pure* politics.

‘Pure’ politics identifies the political with a definite sphere or way of life, and, attempting to preserve the political from the contamination of the private, it configures the political “as a collective body with its places and functions allotted according to the competences specific to groups and individuals”⁷⁷. Such a configuration assumes “that rights *belong* to definite or permanent subjects” and leaves no room for the process of subjectivization of which politics consists.⁷⁸

Arendt sorts out the problem of politics in advance, of who and what are political, by assuming a *fitness* that conjoins definite individuals to definite stations and identities in society.

⁷⁶ Rancière, “*Dissensus*,” 2.

⁷⁷ Rancière, “*Dissensus*,” 3.

⁷⁸ Rancière, “*Who Is the Subject*,” 306. Rancière’s emphasis

She reduces *political* names to *police* names by defining their “extension and comprehension” and reduces potentially ambiguous actors to subjects of a single defined identity—obfuscating the disruptive role of dissensual politics in favor of a definite sphere of pure politics, which ultimately identifies “the political with state institutions and governmental practice.”⁷⁹

Consensus and police logic are inherent to this conceptualization of ‘pure’ politics. Arendt treats divisions—between citizen and man, public and private, political and apolitical, *bios* and *zoe*, subject of rights and rightless—as descriptions of reality rather than as disjunctions in reality that produce disagreement and a potential for the manifestation of other realities. This rehearses the process of consensus, shoring up the gap between these divisions.

In her analysis of the refugee, Arendt claims the existence of rightless individuals. This stems from the conception of a dyadic relationship between a ‘rightless’ subject and a subject who has rights. Favoring the identities of these two subjects, Arendt disregards the gap formed between them. The gap is the space in which rights can be claimed, in which a political subject can inhabit both identities. By filling in this gap, rightlessness becomes an existential state of exclusion from political action and the political altogether. Being political, inclusion in the political, the possibility of politics, is not conceived as a process open to anyone, but as contingent upon a specific identity and the possession of rights.

This is the point at which Arendt arrives in “The Perplexities of the Rights of Man.” She blames the emergence of rightlessness on the development of the nation-state system: “it was a problem not of space but of political organization. Nobody had been aware that mankind, for so long a time considered under the image of a family of nations, had reached a stage where

⁷⁹ Rancière, “*Dissensus*,” 3.

whoever was thrown out of one of these tightly organized closed communities found himself thrown out of the family of nations altogether.” For her, being “thrown out of the family of nations altogether” means losing possession of the identity of *citizen*, and with it, access to politics— falling back on the identity of *man*. This analysis clearly demonstrates the conception of politics as a specific sphere one inhabits, or, alternatively, from which one is excluded.

Inclusion in political life is contingent on qualifications (economic, intellectual, hereditary...), and upon this contingency the differentiation of the human being into hierarchical categories can occur. Rancière calls “the trap...of an ontological destiny of the human animal.”⁸⁰ The logic which distinguishes humans upon these contingent qualification leads to a situation in which some humans are considered political and some are not, and this identification is taken, not as a political problem, but as a distinction of anthropological or ontological significance, a depoliticized distinction. The ultimate consequence of the process of consensus and police logic is “the radical suspension of politics”—a suspension manifest in Arendt’s concept of rightlessness.⁸¹

This depoliticization (which is a naturalization) of social hierarchy prioritizes the *police* count, which counts the population as the sum of its parts—each part identified on the basis of qualifications and hierarchies—and excludes the *demos*, the uncounted. Thus Arendt’s critique of human rights, Rancière writes, “actually was a critique of democracy.”⁸² Arguing against the confusion of abstract, apolitical rights with *real* rights, the confusion of “political freedom, opposed to domination” with “social freedom, opposed to necessity”, and the contamination of

⁸⁰ Rancière, “*Who Is the Subject?*,” 309.

⁸¹ Rancière, “*Who Is the Subject?*,” 301.

⁸² Rancière, “*Who Is the Subject?*,” 298.

the political sphere with the social sphere, is actually an argument against democracy, whose principle is the equality of anyone with anyone, and thus always overrides, rather than inscribes, these doublings or divisions. The power of anyone, which establishes the subject who partakes both in ruling and being ruled, is pushed out in favor of clearly identified subjects, a defined relation of rulership.

Rancière's conception of democracy, as evidenced in its relation to Lefort's work, stems from a tradition of political thought in France that mostly emerged in the latter half of the twentieth century, thinking of democracy from the its relation to totalitarianism, and responding to the events of May '68. Lefort is one of the major figures in this tradition, a thinker deeply influenced by Arendt's work. It is interesting to note that much of Rancière's repudiation of Arendt can already be found articulated, in a less concentrated fashion, in an essay Lefort wrote in order to retrieve the rights of man from Karl Marx's early critique of them in *The Jewish Question*. In Lefort's essay, *Politics and Human Rights (Droit de l'Homme et Politique)*, the argument against interpreting divisions and doubled relationships (the subject of rights and the rightless) as descriptive of realities rather than conflicts in reality is already anticipated. Lefort writes of Marx, describing why he fails to understand the Rights of Man, that "he brings law down to the level of empirical reality, this being a reality of individual relationships, and thus turns it into a device intended to preserve those relationships."⁸³ Here also Lefort is already arguing that the power of rights is not in their description of empirical reality—that their existence above this realm is their power, and that in this way they can provoke change in the empirical reality of relationships. Lefort writes that "rights cannot be disassociated from the

⁸³ Lefort, "Politics," 249.

awareness of rights.” As such rights are not properties, and conception Lefort rejects explicitly when he argues against “anchoring human rights in the individual,” for to do so removes their political nature and thus creates a false antagonism between rights and politics.⁸⁴ To do this, one becomes “unable to conceive of the difference between totalitarianism and democracy,”⁸⁵ similarly to the depoliticization Agamben, by way of Arendt, effects on human rights.

Yet Lefort, who was deeply concerned with human rights, and read Arendt’s work on the subject, did not apply these critiques to her. Certainly he did not embrace all of her work, but, although he makes reference to it, he didn’t critique *The Perplexities of the Rights of Man*, as Rancière does by way of some of Lefort’s arguments.

⁸⁴ Lefort, “*Politics*,” 244, 254.

⁸⁵ Lefort, “*Politics*,” 244, 254.

Chapter II

Arendt's Political Thinking

In a speech on Gotthold Lessing, Arendt describes his “self-thinking” [*selbstdenken*] as having a secret, perhaps unconscious link to action, in that “both action and thought occur in movement and that, therefore, freedom underlies both”⁸⁶. This model of thinking is contrasted to the stoic model of thought—“not so much a retreat from action to thinking as an escape from the world into the self.”⁸⁷ Lessing took up thinking rather than acting, but he this was not a Stoic retreat from the world into his self, for although “it is in action that men primarily experience freedom in the world,”⁸⁸ by maintaining a connection between thought and action he remained engaged with the world. Thus, thinking, Lessing was able to preserved action’s freedom of movement in the world so that his experience of tough was an experience of the world not of the self.⁸⁹ As a political thinker, Arendt also thought in this manner, for she strove to encounter the world as it is and think through its political complexities. Lessing’s self-thinking, to the extent that it engaged with the world, was “essentially polemical”, and directed towards an “anticipated dialogue with others.”⁹⁰ The aim of this polemical thought is to stimulate thinking in others, not to transmit conclusion about the world. Thus Lessing “never [bound] his thinking to results.”⁹¹ Results or conclusions provide a final solution to a problem, stilling the movement of thought

⁸⁶ Hannah Arendt, “On Humanity in Dark Times: Thoughts About Lessing,” in *Men in Dark Times* (New York: Harcourt Brace & Company, 1993), 9.

⁸⁷ Arendt, “*Lessing*,” 9.

⁸⁸ Arendt, “*Lessing*,” 8.

⁸⁹ Arendt, “*Lessing*,” 9.

⁹⁰ Arendt, “*Lessing*,” 10.

⁹¹ Arendt, “*Lessing*,” 10.

and thus cutting off thought's relation to action, which is its relation to the world.⁹² The absence of movement in thinking is the affirmation of a single perspective, it gives rise to a definite world view and cannot help being ideological. Arendt describes this as “a closed, integrated, organically grown and cultivated individual who then looks around to see where in the world the most favorable place for his development might be, in order to bring himself into harmony with the world by detour of thought.”⁹³ In contrast, Lessing's self-thinking seeks neither integrations, organic individual growth, or harmony with the world. Lessing's is a “partisanship for the world” which means that to judge and understand everything in its worldly context and circumstances, as opposed to extracting an object from the world and thinking of it in terms of an ideal system—producing a truth.⁹⁴ To think of everything in terms of its worldly circumstances is to be constantly in flux, for the circumstances of the world constantly change.

The context of Arendt's speech on Lessing was her acceptance of the Lessing Prize, bestowed in 1959 by the Free City of Hamburg. Taking the occasion to stress the human's relationship to the world, Arendt says at the start of her speech, “the honor [of receiving an award] not only reminds us emphatically of the gratitude we owe the world; it also, to a very high degree, obligates us to it...by accepting it we...are accepting a kind of commitment to [the world].⁹⁵” Arendt, no less than Lessing, embodies such a commitment to the world in her writing and political activity. Arendt illustrates what such a commitment entails in this speech by describing Lessing's thinking activity. That she is consciously committed to this model of thought is evidenced in, among other places, her proposal in the introduction to *The Human*

⁹² Arendt, “*Lessing*,” 10.

⁹³ Arendt, “*Lessing*,” 8.

⁹⁴ Arendt, “*Lessing*,” 8.

⁹⁵ Arendt, “*Lessing*,” 3.

Condition: “to think what we are doing.”⁹⁶ Here *to think* adheres to *doing*, articulating the connection between activity and movement, and thought’s engagement with the world.

Approaching Arendt’s work without taking into account her conception of thinking risks ignoring an essential aspect of it. The polemical, questioning, and provocative mode of her work is as important as the theoretical structures and conceptual determinations. Questions move Arendt’s work, she thinks through and from questions rather than resolving them. Her understanding of history as, “a story of events and not of forces or ideas with predictable courses” is only one such example of this.⁹⁷ “The tangible unexpectedness of the event” breaks predictable processes—forcing one to move from event to event, as from question to question—for each event calls into question what can always appear as the inexorable movement of history.⁹⁸ For this reason, contradiction is not the manifestation of mistake or failure in Arendt’s thinking, it is inevitable in thinking through the movement and specificity of the world—one might call it the very evidence of thought. Along with Lessing, Arendt could have said, “I am not duty-bound to resolve the difficulties I create. May my ideas always be somewhat disjunct, or even appear to contradict one another, if only they are ideas in which readers will find material that stirs them to think for themselves”⁹⁹.

This approach resonates even in her first published book in English, written before either *The Human Condition* or her speech at the reception of the Lessing Prize. In a 1958 newsletter written on the occasion of the second publication, in a revised edition of *The Origins of Totalitarianism*, Arendt called it a political book as opposed to a historical book. In the

⁹⁶ Arendt, “*Human Condition*,” 5.

⁹⁷ Arendt, “*Human Condition*,” 252.

⁹⁸ Arendt, “*Human Condition*,” 252.

⁹⁹ Arendt, “*Lessing*,” 8.

newsletter Arendt explains how she had initially felt that, while writing *Origins*, she was writing a historical book, but was unsatisfied with this because, although she dealt with historical events, she wrote, “not in order to save and conserve and render fit for remembrance, but on the contrary, in order to destroy.”¹⁰⁰ That is, she used history, not with the intent to preserve it as it was experienced when it happened, but in order to create a polemical argument about the current time—history was explicitly viewed in terms of its relation to the world, from the “vantage-point of the present.”¹⁰¹ Realizing that this was a political activity, Arendt called *Origins* a political book.

