

Hannah Arendt and the Challenge of Modernity

A Phenomenology of Human Rights

Serena Parekh

STUDIES IN PHILOSOPHY

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To Edward McGushin

All that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds, can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love, which says with Augustine, “Volo ut sis (I want you to be),” without being able to give any particular reason for such supreme and unsurpassable affirmation.

Origins of Totalitarianism 301

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Abbreviations

BPF	<i>Between Past and Future</i>
BT	<i>The Burden of Our Time</i> (the first British edition of <i>The Origins of Totalitarianism</i>)
CR	<i>Crisis of the Republic</i>
EU	<i>Essays in Understanding</i>
HC	<i>The Human Condition</i>
JP	<i>The Jew as Pariah</i>
LKPP	<i>Lectures on Kant's Political Philosophy</i>
LMT	<i>Life of the Mind—Thinking</i>
LMW	<i>Life of the Mind—Willing</i>
MDT	<i>Men in Dark Times</i>
OR	<i>On Revolution</i>
OT	<i>The Origins of Totalitarianism</i>
PP	“Philosophy and Politics”
PRPI	“Public Rights and Private Interests”
QP	<i>Qu'est-ce que la politique?</i>
RJ	<i>Responsibility and Judgment</i>

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The Groundlessness of Modernity

The trouble with the wisdom of the past is that it dies, so to speak, in our hands as soon as we try to apply it honestly to the central political experiences of our time.

Essays in Understanding 309

1 MODERNITY

Of the many ambiguities, tensions, and puzzles involved in the concepts of human rights, one is particularly important. The central tension of human rights is that they became politically significant precisely at the moment when it was no longer possible to justify them. The emergence of human rights in the 17th and 18th centuries, understood as natural rights or the Rights of Man, took place within the context of the rise of modernity. Modernity meant, among other things, a radical change in how we understood our selves, our world, and the values that regulated them. In modernity, values lost their foundation—either in God or in nature. It is precisely when this happens that human rights, grounded on the value and dignity of human life, are asserted in their modern political form.

Hannah Arendt, the German-Jewish philosopher who wrote during the political upheavals of the mid-twentieth century, is keenly aware of this tension. Indeed, as I argue throughout this book, it is an understanding of this crucial tension that animates her work and prohibits her from offering any simple resolution to justify human rights. Because of her keen understanding of the modern situation she is able to conceptualize both why human dignity needs a ground, and why there can be no absolute or unequivocal way to do this. Her determination to hold on to this tension prevents her from sliding into either “reckless optimism” or “reckless despair,” the two

dominant attitudes towards the horrors of the 20th century that Arendt considered to be equally dangerous, limiting, and vain (OT vii).

Why does modernity entail that our concepts no longer have a ground? Modernity marked the end of transcendence as the dominant way to justify our actions, explain reality, and understand the meaning of our lives. In either its secular, Platonic form, or in its Christian form, the Western tradition had long held that there was a standard or measure outside the human mind against which we could evaluate our actions. The standards for right or wrong, good or bad, beautiful or ugly, existed outside of us and could be called upon, through the use of our reason, to clarify things in our world. Without a transcendent ground, values are no longer anchored in a solid, unquestionable foundation. When Nietzsche announced the death of God, and the nihilism that it implied, he was only making explicit what was entailed in this change that began in the 17th century.

Arendt is interested in this transition not because it is something to be bemoaned, but rather because its political implications were not well understood. One of the more disturbing implications of this change came to light with the rise of totalitarianism. Following Montesquieu, Arendt suggests that since the 17th century, the authority of government and laws had become doubtful. “Whether we like it or not, we have long ceased to live in a world in which the faith in the Judeo-Christian myth of creation is secure enough to constitute a basis and source of authority for actual laws, and we certainly no longer believe, as the great men of the French Revolution did, in a universal cosmos of which man was a part and whose natural laws he had to imitate and conform to” (BT 434). When morality lost its foundation, what prevented the worst from happening was the unstable and unreliable ground of customs (EU 315). When totalitarianism emerged in Europe, it did so within a political context whose foundations were no longer secure; it was no longer possible to justify either morality or our political concepts when they were challenged. Similarly, when human rights needed to be asserted in the 20th century, it was no longer possible to justify them on a certain foundation. According to Arendt, the Rights of Man lost their validity because they had only been *formulated*, but never philosophically *established* or grounded (OT 447). Such a project was no longer possible, or at least not possible with pre-modern certainty. The implications of this became most vivid in the death camps of the Holocaust. Despite this difficulty, Arendt never held that the way to overcome human rights violations was to ground our concepts in a transcendent foundation because she understood that the defining characteristic of modernity was precisely this eclipse of transcendence. Nonetheless, this break with tradition forces us “not only to find and devise new laws,

but to find and devise their very measure, the yardstick of good and evil, the principle of their source. . . . Politically, this means that 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” (BT 435–6).

The decline of transcendence and the lack of foundations for morality are not the only important aspects of modernity for human rights according to Arendt; they are not even the most important. What is unique about Arendt’s analysis of modernity is her focus on *world* alienation as the defining feature of this period. After the eclipse of transcendence, people were not thrown back into the world as it is often believed, but rather withdrew into themselves. What defines modernity is not alienation from the self, but alienation from the world understood as a common space in which people appear during the course of their lives. The rise of the scientific worldview, along with the lesson that we can only know what we have made ourselves; the centrality of Cartesian doubt in modern philosophy, which permeated all levels of thought; and the discovery of the Archimedean point within the self; these are the experiences that forced us to turn within ourselves and conclude that we can no longer trust our senses. Without faith in the senses, the common world and *reality*—“the sum total of aspects presented by one object to a multitude of spectators” (HC 57)—became fictions. We no longer have common experiences that can ground our concepts. In other words, “we can no longer fall back upon authentic and undisputable experiences common to all” (BPF 91). The key loss in modernity for Arendt is the loss of this common sense and the common reality it held together.

The political significance of this loss is not immediately obvious. Traditionally, liberal political theory rests on the idea that society is best organized when individuals are free to pursue their private interests and free from obligations to a common sphere. In contrast, Arendt holds that the decline of the common world created a fertile ground for the destruction of human dignity entailed in totalitarianism. Indeed, totalitarian ideology was appealing to people precisely because it stood as a last support “in a world where nobody is reliable and nothing can be relied upon” (OT 478). In Arendt’s analysis, the destruction of the common world was intimately connected with the creation of superfluous people, who were both rootless and homeless. To be homeless and rootless means that you had “no place in the world, recognized and guaranteed by others” (OT 475). Superfluous people—people who are not needed economically, politically, or socially—were created with the mass unemployment and population growth of the 19th century and continued to exist through the 20th century in the form of mass society. Superfluous people, as Arendt understands them, are not merely those who

are despised and oppressed within any given society. This group of people is unique because they simply do not matter and are entirely expendable. This is different from slavery in the ancient world, for example, since “slaves still belonged to some sort of human community; their labor was needed, used, and exploited, and this kept them within the pale of humanity. To be a slave was after all to have a distinctive character, a place in society” (OT 297). Superfluousness is closely tied to world alienation, as one characteristic of such people is that “they do not believe in anything visible, in the reality of their own experiences” (OT 351).

To be superfluous for Arendt did not mean that these individuals were free to pursue their private interests since others did not need them. Rather, superfluousness was connected to the ontological condition of the masses in the 20th century—loneliness. Loneliness is the experience of not belonging to the world at all. “What prepares men for totalitarian domination in the non-totalitarian world is the fact that loneliness, once a borderline experience usually suffered in certain marginal social conditions like old age, has become an everyday experience of the ever-growing masses of our century” (OT 478). Loneliness, isolation, and “the general contempt for even the most obvious rules of common sense” are the defining characteristics of the people who were so easily organized by the totalitarian movements (OT 316). This was all the easier to do since their feeling of superfluousness creates a “contempt for human life” (OT 311). In other words, without a common world, a shared experience that forms a common ground, individuals are not free and happy, but lonely and contemptuous. When standard rules of morality break down—as they did in totalitarianism and continue to do periodically throughout the world (Rwanda, Darfur)—there is nothing to prevent such a breakdown. As Arendt tells us, “[n]othing proved easier to destroy than the privacy and private morality of people who thought of nothing but safeguarding their private lives” (OT 338).

The existence of superfluous people in modernity, people who lack a place in the world from which to act and be recognized, people for whom the world alienation of modernity means living under conditions of radical loneliness, is thus politically significant for a number of reasons. It prepared people to take part in totalitarianism, and it creates “living corpses.” Under such conditions, human rights violations seem like part and parcel of modern life. This remains important because, even though totalitarianism may no longer be a threat in the way that it was in the middle of the last century, the circumstances of modernity—alienation, superfluousness, and loneliness—continue. As Arendt put it, “totalitarianism became this century’s curse only because it so terrifyingly took care of its problems” (BT 430). These are some

of the circumstances and problems that human rights must overcome if they are to be securely established in the modern world.

Arendt's view of modernity is important in understanding her analysis of human rights for a number of reasons. Because of the primacy of the disappearance of the common world, Arendt's focus is on understanding how a common, shared reality might be possible within the modern worldview. My thesis is that for Arendt, it is through a phenomenological rehabilitation of the common world that a ground for human dignity can be found. This can be seen in contradistinction to theories that seek a foundation in order to overcome the loss of a transcendental foundation. In other words, because we can no longer ground human rights in God's will or natural law, many authors seek to find a grounding for human rights that has the same, unquestionable certainty. But because we still live in the modern world, no such ground is possible outside of particular communities of belief. Yet, if we follow Arendt, we will see that this does not mean we are doomed to a partial, subjective, or arbitrary view of human rights or human dignity.¹ If there is a commonly shared world and experience that we can fall back upon, our options are not limited to the choice between pre-modern objectivity and certainty or modern subjectivity and radical uncertainty. What makes human dignity possible is the reality of the common world and our common experiences.

We should keep in mind how Arendt understood what she was doing as she wrote, lectured, and taught about these issues. Arendt saw herself engaged in a project of *understanding*, which she distinguishes sharply from knowing. "Understanding, as distinguished from having correct information and scientific knowledge, is a complicated process which never produces unequivocal results. It is an unending activity by which, in constant change and variation, we come to terms with and reconcile ourselves to reality, that is, try to be at home in the world" (EU 307–308). This can be further contrasted with, "thoughtlessness—heedless recklessness or hopeless confusion or complacent repetition of 'truths' which have become trivial and empty," which for her is one of the "outstanding characteristics of our time" (HC 5). In this respect her very methodology is connected to what she sees as the fundamental challenge of modernity—the loss of reality—since the goal of understanding is to "reconcile ourselves to reality."

Seeing her project in this light is important because it goes a long way in showing why Arendt is engaged in a different project than many other authors on human rights. Her goal is not to create a normative ground for human rights that all people will be forced to grant under pain of self-contradiction. Nor is she interested in producing words that "fight" human rights

violations, since weapons and fighting belong to the realm of violence, and violence marks the end of speech and hence politics. While acknowledging that understanding in itself is never going to end human rights violations, it nonetheless must accompany this struggle: “For, although we merely know, but do not yet understand, what we are fighting against, we know and understand even less what we are fighting for” (EU 310). Understanding was so essential for her, within context of totalitarianism, because it “will certainly more effectively prevent people from joining a totalitarian movement than the most reliable information, the most perceptive political analysis, or the most comprehensive accumulated knowledge” (UP 311). As a phenomenologist, Arendt is not interested in changing people’s minds or developing a system, but in disclosing the world through language. In other words, creating understanding, “reconciling ourselves with reality,” is essential to grounding human dignity, fighting injustice, securing human rights, though it will never have the same unequivocal results of pre-modern theories.

This book is an attempt to engage in an Arendtian project of understanding. The focus of the book is human rights, a topic that Arendt addressed sporadically throughout her career, but one which deeply impacted her life. In the spirit of Arendt’s phenomenological method, the goal of the book is not to develop a normative theory, but to clarify and bring to light the complexities and contradictions in the concept of human rights within modernity. My central argument is that in order to secure human dignity in the modern world, and hence human rights, there needs to be a meaningful common realm and a shared reality among people. I read Arendt as attempting this rehabilitation throughout her career and therefore as grounding human rights through a rehabilitation of the ontological significance of the common world in a way that is neither based on self-interest nor divorced from it.

Her methodology is phenomenological—she is interested in uncovering the structure of our existence by understanding the world as it appears to us and our being in the world. Because of her phenomenological basis, the common world must be understood as thoroughly intersubjective. It is created through our actions and judgments and in turn the common world conditions us. For Arendt, human rights emerge from the condition of plurality and the fact that we must live together with others. She writes that, “[t]he only given condition for the establishment of rights is the plurality of men; rights exist because we inhabit the earth together with other men” (BT 437). But because human rights must be sustained through our effort, a sense of the common is a necessary condition. Without a sense that the world outside of us depends on our action, there is no possibility of upholding human rights.

That is why she is trying to develop a way of grasping the commonness of our experience that does not deny the specific conditions of modernity (the impossibility of transcendence, the loss of authority, the break with tradition), nor concedes to its distressing implications. Through the process of phenomenological understanding, it may be possible to enliven the concept of human rights as we employ it in the 21st century, if only through seeing both its limitations and possibilities. Furthermore, it may also be possible to develop a concept of human rights that avoids inspiring both reckless optimism—the promise that a solid concept of human rights will be sufficient to repair all the injustices in the world—and reckless despair—the view that because human rights are not omnipotent, we are condemned to misery and degradation. These two perspectives remain as dangerous now as they were in Arendt's day (OT vii).

2 ARENDT: BETWEEN HOPE AND DESPAIR

The last twenty years have seen a profusion of work on Arendt throughout the world.² It would seem that Arendt's insights have only grown more relevant since her death in 1975. As the French newspaper *Le Figaro* noted, “[h]er books have not ceased to acquire increased interest as the world today has not ceased to confirm her intuition and her vision.”³ Indeed, Arendt is even quoted in the U.S. Congress by political figures as prominent as Speaker of the House Nancy Pelosi.⁴ What is it about Arendt's work that is so attractive to people today? To be sure, many of her insights are not easy to understand and comforting, nor do they confirm our long held beliefs and deep intuitions. Yet despite this, people from various backgrounds, nationalities, and political circumstances have engaged with Arendt in fruitful ways.

Part of her enduring appeal may be that Arendt wrote during what she considered to be “dark times”—the rise of totalitarianism and its spread throughout Europe. As many have argued, we too seem to be going through “dark times”: not merely because of our awareness of the constant threat of terrorism, or chemical and nuclear attacks, but also because of the way our democratic state has responded to this threat—a war of choice in Iraq, the suspension of civil liberties at home and *habeas corpus* for our “enemies,” the return of torture as a legitimate tool in warfare. While it would be an exaggeration to claim a direct parallel between this situation and the events that led to totalitarianism in the first half of the last century, there is clearly much that resonates in Arendt's work and our current political climate.⁵

Yet there is also a deeper reason, I think, why so many have turned to Arendt. Arendt embodies a tragic vision of the world, but one that is

thoroughly infused with hope. It is this attitude that is most appropriate for studying human rights in our time. Her vision, I believe, emerged from a combination of the events in her life and her intellectual struggles. In 1943 Hannah Arendt began her life-long meditation on the problems of human rights and statelessness in an essay entitled “We Refugees.” These meditations were not abstract speculation, but rooted in her lived experience. Having fled Nazi Germany some ten years earlier and escaped from an internment camp in France, she found herself in America among others who had shared a similar path. She and her fellow Jewish refugees eschewed the term “refugee” and preferred to consider themselves immigrants—immigrants who had come to America simply to improve their lives, and not because they were fleeing persecution. As such, she notes that they were tremendously optimistic despite the horrors that they had left behind. In a way that is typical of Arendt, she diagnoses this optimism as something other than it appears. She writes:

No, there is something wrong with our optimism. There are those odd optimists among us who, having made a lot of optimistic speeches, go home and turn on the gas or make use of a skyscraper in quite an unexpected way. They seem to prove that our proclaimed cheerfulness is based on a dangerous readiness for death . . . Thus, although death lost its horror for us, we became neither willing nor capable to risk our lives for a cause. Instead of fighting—or thinking about how to become able to fight back—refugees have got used to wishing death to friends or relatives; if somebody dies, we cheerfully imagine all the trouble he has been saved. Finally many of us end by wishing that we, too, could be saved some trouble, and act accordingly (JP 57–58).⁶

A little further on she writes, “[t]heir optimism is the vain attempt to keep head above water. Behind this front of cheerfulness, they constantly struggle with despair of themselves” (JP 60).

What are we to make of this disclosure of despair, the revelation that optimism masks a tendency towards suicide, which she presents as a fact of life as a refugee? Did she, too, wish that she could be “saved some trouble” of living? Did she, then almost 40 years old, not share the “deep despair” of the middle aged man who “going through countless shifts of different committees in order to be saved, finally exclaimed, ‘*nobody here knows who I am!*’” (JP 61).⁷ To be a nobody, Arendt tells us elsewhere, is to be denied one’s human dignity (HC 181).⁸ While Arendt does not say that this is her own experience, she does not deny it either. The title of this article is, after all, “We Refugees.”

Though there may be a current of despair in Arendt's work, there is a much deeper hope that pervades it. Her hope in humanity is founded upon something she insisted on throughout her life—that the “supreme capacity of man” is that he has the power to begin and to create (OT 479). This is an insight that she developed in her doctoral dissertation on the concept of love in the work of Augustine.⁹ Through Augustine she discovered the power of what she calls *natality*, the power to begin and to act that is part of the human condition. This capacity means that we are never purely determined by powers outside of us, like nature or history, nor from something within us, such as despair and alienation. We are born with the capacity *for* freedom,¹⁰ the ability to begin something new. That this hope is one of the most enduring themes in her work is supported by her reference to Augustine—*Initium ut esset homo creatus est*, “that a beginning be made man was created”—in almost all of her major works. Even after an almost 500 page discussion of the horrors of racism, imperialism, and totalitarianism, she sees it fitting to end *The Origins of Totalitarianism* by reminding us of this human potential.

Arendt's hope in human possibility can be juxtaposed with the *resentment* of the given, of the fact that we are born into the world and are only able to change ourselves to a limited extent. This fundamental resentment is also characteristic of the modern age where we can put our trust only in what we have made ourselves. It is a resentment of difference and novelty. In opposition to this, she holds that *gratitude* is the most appropriate attitude with which to approach the world. She writes:

The alternative to this resentment [of the given], which is the psychological basis of contemporary nihilism, would be 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. . . . In the sphere of politics, gratitude emphasizes that we are not alone in the world (BT 438–9).

It is this combination of gratitude and hope that allows us to be at home in the world and not yield to the despair so common in modernity. Indeed, “[w]e can reconcile ourselves to the variety of mankind, to the differences between human beings only through insight into the tremendous bliss that man was created with the power of procreation, that not a single man but Men inhabit the earth” (BT 438–9).

This is why, though there is despair in the background of Arendt's writing, we must read her work on human rights and statelessness as an attempt to reconcile her looming despair with her much deeper hope in and gratitude for human life. What is so attractive about Arendt is that she

is able to recognize the dark side of human affairs, the unspeakable horrors that emerge in history, but yet insist nonetheless that we must approach the givenness of life with a sense of gratitude and hope. Her optimism is not grounded in an idle wish, but in an understanding of the human condition and human possibility. Therefore, though modernity threatens human dignity, it can never fully destroy it, and further the possibility of guaranteeing human dignity is precisely within our power. This attitude avoids the shallow and ultimately destructive optimism that concealed a deeper despair that she found so problematic in her fellow refugees. Both shallow optimism and cynical despair are rejected by Arendt. For Arendt, the key political project is to understand how meaningful, dignified existence is possible under the particular conditions of the modern world. It is within the context of this larger project that Arendt's views on human rights must be understood.

Chapter One

The Paradox of Human Rights

The concept of human rights can again be meaningful only if they are redefined as a right to the human condition itself, which depends upon belonging to some human community, the right never to be dependent upon some inborn human dignity which *de facto*, aside from its guarantee by fellow men, not only does not exist but is the last and possibly most arrogant myth we have invented in all our long history.

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Arendt's observations about human rights begin with her discovery of a novel situation and radically new condition of the 20th century: rightlessness. The rightless are people who have been made superfluous through economic and social forces and stateless through political events. Her choice of the term "rightless" is important since it designates for her one of the central paradoxes of human rights in the 20th century: as soon as someone becomes stateless and is denied protection by any political body, such a person is forced to rely on her innate human rights. Yet it is precisely at this moment, when a person becomes nothing but human, that human rights are the weakest: "The world found nothing sacred in the abstract nakedness of being human" (OT 299). People in this situation are entirely without rights, not just because they are not politically or legally enforceable, but also because they are denied the right to belong to any political community at all. The right to belong to a community turns out to be more fundamental than human rights themselves. This paradox—that being *nothing but human* means that you can no longer rely on your human rights—is central to her view of human rights and her concern with understanding the conditions under which human dignity is threatened. As she makes clear, the conditions that allow for rightlessness do not disappear when totalitarianism does (since it merely took the greatest advantage of this situation, but did not create it). It may be the case, she tells us, "that the true predicaments of our time

will assume their authentic form—though not necessarily the cruelest—only when totalitarianism has become a thing of the past.”¹

Arendt makes two distinct sets of arguments for her view that the most fundamental right is a right to belong. The first is historical. Arendt’s view is grounded upon the historical situation of stateless people and minorities, and the initial attempts by the international community to protect them (via the League of Nations and Minority Treaties). The historical context is important because it reveals the connection between the manner in which human rights were conceived and the subsequent failure to protect those rights. The failure to protect human rights outside the state was intrinsic to the way they were conceived. Historically, human rights were tied to national sovereignty so that when there was a conflict between the two—as was the case for stateless people and minorities—human rights were incapable of competing with national interests.

Her second argument is ontological as well as political. The 20th century taught her that there is a fundamental right that we did not include in previous notions of human rights. She refers to this as the “right to have rights.” The right to have rights entails, politically, the right to belong to a state or some kind of organized human community. But it also means, ontologically, the right to a place in the world where one can speak and act meaningfully.² This is the sense in which human rights are tied to our human condition. The loss of the right to have rights entails a loss of a meaningful place in the common world and an enclosure in the private. Arendt’s aim in this analysis is to understand how human rights can be made meaningful within this context and the particular circumstances of modernity.

For Arendt, the 20th century revealed a fundamental paradox in human rights, the resolution to which was by no means obvious. Though the international system has developed considerably and the idea of human rights strengthened by the innumerable declarations, treaties, and covenants that have come into existence, the paradox remains. This is partly because the ontological dimensions of human rights have been largely ignored in favor of the juridical. But more deeply, it is because this paradox is rooted in the conditions of modernity—conditions that still define who we are. Although this paradox can never be fully resolved, Arendt’s work both deepens our understanding of it and suggests ways that we can more fully protect human dignity within these conditions.

1 RIGHTLESSNESS AS A PRE-CONDITION FOR TOTALITARIANISM

Arendt draws a lucid picture of the state of world affairs after World War One. She describes the war’s aftershocks in terms of a large explosion, after

which things are changed utterly and irrevocably. The most dramatic effect of the war was that it exposed the European political system and revealed it for what it was. No longer the bastion of civilization and culture, it could now be seen as the foundation of unprecedented cruelty and instability. The disintegration of European political life was revealed in the general sense of hatred that seemed to dominate public affairs. This hatred, the sense that everybody, especially your neighbor, was your enemy (Slovaks hated Czechs, Croats hated Serbs, Ukrainians hated Poles, etc.), was diffuse and did not direct itself at one group in particular as it had in the past (such as the Jews, the bourgeoisie, the government, an outside power). The result was an atmosphere of animosity, deterioration, and fear.