In the same newsletter she also writes that, “the mood and style of the whole book,” is one of, “inconclusiveness.”¹⁰² Inconclusiveness is a surprising characterization for a book as forceful and well researched as *Origins*, but together with her treatment of history, it is indicative that, even at this stage in her career, Arendt was lead by some version of Lessing’s *selbstdenken*. Political thinking thinks of everything in terms of its circumstances in the world and, because these circumstances inevitably changes, is inconclusive. Because it seeks engages with the world as it is, destroying history in order to make a polemic that says something about the present, it is open, in turn, to the endless eventfulness of history and the destruction that future political thinking, premised on different circumstances, will visit upon history. Approaching *Origins* with its polemical task in mind, treating it as a political book intended to elicit debate, not as a theoretical text that imparts conclusions, opens Rancière’s critique of its ninth chapter and the broader argument he makes on its basis to reconsideration. Of course, the text of *Origins* is not

¹⁰⁰ Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken, 2004), 616

¹⁰¹ Arendt, “*Origins*,” 617,

¹⁰² Arendt, “*Origins*,” 617.

immune to critique because of its political, inconclusive, or destructive character, but by reframing the context in which it is read and responded to, the statements and arguments in the book are opened up to more expansive interpretations.

In a short response to a critique of Rancière made by Michael Dillon, Dean Mathiowetz distinguishes between a register of critical theory, and one of political thinking which entails a polemical quality.¹⁰³ The value of the latter register is that, in its provocation to argument, it opens up possibilities in the thought with which it engages, rather than dismissing it and setting it aside.¹⁰⁴ Arendt's work carries with it what Mathiowetz calls an, "invitation to political thinking," and although Rancière writes in a polemical mode himself, he seems at times to neglect the opportunity this aspect of her writing provides. Andrew Schapp's correction of Rancière's evaluation of Arendt's tone—one of "bitter irony" not "contempt"—appears as an insignificant adjudication in his treatment of the conflict between Arendt and Rancière, but the distinction between irony and contempt is quite relevant.¹⁰⁵ Where contempt refers to a single subject and perception of that subject, irony speaks in several registers at once, proliferating the possible responses, opening up the space of discussion. The activity of opening up animates Rancière's thought, but he seems to miss this same activity in Arendt's writing. The misunderstanding, taking irony for contempt, is indicative of a broader misunderstanding of Arendt's of writing that colors Rancière's argument against her treatment of the Rights of Man.

¹⁰³ Dean Mathiowetz, "Kairos and Affect in Rancière's "Ten Theses on Politics"." *Theory & Event* 20, no. 1 (2017): 89.

¹⁰⁴ Mathiowetz, "Kairos," 89.

¹⁰⁵ Schaap, Andrew. *Enacting the right to have rights: Jacques Rancière's critique of Hannah Arendt*. *European Journal of Political Theory* (10: 1 2011) 33.

Arendt's Critique of Burke

In his critique, Rancière draws attention to a conceptualization of *belonging* in Arendt's work, and to the significant role it plays in her analysis of the rightless person. For Rancière, her references to Edmund Burke in "The Perplexities of the Rights of Man" attest to this—it was Burke who first made the argument that real rights came from within the nation, were the rights an Englishman derived by virtue of belonging to England, whereas human rights were an abstraction springing from nowhere, and not be relied on.¹⁰⁶ This idea, "that the only real rights are the rights given to the citizens of a nation by their belonging to that nation", as Rancière puts it, is based on the assumption that "rights *belong* to definite or permanent subjects"¹⁰⁷. So framed, Arendt's idea of belonging is an extension of the relations of property, that of possession and possessor, object and owner, into a theory of rights and politics.¹⁰⁸ Against this, Rancière can contrast his more complicated conception of the relation between a subject and his rights. A significant amount of secondary writing on Arendt's critique of human rights takes, like Rancière, her reference to Burke as an endorsement of his argument,¹⁰⁹ but this assumption is not, in fact, borne out by her text—Arendt's reference to Burke's argument is not an accord with it. By understanding the place Burke's argument properly holds in Arendt's thinking, her conceptualization of belonging and The Rights of Man can be reformulated, chiefly with reference to her concept of "the right to have rights".

¹⁰⁶ Arendt, "*Origins*," 299.

¹⁰⁷ Rancière, "*Who Is the Subject*," 306. Rancière's emphasis.

¹⁰⁸ This is a variation on Locke's theory of an individual's right to property in *Second Treatise of Government*. Karl Marx critiqued this, among other things, when critiquing the Rights of Man in *On the Jewish Question*.

¹⁰⁹ Justine Lacroix catalogues this body of work well in "The 'Right to Have Rights' in French Political Thought"

In his opposition to the abstraction of the Rights of Man, Burke conceived of liberty and rights around the concept of inheritance.¹¹⁰ In this vision rights are an inheritance received from a nation and ones ancestry and bequeathed upon ones posterity. This vision “[signifies] the direct acceptance of the feudal concept of liberty as the sum total of privileges inherited together with the title and land.”¹¹¹ By basing them upon inheritance, rights are, like the feudal understanding of liberty, manifest as the passing down of privileges and property, from one generation to next—these privileges and properties owned as possessions within a family. Invoking this feudal practice in his conception of rights as the rights of Englishmen, Burke “enlarged the principle of these privileges to include the whole English people”, augmenting the liberty of the nobility in feudal times, their privileges, to encompass the whole of the English people, so that the English nation appeared, at least to itself, as a nation of nobility among mere nations.¹¹² Arendt writes that as a “consequence of this assimilation of noble standards...the English brand of race-thinking was almost obsessed with inheritance theories and their modern equivalent, eugenics”¹¹³. In other words, Arendt credits the original formulation of rights in terms of inheritance, based on the feudal model of nobility, as the *beginnings* of the development of English race-thinking, a development “which may be traced back to...Edmund Burke”¹¹⁴.

Arendt holds a firm distinction between *race-thinking* and *racism*, race-thinking is one of many free opinions, whereas racism is an ideology, “[differing] from a simple opinion in that it claims to possess either the key to history or the solution to the ‘riddles of the universe’ or the

¹¹⁰ Arendt, “*Origins*,” 176.

¹¹¹ Arendt, “*Origins*,” 176.

¹¹² Arendt, “*Origins*,” 176.

¹¹³ Arendt, “*Origins*,” 176.

¹¹⁴ Arendt, “*Origins*,” 175.

intimate knowledge of the hidden universal laws which are supposed to rule nature and man.”¹¹⁵ She likens the relation of one to the other as of a “shadow accompanying the development of the comity of European nations, until [race-thinking] finally grew to be the powerful weapon for the destruction of those nations,” that is racism.¹¹⁶ Given this understanding of *race-thinking*, it is hardly plausible that Arendt would endorse Burke’s concept of rights. Separated from Burke’s account of the abstraction of the Rights of Man, Arendt account of human rights becomes must less intuitive, and Rancière’s critique less assured. Still, Arendt does write that the facts and reflections she presents in “The Perplexities,” “offer what seems [a]...belated confirmation of the famous argument with which Edmund Burke opposed the French Revolution’s Declaration of the Rights of Man,” and that, “the pragmatic soundness of Burke’s concept seems to be beyond doubt.”¹¹⁷ Understanding these statements in their context, they may be seen, not in correspondence to a positive argument Arendt endeavors to make affirming Burke’s of vision of human rights, but to an analytic description of what human rights, which failed when put to the political test, were or are. This latter description might be called the first part of “The Perplexities.” Indeed, “The Perplexities” primarily consists of two parts, the first largely containing this historical and analytic depiction of the Rights of Man, and the second principally an argument regarding the possibility for a different vision of human rights. Contrary to what the name *part* implies, these two parts do not exist in strict separation, one following on the other, but are woven together throughout the section—thus, notwithstanding Burke’s appearance in the

¹¹⁵ Arendt, “*Origins*,” 159.

¹¹⁶ Arendt, “*Origins*,” 161.

¹¹⁷ Arendt, “*Origins*,” 299. There is, perhaps, little merit in drawing attention to the repetition of the words *seems* in both quotes, although the proximity of the two sentences to one another (they begin adjacent paragraphs) and the fact that they are the only places in this section where she addresses Burke’s argument on its own terms, rather than using it in the service of other arguments, make it an unlikely accident.

last few pages of the section, he properly relates to what is being called the first part of “The Perplexities.”

Rancière primarily objects to the first part of “The Perplexities,” Arendt’s analysis and description of the rights of man, and seems to ignore the second part, which attempts to conceive of a human rights that could be politically viable, echoing Rancière’s effort against an apolitical conception of human rights. To further clarify the distinction between the two parts of “The Perplexities” it may be useful to extrapolate from her statement of purpose in the 1951 preface to *Origins*, in which she proposes to comprehend the central events of our times. For Arendt, “comprehension... means the unpremeditated, active facing up to, and resisting of, reality—whatever it may be.”¹¹⁸ Following the double act of comprehension—facing up to, and resisting—what is called the first part of “The Perplexities” can be understood as the facing up to of reality, and the second part as the active resisting of it.

Facing Up to Reality

The first part primarily consists of a historical narrative Arendt establishes, detailing the particular way in which the Rights of Man have come into existence, and weaving this account into the story of the modern day refugee, which appears as the central story of human rights. It faces up to the novel existence of refugees, the rightless, and the declared existence of the Rights of Man—the fact that both exist in the world at the same time without precluding the existence of the others. The existence of the Rights of Man should contradict the existence of rightless individuals, if all human have rights by virtue of being human rightlessness should be

¹¹⁸ Arendt, “*Origins*,” viii.

impossible, but the Rights of Man did not prevent the emergence of rightlessness. The rightless cause Arendt to investigate the now dubious existence of the Rights of Man, but as the second part of “The Perplexities” attests, the rightless do not preclude the possibility of human rights. One might easily imagine this section of *Origins* being titled “The Failure,” or “The Disintegration” of the Rights of Man—but the title Arendt chose, “The Perplexities of the Rights of Man,” reveals a commitment to facing these contradictions as they are manifested in the world, as perplexities to confront rather than to resolving, which would likely result in abandoning human rights; to resolve the perplexities would be to “deny the outrageous” or “explain phenomena by such analogies and generalities that the impact of reality and the shock of experience are no longer felt,” Arendt’s description of activities that fail at the task of comprehension.¹¹⁹ Comprehension must simply face this contradiction as a contradiction that, however hard to contemplate, exists. Facing up to it means understanding it, not by seeking a cause from which it follows as an inevitable effect, but by understanding the present in terms of its origins in the past, origins which become origins only in hindsight, after the events of the present have occurred.¹²⁰ The unpredictableness of events, of which history is made up, do not lead to other events in any necessary way, as one may speak of outcomes following from origins. But, in hindsight, events can be traced back to other events as the conditions for their possibility. Origins, not by a law of causality and historical necessity, but by fact that they made possible the circuitous route of human actions and decisions that lead from one event to the next—actions and decisions could have been entirely otherwise. Thus the origin of Arendt’s title should not suggest “however faintly, a belief in historical causality, which I did not hold when I wrote the

¹¹⁹ Arendt, “Origins,” viii.

¹²⁰ Arendt, “*Origins*,” 617,

book and which I believe in even less today.”¹²¹ Understanding does not aim at finding an origin or origins that necessarily caused a series of events to unfold, but rather, it focuses on the irresistible facticity of the present, and from that discerns those resistible origins which, neither causing nor necessitating anything, nonetheless made the present possible.

Arendt’s understanding of the history of the Rights of Man hinges on two crucial points, of which the first is that there was an initial slippage in the image of Man. The Rights of Man proclaimed “Man himself...their source as well as their ultimate goal,” making him, “the only sovereign in matters of law.”¹²² At the same time, in the course of both the American and French Revolutions, “the people was proclaimed the only sovereign in matters of government.”¹²³ The rights of the people were proclaimed in the name of Man, on the authority of Man, but, reflexively, it was in the sovereign self-government of the people that the Rights of Man were guaranteed—as a result the Rights of Man, as the basis of law, became subsumed into the sovereign right of the people—the basis of government—so that “the people, and not the individual, was the image of man”¹²⁴. The implication of the substitution of the people for the image of Man became clear at the moment when individuals emerged who were not attached to any peoples, appearing only as—the rights of man did not in fact apply to the individual¹²⁵.

Substituting the people, constituting a nation in the modern age, for the individual as the image

¹²¹ Arendt, “*Origins*,” 616.

¹²² Arendt, “*Origins*,” 291.

¹²³ Arendt, “*Origins*,” 291.

¹²⁴ Arendt, “*Origins*,” 291.