The instability of European political life was due in no small part to the existence of several new groups of people for whom the rules of political life, both its rights and its duties, did not apply: minorities and stateless people.³ These two groups came into existence when the pre-war multinational states, Russia and the Austro-Hungarian Empire, dissolved and deprived individuals of their nationality and citizenship. Stateless people and minorities, as we will see, were entirely different from other oppressed groups because, for them, the loss of their nationality meant the loss of their human rights. When it became clear that they required protection from oppression, the only means available were the feeble Minority Treaties. These treaties were signed by all governments (except the Czech government) under protest and never became law. Thus stateless people and minorities essentially lived in a situation of lawlessness.

For Arendt, the crucial aspect of this situation is that these are precisely the political conditions which totalitarianism required to flourish. Totalitarian regimes became masterful at denationalizing people and thus putting them in the situation of minorities and stateless people, namely in a situation of rightlessness. Furthermore, this situation demonstrated a *constitutional* inability of nation-states to guarantee human rights to those who were not its citizens. Europe's inability to prevent the persecution of individuals who were not its members was essential to the success of totalitarianism. In other words, the connection between rightlessness and totalitarian annihilation is not accidental, but rather, rightlessness is the necessary precondition for totalitarian persecution. That the Nazis took great pains to make Jews of non-German origin stateless, and hence rightless, was no accident; as Arendt observes, they had to check and see if any country would claim these people before they could begin using the gas chambers. Indeed, these circumstances—statelessness as a condition of rightlessness, and the inability of government to protect the human rights of non-citizens—were essential to totalitarianism's ability to flourish.

2 A FIRST ATTEMPT TO PROTECT HUMAN RIGHTS

After the First World War, the nation-state for the first time had to deal with both minorities, created by the Peace treaties, and refugees, created as a consequence of revolutions. If we remember that the European nation-state was defined by its attempt to combine being rooted in the land with homogeneity of the population, we may see why the advent of these two groups (one not tied to the land, the other not of the homogenous population) was such a threat.

The Peace Treaties of World War One were a colossal failure, in part because they were dealing with something so unprecedented as the homelessness of great numbers of people, and in part because of a misunderstanding of the circumstances in Europe. The treaties arbitrarily lumped groups of people together and created a state out of “state people,” who were entrusted with government, and “minorities” with the remaining nationalities, who were under the jurisdiction of the state people. The treaties seemed to be a game “which handed out rule to some and servitude to others” (OT 270). The treaties left both groups in vulnerable positions. The minorities, who lived under the precarious jurisdiction of a state that neither wanted them nor recognized them as full members, were clearly in need of international protection. Minority Treaties, arguably the first international attempt to protect human rights, were created for that purpose. Yet the newly formed state saw the Minority Treaties as a threat to their newly developed sovereignty. Under these conditions, a conflict between the two groups was inevitable, a conflict which mirrors the larger clash between state sovereignty and human rights.

A closer look at the treaties reveals the source of this conflict. It had been long established in international law that a state may limit its sovereignty through a treaty, and this principle is the foundation of all international human rights agreements.⁴ Yet in 1920, when the League of Nations was formed, its constitution said nothing of the international protection of human rights. This absence reflected the lack of seriousness with which the idea of infringing on state sovereignty for the sake of the protection of human rights was taken. The League did attempt to develop a system of international protection for minorities, deriving from the series of treaties born at the end of World War One. The countries newly formed or made newly independent under the Peace Treaties—Poland, Czechoslovakia, Hungary, Yugoslavia, Bulgaria, Albania, and Romania—were forced to include ethnic, religious, and linguistic minorities which the League immediately recognized as being in danger. The Minority Treaties insisted that the state not only guarantee non-discrimination against minorities, but also grant them special rights which would be necessary for the preservation of their ethnic, religious, or linguistic

integrity (for example, the right to use their languages, to have their own schools, to practice their religion). Because they were considered only half stateless, that is, they belonged *de jure* to a political body, it was believed that they only required these secondary rights, while the more fundamental rights (the right to work or to residence for example) were not mentioned. This was due in part to the belief that nations that were based on a constitution were founded on the Rights of Man and thus no extra laws were needed for their protection. It was also due to the idea that the human rights protections of the Minority Treaties were laws of “exception” designed to deal with a temporary situation. But the limits of these laws were immediately obvious: when the succession states were created, approximately 30 percent of the 100 million inhabitants were officially recognized as “exceptions” who needed the special protection of the Minority Treaties.⁵

These treaties, having been imposed from the outside, posed a number of problems. First, there was the question of the unwelcome infringement on the sovereignty of nations, a problem that was magnified precisely because the treaties were imposed by an international body, and did not originate in the aspirations of the people of these countries or the governments representing these people. Second, the rights that the states were supposed to grant minorities put a tremendous burden on the newly formed states, which naturally caused resentment against the apparent source: the minorities themselves (rather than the League of Nations). Third, the minorities could not trust the League of Nations anymore than they could trust their states. The League was composed of statesmen who were seen as being sympathetic to the new governments, not to the minorities whose only political importance came from the difficulty they brought to the new states. Finally, in a political milieu where state sovereignty is so highly prized and human rights so little valued,⁶ it hardly made sense for a new and frail nation to limit itself for the sake of people whose well being it had no concern for or interest in.

It quickly became clear that neither the Minority Treaties nor the League of Nations could take care of large groups of people who could no longer fit neatly into the nation-state.⁷ It became a matter of course that the minorities should be disloyal to the government and the government should oppress its minorities. This failure to protect the rights of minorities demonstrated clearly that people who were deprived of their own government were essentially deprived of their human rights.⁸

The significance of this situation was its novelty. Although minorities had existed for a long time, this was the first time they were recognized as a permanent group of people living outside the protection of a government and in need of international protection. What was new about the Minority Treaties was not

their nature, but rather that an international body, the League of Nations, was supposed to guarantee them. The very fact of the Minority Treaties showed explicitly what had until then only been understood implicitly: only nationals (i.e., people of the same national origin) could be citizens (i.e., enjoy the protection of legal institutions), and thus that people who were not nationals needed protection (at least until they were assimilated and fully divorced from their origin).

In turn, this development showed that in a nation-state, the state had become an instrument of the nation, rather than an instrument of the law. In a sense, the nation had conquered the state, and national interests conquered all mere legality. This happened long before Hitler claimed that “right is what is good for the German people.” Since the nation-state arose at the same moment as the idea of a constitutional government based on the rule of law (namely the French Revolution), the nation-state had always maintained a precarious balance between the rule of law and national interests. This balance finally tilted in favor of the latter when the right to self-determination was recognized and the nation became superior to all legal institutions.

In this context, Arendt’s analysis brings to light the nature of self-determination. Self-determination was the sharpest double-edged sword of the era: the situation of minorities showed that self-determination and self-government provided the only possibility of having one’s rights protected. Yet, it is precisely this enthronement of self-determination that justified a nation placing its own interests and the good of its own people above the well-being of other people, and thus asserting that the will of the nation is supreme over all merely legal institutions. This is a problem at the center of conflicts in the 20th century.

3 RIGHTLESSNESS AND THE CONDITIONS OF MODERNITY

Following the logic of the Minority Treaties and the attitude of their creators, Arendt argues that these agreements were nothing more than a painless and humane method of assimilation. Though only the British and French were explicit about this,⁹ Arendt claims that it was the only conceivable solution that could come from a system of sovereign nation-states, since the minority treaties, had they been serious, would have restricted the national sovereignty of the old European states in a way that was considered unthinkable. Anything else would have amounted to a defeat of the nation-state that no one, not even those driven by humanitarian motives to protect the people being persecuted, were prepared for. Neither the Minority Treaties nor the League of Nations, which both had the

firmest *intention* of protecting minorities, were able to prevent this process of assimilation.

For Zygmunt Bauman, assimilation was the only solution to the problem of minorities, given the conditions of modernity.¹⁰ For Bauman, modernity can be understood as being heavily influenced by the drive to remove ambiguity from the human condition. The archetypal task of modernity, he argues, was to bring order upon society, through design, manipulation, management, and engineering.¹¹ In Bauman's words, "the typically modern practice, the substance of modern politics, of modern intellect, of modern life, is the effort to exterminate ambivalence: an effort to define precisely—and to suppress or eliminate everything that could not or would not be precisely defined."¹² This project of engineering society and culture necessitated the construction of limits for incorporation and admission; and this in turn "calls for the denial of rights" since "everything cannot be assimilated."¹³

The drive to erase ambiguity and difference in modernity was of the gravest consequence for one particular European minority, the Jews. For the architects of modernity, there were two simultaneous drives that aimed at ridding society of difference. The first was a political impulse to uniformity, to make everyone "equal before the law." While such legal egalitarianism meant that, at least in principle, discrimination against Jews was eliminated, it also meant that Jewish privilege was destroyed; the cultural autonomy and communal authority that Jews had enjoyed and which had sustained their identity was erased. The other drive was cultural: a relentless project to extirpate differences in values, life-styles, customs, speech, and public demeanor. According to Bauman, it was a drive to make all cultural values and styles into those endorsed by the modernizing elites. The result of these two tendencies was that the Jews of Europe were compelled, at all costs, to assimilate, to remove their otherness, and consequently, the ambivalence they brought with them. Bauman's key insight is that assimilation (and ultimately rightlessness) was not merely a historical contingency or a consequence of age-old anti-Semitism, but a necessary product of the project of modernity. The difference or otherness the Jews symbolized was intolerable because it represented an ambiguity that was intolerable to the modern world.

Yet assimilation was often not even a possibility. According to Arendt, the biggest obstacle to assimilation is lack of respect for the national culture—an obstacle that was often present. For example, in the case of Poland (where Poles comprised a mere 60% of the population), the Russian and Jewish minorities did not feel Polish culture to be superior to their own, and as such, refused to assimilate. Yet even if they wanted to assimilate, as Bauman points out, that was often not possible. Assimilation was an impossible

game, in which the person trying to assimilate adopted the standards of the dominant class and then brought himself before this class for judgment. Inevitably, even the most assimilated Jews, for example, could not remove all traces of Jewishness.¹⁴ Consequently, whether they wanted to assimilate or not, Jews and other minorities remained “trapped in ambivalence.”

4 STATELESSNESS AS A NECESSARY CONDITION FOR RIGHTLESSNESS

The condition of the stateless in this period was even worse than that of the minorities, and the consequences of statelessness for the nation-state was even more grave. The rise of statelessness was not due to any one circumstance. Indeed, every event after the First World War added a new category to this group. The oldest groups of stateless people were those created by the Peace Treaties of 1919, with the dissolution of the Austro-Hungarian Empire and the establishment of the Baltic states. The real nationality of these individuals could often not be determined, in part because they had shifted around so much, but more importantly, because they clung to their stateless status in order to avoid deportation. Thus it was even harder to pin-down and protect stateless people. Legally, stateless people did not have their own legal status, but were considered refugees. The problem with this, as we will see below, is that the laws designed for refugees were incapable of coping with large numbers of people and therefore broke down when they were applied to the stateless.

Again, the novelty of this situation made it uniquely difficult. While the creation of stateless persons as a consequence of war was not new, mass denaturalization as a state decision was. Governments always had the right to take away the citizenship of their people but it was a right that was exercised so infrequently and in such small numbers as to be politically insignificant. What was significant about this right of governments was that it set a precedent followed by almost all of the countries in Europe after World War One: when a crisis arrives, it is acceptable to denaturalize people in problematic groups. The Nuremberg laws of 1933 were only the most dramatic instance of this response.

The real problem of statelessness, like the problem of refugees, was that a large class of people was *de facto* welcome neither in their home countries nor in any other. The problem of statelessness revealed something essential in the nature of national sovereignty: the sovereignty of neighboring countries could come into conflict not only in times of war but also in times of peace. We should recall that, between the wars, every single country in Europe

enacted some law, however weak, that allowed it to expel a number of its inhabitants at a given moment. The tacit agreement regarding immigration, emigration, and expulsion that had previously kept sovereign countries at peace broke down when statelessness became such a common phenomenon.

The arrival of stateless people in great numbers had tremendous effects on the nation-state system. For one, due to the arrival of this group, the right of asylum, which had been standard since the beginnings of regulated political life, was abolished. This law had protected both the refugee and the land of refuge from becoming outlaws as a result of political circumstances. Now the right of asylum was felt to be in conflict with the rights of a state.¹⁵ Because this right was never really codified into law, it suffered the same fate as the Rights of Man: its vague existence was not sufficient to protect the growing numbers of people that needed it while normal legal institutions were unable to ensure it either.

The failure to help stateless people was not universal. There existed a number of non-governmental organizations working to protect human rights—the French *Ligue des Droits de L'Homme* being the most important. Although we may be inclined to think that such groups were useful, as they no doubt were in a sense, we must also acknowledge the paradox that these groups actually hindered the fuller protection of human rights. By behaving as if the protection of human rights was a matter of charity, a matter of saving individuals who were persecuted because of their political convictions or actions, they missed the most important aspect of being stateless. As Arendt writes, “When the Rights of Man became the object of an especially inefficient charity organization, the concept of human rights naturally was discredited a little more” (OT 280). To treat this group as if it was merely an exception was absurd in the face of millions of Jewish, Russian, and Armenian refugees. Such organizations showed that even non-governmental institutions, which were aware of the severity of the problem, were ill equipped ideologically and administratively, to deal with the stateless.

Given the size of the group, it was clear that its members could not be treated in the same way that stateless people had been treated in the past, and this, in turn, had a large impact on the nation-state. For the first time, governments realized that it was impossible either to deport them or to transform them into citizens. The previous assumption had been that there were two ways of solving the refugee problem: repatriation or naturalization. Repatriation failed because no country existed which would take the refugees. Naturalization failed, not only because the stateless stubbornly held on to their nationality,¹⁶ but also because the countries were administratively unprepared to handle mass applications (since naturalization laws were

meant for exceptional cases, not millions of people). The government reacted to this state of affairs not by attempting more naturalizations, but rather by denaturalizing citizens of the same origin as the refugees (it was often the case that the arrival of refugees from one country changed the status of all people from that country).

If we keep in mind the strange status of a refugee—they were often of nationalities that had no loyalty to their state of residence, nor any roots in the territory, and they remained loyal to their home country even though they were no longer citizens¹⁷—it is not surprising that governments were so afraid of them. Further, because they could be neither naturalized nor repatriated they lived, essentially, outside the law. As a result, they were at the mercy of the police, who were wont to commit illegal acts against these illegal people. The situation of the stateless put everyone in a state of lawlessness. Governments were forced to commit illegal acts in order to deal with the illegal nature of statelessness, including, among other things, smuggling refugees into other countries. The situation of refugees also forced governments to give the police new and unprecedented authority. The strength of the police and its tendency to act outside the law grew as the number of refugees grew, until it had more or less unrestricted and arbitrary power over them. This sequence of events set the stage for the transformation to a police state.

For their part the stateless, being without the right to residence or the right to work, were forced to transgress the law merely to stay alive. As a result, they lived in the paradoxical condition where they actually benefited by committing a crime and being prosecuted for it. As a criminal, the stateless person had a status and was treated like a normal, national criminal, with rights to a lawyer and protection from arbitrary police brutality. However without committing a crime, she could be detained just for trying to work, that is, because of her presence in the world and her lack of rights. In a sense, as criminals, the stateless were granted the privileges of citizenship. As Arendt says, if a person can actually augment her political status by committing a crime clearly there is something wrong with the system. This irony reveals the depth of the problem of human rights at that time.

Arendt's thesis is that statelessness is a necessary condition for rightlessness, and ultimately, a precondition for totalitarian annihilation. Hitler's solution to the "Jewish problem" was first to reduce all German Jews to the status of a minority that lacked full citizenship within Germany; second, by driving them outside of the German border, the Nazis made the Jews stateless, and thus without the protection of any government; only then did they rounded them up and put them in extermination camps. The second step—

the trouble Hitler took to make the Jews stateless—shows, if nothing else, the connection between statelessness and rightlessness.

The point is not merely that statelessness means that rights cannot be protected, but worse, that the very existence of rights are abolished in becoming stateless. The denial of citizenship of Jews in their countries of origin and the fact that this forced them to go throughout Europe as penniless beggars, without money or passports, acted as a kind of “factual propaganda” which established the Nazi’s claim that the Jews were “the scum of the earth.” This, Arendt claims, was far better established by the process of their becoming stateless than by even the strongest Nazi rhetoric. Stateless people are denied rights not merely because there is no government that can enforce them, but because the fact of their having become stateless entails their fundamental deprivation of rights.¹⁸

5 HUMAN RIGHTS AND NATIONAL SOVEREIGNTY

The failure to protect minorities and stateless people in Europe prior to World War Two can be explained, at least in part, by a conflict between the prerogative of a nation to sovereignty and the claims of an individual to basic human rights. In the situation described above, the well-being of the nation-state was put over and above the rights of individuals living on their soil. The conflict between national self interest and mere lawfulness inevitably led to a victory for the former over the latter. The interest of the nation-state justified making people rightless. This problem can be traced back to the way human rights were thought of in the 18th century.

The Declaration of the Rights of Man and Citizen was declared on August 26, 1789. It made the radical claim that *all* human beings have rights just in virtue of being human, regardless of social status. The preamble to the *Declaration* referred to these rights as “natural, inalienable and sacred.” We should notice, as Arendt points out, the idea of inalienable political rights by virtue of birth must have appeared as a contradiction to all prior ages, since the term man, defined as someone who is *merely* human (not a citizen, subject, nobleman, etc) is a rightless person, a slave (OR 223).¹⁹

This declaration meant that the legitimacy of any government rested on its ability to guarantee these natural rights to all its citizens. Indeed, as the second article states, “the purpose of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression.” From the inception of human rights, the purpose of government was understood to be the protection of them. Unlike the American *Bill of Rights*, which was an attempt to limit government, the French *Declaration* was the very foundation of a lawful government.²⁰

The radical nature of these propositions can be seen if we contrast their assumptions with the traditional ways of viewing government in France, in the context of its feudal social organization. Traditionally, rulers had legitimacy by virtue of birth, such as the king, or by perceived proximity to God, as in the case of religious leaders. Social groups were ranked horizontally and granted privileges accordingly, so that it seemed natural for some groups, such as the nobles, to receive more privileges than another group, such as the peasants. With the *Declaration*, human rights made this plane vertical and thus altered not only the basis of government, but also how people saw themselves in relation to each other.

For Arendt the most salient feature of the *Declaration* is the place of the human being as the new center of the law, since the point of government was now the protection of human rights. It was no longer God's command or custom from which law was supposed to derive. The crucial implication of this is that, because the point of all government, and hence all law, is to protect human rights, no explicit law needed to be set up for their protection. Indeed, since human rights were "inalienable," there was certainly no need for explicit protection. They did not need any special protection by the law since they were the source of all law. The outcome of this—that human rights disappeared as soon as one's legal status did—only became clear in the 20th century.

Arendt illuminates the *Declaration* as a distinctly modern document, which could only have been created in modernity, given that period's breakdown in traditional sources of meaning. Emancipation meant that man became an isolated being, but the *Declaration* meant that he could carry his dignity within himself. This document acted as a much needed protection of one's identity in an era where other protections had disappeared. In modernity, for example, individuals were no longer part of a secure social class, could no longer rely on their place and station of birth to grant their identity; they could no longer be sure of their status before God to guarantee their equality. Not only was the *Declaration* necessary in this period to fulfill the role of defining identity, but it guaranteed this in a distinctly modern way as well. In this secular, emancipated world, people could no longer be sure of the rights that had been secured to them by social and religious forces, thus they needed to be assured by government and constitution.

The conflict between national sovereignty and human rights can be clearly traced back to this document. Arendt points out that only two articles after the statement that "men are born and remain free and equal in rights" (article 1), we find the right of national sovereignty, "the principle of all sovereignty rests essentially in the nation" (article 3). This essentially tied

the Rights of Man to national sovereignty. Since sovereignty was rooted in man (not God), it seemed natural that the inalienable Rights of Man would become a part of the right of people to self-government. It's as if the emancipated "man," the abstract human being who seemed to exist outside a social order, was swallowed up by "the people" almost as soon as he was emancipated. It became clear that human rights had to be tied to national sovereignty, since only a sovereign people appeared able to protect them. Civil rights, the rights of citizens, were conflated with the inalienable and eternal Rights of Man (which were, supposedly, independent of citizenship and nationality). The rights of *man* were the rights of *a people* and the 20th century showed that *man* lost his rights when he lost his *people*.

This situation draws out a danger latent in the nation-state system. There is a tension between the nation and the state, or between national sovereignty (the ground of the nation) and lawfulness (the ground of the state). The situation of minorities and stateless people in the first half of the 20th century was a result of the will of the nation overwhelming all legal institutions. In other words, it was a case of national sovereignty, the basis of the nation, overwhelming state institutions. The idea seemed to be that if it is in the interest of the nation to denaturalize a Jewish citizen, legal constraints (such as the Minority Treaties) should not be an obstacle. In other words, the way human rights had been understood since the French Revolution—that is, as part of the rights of a nation—was a fatal equivocation for all those who found themselves outside the protective walls of a nation.

The idea of sovereignty is, for Arendt, one of the central problems in political thought. Seeing sovereignty as the basis for human rights is both tragic and inescapable. On the one hand, historically, human rights belong to nationals and the 20th century showed that this is the only way they can be protected. Yet on the other hand, this cannot suffice. For one, the number of people considered outside of a political community, and hence outside of humanity, has only grown since Arendt's time. Further, it is in the very nature of sovereignty itself to neglect human rights. People were made stateless and rightless precisely because of claims to national sovereignty, and moreover, any attempt to rectify the situation was also limited in the name of respecting national sovereignty. This doubled-edged sword had tragic consequences for human rights in the 20th century.

6 TWO ERRORS IN HUMAN RIGHTS

That refugees, minorities, and stateless people so easily lost their human rights, which, since the 18th century had been seen as inalienable, coupled

with the impossibility of protecting or guaranteeing rights outside the boundaries of a state, reveals much about the nature of human rights. For Arendt, this shows that our understanding of them was flawed in at least two ways. First, we were wrong to think, as we had since the 18th century, that human rights are natural and inalienable. However helpful it was at the time to claim this, the consequences of this idea were disastrous for the rightless of the 20th century. This leads to the second mistake. We had confused civil rights for human rights and thus had to learn that when a person is nothing but human, he cannot embody rights.

The situation of the 20th century makes it clear that what we had previously understood as “human rights” were in fact civil, not human rights. In the case of stateless people, human rights, independent of a government, seemed to disappear as soon as people lost their government and needed to ask for their rights. In such cases, as we have seen, no authority or institution could grant them. In the case of minorities, the international body that was supposed to protect their rights failed precisely because it was not a state institution. It failed both because governments refused to give up sovereignty, and because the minorities themselves trusted only those bodies that could be tied to their nation. Both violators and victims believed only in national rights, and were no longer willing to give credit to the idea of basic human rights apart from citizenship.

We can see, then, how a connection that was only implicit in the 18th century formulation of human rights, between rights and national sovereignty, became such a destructive problem in the 20th. For stateless people and minorities it was clear, both to them and to the outside observer, that the loss of national rights were equivalent to the loss of human rights, and that the latter were only secured by the former. This was clear enough to those who had lost their rights, since they did not try to claim their *human* rights but insisted all the more strongly on their *national* rights. That is, they demanded them *qua* Poles, Jews, Russians, etc., even and especially when they had lost their citizenship (OT 292).²¹ Arendt observes that it was as if they realized that their nationality was their only remaining tie to humanity.

Arendt agreed with Edmund Burke’s critique that the *Declaration of the Rights of Man* was too abstract. He argued that it was better to rely on “entailed inheritance” or to claim the “right of an Englishman” and not human rights. While Arendt doesn’t go that far, she does admire the “pragmatic soundness” of his view, especially in light of the events we have been discussing, namely that the loss of national rights means a loss of human rights. She offers the situation of Israel as an example of the opposite case:

that through the establishment of nation rights by the creation of a state human right were able to be secured.²²

Precisely because human rights are the rights of citizens, they cannot be considered inalienable. “No paradox of contemporary politics is filled with more poignant irony,” writes Arendt, “than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as ‘inalienable’ those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves” (OT 279). The situation of the rightless described above demonstrated without a doubt that human rights are unenforceable when they have been severed from citizenship in a sovereign state.