¹²⁵ Arendt, “*Origins*,” 291.

of the rights of man meant that the question of human rights became inextricably bound up with the question of the nation and national emancipation.¹²⁶

This leads to the second point, which consists of Edmund Burke's vision of rights. For Burke rights are rooted in and sustained by definite national communities, and belong to individuals along the model of feudal liberty, an extension of property relations to the concept of rights.

These two fundamental points characterized the *man* of the Rights of Man, and the *rights* of the Rights of Man. Rights were properties and Man was a people or a nation, thus these rights could never have applied to individuals outside of any definite national community. Such individuals were neither the man in whose name rights were declared, nor were any rights available to them, for rights, as Burke argued, were only real, which is to say of practical political significance, when guaranteed by a government to a subject belonging to that government, analogous to the guarantee of property. The Rights of Man, which for so long had been presumed to apply directly to men, humans as such, outside of the particularity of their political status or identity, were revealed to be entirely unfit for the task demanded of them—when humans rather than citizens appeared on the world stage.

Thus, the true significance of refugees, what made their appearance unique, was not that they had lost their homes or the protection of their governments, for “in the long memory of history [these experiences] look like everyday occurrences”¹²⁷. What was unprecedented was that, once lost, neither home nor government protection could be regained—that these refugees

¹²⁶ Samuel Moyn chronicles this shift in human rights, from an identification with the *people* to the individual, in *The Last Utopia*. Chapter one, “Humanity before Human Rights” primarily concerns the relation of the Rights of Man to a people or a nation as experienced in the early twentieth century.

¹²⁷ Arendt, “*Origins*,” 293.

literally became homeless and, in losing government protections, were outside of legality altogether. Only then did they become rightless. Arendt writes that “the calamity of the rightless is...that they no longer belong to any community whatsoever...not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.”¹²⁸ That the emergence of refugees coincided with the expansion of the nation-state system over the entire globe also made rightlessness possible. For rightlessness was a problem, “not of space but of political organization. Nobody had been aware that mankind, for so long a time considered under the image of a family of nations, had reached a stage where whoever was thrown out of one of these tightly organized closed communities found himself thrown out of the family of nations altogether.”¹²⁹ The result of this total organization is that “we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.”¹³⁰ The true and most extreme plight of the rightless is expulsion from humanity altogether. When they lost their home and their legal status it was discovered that in the world’s total organization there was no longer any surplus place to call home, no longer any surplus legal status to be assumed. Under such conditions the loss of home and of legal status means the loss of all rights, rightlessness, which is the loss of humanity altogether.

Rancière’s Critique of Part One

¹²⁸ Arendt, “*Origins*,” 295-6. Arendt is aware that there “were people who wanted to oppress them and laws to do this,” as Rancière argues. In the first section of chapter 9 of *Origins*, *The “Nation of Minorities” and the Stateless People*, Arendt catalogues the political, historical, and legal events that created the ‘rightless’, oppressive laws included. But the *plight* of the rightless is that they were ‘legally’ forced beyond national laws and thus placed at the mercy of extralegal forces, like the totalitarian police forces.

¹²⁹ Arendt, “*Origins*,” 294.

¹³⁰ Arendt, “*Origins*,” 297.

This is Rancière's principal objection and the basis of his critique of Arendt, the conceptualization of a human status that is so thoroughly expelled from humanity as to be "outside the pale of law,"¹³¹ a situation in which humans can actually lose "some of the most essential characteristics of human life," including the, "loss of the relevance of speech," and the, "loss of all human relationships," the two human characteristics, defined by Aristotle, that have since lead the human to be characterized as a political animal.¹³² All of which says that the human can be expelled from humanity and expelled from politics, humans can lose the basic capacity to act with other, to be political. For Arendt this means that, although the vicissitudes of fortune may readmit certain of the rightless to humanity, the rightless themselves have lost the capacity to claim readmission, to act politically even on their own behalf. But in focusing solely on this analysis Rancière misses the overall movement of Arendt's chapter towards its second part. The first part is not a conclusion for Arendt, not something for which she argues (though it itself is an argument), but the frame of her argument, the very thing which she is resisting.

It is quite true, as Rancière argues, that the rightless Arendt describes are only conceivable within a framework that insists that the political is a distinct and separate space, corresponding to the existence of a private sphere, equally separate and distinct. Only in such a rigid structure could a conceptual category definitely excluded from both spheres be conceivable. Indeed, the true implication of Arendt's description of the refugee is not that it is outside of the political, that this sphere is no longer given to it, but that it is outside of all spheres of human life, private and public, and therefore expelled from humanity. This is the true sense of Arendt's term *superfluous*, which "means not to belong to the world at all", and which can properly be applied

¹³¹ Arendt, "Origins," 295.

¹³² Arendt, "Origins," 297.

to the rightless.¹³³ The rightless person is not the only subject who Arendt conceives of as *superfluous*. Superfluousness is the experience totalitarianism attempts to force upon its population, a new form of domination which stems not from the mere isolation of individuals from one another, which destroys the public realm, but the infliction of loneliness on individuals, which “destroys private life as well” and creates the conditions for experience of superfluousness, of not belonging to the world.¹³⁴ Rancière’s conception of the political as a process, rather than a sphere, expands the political so that it has no definite limits and anyone can participate in it. This also makes a conceptual category beyond access to the political inconceivable. Politics, in Rancière’s conception, is the capacity for staging a dissensus, putting two worlds into one world, thus making visible the illegitimacy of certain exclusions by presenting a world in which these exclusions do not exist—enacting “the mere contingency of equality”¹³⁵. This affirms that whatever is called equality in a given society is contingent on a particular configuration of groups and givens, on the prioritization of some qualifications over others, and thus always creates a corollary inequality or exclusion. Demonstrating the mere contingency of equality allows for what is called ‘equality’ to be reconfigured and expanded. Arendt’s equality is different from Rancière’s, but it is also always contingent. For her, equality is also related to politics, but it exists only in the political space, the place in which politics occurs, and is created by the people who come together in it—is manmade by definition. Arendt’s equality is an artifice, fabricated to create a space for politics, which can only occur among equals.¹³⁶ Rancière’s equality is marshaled against such a space, challenging the

¹³³ Arendt, “*Origins*,” 475.

¹³⁴ Arendt, “*Origins*,” 475.

¹³⁵ Rancière, “*Dissensus*,” 4.

¹³⁶ Arendt, “*Origins*,” 301.

exclusion created with the creation of equality within certain bounds. In Arendt's conception, politics, or being political, means "having a place in the world which makes opinions significant and actions effective"¹³⁷.

Rancière's definition is more polemical and Arendt's more broad and existential, but they are not radically opposed. The difference is that in Arendt's model politics requires a specific place in the world, and the inhabitation of this place is, in certain circumstances (the circumstance of the refugee for instance), beyond the control of the individual who inhabits, or would inhabit—which means that the capacity for politics can be taken away. In Rancière's model the political subject has the capacity to act politically (to have significant opinions and act effectively) regardless of their status of habitation (having a place in the world or not)—the capacity for politics cannot be taken away. Even if his subject did not, in Arendt's terminology, *have a place in the world*, this would not preclude it from the possibility of *claiming* a place in the world. Arendt speaks of the *world* in the singular, thus an individual can be expelled from it, it can be lost. For Rancière the world is always divided and doubled, thus it can never be fully lost, there is no full expulsion. A political subject can always claim a place in the world because they can stage a dissensus, in which they put two worlds in one— demonstrating the existence of, not just the world in which they have no place, but another world, in which they do have place.

Rancière draws attention to the strong conception of belonging at play in Arendt's politics. She conceives of subjects as belonging to one or another sphere of human life—public or private— and is able to conceive of a space beyond humanity, altogether outside the realms of

¹³⁷ Arendt, "*Origins*," 296.

public and private, to which a definite human subject corresponds, because this subject, the rightless person, belongs to this space from out of its very *un-belonging* to every other spheres of human life. The plight of the rightless, in Arendt's analysis, is identical with their loss of belonging; as Arendt writes, the right at stake in the plight of the refugee becomes apparent "when *belonging* to the community into which one is born is no longer a matter of course and *not belonging* no longer a matter of choice¹³⁸". But the rightless subject, Rancière contests, does not exist. No human is definitely rightless or belongs to a sphere of rightlessness beyond humanity because, regardless of real inequalities and lack of rights, every identity is divided, and anyone can enact a dissensus, showing that there is not one given reality but two conflicting realities. Stressing belonging as Arendt does, absolutizing it and instituting distinct spaces of belonging and not belonging, creates 'exceptions' to the political and 'exceptional' spaces outside politics and humanity. Thinking in terms of a definite belonging covers over the divisions and doublings in human existence by which a political subject might demonstrate that, at the same time as they don't belong, they do belong. Ultimately this constitutes an erasure of the political. A frame in which rights are dispensed by virtue of belonging dispenses with the political action of dispute, making rights the definite predicates of a political subject, rather than the very subject of politics. Rancière writes "freedom and equality [i.e. rights] are not predicates belonging to definite subjects. Political predicates are open predicates, they open up a dispute about what they entail, whom they concern and in which cases."¹³⁹ Arendt's conception of belonging and definite spheres of human activity creates an apolitical space, radically outside of politics and humanity.

¹³⁸ Arendt, "*Origins*," 296. My italics.

¹³⁹ Rancière, "*Who Is the Subject*," 303.

The disjunction between Arendt's and Rancière's account of rights manifests itself, from another perspective, in Arendt's attention to the distinction between the rights of men and the rights of citizens. Arendt still tries to name a right that properly *belongs* to the human. She writes that "no one seemed to know which rights [the rightless] lost when they lost these human rights,"¹⁴⁰ and elaborates that certain rights, the right to life, to freedom, to the pursuit of happiness, cannot be thought of as human rights, for in wartime the soldier loses the right to life, in times of emergency the citizen loses the right to the pursuit of happiness, and the prisoner always loses the right to freedom, but "nobody would ever claim that in any of these instances a loss of human rights had taken place."¹⁴¹ One of Arendt's major questions in "The Perplexities" is: what is a human right, what can properly be *named* a human right? This is an unnecessary question for Rancière because rights, as such, are *of* man. There is not a particular right that belongs to man because the inscription of rights, and their enactment, exceeds the particular naming of a right. In the 1980's, with the rise in social groups claiming additional rights, there were debates, in France and elsewhere, as to whether "the rise of new rights might not signal a perversion of the principle of human rights," new rights applying to social and economic and cultural (private) affairs.¹⁴² For Rancière human rights are the capacity of humans to claim and enact rights—that we continually make new rights rather than remain tied to a preordained, prejudged set of *human rights* is the point and principle of human rights. There is no corruption of the principles of human rights, for human rights are not defined and situated in some original

¹⁴⁰ Arendt, "Origins," 293.

¹⁴¹ Arendt, "Origins," 296.

¹⁴² Lefort, Claude. "Human Rights and the Welfare State." *Democracy and Political Theory*, (University of Minnesota Press, 1988), 21-22.

context—they are created as they are redeclared. The declaration of human rights is more momentous than the specific right declared.

The Second Part of “The Perplexities” and the Right to Have Rights

But the disagreements that Rancière manifests between his and Arendt’s account of rights and politics is less fundamental than he presents it to be, precisely because the shortcomings he identifies in Arendt are the subject of the second part of “The Perplexities” which he does not comment on. In this part, Arendt addresses and resists what she has calls the plight of the rightless and the impotence of the Rights of Man. Even if the Right of Man can be understood to function as Rancière theorizes, the facts of the refugee crisis in the beginning of the twentieth century that Arendt establishes maintain that, although less helpless and not essentially dehumanized, the refugees found little respite or sanctuary in the Rights of Man. These human rights were of little use to the refugees. It is this experience, the emergence of millions of people who had lost their status as citizens and had no reliable access to the Rights of Man, nor the possibility of regaining their rights as citizens, that made Arendt “aware of the existence of” a different and hitherto unformulated human right which she names, “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.”¹⁴³ Arendt doesn’t formulate the right to have rights as a solvent to the condition of rightlessness, in her account the the right to have rights is a more legitimate right than those documented by the Rights of Man, but the rightless have lost this right as well. But, setting that aside, maintaining Rancière’s rejection of absolute

¹⁴³ Arendt, “*Origins*,” 296-7.

rightlessness, the idea manifest in the right to have rights breaks with the account of human rights that Rancière critiques. Although famously freighted with ambiguity, Arendt's right to have rights appears to resonate and foreshadow the account of rights that Rancière himself gives.¹⁴⁴ It is curious then, that Rancière makes no mention of the right to have rights, and seems not to engage with this, if not the culmination of Arendt's chapter, then one of its crescendos, and a point toward which much of the material Rancière critiques is building.

The right to have rights, in its language as much as its ideas, and in spite of Arendt's parenthetical 'explanation' of it, has proven in equal parts fecund and frustrating. This is inevitable, for Arendt never returned to this concept, nor obviously integrated it into her work. Of her (in)famous concept, the banality of evil, she wrote "after having been struck by a fact, which, willy nilly 'put me in possession of a concept (the banality of evil), I could not help raising the question quaestio iuris' and asking myself 'with what right I possessed and used it'."¹⁴⁵ This statement may just as well have been written of the right to have rights, if only for the fact that, so far as it appears in writing, Arendt never asked herself "with what right [she] possessed and used it"—leaving that question open to whosoever has attempted to make something of the right to have rights..

There is a tendency among those who make use of the right to have rights, in scholarship on Arendt and on human rights, to assimilate the phrase into the human rights paradigm—"to treat the phrase as merely another, more poetic name for 'human rights'," or, "reduce the 'right to

¹⁴⁴ Certainly the doubling that constitutes the right to have rights is extremely fertile in Rancière's thought, particularly in what follows from his statement of "a difference between sense and sense: a difference within the same, a sameness of the opposite." Rancière, "*Dissensus*," 1.

¹⁴⁵ Arendt, Hannah. *The Life of the Mind*. (New York: Harcourt Brace Jovanovich, 1978), 5.

have rights' to a new-and-improved version of human rights."¹⁴⁶ The abstractness of the phrase, the paradoxical quality of its repetition of 'right', make it a tempting template to translate into a more manageable formulation; a *right to asylum*¹⁴⁷; a *right to enter*¹⁴⁸; to define a hierarchal relation between the two rights¹⁴⁹, or some other such structure that distinguishes clearly between subject and object.

None of these formulations are unfounded, indeed the right to have rights demands reformulation. The original model for doing this is the text of *Origins* itself, which names a number of objects that the rightless had lost and formulates several other novel rights adjacent to the formulation of the right to have rights. There is the loss of a home, the loss of the distinctive social texture of one's place in the world along with the place itself; the loss of government protection and of legal status; and, effectively unifying these losses, there is the calamity that the rightless have lost their polity, they no longer belong to any community at all.¹⁵⁰ But to take the losses of this list, coupled with the right to have rights, as new objects for 'human rights' to embrace and formulate rights around would be to misunderstand the effort of the text, and reduce the right to have rights to the framework of the Rights of Man. Arendt's critique of human rights does not merely address the specific objects of right named by and in human rights discourse or enumerated in *La Déclaration des Droits de l'Homme et du Citoyen*, though she surely does this. Her critique addresses the more general frame and thinking that characterize human rights. When

¹⁴⁶ Stephanie de Gooyer, et al. *The Right to Have Rights*. (New York: Verso Books, 2018), 3.

¹⁴⁷ Oudejans, Nanda. "The Right to Have Rights as the Right to Asylum." *Netherlands Journal of Legal Philosophy*. 43, (2014) 7-26.

¹⁴⁸ Hirsch, Asher Lazarus; Bell, Nathan David. "The right to have rights as a right to enter : addressing a lacuna in the International Refugee Protection Regime." *Human Rights Review*. Vol. 18, No. 4. (2017) pp. 417-437.

¹⁴⁹ Michelman, Frank. "Parsing 'a Right to have Rights.'" *Constellations*, 3. (1996) 200-208.

¹⁵⁰ Arendt, "*Origins*," 293-7.

human rights first became a practical political issue, in the emergence of humans who humans and nothing more,¹⁵¹ they did not fail because they simply named the wrong rights and alternatively, if different rights had been named human rights would not have been any more effective. As a guiding form and structure, human rights was impotent. It named the rights it did and named no others because of what it already was, by reason of its theoretical conception and assumptions. Thus, any mere expansion of the objects which human rights apply to would leave untouched a set of bankrupt premises and assumptions.

The right to have rights names *rights* themselves as its object. It breaks with the rights of man outlined in the first part of “The Perplexities”, and, doing this, approaches Rancière’s affirmation of rights as such. The right to have rights exists in its fullest sense as a question— as Frank Michelman says, its difficulty “fairly leaps off the page.”¹⁵² It guarantees rights on the basis of a right, but, bereft of rights, of what good could such a right be? By making rights their own source it responds to the perplexities of human rights as Alexander did to the Gordian knot, cutting it in half—not so much solving the problem as approaching it in an entirely novel way. The numerous and varied reformulations of the right to have rights bring it back to the traditional paradigm of human rights, in a sense solving the right to have rights by reintegrating it into an established system, but it is the basic problem manifest in the phrase, its novel approach to the question of rights, which continues to make a claim on our thinking attention and represents the phrase’s enduring significance. Undoubtedly, there invitation to reformulation in the phrase, and this is, perhaps, part of its genius, but by the same token, no reformulation is adequate to the phrase— though each formulation deduced from the right to have rights may be meaningful,

¹⁵¹ Arendt, “*Origins*,” 293.

¹⁵² Michelman, “Parsing,” 200

none exhaust or successfully define the phrase. As Alastair Hunt writes, “far from being a new version of human rights, the right to have rights blows wide open the question of who the subjects of politics are, and prompts us to rethink, from the ground up, the most just shape of a democratic political community.”¹⁵³ The best interpretation of the right to have rights may be one that doesn’t entirely reconcile its novel approach to rights, the question at its heart, and, despite reformulation, retains a space in which the questions can still be heard. Nanda Oudejans provides such an example when she describes the refugee as not merely raising the question of how inclusion into politics can occur, and furthermore, how one who is excluded can still be political, but also, “[raising] fundamental questions as to the people’s self-inclusion and self-foundation”. She writes, “the right to have rights radically calls into question the power of a people to determine itself, and in the wake of that, challenges the concomitant claimed right to select and exclude outsiders in its own interest.”¹⁵⁴ This calling into question is an essential feature of the right to have rights. Another such example is found in Frank Michelman’s *Parsing a Right to Have Rights*, when, after attempting to follow the logic of the right to have rights, he concludes that “reading [Arendt] as I believe she rather ought to be read leads back to the sort of conundrum with which we began, which her text does not resolve”, and which he puts more specifically later: “[Arendt] is pointing to an irreparable groundlessness of rights, affirming our own precarious, existential, collective self-care when it comes to creating and maintaining in this

¹⁵³ Alastair Hunt, “*The Right*,” 77.

¹⁵⁴ Oudejans, “Asylum,” 15-16.

Oudejans reading of the right to have rights is significant because, she multiplies its questions, expands the problem it poses to the constitution of the nation-state at large. In Oudejans reading the right to have rights highlights “the inevitable asymmetry between refugees and the receiving states”, that the refugee is essentially helpless, having little to no influence on a state’s decision to grant admission or not. Oudejans implicates the people of a polity in this problem, the asymmetry experienced by the refugee because, if there is no political reciprocity, no mutual engagement in decisions over inclusion or exclusion, between a state and an outsider, then the reciprocity presupposed in the foundation of a democratic state, the possibility of a collective self-foundation, is also called into question.

world the conditions of civility and humanity for any or for all.”¹⁵⁵ In other words, if the perplexities of the Rights of Man made them politically impotent, the strength of the right to have rights is that it is an embodiment of the perplexities themselves, the perplexities inherent to human rights. It continually reopens the problem they present, repeating and reminding that these perplexities and the groundlessness of human rights, remain. Instead of being rendered invalid like the Rights of Man did, “which had never been philosophically established but merely formulated, which had never been politically secured but merely proclaimed,”¹⁵⁶ the right to have rights points to this very challenge, the absence of an enduring philosophically and politically secured establishment, and subjects the questions of establishment, foundation, and authority, the perplexities of human rights, to continued thought and attempted solutions.

Rightlessness and Holes of Oblivion

The emergence of millions of rightless refugees made Arendt aware of the existence of a right to have rights, only as the last and most important right lost by the rightless, sealing them into their rightlessness. Rancière’s critique of the theoretical framework that lead to Arendt’s conceptualization of the rightlessness is significant because it calls into question what Arendt believes the plight of the refugee to be, but it doesn’t undermine her discovery of the right to have rights. This right emerged from her consideration of the refugees of World War One and Two, but it is not tied to, nor does it depend on, the specific analysis Arendt makes of this situation. As in Arendt’s treatment of the historical event and her approach to thinking, the right to have rights doesn’t depend on a given set of premises, and her ideas do not topple when a

¹⁵⁵ Michelman, “*Parsing*,” 203, 207.

¹⁵⁶ Arendt, “*Origins*,” 447.

premise is upset. Even in the language Arendt uses to describe the right to have rights, it is something she becomes aware of, it is not tied to one or another proof—that is, in the absence of a rightless subject, the right to have rights is not invalidated. Indeed, the pertinent shift would be to realize that this right was never definitely lost. Thus, one may question the concept of rightlessness without undoing the right to have rights. It stands alone as what she comes to call “the one human right¹⁵⁷”, and is connected to rightlessness as much as it is to other of Arendt’s concepts and her broader conception of the modern world. Indeed, Arendt makes a significant revision in a later text, *Eichmann in Jerusalem*, to what she described in *Origins* as “holes of oblivion”, a revision which may be successfully extended to her concept of rightlessness.

In “Totalitarianism in Power,” the third chapter of “Totalitarianism,” the final section of *Origins*, Arendt describes the way totalitarianism created, or attempted to create, what she calls, “organized oblivion,” a total domination of man extending beyond the concentration camps to society at large, effectively creating a, “concentration-camp society,” a, “society of the dying” that consisted of, “living corpses.”¹⁵⁸ The analogy of the subject of totalitarian domination to a living corpse likens their life to the life of the dead, because, as encapsulated in the concept of superfluosity, the subject of total domination losing both the public and private realm of human life, like the dead, was made to not belong to the world. Because totalitarian domination could be only fully test its most radical techniques in the concentration camp, the camp was the most perfectly realized example of organized oblivion, of the society of the dying.¹⁵⁹ For this reason Arendt called the concentration camps “holes of oblivion,”¹⁶⁰ places from which, as

¹⁵⁷ Arendt, “*Origins*,” 629.

¹⁵⁸ Arendt, “*Origins*,” 447-456.

¹⁵⁹ Arendt, “*Origins*,” 456.

¹⁶⁰ Arendt, “*Origins*,” 459.

David Rousset writes, “there can be no testimony”, for, “no witnesses are left...there are hundreds of thousands of us here, all living in absolute solitude”¹⁶¹. In the camps death itself was made anonymous and robbed of its meaning, “making martyrdom, for the first time in history, impossible.”¹⁶²

The camp was a radically new experience in human history, and was itself an existential state—Arendt writes that “the concentration camps are the laboratories where changes in human nature are tested.”¹⁶³ The conceptualization of the rightless is not only similar to that of the subject of totalitarian domination, it bears a striking resemblance to Arendt’s depiction of the concentration camp. To be sure they are not alike in content, but the form of Arendt description is similar. Both the rightless and the camp are conceptualized as absolute existential states, bordering on an ontological condition. As human nature is changed and recreated in the camp, the refugee experiences a loss of, “some of the most essential characteristics of human life,” a loss which can hardly be understood without, in some way, taking into account human nature. In this respect, both the rightless and the camp appear as perfected conceptual categories. Rancière objects to Arendt’s rightless person because, on the most basic level, he does not believe that such a concept really exists in the world. Arendt’s revision of the concentration camp, as a hole of oblivion, is made on similar grounds.

At the end of the chapter titled “Evidence and Witnesses,” in *Eichmann in Jerusalem* Arendt quotes from the memoir of a German Army physician named Peter Bamm who holds the same view of concentration camps and of totalitarian domination that she puts forth in *Origins*.

¹⁶¹ David Rousset quoted in Arendt, “*Origins*,” 451.