The characterization of human rights as inalienable makes it difficult to understand, and hence recognize, when they are lost. Human rights in the 19th century were, according to Arendt, seen as something to be invoked in a perfunctory way to defend individuals against state power and to lessen the insecurity caused by the Industrial Revolution and the new arbitrariness of society. It was the standard slogan used to help the underprivileged. In the first half of the 20th century, none of the liberal or radical parties in Europe incorporated a new declaration of human rights, and none of the victims of human rights abuses ever invoked them. All attempts to protect rights or draft a new declaration in this period were done by marginal figures such as international jurists or professional philanthropists, who no one, not even the persecuted, took seriously. According to Arendt, human rights were not invoked in this period or in the 19th century because of what must have been obvious: civil rights were supposed to embody, in the form of tangible laws, the eternal Rights of Man which were independent of citizenship or nationality. If this was not the case, if laws did not embody universal human rights, people were supposed to change them, either through legislation or revolution. Thus there is no reason to invoke human rights or to demand their protection and enforcement. In other words, if human rights are inalienable, they must exist, and therefore securing them is just a matter of putting them into law. But if we see human rights in this way, we will find it difficult to understand the situation of those people to whom the law does not apply.

We noted earlier that the fundamental reason why the stateless were persecuted was not merely because they were the wrong race or nationality, but because in becoming stateless they had become *nothing but human*. For Arendt, the phrase “nothing but human” means that the stateless person has lost her public persona, her legal status, all distinctions that require public recognition, and her unique identity. All that is left when we see such a person, all that she has to fall back upon, is her givenness, her existence as

a human being. In other words, the stateless person has become a human being, not an individual with a unique identity and history; not a professional; not someone connected to a community; not a citizen, alien, tourist, etc. Arendt wants us to see that this is the image of the supposed bearer of human rights according to 18th century theories. The 20th century has shown how paradoxical this is: as soon as someone became only a human being, she was unable to claim her human rights. The idea that human rights were tied to our givenness as human beings broke down precisely when we were forced to encounter stateless people and refugees, people who had lost all other qualities and relationships and were nothing but human. It turns out that there is nothing more dangerous than being nothing but a human being.²³

Why is this the case? Oddly enough, when a person is reduced to this state, she has actually lost the very qualities that enabled other people to treat her as a fellow human being. For Arendt, there are two primary reasons for this. First, there is a distrust of the natural within all highly developed civilizations. The more highly developed a civilization is, the more resentment it has for everything that its members have not produced, for everything which is simply natural—as the rightless, who appear in their mere givenness as human beings, are. Where fabrication and artifice are valued, as they are in any political community, everything that is merely given becomes intolerable. Thus a person who resides in his simple givenness, not as one who produces artifice or is conditioned by it, does not seem to be a human being in a civilized world.

The second reason is that, without a political community, we cannot make sense of our differences. The rightless person has no public manifestation and is therefore thrown back on what is natural, given, and thus private. As Arendt argues elsewhere, the private realm remains a threat to the public realm because the public realm is the realm of equality while the private is the realm of difference. That difference always threatens to disrupt equality. It is only in being in the public, common world that our differences can be equalized. In contrast to mere existence, equality is not given to us but is the result of human organization. All political life, Arendt insists, rests on the assumption that we can produce equality through organization. Difference, what exists in private, away from the light of the common world, is all that we cannot change at will; it is a limitation. This is perhaps why it arouses hatred, mistrust, and discrimination. What cannot be made equal, what remains completely different, cannot be understood and hence trusted or accepted. The alien is the symbol of difference as such, and makes us aware of the limits to our capacity to build and act. The stateless person is precisely

the figure who has become merely different with nothing to make him equal, or to make him recognizable to the public world.

7 A NEW UNDERSTANDING OF HUMAN RIGHTS

For Arendt, the novel situation of the rightless in the 20th century shows that there are certain rights more fundamental than those of citizens that must be ensured before there can be any rights at all. This is the “right to have rights” or the right to a place in the world where you can act and speak meaningfully. This is a radical proposal as it goes completely against the way that human rights are traditionally understood.

I want to examine Arendt’s suggestion carefully in order to understand the meaning of this phrase. By examining what the rightless really lost when deprived of their civil rights, we can see how Arendt arrives at her position. The stateless lost aspects of human life that are inherently tied to our human condition. Yet having lost part of their *human* condition in losing human rights, they had also lost part of their *worldly* condition. In this sense, a loss of identity (which is entailed in losing the right to meaningful speech and action) means the loss of a place in the “common world” and an enclosure in the private. Although Arendt is pessimistic about the possibility of overcoming this dispossession, she does suggest that it is possible.

The state of being rightless entails two distinct deprivations. The first is a loss of a home. This is not merely the loss of one’s physical residence, but “the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world” (OT 293). What is unprecedented in the 20th century is that, for the first time, it was impossible for these people to find a new home. As we saw regarding the situation of stateless people above, they could not reside peacefully in their country of refuge since they could not or would not assimilate; their home country would not take them back (except to punish them); and no other country in the world would grant them the right of asylum. Arendt is careful to point out that this is not because of a lack of space or a material obstacle like over crowding; it is strictly a political problem, that is, a problem of political organization.

The second distinct loss is a loss of all government protection. In losing their legal status in their own country, they lost the right of protection from any government. Stateless people were outside of the web of reciprocal treaties and agreements, so that their illegality stretched to all countries they came across. This inability to find asylum, to gain a legal status or *persona*, is also unprecedented.

If we examine more closely why the stateless experienced these losses, we begin to see a new aspect of statelessness. Let us keep in mind that stateless people, refugees, and minorities were persecuted not for what they had done, thought, or said, but because of what they unalterably were—Jews (wrong race), Poles (wrong nation), etc. Even more fundamentally, it was as if in becoming stateless they became *nothing but human*, and this, ultimately, is what they were persecuted for. The drafters of the *Declaration of the Rights of Man* thought that human rights were attached to a person in his raw humanness; but the situation under discussion showed that as soon as a person became nothing but human, that is, as soon as she lost her citizenship, her place in the world, she lost all her rights. At the exact moment when rights are needed, they are absent. It seems almost paradoxical that it should be easier to deprive a completely innocent person of her legal status than someone who has committed a crime. That is because we are used to thinking of law in terms of punishing a crime by depriving the criminal of rights (such as the right to freedom), so it seems terribly strange that the loss of all legality, of all rights, should not be connected to any crime in particular.²⁴

For Arendt, these deprivations—of a place in the world, of a recognizable identity—are more fundamental than the loss of the rights to citizenship. This is why she argues that the loss of “human rights” (which are, as we have seen, the loss of the rights of citizens) does not entail *absolute rightlessness*. A soldier during war may be deprived of his right to life, a criminal may be deprived of her right to freedom, but in both cases there is no loss of human rights. In the case of the stateless, however, they are not deprived of the right to freedom of movement, the right to free expression, or the right to equality—you can be completely rightless and still have these “civic rights.” The difference is that since the rightless do not belong to any community and have no law to judge them, none of these rights has any *meaning*. “The prolongation of their lives is due to charity and not to right,” she argues, “for no law exists which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool’s freedom, for nothing they think matters anyhow” (OT 296).

To be sure, it’s only at the end of the process of rightlessness that the right to life is called into question. In other words, complete rightlessness had to be first established before the right to life can be challenged. This is why Arendt insists that the Nazis treated the Jews the ways they did. They did not simply kill them, but rather, they first took great pains to make them stateless, then cut them off from the world community by forcing them into ghettos and concentration camps, and only then did they take their lives:

“before they set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people” (OT 296).

Arendt is making the point that being deprived of civil rights does not make you completely rightless. Since this is the case, she argues that there must be something more fundamental than civil rights; there must be something that the rightless are deprived of that makes them different from the soldier or the criminal who has lost civil rights. Arendt argues that this is “a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and the right to belong to some kind of organized community” (OT 296–7). The loss of human rights deprives us of a *place in the world that makes opinions significant and actions effective*. The state of absolute rightlessness for Arendt is a state of being deprived, not of the freedom to do what you want, but the right to action, not the right to think what you want, but the right to form an opinion. That is what it means for her to live within a framework where you are judged by *who*, not *what*, you are. To use Arendt’s example, if a black man in a racist community is considered black and nothing else, that is, if all his actions are explained as a consequence of his being black, then he has lost his right to equality as well as his right to action. To be fundamentally rightless is to be in a situation where, unless you commit a crime, you are not treated according to what you have or have not done, and privileges and condemnations are handed out arbitrarily or accidentally.

8 HUMAN RIGHTS AND THE HUMAN CONDITION

Arendt’s claims about what it means to be fundamentally rightless must be understood in the context of the picture she draws of the human condition. Indeed, she claims that the loss of the rights to meaningful speech and action represents the most fundamental kind of deprivation because they are part and parcel of the human condition. She goes so far as to argue that what she is calling a “human right” would have, in all previous times, been thought of as just a general, inalienable, characteristic of the human condition. The two essential things that we lose in becoming absolutely rightless—the relevance of speech and our ability to act in concert with others—have since Aristotle’s time been thought of as essential to what it means to be human.²⁵ That is, the fundamental deprivation of rights results in a loss of the *relevance* of speech and since Aristotle, we have thought of human beings as being defined by his capacity for speech and thought. It also leads to the loss of all human relationships, which, since Aristotle, we

have thought of as being fundamental to our sense of humans as “political animals” who must live within a community.

The loss of speech and action constitute a fundamental deprivation of rights because these losses represent the loss of some of the most essential features of human life. The fundamental loss of rights affects our ability to *act* (in Arendt’s distinct sense of the term), since it destroys the conditions of plurality and further, the condition of being forced outside of a community impacts on the ability to *judge* and form an *opinion* (again, in Arendt’s quite specific sense).

The Human Condition is Arendt’s analysis of the activities of the *vita activa* and an evaluation of the value or meaning ascribed to each.²⁶ In our society, she argues, labor is considered the supreme activity, while in the ancient world action was given top place. Though it is clear that Arendt is interested in reasserting the ontological dignity of action, all activities in the *vita activa* have both positive and negative aspects. Labor, for example, corresponds to the biological activity of the body and is essentially the way we interact with nature. It tends to the necessity of sustaining life. Though this metabolism with nature is the way in which we experience “the sheer bliss of being alive which we share with all living creatures,” its activities are essentially futile since they leave behind no lasting product (HC 106). Work, by contrast, is the means by which we produce the artificial world that we share in common with others. Work corresponds to our worldliness, our need to live in a community. The essential negativity of work, however, is twofold. For one, it always contains an element of violence since it must necessarily do violence to nature in order to achieve its products. Second, because the worker sees everything as a means to towards an end (i.e., the product), the worker’s view of the world risks turning everything into a means to an end.

Action is perhaps the most complex activity. To be sure, Arendt does not use this term in its common meaning of “activity.” In its most general sense, action refers to the process of beginning something, taking an initiative, setting something in motion. Beginning is connected with *natal-ity*, the fact that we are born into the world. Further, action always occurs in conjunction with other people; it is never a solitary activity.²⁷ Because action begins something, it is coextensive with our freedom. For Arendt, we are free when we act—not before and not after. Since Plato, philosophers have had a negative view of action because of its two negative features: its uncontrollability and its unpredictability. When one acts, one cannot control the effects of one’s action because we always act within a “web” of relationships. Consequently, the ends of our action are always unpredictable. Both of these have a partial remedy through promise making and forgiving,

which are essentially our ability to undo the past and bring stability to the future. Action, the means by which people interact with each other, is “the only activity that goes on directly between men without the intermediary of things or matter” (HC 7).