¹⁶² Arendt, “*Origins*,” 451-2.

¹⁶³ Arendt, “*Origins*,” 458.

He writes that totalitarian governments “don’t permit their opponents to die a great, dramatic martyr’s death for their convictions...the totalitarian government lets its opponents disappear in silent anonymity”, from which it follows that “anyone who had dared to suffer death rather than silently tolerate the crime would have sacrificed his life in vain.”¹⁶⁴ Such a sacrifice might retain its moral dimension, but would nonetheless be “practically useless.”¹⁶⁵ In anonymity, whatever morality may be demonstrated by suffering death rather than tolerating totalitarianism’s crimes in silence, would be known to no one, and thus be vain and useless. The hopelessness expressed by this view is the horror Arendt evokes in *Origins*, but in this chapter, published twelve years after the initial publication of *Origins*, Arendt rejects the hopeless view that sees even death as practically useless. Reflecting on the story of Anton Schmidt, a German officer who helped Jews during the war— supplying them with forged papers and transportation—and was executed by the Nazis for his actions, Arendt writes, “the holes of oblivion do not exist. Nothing human is that perfect, and there are simply too many people in the world to make oblivion possible. One man will always be left alive to tell the story. Hence, nothing can ever be ‘practically useless.’”¹⁶⁶

Arendt is dealing with questions of memory and storytelling in this quote, among the primary things totalitarianism seeks to obliterate in its aim to totally isolate, and thus totally dominate its subjects. Total domination depended on the radical anonymity it forces upon its subjects, the “absolute solitude” Rousset describes, in which every human exists as if they are alone, without others, and thus are powerless. As power can only be created by people together,

¹⁶⁴ Arendt, Hannah. *Eichmann In Jerusalem: a Report on the Banality of Evil*. (New York: Viking Press, 1965), 232.

¹⁶⁵ Arendt, “*Eichmann*,” 232.

¹⁶⁶ Arendt, “*Eichmann*,” 232-3.

corresponds to the condition of human plurality, there is no potential for power in isolation.¹⁶⁷

But here Arendt rejects the success of total domination she had theorized, as holes of oblivion, in *Origins*.

Arendt gives two reasons for why the holes of oblivion do not exist. First, she writes, “nothing human is that perfect,” and second because, “there are simply too many people in the world to make oblivion possible”. These claims are interrelated. The second claim corresponds to the condition of human plurality, “the fact that men, not Man, live on the earth and inhabit the world,”¹⁶⁸ which accounts for the claim that there will always be someone left alive to tell others what has happened.¹⁶⁹ If this were not the case, if there really were holes of oblivion in which human plurality was completely destroyed, in which people could disappear without a trace, then human life as we know it would have ceased to exist. The fact of plurality also contains in it the first rejection, for plurality rules out the existence of anything perfect in human affairs. Human affairs are worldly, and the world is rife with contradiction and change. Perfection can only be achieved by retreating from the world into the self—as in the case of the “a closed, integrated, organically grown and cultivated individual” who ignores the fact of plurality and “looks around to see where in the world the most favorable place for his development might be, in order to bring himself into harmony with the world by detour of thought.”¹⁷⁰ But this activity, disappearing into the self, strives for a perfection that is neither human nor of the world.

In Arendt’s rejection of the holes of oblivion, her championing of plurality and the absence of perfection in human and worldly affairs, she also rejects the notion of a political

¹⁶⁷ Arendt, “*Human Condition*,” 201.

¹⁶⁸ Arendt, “*Human Condition*,” 7.

¹⁶⁹ Arendt, “*Human Condition*,” 7.

¹⁷⁰ Arendt, “*Lessing*,” 8.

thinking that arrives at perfection, or perfected concepts. Only a thinking that departs from the world can arrive at an idea so sealed and absolute as the total anonymity and total domination of the holes of oblivion. It may be observed that rightlessness and the rightless person is another such perfect concept. The rightless, having lost some of the most essential features of human life and been expelled from humanity, are without, “the very qualities which make it possible for other people to treat him as a fellow man.”¹⁷¹ By virtue of their deprivation they cannot even be recognized as human. A concept which subjects millions of people to this status is no less absolute and overdetermined than the concept of *holes of oblivion*, and also flies in the face of the statement that, “nothing human is that perfect.”

Arendt once quoted a remark of Kant’s, in which he said, “it is by no means unusual upon comparing the thoughts which an author has expressed in regard to his subject, . . . to find that we understand him better than he had understood himself. As he has not sufficiently determined his concept, he has something [sic] spoken, or even thought, in opposition to his own intentions”, and wrote herself that, “this remark is of course applicable to his own work.¹⁷²” In this case we apply the remark to her work. Unbound to the specific conceptualization of rightlessness, the proximity between Arendt and Rancière appears fully. In Arendt’s statement against human perfection, Rancière’s rejection of a ‘pure politics’ can be heard. Both thinkers are concretely concerned with refuting, or circumventing the idea that establishes a space beyond the possibility of politics. Where Arendt seems to theorize this space, rightlessness, only to provide a resource to contest it, Rancière constructs his entire theory of politics against this possibility, as a theory of including the excluded. It might be said of Arendt that, in the formulation of the right to have

¹⁷¹ Arendt, “*Origins*,” 300.

¹⁷² Arendt, “*Mind*,” 63.

rights, she is attempting to prove that *rights are political*, specifically because she observes a political situation in which rights seem not apply. Conversely one might say of Rancière's project, that it intends to demonstrate that *the political is rights*. In reference to this distinction, the right to have rights can be seen as a radical break in Arendt's work, and a bridge between her's and Rancière's though, as it points towards the possibility of politicizing that which appears to be apolitical, that, as Bonnie Honig puts it, "nothing is necessarily or naturally or ontologically *not* political."¹⁷³ This is the activity Rancière describes as the putting of two worlds in one and the same world—it is the activity of expanding the political. The right to have rights provides a resource for this expansion.¹⁷⁴

¹⁷³ Bonnie Honig, "Political Theory and the Displacement of Politics" quoted in Alistair Hunt, "*The Right*," 92.

¹⁷⁴ Alistair Hunt, "*The Right*," 93.

Chapter III

Chapter two began with the speech Arendt gave upon receiving the Lessing prize, in which she praised Lessing's practice of thinking, *selbstdenken*, for preserving a link between action and thought—"both action and thought occur in the form of movement"¹⁷⁵. This connection between thinking and movement is important in Arendt's own thinking writing, and on the basis of this insight we were able to rethink Rancière's critique of Arendt. We saw that thinking, as a form of movement, is an activity that does not arrive at answers but is terminated by them, that "every truth that is a result of a thought process necessarily puts an end to the movement of thinking"¹⁷⁶. This insight, of the priority Arendt gives to movement in political thought, can help radicalize her work. Yet, it is a mistake to overstate the importance of this conception of thinking, or to use it in order to create a primarily negative or destructive interpretation of her work that eschews answers and conclusions. Arendt creates concepts and theoretical structure that, often arriving at answers, in what Judith Butler has described as her "outrageously authoritative tone" of "bold declaratives, authoritative prose,"¹⁷⁷ that shouldn't be simply revised or written off. Neither the intent to stimulate thought and practice independent thinking are incongruent with the task of argument and construction, of announcing full ideas. Thus a concept like the right to have rights is only partially treated when, as in the preceding chapter, it is primarily defined in its negative and critical dimension. It has an entirely other dimension that is worthy of treatment. The right to have rights and the idea of a human right is

¹⁷⁵ Arendt, "*Lessing*," 9.

¹⁷⁶ Arendt, "*Lessing*," 10.

¹⁷⁷ Judith Butler, "Heidegger & The Role of Thinking," October 2009, the European Graduate School EGS Media and Communication Studies department program Saas-Fee Switzerland Europe, Youtube, 120 minutes, <https://www.youtube.com/watch?v=e66FEnJge9k>.

central to an overarching argument Arendt makes in *Origins*, attempting to respond to what she calls “the burden of our times,”¹⁷⁸ the same burden to which totalitarianism responds.

Concluding Remarks: Totalitarianism and the Burden of Our Time

The original publication of *Origins* begins and ends—in its “Preface” and “Concluding Remarks”—with an invocation of the need for a “new law on earth”. Subsequent editions of *Origins* excised “Concluding Remarks,” replacing it with an additional chapter on totalitarianism. Arendt clearly states this change wasn’t made because she no longer agreed with the argument of “Concluding Remarks”—she wrote of this, “suggestive but consciously inconclusive,” section, “it may be argued that the very inconclusiveness of the original ending, showing the extent to which the author was involved and prepared to remain engaged in her subject matter, was better attuned to the mood and style of the whole book.”¹⁷⁹ *Ideology and Terror: A Novel Form of Government*, which replaced *Concluding Remarks*, is more rigorously theoretical and punctuates Arendt’s analysis of totalitarianism. By contrast, *Concluding Remarks* returns to the question of human rights and shows how her conception of a human right, the right to have rights, is deeply bound up with other questions in her work, namely that of the radical break the modern world, which “was born with the first atomic explosions,”¹⁸⁰ has made with the past, and the problems entailed in this break.

¹⁷⁸ The Burden of Our Time is the title of the first British edition of The Origins of Totalitarianism.

¹⁷⁹ Arendt, “*Origins*,” 617,

¹⁸⁰ Arendt, “*Human Condition*,” 6.

The first half of *Concluding Remarks* addresses the question of totalitarianism, and “the disturbing relevance of totalitarian regimes.”¹⁸¹ Arendt speaks of totalitarianism, partisanship for the world, in terms of relevance—a relevance to the modern world, because regardless of its longevity (Arendt believed it likely that totalitarianism would disappear), it is a form of government that cannot be separated from the crisis of the twentieth century. As puts it, totalitarianism became, “this century’s curse only because it so terrifyingly took care of its problems.”¹⁸² The problems of this century, addressed in brutal and unthinkable ways by totalitarianism, remain with us, thus making totalitarianism relevant, not simply in its own right, but in relation to the challenge that must still be faced.¹⁸³ Totalitarianism’s true significance is that its aims and extreme methods revealed, for the first time, the fundamental and intractable problems of this century. This half of *Concluding Remarks* can largely be found in, and as the impetus for, the chapter that came to replace it, *Ideology and Terror*, which makes a deeper analysis of totalitarianism’s aims and means.

The second half of *Concluding Remarks* (the chapter is divided in half by a single space) deals with the problems of the modern world. Above all, the problem is that “the whole structure of Western culture with all its implied beliefs, traditions, standards of judgement, has come toppling down over our heads,”¹⁸⁴ and the burden of our time is to rise to the challenge of this collapse. Arendt enumerates four characteristics, or distinct problems, implicated in the collapse, and revealed in the practices of totalitarian domination.¹⁸⁵ Totalitarianism made a claim to global

¹⁸¹ Arendt, “*Origins*,” 619,

¹⁸² Arendt, “*Origins*,” 619,

¹⁸³ Arendt, “*Origins*,” 619,

¹⁸⁴ Arendt, “*Origins*,” 625,

¹⁸⁵ Arendt, “*Origins*,” 625,

rule, spread the notion that ‘everything is possible’, attempted to change the nature of man, and was contemptuous of factuality.¹⁸⁶ These are totalitarianism’s “solutions” to the problems of our time, made apparent in totalitarianism’s attempt to ‘solve’ them. Corresponding to totalitarianism’s claim to global rule is the fact that, “mankind is no longer a beautiful dream of unity or a dreadful nightmare of strangeness, but a hard inescapable reality”; corresponding to its notion that ‘everything is possible’ is the, “knowledge that far more is possible than we had ever thought”; corresponding to the totalitarian attempt to change the nature of man is the, “insight that no nature, not even the nature of man, can any longer be considered to be the measure of all things”; and corresponding to totalitarianism’s contempt for factuality is, “modern man’s deep-rooted suspicion for everything he did not make himself.”¹⁸⁷ Together, the novel result of these four problems is that, “though we have many traditions and know them more intimately than any generation before us, we can fall back upon none, and that, though we are saturated with experience and more competent at interpreting it than any century before, we cannot use any of it.”¹⁸⁸ The premise of Arendt’s thinking is that, although totalitarianism is a supreme calamity, it did not create our burden, the collapse of tradition and civilization. Indeed, it faced this burden before the rest of the world did, and by responding to it in a ruthless and extremely destructive manner, has forced us to face the burden too—the collapse of all our traditions and the rejection of everything given.¹⁸⁹ Tradition was among our givens, and with its collapse, other of our givens, the world, natural laws, human nature, and even human existence, are no longer trusted.