All the activities of the *vita activa* occur in the environment created by these activities. Arendt privileges action because a given human life can exclude labor and work and still be part of this common world (that is, you can always find someone to do your labor, and you can still share in the fruits of human fabrication without producing any of them). However, a human life cannot be imagined without speech and action since they are the modes by which we interact in the world and appear in our individuality.²⁸ Through these, a person reveals her uniqueness and distinguishes herself. Appearing in the world like this, “as distinguished from mere bodily existence, rests on initiative, but it is an initiative from which no human being can refrain from and still be human” (HC 176). Without speech and action, life “has ceased to be a human life because it is no longer lived among men” (HC 176).²⁹

The curious fact that a life without speech and action is no longer a life “lived among men” can be understood by the fact that speech and action create our individual identities—a process that can only occur among other people. Without this individuation, we no longer live “among men” because to be among men means to speak and act, and hence disclose ourselves.³⁰ To paraphrase Aristotle, someone who is in a condition of fundamental rightlessness, that is, someone who is without these essential political capacities, is either a beast or a god.³¹ To be sure, Arendt is not saying that in order to be considered human we *must* speak and act—as if the only human beings are those we see on the news or witness in public venues. On the contrary, speaking and acting is what we do most naturally as humans so that their loss—such as in concentration camps and in the situation of the rightless of the 20th century—is an essential deprivation.

As mentioned earlier, speech and action disclose the *who*, rather than the *what*, somebody is.³² The *what* that a person is (those qualities which are easily perceivable—talents, characteristics, faults, etc.) can be hidden or manipulated, but *who* somebody is, in contrast, can neither be hidden nor deliberately disclosed—it can only be *revealed* in action and speech. The self that is disclosed in speech and action is often a mystery even to the agent. Moreover, the way we are disclosed in speech and action may be ambiguous. The self is so intangible that it can defy verbal expression: in trying to express *who* somebody is, we inevitably are led to speak of *what* she is. This is rooted in the difficulty of articulating what makes one human being distinct from another. We are revealed as distinct individuals through action and speech,

even when the action is aimed purely at a material or worldly end—even when we do not want to appear in this way. This is because our identities depend upon intersubjective agreement, that is, their recognition by others. Speech and action are intersubjective insofar as they are only meaningful when understood and judged by others.

Action and speech acquire meaning precisely because of *plurality*, that as selves, we are part of the “the paradoxical plurality of unique beings” (HC 176). Plurality, the *conditio per quam* of political life, refers to the fact that one lives “as a distinct and unique being among equals” (HC 178). Plurality embodies two paradoxical characteristics: equality and distinction. Human beings are equal, for if we were not we could not understand others who come before or after us. Our equality in this sense is not the abstract political equality of the French Revolution, nor a moral equality before God, nor the abstract equality of mass man;³³ it is the equality of individuals based on a common human constitution. Our very equality, according to Arendt, is based on our capacity to communicate and understand each other.³⁴ However, if each individual were not distinct from all others in the past, present, and future, then action and speech would not be necessary.³⁵ Action and plurality are related because action cannot occur in isolation, but necessarily requires the company of other people. It is only on the condition that someone understands the meaning of my words and the significance of my actions that the constitution of a self is possible.

Arendt finds a revealing basis for her claim that action is connected to plurality. Etymologically, Latin and Greek have two different but inter-related words for our verb “to act.” The presence of these two words, *gerere* and *agere* in Latin and *prattein* and *archein* in Greek, make it appear as if action had two parts: the initiation by an individual, and the result that many people must see through. Historically, the words that represented the second half of an action (*prattein* and *gerere*) came to mean action in general, while the words referring to the initiation of the action came to mean action in a political sense (*archein* “to rule,” *agere* “to lead”). The original sense of the term action, implying the *interdependence* of a leader upon the people who carry out the action and people upon a leader for an occasion to act, is now lost. The two functions were split apart, rendering one side the command giver (the ruler) and the other the executioners of the command (the subjects) (HC 189).

We may see, then, why the deprivation of a place in the world for meaningful speech and action constitutes the absence of the most fundamental kind of rights. But she also says that the right to have rights entails having a place in the world where *opinions* are significant. By “opinion,” Arendt

does not mean the unreflective thoughts of an individual who lacks access to the truth (a definition we have adopted since Plato). For Arendt, politics is the realm of opinion, since truth, in an objective absolute sense, is too coercive. If politics were based on truth, there would be no need for speech or action since we would only need to follow what the truth commands. An opinion, on the contrary, is an expression of the way the world appears to an individual. The right to a significant opinion is not simply the right to think whatever you want; it is the right to develop an idea and test it on an intersubjective basis. Opinion is grounded on the genuine political experience of thinking and acting with equals, that is, of living within a plurality. Her description of how we form opinions reveals the interconnection between action and plurality:

I form an opinion by considering a given issue from different viewpoints, by making present to my mind the standpoint of those who are absent; that is, I represent them. This process of representation does not blindly adopt the actual views of those who stand somewhere else, and hence look upon the world from a different perspective; this is a question neither of empathy, as though I tried to be or to feel like somebody else, nor of counting noses and joining a majority but of being and thinking in my own identity where actually I am not . . . the better I can imagine how I would feel and think if I were in their place, the stronger will be my capacity for representative thinking and the more valid my final conclusion, my opinion (BPF 241).³⁶

Without the capacity to form meaningful opinions, one cannot be part of the political realm.

To be fundamentally rightless means to be deprived of some essential features of human life, such as speech, action, and the ability to form an opinion and be part of the political realm. But here is another implication of rightlessness that is not immediately clear. The nature of rightlessness, according to Arendt, also implies an expulsion from what she refers to as the “common world.” This is the world comprised of human artifacts created through work, the place in which we labor, and we insert ourselves into it through action and speech. Being fundamentally rightless means that we cannot add anything to the common world and that everything we do will lack significance because it will have no expression in the common world.

The problem with being rightless and expelled from the common world is twofold. On the one hand, that banishment means that the stateless have lost those aspects of the world and human existence that are the result

of common labor and fabrication. In a sense, they have lost the public. On the other hand, this loss of a common world means that even one's private life has lost its meaning. The stateless person is outside of the common world and cannot contribute anything to it or have her identity be made meaningful within it. A person who has lost his identity—what joins his actions into a consistent whole—is left alone, since he is left with those qualities that can only be seen in private.³⁷ Yet because they have been thrown back on their natural givenness and difference, and have been forced to live outside the common world, they necessarily lack the ability to equalize their differences within a commonwealth. So these private qualities, which represent our unique individuality, are deprived of expression in the common world and lose all significance.

Arendt points out that the situation of the rightless is not only a tragedy for the rightless, but also a tragedy for civilization. For Arendt, civilization was distinguished from what she perceived as “savage” or “barbarian” people, who do not produce a culture and transmit it from one generation to another.³⁸ It's as if we have relegated the rightless to the status of the “savage,” who adds nothing to the world and leaves no trace behind when he dies. Since we have produced “barbarians” by forcing people to live in the condition of “savages,” we have created a group that thus threatens political life and human artifice. As we noted earlier, for Arendt the conditions that made totalitarianism possible continued to exist after totalitarianism ended and still threatens our world. This is but one way that the *common world*, as opposed to the people living in it, is threatened by rightlessness. That is why the right to have rights, the right to a place within the common world, is so fundamental.

9 CAN THESE RIGHTS BE GUARANTEED?

Arendt gives us a way of understanding how we can protect and guarantee the “right to have rights” in a particular, limited way that is distinctive to the realm of human affairs.³⁹ What is central to her concept of human rights is that they are created through political (i.e., intersubjective) commitment. They are not merely given or natural but created by us, and so they *condition* us: they become part of our human condition. We are conditioned by human rights insofar as they become products of the common world. As such, I think her proposal for guaranteeing human rights can be inferred from the following:

We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal

rights. Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals (OT 301).

This needs to be understood in the context of what we have learned about speech, action, opinion, and the common world. If we look at the first line, we see that Arendt emphasizes that we are not born equal, but that equality is produced based on our decision. This is precisely Arendt's sense of human rights—we are not born with them but they are created by us through the strength of our decision. We have already seen in detail why Arendt opposes the metaphorical fiction of being “born” equal or with human rights in politics. She goes on to tell us that our equality is based on our membership in a group and by the strength of our decision. What this implies is that equality, like human rights, depends upon our *decision* to guarantee these to ourselves. In one sense, this is problematic because no mere decision can guarantee anything. But Arendt does not mean decision in the loose sense of making up one's mind. Rather, in a political situation, decision through speech and action is the only kind of guarantee we have. Yet equality is made as real as anything else in human affairs on just this basis. For the Greeks, quality the central concept in their political life, was grounded in the same way. Equality is not some objective reality but it is not a subjective illusion either—it is made real through our intersubjective understanding, solidified in the common realm and thereby conditions us as human beings. Human rights, I think, have precisely the same status: they are neither created and subjective, nor natural and objective, but rather, made real through us and through our political commitment.⁴⁰

The second sentence implies, in part, why we must consider human rights. Recall the fact that politics rests on individuals speaking and acting in their individuality. The realm of human affairs can be nothing more than this conjunction of speaking and acting. Thus commitment, making a promise, is a necessary condition for politics. But given that Arendt offers no moral norms, on what is this commitment grounded? The answer to this lies in the clause that a person can affect political change “together with his equals and only with his equals.” We have seen that the political realm is intersubjective (it requires the judgment and memory of others to confer meaning). Without other political equals, there is no possibility for genuine action and speech. In other words, we need to guarantee human rights in order to have equals with whom we can speak, act, and disclose our identities. Our status as political beings hangs on our ability to guarantee human rights through our

commitment in speech and action. Without such a guarantee there could be no genuine politics (only coercion and confrontation). Our very understanding of what it means to be a person grounds our capacity to commit to and guarantee human rights.

10 FOUNDATIONS

I have argued above that Arendt is interested not in solving the problem of statelessness, but in deepening our understanding of it by placing it within its modern context, while at the same time, suggesting a way that the ontological deficits of statelessness might be tempered. In doing so, Arendt resists the kind of normative justifications for human rights that have become the standard in our time. This has been a source of criticism from many of her commentators. For example, while Benhabib is aware that Arendt's anti-foundationalism is what attracts people to her work,⁴¹ she argues that her lack of normativity marks a "lacuna" in her thought.⁴² Arendt never directly answers certain questions about human rights that are essential for Benhabib: is the category of human rights defensible? Do we have rights in the same way we have body parts? On what assumption do we defend treating people as if they have rights? Are human rights grounded in nature, history, or human rationality?⁴³ Arendt's refusal to give a normative justification for human rights is highly problematic for Benhabib and ultimately a failure on Arendt's part.

To be sure, Arendt does not give us what we usually expect from someone championing human rights—a clear and compelling reason that we should uphold them under any circumstances. That Arendt does not do this, I believe, is not a failure on her part but consistent with her views on political life. While it is true that her writing may not provide a knock-down argument for why we should uphold human rights, she does lead us to this conclusion through other means. Arendt believed that it was *understanding*, reconciling ourselves with reality, that is more likely to prevent worldly destruction than the most persuasive and compelling logical argument.⁴⁴ Arendt's work is valuable insofar as it deepens both our understanding of human rights and also the reason why they often fail when they are most needed.

Arendt is an anti-foundationalist for a number of reasons. Historically, she saw and experienced first hand the failure of human rights that were based in metaphysical foundations like nature and God. Besides their pragmatic failure, Arendt recognized that in modernity, people no longer believed in such things in the way they did in the past; these metaphysical abstractions had lost their authority and could be of no use in modernity. Further,

she believed that even if rights could be based upon natural law or God, they would still only be possible if people were inscribed within a political community. The requirement of belonging does not follow from human rights even when they are grounded in a metaphysical idea.