“Modern man has come to resent everything given, even his own existence...in his resentment of

¹⁸⁶ Arendt, “*Origins*,” 625,

¹⁸⁷ Arendt, “*Origins*,” 625,

¹⁸⁸ Arendt, “*Origins*,” 625,

¹⁸⁹ Arendt, “*Origins*,” 631,

all laws merely given to him, he proclaims openly that everything is permitted and believes secretly that everything is possible.”¹⁹⁰ Arendt sees this attitude of fundamental resentment proliferated among the people of the modern world—it is this attitude, even more than the collapse of tradition, which poses a threat, for she finds this resentment of everything given characteristic of the masses without which totalitarianism could not have risen.¹⁹¹ The burden of our time is not merely that traditions have been broken, but that masses of people are so thoroughly resentful of the world as to make the present a fertile ground for the development of the radical solutions embodied by totalitarian domination.

The Emancipation from History and Nature

This crisis is the result of a long process of deterioration which Arendt describes as man’s gradual emancipation from his transcendent sources of law and the authority of law—history and nature. History and nature functioned as origins, which, transcending man and human history, gave meaning to both and appeared secure from the haphazardness of human action accident.¹⁹² Arendt likens both to myths, and sees examples of such a historical origin in various theories of history: “the Greek assumption of a Golden Age”; the “Oriental hypotheses that an absolute evil was the source of things human”; the “Hebrew myth of a lost Paradise [to] be rediscovered in the Messianic Age”; “the Christian myth that original sin needed the entire course of history as its necessary road to salvation”¹⁹³. Common to each of these theories is the belief that,

¹⁹⁰ Arendt, “*Origins*,” 630,

¹⁹¹ Arendt, “*Origins*,” 630,

¹⁹² Arendt, “*Origins*,” 626,

¹⁹³ Arendt, “*Origins*,” 626,

“something was there, given, already established before human history actually began.”¹⁹⁴ Such origins gave a source of law and of authority beyond human control, an authority to be obeyed or disobeyed to be sure, but given nonetheless, not subject to change.¹⁹⁵

Man’s emancipation from history occurred in the American and French revolutions, which, without proposing a new concept of history, they still relied on the enlightenment’s theory of progress, proposed a new concept of its ultimate meaning.¹⁹⁶ History had been mankind’s education, and they declared that man had now come of age. The revolutionaries declared the concept of human rights, rights that were given with human nature as such, independent of an emancipated from historical rights,¹⁹⁷ thus declaring man’s independence from a transcendent origins in history.¹⁹⁸ But this declaration was not the emancipation of man into utter independence, for it substituted nature for history, replacing historical rights with natural rights in the tacit assumption that nature had a more essential relationship to the human than history.¹⁹⁹ In the modern age, in which man has produced weapons capable of destroying the earth and achieved a level of scientific knowledge that renders the existence of natural laws doubtful, man has come into utter independence, equally emancipated from nature and history.²⁰⁰ Today, no nature, not even the nature of man, can any longer be considered to be the measure of all things—there are no longer any transcendental sources of law and authority.

¹⁹⁴ Arendt, “*Origins*,” 626,

¹⁹⁵ Arendt, “*Origins*,” 626,

¹⁹⁶ Arendt, “*Origins*,” 626,

¹⁹⁷ Burke’s vision of rights is an example of historical rights.

¹⁹⁸ Arendt, “*Origins*,” 626,

¹⁹⁹ Arendt, “*Origins*,” 626,

²⁰⁰ Arendt, “*Origins*,” 627,

The absence of a transcendental source of law and authority has created modern man's resentment and distrust for everything merely given, but this does not mean that there are no more givens, or that we are fundamentally deprived of law and the authority of law. The challenge we must face, the burden of our times, is to "create—not merely discover" new laws as well as their very measure, "the principle of their source."²⁰¹ Arendt sees in the coeval emergence of mankind as a factual reality "no longer separated by space and nature, and consequently, by spiritually insurmountable walls of history and culture", with the emancipation of man from nature and history, a situation in which "mankind actually begins to occupy the position formerly assigned to nature or history."²⁰² In the existence of mankind new source of authority may be fashioned. But this does not mean that a new source of authority and law is given in mankind's reality. Totalitarianism attests to the ambivalence of this new reality, in which mankind has taken the place of history and nature. The factual existence of mankind created the possibility for totalitarianism's claim to world domination as much as it may create the possibility for a new source of authority. The great danger and great responsibility of the modern crisis is that anything can come of it. In man's emancipation from the absolute authorities of old, nothing is given other than a new burden of responsibility for what is to come next. The radical destruction of totalitarianism is as likely as the creation of a new source of authority. As Arendt puts it, "mankind will either find a way to live in and rule together an overcrowded earth or it will perish."²⁰³ The modern world is, "a new and yet unknown age."²⁰⁴

²⁰¹ Arendt, "*Origins*," 627,

²⁰² Arendt, "*Origins*," 627,

²⁰³ Arendt, "*Origins*," 627,

²⁰⁴ Arendt, "*Human Condition*," 6.

A New Law on Earth

Establishing a new law on earth means nothing short of making new laws and, before that, creating the authority that must be the source of these laws. The task is at once a dire necessity and a radical opportunity, a necessary response to the threat manifested by totalitarianism as well and the novel possibility of man himself giving a meaning to his history and all of his activities. The establishment of a new law on earth is only needed because of the disintegration of every law given by Western civilization, and only conceivable because nothing short of the real existence of mankind could suffice to create a new source of the authority of law. In this sense, the crisis of the collapse of civilization is “not the end of history, but its first consciously planned beginning.”²⁰⁵ Only in the absence of any given laws can man himself create a new one. Human rights had been based on the assumption of nature’s absolute authority, and with the invalidation of nature authority, human rights were also invalidated; in the new reality, in a time when, if there is to be a new source of authority man must make it himself, human rights can be revived and made the basis of a new law.

One Human Right

The right to have rights appears twice in *Origins*. In the first instance Arendt writes, “we became aware 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”;²⁰⁶ in the second instance she writes, “the new situation, in which ‘humanity’ has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the

²⁰⁵ Arendt, “*Origins*,” 627.

²⁰⁶ Arendt, “*Origins*,” 297.

right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself.”²⁰⁷ In both iterations it is accompanied by another right: first an additional right, an ‘and’, and then translated, by an ‘or’, into another right. The two others rights are rights to belong—“a right to *belong* to some kind of organized community” and “the right of every individual to *belong* to humanity.” In the space between the first and second enunciation the right itself, as a right to belong, does not radically change, although its object, the object of belonging, does change—*humanity* replaces an *organized community*. An organized community is a space for politics in so far as it creates a space in which speech and action are meaningful. In the rapid substitution of humanity for an organized community, the organized community appears to be subsumed by, or included in, humanity. At the same time as this replacement occurs, what are initially presented as two rights, the right to have rights *and* the right to belong, becomes a single right—a right to have rights *or* a right to belong. This singularity is already alluded to in the first appearance of the right to have rights when Arendt describes “what we must call a ‘human right’ ... a general characteristic of the human condition.”²⁰⁸ She is thinking in terms of a human right—which she makes explicit in the “Concluding Remarks,” writing, “man as man has only one right that transcends his various rights as a citizen”, and “corresponding to the one crime against humanity is the one human right”²⁰⁹. In the declaration of a single human right, a unity appears between the right to have rights and the right to belong.

The idea of belonging does not only appear in the formulation of a right—it recurs in *Origins*, and is almost abundant in “The Perplexities.” Arendt speaks of the novel tragedy visited

²⁰⁷ Arendt, “*Origins*,” 298.

²⁰⁸ Arendt, “*Origins*,” 297.

²⁰⁹ Arendt, “*Origins*,” 628-9,

upon the rightless in terms of belonging. She writes, “something much more fundamental than freedom and justice, which are rights of citizens, is at stake when *belonging* to the community into which one is born is no longer a matter of course and *not belonging* no longer a matter of choice”²¹⁰; and, “the calamity of the rightless is not that they 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.”²¹¹ In the “Totalitarianism” section of *Origins* Arendt writes of *superfluosity* and *loneliness* in terms of belonging: they are “the experience of *not belonging* to the world at all, which is among the most radical and desperate experiences of man.”²¹²

Belonging is one of the fundamental human experiences imperiled by the modern crisis, thus it is also central in Arendt’s response to the crisis. In speaking of a right to belong one does no more than parrot Arendt. But the fact that the right to belong is equated to, and perhaps even undergirds, the right to have rights makes it evident that, when Arendt writes of one human right, she is writing of the right to belong.

Belonging

This idea of belonging must be separated from the idea of belonging critiqued by Rancière. That belonging is modeled on Burke’s concept of inheritance in which the relations of property are extended to the concept of rights. Arendt does not accept that vision of rights, it is among the flaws of the rights of man and is in part responsible for the emergence of the rightless.

²¹⁰ Arendt, “*Origins*,” 296.

²¹¹ Arendt, “*Origins*,” 295.

²¹² Arendt, “*Origins*,” 475.

The idea of belonging referred to here is distinguished from that which identifies particular individuals with definite identities and furthers what Rancière calls the *process of consensus* and depoliticization. Belonging, in its new sense, is productive of, and even a precondition for, politics.

As we've seen in the shift from a right to belong to an organized community to a right to belong to humanity, belonging is not an autonomous concept that holds its own worth for Arendt. Its worth stems, to a significant degree, from its object, that to which it relates. In a 1964 interview with Günter Gaus, Arendt speaks of two kinds of belonging; one is a naturally occurring condition, "you belong to some sort of group when you are born, always"; the second belonging is political, it is the belonging that occurs in forming or joining some group or organization which "has to do with a relation to the world" (here she defines *the world* as "space for politics"), based on what the "people who become organized have in common...interests"²¹³. This distinction is made over a decade after the publication of *Origins*, in which both senses of belonging seem to be entwined. Belonging is related to an organized community—which is understood as a space for politics—and also to humanity, which expands beyond the designation of an organized community, of the realm of politics, to the private realm of human life as well. Arendt's human right responds to the plight of the rightless and the crimes of totalitarian domination, which not content with isolating individuals, eradicating the space for politics which they share with others, "destroys private life as well."²¹⁴ To not belong to the world, to be superfluous, does not mean to be merely isolated from others—expelled from politics—but to be made lonely, forced from the private realm as well. Loneliness follows upon isolation if the

²¹³ Hannah Arendt, and P. R. Baehr. *The Portable Hannah Arendt*. (New York: Penguin Books, 2000), 16

²¹⁴ Arendt, "*Origins*," 477.

isolated person is no longer recognized as a human and treated as a mere animal.²¹⁵ In Arendt's concept of rightlessness, the rightless, who have lost those qualities which make them recognizable and ensure their treatment as humans, are indeed subjected to such a condition.²¹⁶ Thus, the right to belong to humanity encompasses both the public and private realms of human life.

Belonging to humanity is not given. This is the tragic insight brought to light by the appearance of the rightless, and revealed to Arendt that what had hitherto been thought of as an immutable characteristic of the human condition was actually a human right—the right to have rights or the right to belong. Much as the burden of our time was brought to light by the outrageous actions of totalitarianism, this human right becomes apparent only when it is perceived to be lost, in the appearance of the rightless.²¹⁷ A right, a human right even, is neither transcendent nor absolute, because of the simple fact that it can be taken away. The rightless signal the possibility of not belonging to humanity, both a political and a private loss. The rightless are not relegated to the private realm, they are pushed from the space of both the private and public realm. This is the expulsion from humanity, an expulsion that, unlike the loss of a home, of government protection, or of access to the realm of politics, is unheard of “in the long memory of history.”

²¹⁵ Arendt, “*Origins*,” 477.

²¹⁶ Arendt, “*Origins*,” 300.

²¹⁷ Arendt, “*Origins*,” 297.