But there is also a more fundamental reason for Arendt's rejection of norms. Arendt is fundamentally a thinker of plurality. Plurality is the condition of equality and difference that corresponds to life in the public realm. Plurality was often threatened in modernity—not only by the genocidal regimes which wanted to eliminate all difference, but also by life as lived in the purely social or private realm (a sphere of pure difference). The backdrop to Arendt's political philosophy is an attempt to understand political life in a way that guards plurality. The problem with norms is that they are essentially monadological.⁴⁵ In responding to a norm, we do not consider others in an essential way. The Kantian formula of deriving a universally valid law from reason and applying it consistently is inconceivable for Arendt; for her the political realm is too diverse and unpredictable. One therefore needs a way of thinking and judging that is fluid, that accounts for plurality. In other words, not only do rights as norms often fail, but they do not support the conditions of plurality. Arendt is searching for a way to guarantee the right to have rights that is faithful to the condition of plurality and the indeterminacy of action, but does not involve the coercion implied (for her) by norms.⁴⁶

Despite this, a number of other authors have tried to identify ideas that might serve as a foundation for Arendt's view of human rights. Jeffrey Isaac argues that her philosophy is engendered by the failure of human rights and the determination to reframe them. It's not that she is a theorist of human rights, but rather that her whole philosophy is driven by their loss.⁴⁷ As such, he reads *The Human Condition* as the locus of her philosophy of human rights. In particular, he argues that action is central for reclaiming the practices of citizenship that can guarantee human rights. He claims that her vision of a politics of human dignity has two features. The first is that the drive for human rights must always come from the praxis of citizens, even though the state is still the preeminent political actor.⁴⁸ The second is that we ought to conceptualize citizenship on many levels—local, regional, global—in order to understand citizenship in a way that is appropriate for human rights. For example, Human Rights Watch and Amnesty International may be the kinds of political associations that Arendt might have had in mind for her conception of citizenship for as Isaac writes, “[t]hese are forms of collective empowerment that might provide a new foundation for human dignity.”⁴⁹

Peg Birmingham has recently argued that we must understand the principle of natality as the normative ground for human rights for Arendt.

According to Birmingham, Arendt's formulation of human rights is rooted in a principle of common humanity that is not grounded upon an autonomous subject, nature, or God, but upon "the event of natality, with its inherent principle of humanity."⁵⁰ This, she argues, is Arendt's ontological foundation for human rights. Birmingham interprets natality as having two distinct principles: beginning and givenness. The first, a relation to the common world, corresponds to our plurality while the second corresponds to our singularity and uniqueness. The common, she argues, must include both plurality and uniqueness.

Birmingham develops her position by tracing Arendt's critique of human rights through her critique of sovereignty. Hobbes was the first to replace the lack of authority of politics with a view of sovereignty. For Hobbes, rights are private and correspond to an autonomous, sovereign subject. Political membership is important only insofar as it protects individual autonomy. The origins of the sovereignty model of human rights, according to Arendt, come from Hobbes, who reduced human rights to the self-interested power of a sovereign and isolated individual. In contrast, Birmingham argues that Arendt develops a notion of human rights that is not tied to sovereignty in this way. It is precisely for this reason that Birmingham traces the foundation of human rights to the principle of humanity. The ideal of humanity, in her view, demands that humanity assume responsibility for all crimes and evils committed by human beings. This, for Birmingham, is the predicament of common responsibility for "[o]nly a principle of humanity is able to provide the normative source for an imperative of common responsibility."⁵¹ But this principle of humanity rests not in the *end* of the human being, but in its beginning, in natality. The principle of humanity that grounds the right to have rights is the *archaic* (original) event of natality.

The normative force of this principle comes into play when Birmingham argues that it allows us to distinguish legitimate forms of power and institutions from illegitimate ones. Legitimate power is power that allows actors to appear in a public space with others; it demands that constitutions divide powers so that all actors are empowered. The right to have rights, then, entails a right to *appear* because it is rooted in the event of natality: "The event of natality that carries within it the principle of publicness, when restated as the law of humanity (understood as the appearance of the actor among a plurality of actors in a public space of freedom), demands that the actor have the right to appear, or, as Arendt so succinctly puts it, the right to have rights."⁵² One of the virtues of Birmingham's analysis of Arendt and her focus on the principle of humanity is that she is able to take seriously the ontological aspects of human rights, such as appearing and

acting with others. She avoids the danger of seeing the right to have rights as merely a juridical right. But what Birmingham leaves open is precisely how we move from an *is* to an *ought*. That is, while it is clear in Arendt's work that we appear when we act and that this is rooted in the fundamental condition of natality, it is less clear why we have a *right* to appear.

I disagree with Birmingham, however, when she claims that the right to have rights requires that unqualified human existence—givenness—has a rightful place in the political sphere. Birmingham clearly delineates two distinct and contradictory views that Arendt holds concerning givenness. The first is a positive sense that connects the given to natality. Birmingham interprets her as calling for an acceptance of givenness, which is at the heart of plurality and consequently entails an ethical demand of unconditional affirmation and gratitude. The denial of givenness in the Western tradition is the source of an initial violence at the heart of the political space, the negative ramifications of which Arendt is highly aware. The second sense of givenness is distinctly negative. When Arendt treats givenness in its negative light, she equates it with *zoe*, mere life, which must be relegated to the private and removed from the public realm of action and freedom. In this mood, Arendt is recapitulating the Western tradition's denial of the importance of givenness in politics.

However, Birmingham then argues that, though these two senses of givenness compete in Arendt's work, "what we must observe is her *continual* preoccupation with the first sense of life (*zoe*) as the 'distributing miracle of the given.'"⁵³ She goes on to argue that, because of Arendt's *continual* preoccupation with givenness in the positive sense, we must interpret the right to have rights as a call for the acceptance of unqualified human existence into the political sphere. She sees Arendt's lament that when someone becomes nothing but a human being they have really ceased to be human, as a demand for the reversal of this negation: that bare, unqualified humanity should be recognized as fully human and deserving of dignity. In my reading of Arendt, however, I do not see her calling for the acceptance of this mere humanity on the level of the political. While I agree that Arendt is not wholly negative about givenness, I do not agree that she is calling for a complete affirmation of it. As I have been arguing throughout this chapter, Arendt wants people to have the possibility of transforming themselves from mere givenness (*zoe*) into individuals with unique identities (*bios*); that transformation is only possible through acting and speaking with others in a public space. The uncritical acceptance of givenness in the hypocritical form it takes in modernity—life as the highest good—is precisely the object of Arendt's disparagement. Only by transforming bare life into a recognizable

human life do we make it possible to protect human dignity. This is why I see Arendt as calling not so much for the acceptance of givenness within the political, but for the right to belong so that one can speak and act and hence disclose one's individuality.

11 CONCLUSION: THE POSSIBILITY OF HUMANITY

As Arendt puts it, a person loses the right to have rights when she can neither belong to the community into which she is born nor find a new community in which to live. This was precisely the fate of millions of people who lost their rights and could not reclaim them because of the political situation. This inability to regain one's fundamental rights, or to find a new place in the world to call home, is a result of modernity and the sense that we now live in "One World," where the loss of one's home and one's political identity is tantamount to being expelled from *humanity*.

The idea that human rights were based on the nature of the human being, as it was understood in the 18th century, no longer makes sense to us. Not only have the events of the 20th century shown us the dangers of this fiction, but our experiences in the realm of science have solidified our alienation from nature. What needs to take its place, according to Arendt, is not a fictive concept like nature, but the idea of "humanity," which for us has become "an inescapable fact" (OT 298). Humanity needs to play the role that nature formerly fulfilled, and thus "the right to have rights" must be guaranteed by humanity itself. Yet for Arendt, it was not clear that this is even possible.

This is, of course, the old problem of national sovereignty. The idea of making humanity the central concept flies in the face of that principle. Arendt argues that no matter how strong our intentions are, as long as international law is based on reciprocal agreements between sovereign states, humanity can never guarantee the right to have rights. This would undermine the central notion of a nation, namely that some people are excluded. This might seem to imply that Arendt is against national sovereignty, that she is calling for its elimination in the name of human rights. But the situation is much more complicated than that.

For Arendt, the solution is certainly not the elimination of national sovereignty in favor of a "world government." The problem with a world government is its basis, "like all liberal notions of political power, on the same concept of individuals submitting to a central authority which 'overawes them all,' except that nations are now taking the place of individuals" (OT 142 fn. 38). This Hobbesian model of a world government is simply

inadequate to overcome the problems of human rights as we have discussed them. There is no reason to believe that such a political system would be immune to the same problems inherent in the nation-state system. For example, such a body would not be sufficient to prevent the equivocation of right with the good (for the individual, the family, country, largest number of people, etc.). As long as it is possible to equate the rights of a person with the good of a nation, (even if the group for whom something is “good for” is all of humanity), it is quite conceivable, Arendt argues, that through democratic procedure a majority will decide that it is better if one part of humanity is liquidated for the sake of humanity as a whole.

She elaborates her criticism of a world government when she addresses whether or not Karl Jaspers ought to be called a “world citizen.”⁵⁴ In this essay, Arendt argues that a world government, as a centralized authority over the globe with a monopoly on all means of violence, is not the brightest hope for civilization but rather, “a forbidding nightmare of tyranny” and “the end of all political life as we know it” (MDT 81). The reason for this is that a world government would destroy what is perhaps the most important concept in politics—plurality. Plurality, the simultaneous condition of equality and difference, necessarily requires limitations and distinctions among people. This fact holds true for individuals as well as countries. One can only be a citizen of one country in distinction to not being a citizen of another country. If a world government erased this possibility of making distinctions among people, it would necessarily undermine our capacity to act politically, which is to say, our ability to act as particular individuals, to act from a particular place in the world. While “philosophy may conceive of the earth as the homeland of mankind and of one unwritten law, eternal and valid for all,” we should not conflate it with politics that “deals with men, nations of many countries and heirs to many pasts” (MDT 81). A world government would destroy the differences among people *qua* citizen and therefore become a tyranny.⁵⁵

Thus human rights *must* be something over and above civil rights and national (or international) sovereignty.⁵⁶ What is needed, as Arendt claims in the preface of *The Origins*, is a new guarantee for “human dignity” that can only be found in a new law on Earth. This new law must be valid for all of humanity, yet remain rooted in and controlled by states (OT ix). The trick is to find a principle which some-how goes beyond the means-end category, so that human rights are goods granted regardless of whether they are “good for” a particular group. This suggestion points to a particular picture of politics and a view of human capacities that need to be examined more fully. This will be the task of the next chapter.

Chapter Two

Human Dignity and the Ethos of Modernity

With populations and homelessness everywhere on the increase, masses of people are continuously rendered superfluous if we continue to think of our world in utilitarian terms.

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One of the dominant problems in human rights is the discrepancy between claims about human rights and political practices. On the one hand, we in the United States have widely proclaimed support for human rights norms—through various international declarations and covenants that we have signed and ratified, the stated goals of our foreign policy, and through the widespread support of various non-governmental agencies and organizations, like Amnesty International and Doctors Without Borders. Yet on the other hand, our political practices and policies undermine our explicit adherence to these norms. Internationally, we regularly support regimes that violate human rights norms, and nationally, we have failed to secure a life of dignity for millions of citizens who lack health care, access to decent education, and a basic level of subsistence. More alarming, we have consistently failed to come to the aid of peoples experiencing gross human rights violations such as genocide. We have only to think of the situation in Darfur to see this at its worst.

If we are to understand human rights in modernity, we need to make sense of this apparent contradiction between word and deed. Many theorists have sought to explain this tension between our expressed commitment to human rights and the actual policies we implement. One well-known view claims that all politics, especially international politics, is a matter of “realism.” The realist school of thought holds that states only act in their own best interest, and do not follow moral norms unless there is a practical benefit in doing so.¹ According to this view, it is not surprising that we espouse human rights norms in word only, since we always act only in our own self interest.

It is also not surprising that we have not been more forceful in stopping the genocide in Darfur because we have no strong interest in doing so.

For a second school of thought, this tension arises because human rights are severed from their original foundation in natural law, and therefore alienated from a transcendent, religious worldview. Though this separation has been necessary in order to make human rights more universal, it nonetheless renders them weak and inefficient. On this account, because human rights are not anchored in any deep structure of meaning, it is understandable that they get washed away with the first flood of political strife.²

The problem with the first account, which attributes our lack of willingness to support human rights in practice to our supposed concern with our own interests and well-being, is that it fails to explain why we must see everything—including human life—in terms of interests, and why these interests are so naturally thought to transcend all other goods. While I think that the second account, which holds that the tension occurs because human rights are no longer grounded in a meaningful source, goes to the heart of the problem more fully than the first, it too does not supply a full explanation. It fails to explain why this deracination was necessary in the first place.