Rightlessness

As we've attempted to demonstrate, the concept of rightlessness is an untenable one, more of a conceptual category than of the world. From this position, the right to have rights or the right to belong is no less essential, but is not considered as a right that was definitely lost. As a general human characteristic or capacity it may be removed but not erased, taken but not lost. Following Rancière's argument, an individual can be deprived of their human rights, but because these rights cannot be absolutely erased, because there is still an awareness of them, they can be taken back. It is in this sense that we don't agree with Arendt's concept of rightlessness; but because rightlessness was essential to Arendt's awareness of this human right, in what follows we return to and explore the concept, without affirming it.

The defining and truly damning plight of the rightless is that, not only had they lost their human rights, been expelled from humanity, but, as Arendt writes, they, "could not regain these rights."²¹⁸ There are, of course, examples in which human rights were *restored* to the rightless. But, as in the example of the state of Israel, or the nationality based reintegration programs (in the case of Mexico's acceptance of some Spanish refugees, or the national quota system instituted by the United States)²¹⁹, human rights were only ever restored by way of the restoration of national rights, the rights of citizenship.²²⁰ The restoration of national rights is achieved based on the decision of a sovereign national or international body, a decision over which the refugee "has little, if any, influence."²²¹ The plight of the rightless is not that they are beyond the *potential* possibility of regaining rights, but that, while retaining the *potential*, the

²¹⁸ Arendt, "Origins," 297.

²¹⁹ Arendt, "Origins," 294. footnote 48.

²²⁰ Arendt, "Origins," 299.

²²¹ Oudejans, "Asylum," 15.

possibility itself has nothing to do with them. The rightless may be given rights again, but this will be a gift, over which they hold no sway—a gift given to apolitical humans, humans who have lost the capacity to act.

It is the loss of the right to action and to meaningful speech that determines rightlessness. Without these capacities the rightless do not have the capacity to regain their rights, to intervene in political decisions, such as the decision over the restoration of national rights. They are the defining characteristics of man insofar as he has the capacity to act politically.²²² Without such capacities whatever is visited upon the rightless, injustice and privilege alike, has nothing to do with what they have done. “Innocence, in the sense of complete lack of responsibility, was the mark of their rightlessness.”²²³ The rightless experience a loss of agency, and thus a loss of responsibility over their fate and their future. Nanda Oudejans describes this as, “the powerlessness which the refugee experiences,” insofar as, “refugees and democracies cannot jointly decide on the refugee’s admission. As the very decision on his inclusion or exclusion is always taken from within the polity, the refugee is virtually powerless with respect to his own inclusion.”²²⁴ Oudejans calls this the, “inevitable asymmetry between refugees and receiving states,” the fact that the rightless are helpless and the state powerful regarding the restoration of human rights. In the powerlessness of the rightless, which is the condition of their innocence, “blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.”²²⁵ Arendt speaks of the rightless person’s

²²² The significance of speech and action to the human being, and to his capacity for politics is formally elaborated in *The Human Condition*, particularly the chapter titled “Action.”

²²³ Arendt, “*Origins*,” 295.

²²⁴ Oudejans, “*Asylum*,” 13-14.

²²⁵ Arendt, “*Origins*,” 296.

experience of events in these theological terms, for, there powerlessness and inability to act, the actions and decisions of sovereign power appear as absolute judgments, saving or dooming the rightless person. Though the rightless may speak and have opinions, Arendt calls this, “a fool’s freedom, for nothing they think matters anyhow”;²²⁶ no one is obliged to listen to them, whatever they may do lacks the condition of political action, being meaningful or significant, attended to by others.

Though human rights can be restored to the rightless through reintegration into the nation-state system, and though the potential to be reintegrated never disappears, reintegration is dependent on the charity of others and accidents of circumstance. The inability to act or speak in a meaningful way, one which will effect others and bestow responsibility and agency upon the speaker, marks the rightless. Without losing the potential to regain humanity, the rightless have lost the possibility to do it themselves and are at the mercy of others.²²⁷ It is in this sense that we speak of a right to belong to humanity, a right which takes on both the political and natural aspects of belonging delineated in the Gaus interview. As Arendt writes in We Refugees, “we lost our homes, which means the familiarity of daly life. We lost our occupations, which means the confidence that we are of some use in this world. We lost our language, which means the

²²⁶ Arendt, “*Origins*,” 296.

²²⁷ Rancière’s critiques of Giorgio Agamben and François Lyotard are given full expression here in the concept of rightlessness. The direct relationship of a sovereign power over an individual in the state of exception, outside of politics, is established in Arendt’s and Oudejan’s account of the powerlessness of the rightless with regard to sovereign states.

Lyotard’s transformation of human rights into the *rights of others* is also manifested. By removing the capacity for meaningful speech and action, for politics, from the rightless, establishing their “innocence in the sense of complete lack of responsibility,” the rightless, subject to charity and accident, are at the mercy of others. This is the establishment of Lyotard’s “absolute victim”, and of human as the “rights of the absolute victim,” which then become the responsibility of an outside power to enforce on their behalf.

Revising Arendt’s concept of rightlessness means that neither Agamben nor Lyotard’s theory is ever reached.

naturalness of reactions, the simplicity of gestures, the unaffected expression of feelings”²²⁸. In the loss of humanity, the loss of the public and the private coincide.²²⁹ There is the loss of a publicly recognized place in the world and also a loss of the “naturalness of reactions, the simplicity of gestures, the unaffected expression of feelings,” a private loss of the way in which one claims and inhabits a place in the world.

Humanity and *Humanitas*

In the same 1964 interview, Günter Gaus quotes from a 1958 speech Arendt gave in praise of Karl Jaspers, subsequently published as “Karl Jaspers: A Laudatio” in *Men in Dark Times*. He quotes, “humanity [*humanität*] is never acquired in solitude, and never by giving one’s work to the public. It can be achieved only by one who has thrown his life and his person into the ‘venture into the public realm’”²³⁰. Gaus is asking after what Arendt means by the phrase a ‘venture into the public realm’—a quote she borrows from Jaspers—but what she says about humanity in her response, as well as in the *Laudatio* itself, reveals a more particular meaning the word has for her, a double register in which she invokes it. At times Arendt uses ‘humanity’ as a synonym for ‘mankind’, but elsewhere, as in the interview and the *laudatio*, and on occasion in *Origins*, it is a concept all its own.

In the quote above Arendt states that humanity is not simply given with being human, which was already made apparent in the work of *Origins*. What is new, however, and what

²²⁸ Kohn, Jerome, and Ron H. Feldman, editors. “We Refugees.” *The Jewish Writings*, by Hannah Arendt, (Schocken Books, 2007), p264

²²⁹ The unification of both public and private in the idea of humanity, and the designation of belonging to humanity as a right, a subject of political dispute, is evocative of Rancière’s process of subjectivization, in which an individual acts politically by manifesting two different identities, designating different belonging, in the same place, and in this, insisting on a revision on the identification or belonging.

²³⁰ Arendt, “*Portable*,” 21.

perhaps sets this idea of humanity apart from one that is synonymous with mankind, is that humanity is acquired or achieved—done so through the venture into the public realm. Arendt explains this venture as “exposing oneself to the light of the public, as a person.”²³¹ The specificity of exposure *as a person* refers back to a distinction Arendt establishes in the *Laudatio*, between, “one’s work,” and, “oneself”, or between, “the individual and the person.”²³² The individual may produce something and give it away to the the public realm, without necessarily making a venture into the public, but if the work itself cannot be separated from the life of the individual, if it a result “of ‘having proved oneself in life,’” then the person appears in public alongside the work;²³³ what emerges from this latter phenomenon, “is unknown to the one who reveals it; he cannot control it...the personal element is beyond the control of the subject.”²³⁴ This personal element only appears in public because it is only apparent to others, can only be revealed where a public space exists. The venture into the public realm is the exposure of the personal element to the light of the public. Because the person who so exposes themselves does not know what will be seen, the distinguishing quality of the venture, the exposure, is that it is unpredictable. Arendt likens the personal element to “the Greek *daimon*...which accompanies every man throughout his life, but is always only looking over his shoulder, with the result that it

²³¹ Arendt, “*Portable*,” 21. The phrase ‘the venture into the public realm’ speaks of *action* which is the most political (corresponding to the human condition of plurality—“the *conditio per quam*—of all political life”) of human activities. It has the double characteristic of revealing the person more than any other human activity, and of being entirely unpredictable. In action “we start something. We weave our strand into a network of relations. What comes of it we never know.”

language p21

²³² Hannah Arendt, “Karl Jaspers: A *Laudatio*,” in *Men in Dark Times* (New York: Harcourt Brace & Company, 1993), 73.

²³³ The abstractness of this distinction may best be remedied by the example of an individual who engages in politics as a politician, joining public conversation and debate, and one who engages as a cabinet member or advisor, contributing to the affairs of the public, but avoiding scrutiny and the public eye.

²³⁴ Arendt, “*Laudatio*,” 73.

is more easily recognized by everyone a man meets than by himself.”²³⁵ The personal element or personality of the human is hidden when it is not exposed before others (it is behind their back, looking over their shoulder).

The personality is revealed in political action, but this does not mean that the personality is merely an element of politics. The manifestation of the personality in public leads Arendt to say that what she calls the public realm has a “deeper significance...which extends far beyond what we ordinarily mean by political life.”²³⁶ To the extent that the public realm is also the space where the personality of human beings to appear to others, “there is manifest in it what the Romans called *humanitas*.”²³⁷

Arendt uses the word *Humanitas* as synonymously with the word *Humanität* or humanity—she writes that, “*humanitas* is precisely what Kant and Jaspers mean by *Humanität*,”²³⁸ and in the 1964 interview, Gaus, quoting the “*Laudatio*” replaces the word *humanitas* with *Humanität* without drawing comment from Arendt.

The idea of *Humanitas*, or humanity, is conceived spatially²³⁹—it names a space in which humans can fully reveal themselves. This space, humanity, is not given, “it can be achieved only by one who has thrown his life and his person into the ‘venture into the public realm.’” Humanity, the space in which the human can fully reveal himself, is achieved by making the venture into the public realm, which we’ve already seen is the act of revealing or exposure. The act of revealing then is coeval with the creation of the space in which one can reveal oneself. In

²³⁵ Arendt, “*Laudatio*,” 73.

²³⁶ Arendt, “*Laudatio*,” 73.

²³⁷ Arendt, “*Laudatio*,” 73.

²³⁸ Arendt, “*Laudatio*,” 73.

²³⁹ Elsewhere in the *laudatio*, Arendt writes of the “space of *humanitas*” (p79) and the “realm of *humanitas*” (p80)

this sense the venture into the public realm is creative—it reveals something at the same time as creating the space in which such a revealing can take place. Arendt writes, “the ‘venture into the public realm’, in which *humanitas* is acquired, becomes a gift to mankind”²⁴⁰. In its creative aspect, the venture can be seen as a gift, for in achieving the space of humanity, the space is opened up to others—the achievement of humanity is not an individual achievement, *humanitas* is never acquired in solitude. The gift is also manifest in the risk one undertakes in the venture, revealing something which is unknown and, for that reason, cannot be controlled. The achievement of humanity establishes a relation between the individual and mankind, as in the giving of a gift. Karl Jaspers is an example of this, one who, in achieving humanity, represented its continued existence to others, even in the domination of totalitarianism which threatened to erase the space of humanity.²⁴¹

Arendt calls the common, shared space between people, the space of politics or the world, but the space of humanity, as distinct from the space of politics, is the space between the individual and mankind, a space through which the individual can relate to mankind. As Arendt writes, “whatever stands up to light and does not dissolve in vapors under its brightness, partakes of *humanitas*; to take it upon oneself to answer before mankind for every thought means to live in that luminosity in which oneself and everything one thinks is tested”²⁴². Arendt discusses *humanitas* in her *Laudatio* for Karl Jaspers because he is at home in the realm of *humanitas*, one who has “written as if to answer for himself before all of mankind”, and one for whom this “responsibility is not a burden.”²⁴³

²⁴⁰ Arendt, “*Laudatio*,” 74.

²⁴¹ Arendt, “*Laudatio*,” 76.

²⁴² Arendt, “*Laudatio*,” 75.

²⁴³ Arendt, “*Laudatio*,” 75.

This idea of humanity is more rarified, a higher idea, than that expressed in *Origins*, contained in the right to belong to humanity. Karl Jaspers demonstrates the achievement of humanity, but he is an exceptional figure, “more at home in this region...than others who may be acquainted with it.”²⁴⁴ Nonetheless, several features of humanity, as found in the “Laudatio,” resonate with the humanity of the right to belong. In “Concluding Remarks” Arendt writes that, as a result of the inescapable reality of mankind, which now exists as a single political reality, “some of the factual responsibility shared by members of every national community for all the deeds and misdeeds committed in their name has now expanded to the sphere of international life.”²⁴⁵ This responsibility is articulated again the description of the relation of the individual to mankind in the space of *humanitas*. To be in this space is to be responsible to mankind, to answer for ones thoughts and actions before mankind, and not merely one’s national community. The new responsibility that comes into being with the political reality of mankind is faced in Arendt’s conception of humanity in the “Laudatio.”

The Authority of Politics and Rights

Arendt reformulates the one human right several times in *Origins*, naming it “a right to the human condition itself”²⁴⁶, “the right of man to citizenship”²⁴⁷, “the right never to be excluded from the rights granted by [one’s] community”²⁴⁸, as well as a right to have rights and a right to belong to humanity. What these other names make more apparent, what each name

²⁴⁴ Arendt, “*Laudatio*,” 76.

²⁴⁵ Arendt, “*Origins*,” 628,

²⁴⁶ Arendt, “*Origins*,” 631,

²⁴⁷ Arendt, “*Origins*,” 629,

²⁴⁸ Arendt, “*Origins*,” 628,

shares, is a common commitment to a political, rather than absolute, conception of rights. This corresponds to Arendt's insistence that, "the only given condition for the establishment of rights is the plurality of men."²⁴⁹ Human plurality is also the condition for man's political life. What is *given*, the plurality of men, is no transcendent origin; unlike history and nature, it is a fact. On its own the fact means nothing, it must be used in the creation of something, made to mean something, like a human right. Arendt writes that a human right, "will, by itself, achieve neither liberty nor justice, for these are the concern of the daily strife of all citizens; it can only secure the participation of all men in the daily strife."²⁵⁰ The participation of men in politics can only be secured by a right, but the right which would secure this participation can itself only be secured through the participation of men, that is through political activity. The condition for politics and the condition for the establishment of rights is the same, human plurality. This is the groundlessness invoked by Frank Michelman—that human rights must be made by humans on their own behalf. While making them groundless, lacking in an absolute source of authority, they also become politicized. Rights secure politics and politics secures rights. Their groundlessness is the fact that they are grounded in themselves.

It must be said explicitly that the creation of human rights, or the possibility of a human right, is the direct result of the existence of mankind. But even with the frame in which a human right is conceivable, the authority by which a new law on earth might be established, which might ground a human right, is absent. This, the question of the foundation of authority, is the most pressing. There is no absolute authority that can sustain law or a human right, thus the only possible source of authority remaining is that which men can create for themselves. All that

²⁴⁹ Arendt, "*Origins*," 629, My italics.

²⁵⁰ Arendt, "*Origins*," 631,

stands is man's capacity for politics and his ability to create something new. The plurality of men, the condition for politics and for the establishment of rights, is also the condition for the establishment of a new source of authority. As Arendt writes, "before drawing up the constitution of a new body politic, we shall have to create—not merely discover—a new foundation for human community as such."²⁵¹ The only possible source of authority, following the rejection of 'history' and 'nature', is man's own capacity for politics.²⁵²

There is a logic in the "Concluding Remarks": the existence of mankind is the precondition for the foundation of a new law on earth. Only a new law on earth can establish the existence of a human right which would guarantee the elementary right to belong to humanity. But the authority on which a human right and a new law on earth depend must be created by the actions of men. Arendt specifically rejects the idea to establish a "world government"²⁵³ that would provide the authority for law and right.²⁵⁴ Once again distancing herself from Burke, she writes that, "we must therefore try for what Burke's great common sense deemed impossible: 'new discoveries...in morality...or in the ideas of liberty'"²⁵⁵. These new discoveries would follow from the acts of men attempting to produce a new authority. Arendt describes this authority in incredible terms, "the prepolitical foundation of a new polity, the prelegal basis of a new legal structure, the prehistorical fundament from which the history of mankind will derive

²⁵¹ Arendt, "*Origins*," 627,

²⁵² Without speaking in terms of authority, this is what Rancière describes when he says, speaking of democracy, that, "I identified [the democratic process] with the political supplementation that confronts this functioning with the 'power of anyone' which grounds it at the cost of disrupting it. The unequal order cannot work without its egalitarian presupposition." It is the authority of man's capacity to act politically, a reflexive authority that is equal parts corrosive and creative. The very ability to challenge authority is the authority on which Rancière grounds his conception of democracy. Rancière, "*Dissensus*," 6.

²⁵³ Arendt, "*Origins*," 298.

²⁵⁴ Arendt, "*Origins*," 298.

²⁵⁵ Arendt, "*Origins*," 630,

its essential meaning in much the same way Western civilization did from its own fundamental origin myths”²⁵⁶. Even though she conceives of an authority derived from man’s creative, political capacity to act, it remains mythic—an origin from which law and right follows, rather than emerging contemporaneously with it (as Rancière’s model allows for).²⁵⁷

Solidarity

In the final paragraphs of “Concluding Remarks” Arendt writes of something else, something “in the meantime”, less awesome than the establishment of a new law on earth.²⁵⁸ She writes of solidarity, and in the attempt to understand the origin of our modern problems, of, “a way towards a new form of universal solidarity.”²⁵⁹ This solidarity is important, the thought on which she concludes these inconclusive remarks, because those, “who were expelled from humanity and from human history and thereby deprived of their human condition need the solidarity of all men to assure them of their rightful place in ‘man’s enduring chronicle.”²⁶⁰ Not so radical as the conscious beginning of history, it is something more tangible to work towards. Not the guarantee of belonging to humanity by a new law or right, but the assurance of humanity to those who have lost it.²⁶¹

²⁵⁶ Arendt, “*Origins*,” 631,

²⁵⁷ See footnote 80

²⁵⁸ Arendt, “*Origins*,” 631,

²⁵⁹ Arendt, “*Origins*,” 632,

²⁶⁰ Arendt, “*Origins*,” 626,

²⁶¹ Concluding her book, “Why Arendt Matters,” Elisabeth Young-Bruehl writes that for Arendt, “the removal of people from our judging consideration contributes to the removal of them from humanity and human history. And being considerate of them contributes to their being included”. Solidarity is a manifestation of the consideration for others. Thus Young-Bruehl situates solidarity at the center of Arendt’s work, writing, “[Arendt] had always written out of solidarity with the victims of such crimes [removal from humanity], with the conviction that telling their story for the sake of the future was her life task”.

Young-Bruehl, Elisabeth. *Why Arendt Matters*. (New Haven: Yale University Press, 2009), 209

In her interview with Günter Gaus, Arendt speaks of this solidarity when she says: “and now I would say that this venture [into the public realm] is only possible when there is a trust [*trauen*] in people. A trust—which is difficult to formulate but fundamental—in what is human in all people [*menschliche in aller menschen*]. Otherwise such a venture could not be made.”²⁶² Arendt invokes this trust in her “Laudatio” of Jaspers. She says that, existing in the realm of *humanitas* as he does, Jaspers has a, “secret trust in man, in the *humanitas* of the human race.”²⁶³ The trust, or solidarity, is formulated in *Concluding Remarks* as an attitude, a, “fundamental gratitude for the few elementary things that indeed are invariably given us, such as life itself, the existence of man and the world...gratitude emphasizes that we are not alone in the world.”²⁶⁴ Gratitude for our elementary givens is not enough to establish authority, to guarantee law and right, but it recognizes the plurality of men and that men can create—“that man was created with the power of procreation, that not a single man but Men inhabit the earth.”²⁶⁵ If gratitude, as the recognition of human plurality, can be understood as the condition for the venture into the public realm, a political act as well as an act of exposure, one that creates the space in which humans may bear the responsibility of the existence of mankind, it seems to be an essential condition for men to establish rights and create a new source of authority for themselves. In the nexus connecting gratitude, rights, plurality, authority, and politics, gratitude, as the recognition of plurality, appears at the center, for plurality, as we’ve seen, is the condition upon which rights, politics, and authority depend.

²⁶² Arendt, “*Portable*,” 21.

²⁶³ Arendt, “*Laudatio*,” 77.

²⁶⁴ Arendt, “*Origins*,” 630-1,

²⁶⁵ Arendt, “*Origins*,” 631,

Conclusion

Chapter III leaves a lot of question up in the air. It introduces a whole bunch of concepts that I'd hoped to explore—but that'll be another 'day.' So far as concluding this project, I might say that I stumbled upon the question of authority when I was more than halfway through it, and that's the question I want to chase now; and that my intention, stepping into this project, had been to look at Arendt in relation to some of Martin Heidegger's writing on belonging. I'd also intended to make my way from Rancière to a whole assortment of his contemporaries who think about both Arendt and Heidegger. Obviously this wasn't the time for that.

The trouble with a project like this, approaching human rights as a theoretical concern, is that it risks becoming alienated from practical concerns. It risks losing sight of the worldly events that demand response and make the theoretical underpinnings of human rights so deeply important.

Arendt threads this needle better than almost anyone, combining her concern with understanding the significance of what has since been acknowledged as the beginning of the modern refugee crisis—a crisis that was still only just unfolding when she wrote about it, and in which she, a refugee herself, was personally involved—with her philosophical concern regarding the existence of the human being. Her engagement with the problem of human rights responds to the practical political problem faced by refugees in a paradigm of nation-states, and also to the philosophical question of what the human being is? or as she would put it, what the human condition is?

To a lesser extent Rancière's engagement with human rights succeeds in establishing the same tense equilibrium between the practical and the philosophic (this relationship is the subject

of his book *La Mésestante*). Writing almost fifty years after Arendt published *Origins*, he is responding to the last decades of the twentieth century, primarily the 90's, in which human rights appeared to justify increasingly violent displays of power on the part states which intervened in humanitarian crises. By the end of the century that established international human rights laws, the most potent form of human rights appeared to have become the right of superpowers to humanitarian intervention in weaker states. The question is not whether or not humanitarian intervention is sometimes necessary or justified, but of the significance of justifying the exercise of state power on the basis of human rights, whether human rights should apply to sovereign states. This seems to be a corruption of the basic principles of rights, and Rancière takes it as such. But he also deals with the question of the human being, entwining it with politics even more deeply than Aristotle, and giving an account of the political significance, not just of the capacity for speech, but of the capacity of writing and the production of words.

As for me...less of an observer of political events than either of these two thinkers...engaging with human rights primarily as a textual concern...attempting to deal with the cleavage between two theoretical accounts of it without much grounding in the exterior, which is to say reality, of human rights...it seems to me I must respond, for it is indeed asked, to the question: do I diminish human rights by thinking of them outside of any immediate political context? Certainly the political context is there to be thought about, but, at least in this project, I haven't done so. It seems to me the only answer I can give is an affirmative one, that yes I've separated human rights from their political contexts, and yes this does diminish them.

In a way, Arendt and Rancière are bristling at precisely such a diminishment of human rights in their respective times—that is, accounts of human rights that, unintentionally or not,

prioritize a number of theoretical assumptions, becoming insulated from the practical political concerns, the worldly realities, of human rights. Rancière's leitmotif, to politicize human rights, is an argument against the hermetic theorization which endangers human rights, and to which they seem prone. Arendt's critique of the Rights of Man is a critique of a paradigm of human rights thinking that was mesmerized by the thought of absolutes and failed to give a practical account of human rights.

Perhaps the answer I've given to the question I posed myself is a bit convenient—already its begun to feel insincere to me. It might be that I've answered the question without facing the problem, or something along those lines. I certainly haven't constructed a theory of human rights. I'm contending with two 'conflicting' accounts, two theories human rights that pay special attention to the pitfalls of theorizing human rights. I'm mining texts to produce another text, but I'm also trying to 'correct' certain theories of human rights that get to far from the practical concerns. I may be very far myself, but the people I'm writing about aren't.

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