If we follow Arendt's analysis of modernity, we will see that this conflict occurs because of the way that human rights emerged within modernity, and as such, that the tension at the heart of human rights is not an aberration, but a constitutive feature. Modernity, roughly beginning in the 17th century, was marked in part by a transition from *natural law* (a violation of which was a violation of the natural order rather than of individuals) to individual natural or human *rights* that were grounded in the elevation of human dignity. Kant is, of course, the most well known figure in this story, as he developed the first non-theological defense of human dignity. Yet this project of Kant's only became necessary when human dignity could no longer be taken for granted, that is, when it in fact required a *defense*. In other words, what precipitated the need for human rights were precisely the conditions that rendered them problematic.

The question I will turn to below is, why did human dignity all of a sudden require a defense?³ Why was it no longer something that could be taken for granted? A significant part of the answer has to do with the *ethos* of modernity. It is the ethos of modernity—the distinctive character of the modern era insofar as it is expressed in attitudes, habits, and beliefs—that ultimately undermined the concept of human dignity, and thus made the assertion of human rights necessary. We can contrast the ethos of modernity with what might have been explicitly said at the time about human beings,

the “official” story, which continued to uphold human dignity, at least insofar as the dominant institutions remained largely religious.

Modernity is characterized for Arendt by the rise of the social realm and decline of the value of both the public and the private realms. As such, the ethos of modernity is dominated by the worldviews of *homo faber* and *animal laborans*, that is, the person *qua* worker, and the person *qua* laborer. In modernity, these two activities have come to define the range of meaningful human activities, and this is why their worldviews encapsulate the ethos of modernity. We will see that both these ways of viewing the world undermine human dignity. *Animal laborans* sees everything in terms of staying alive and making life more comfortable. *Homo faber* sees everything in terms of utility, and as a means towards some end. When these standards get generalized in modernity, it becomes necessary to insist that the human being is something outside of these standards that must be respected in itself. Yet simultaneously, this becomes impossible.

Precisely because of the ethos of modernity, embodied in *homo faber* and *animal laborans* within the rise of the social realm, the elevation of human dignity becomes a necessary project, since this ethos reduces everything, including human life, to a means to an end; yet the dominance of this ethos makes it impossible to elevate human dignity in a way that makes it secure. The ethos of modernity presents a concept of the human being that is contradicted by modernity’s most central tendencies. In other words, while we claim to elevate the human being and human dignity in modernity, our very *ethos* ultimately undermines that claim.

1 MODERNITY AND THE RISE OF THE SOCIAL

In order to understand why the ethos of modernity renders human rights both necessary and impossible, we must keep in mind Arendt’s understanding of modernity. Her analysis of it works on two levels. On the ontological level, Arendt is concerned with the way people experience their lives and the world. In modernity, this is characterized by loneliness and alienation.⁴ On a political level, Arendt is interested in the way people understand how they live together with others. Consequently, a large portion of her analysis of modernity is dedicated to understanding how the public, private, and social realms are understood, as well as the activities of the *vita activa*, labor, work, and action. These two modes of analysis are connected by Arendt’s interest in *reality*. Both the political and the ontological changes conspire to put reality into question, for reality is lost with the disappearance of the public realm and the rise of loneliness as a mass phenomenon. Only by understanding

these changes in modernity can we understand why it is that human rights become so important and remain so contradictory.

The most fundamental change in modernity is the rise of the social realm and the eclipse in the significance of the public and the private realms.⁵ In *The Human Condition*, she speaks of the social as “the rise of housekeeping, its activities, problems, and organizational devices” into the public realm (HC 38). This change of space or location is of central importance to Arendt’s analysis of the activities in the *vita activa* since each activity has a space proper to it: action is public while labor and work are necessarily private. The change in location of an activity is significant—to eliminate the public realm is essentially to eliminate the possibility of action (though, as she tells us in *On Revolution*, a public space is created when and so long as people act together). Moving labor from the realm of the private into the realm of the social did not fundamentally alter the nature of the activity, although it did change our perception of it, which in turn, altered the value we ascribe to it. Thus *where* an activity takes place determines to a large extent both what kind of activity it is and how it will be perceived.

In ancient Greece, the world was clearly divided between the public and the private realms. For that society, the public realm was associated with freedom, permanence, and honor, while the private realm was considered the realm of necessity, futility, and shame; the public realm was the realm of action while the private was the realm of household activities. In the ancient world, one lived in a household because, being human, one was driven by needs and wants that had to be satisfied. The household took care of these needs. The public realm, however, was the realm of activities that were free in the sense of not being driven by necessity, but that emerged out of a desire to speak, act, and be with others.⁶ The public realm was dependent on the private because the necessities of life needed to be mastered before one could have the freedom of public life. The divide between the two spaces was solidified by the basic assumption of Greek political life that no activity that served the purpose of making a living or sustaining life was permitted into the public realm: politics was never done for the sake of mere existence.⁷ The distinction between the public and the private can be seen as a distinction between freedom and necessity, or between activities related to the common world and activities related to the life process.

In modernity, however, the world is not divided between the public and the private, as both spaces have collapsed into the social. Arendt defines the social as the rise of the household and its activities (and problems) into the public realm, so that all private matters are now of concern to all people. To be sure, this process has changed both what it means to be private and what

it means to be public—the public is no longer the realm of freedom and the private no longer the realm of necessity; freedom is no longer the freedom *to* act in concert with others, but rather the freedom to satisfy necessity, to be free *from* acting with others. Arendt argues that with the rise of the social, there can be no real public because there is no genuine private realm (nothing can stand the light of the public all the time; without a private sphere to retreat to, no public can exist).

Arendt's discussion of the social realm, and her insistence that it must remain separate from the political, remains one of the most controversial aspects of her philosophy. The essential problem with the social is that it takes away from the autonomy of the political—action for the sake of self-disclosure, revelation of a principle, etc.—and reduces it to an activity within the means-ends framework. Within the social realm, political action becomes more like an activity of fabrication than *praxis*. Further, the ways we behave in private become our only modes of being—that is, conformism replaces novelty, behavior replaces action. Pursuing the needs of life and sustaining the life process, which are normally the domain of labor, become the key political concerns.

Arendt's strongest attack on the social can be found in *On Revolution*, where she claims that the introduction of the poor onto the public stage was the ruin of the French Revolution. This was so because instead of founding freedom (which for Arendt is the task of all revolutions and what made the American Revolution great), the revolution aimed at eliminating necessity. Poverty is the essential social question that ruins politics as soon as politics begins to concern itself with it. This is partly because in the French Revolution, the Jacobins used the concept of “le peuple”—the poor, the suffering—to group people together into a mass that was easily manipulated. “The people” became a homogenous univocal force that eliminated plurality. Consent based on deliberate choice was replaced by *will* that excluded the exchange of opinions; equality of citizens was replaced with equality of those who were good at heart; pity replaced respect (OR 71). These changes helped to destroy the freedom to act inherent in the revolution.⁸

One of the political consequences of the rise of the social realm is a transformation in our understanding of equality. Arendt reminds us that the ancient sense of equality was an equality among citizens—i.e., people who were inherently unequal and different, who became equals through political participation. In other words, it was through political means, not nature, that people were equalized. In the modern age, with the rise of the social and the birth of human rights, equality was seen as a universal birthright, something intrinsic to what it means to be a human being. Arendt argues

that this kind of innate equality differs from the ancient sense not merely because earlier concepts applied only to the few who had freed themselves from necessity; rather, it suggests a fundamentally different understanding of equality. For the ancients, equality was a status that had to be achieved through participation in political life where each actor had to distinguish himself. In other words, equality meant an equalization of people who were different. In the modern age, equality means *sameness*, in the sense that biologically, we are all the same. The equality inherent in society is an equality of household members. This equality is achieved, not through political participation and distinguishing yourself in public, but rather through a strictly enforced *conformism*. Equality, she argues, means being the same, conforming to a standard of behavior and this is achieved through following the rules of society. Society's rules "normalize" its members and thus make them equal in this sense (HC 40).

To be sure, Arendt is not advocating a return to an elitist conception of equality, as something open only to the few. She is, however, interested in pointing out the full implications of this change of definition and also what we have lost in this drive towards sameness. There are two primary problems: equality as sameness rules out action and destroys plurality. Concerning the first problem, genuine, spontaneous action is ruled out in society because *equality* here means conforming to social rules. Modern equality, Arendt argues, is possible only because *behavior* has replaced action as the way of relating to people. Again, the distinction from Greece is striking: the public realm was an extremely competitive place where one was forced to distinguish one's self, to show one's individuality. Equality thus required distinction. In the modern world, distinctions are the stuff of the private, where we are unique only to our friends and family, while in society, we conform in order to appear equal and lacking in distinction. This is particularly troubling for Arendt since this notion of equality rules out everything that is not part of the norm, and leaves only what is expected. Thus the significance or meaningfulness of everyday life, which is disclosed in rare deeds, in action, in the unexpected, can no longer be felt. This leads to the second problem with the modern version of equality: it goes against the *sine qua non* of politics—plurality. Plurality means that we are both similar and different—we are similar in that we can speak and understand each other, but we require speech and action because we are distinct, unique. To lose either of these qualities can be tragic. The emphasis on sameness in society, which entails a diminishing of plurality, is particularly troubling for Arendt because it calls into question the very basis of politics, as well as our ability to protect human rights.

What the rise of the social and decline of the public shares with the increase in alienation and loneliness in modernity is the loss of *reality*. Mass loneliness is intimately connected with this loss because in being deprived of reality, which comes from being seen and heard by others, we are deprived of “objective” relations with others that arise from being related and separated by a common world. This essentially private existence means that what you do is without consequences for others, or literally without interest. Loneliness, Arendt writes, is what happens when the loss of “objective” relations becomes a mass phenomenon.

To be sure, Arendt is not talking about a transcendent reality, such as the realm of the Platonic forms. For her, what *is* is what *appears*; reality is appearance. The public realm was so important because it is the realm of what *appears*, of what is seen and heard by others. Accordingly, all that is not public, such as the domain of intimacies, passions, and sensations, has a vague existence that can only be made “real” by stories, artistic creation, or by speech.⁹ In other words, even the most intimate experience must be transposed into something public before it can have reality. Thus, since reality depends upon appearance, it necessarily depends upon a public realm.¹⁰

In modernity, when the public space where things appear in common is eliminated, the most “real” objects are those that appear in my mind and are justified through reason. We need only think of Descartes *cogito* in order to see this. The result is a loss of a sense of commonality, that the world is something shared by all, even though we all have a privately owned place within it. This idea of commonality is essential to Arendt’s definition of the “world” of human artifice. The world does not exist merely for one generation; we have it in common with those who are alive, have lived, and will live on the earth. This realm is “what we enter when we are born and what we leave behind when we die” (HC 55). The world lies “between” people and both separates and relates. Without the public realm, as in the modern age, the world has lost its power to relate people and exists only as something that stands between them. This loss of the common world, which is tied to the disappearance of a separate, public realm, is one of the main difficulties with modern life and, as we will see, will pose a particular difficulty for human rights.¹¹

The loss of commonality relates to our sense of reality as, without the world as a common object that binds and separates us, our sense of reality is further diminished. Though the world is common to all, the key is that everybody sees this world from a different place and a different perspective within it. Reality thus arises from the sum total of aspects given by an object to those who see it; reality exists when a thing is seen by many people

without changing in its identity, despite the diversity of views. Reality is in this sense guaranteed in that, despite the difference of perspectives, we can still grasp the sameness of the object. Equality as sameness threatens reality insofar as it encourages people, through conformity, to adopt one perspective. The price of equality in modernity is a loss of the sense of the real.¹²

The rise in importance of the social and the decline in importance of the public and the private realms are the distinguishing features of modernity. Because of the increased status of the social realm, the life process becomes of central importance: the functioning, prolonging, and sustaining of biological existence. Politically, this means that only activities connected with survival are admitted into the political realm and thus politics becomes an administration aimed at regulating the life process. The rise of the social has meant that politics is thought of primarily as taking care of the needs of people and sustaining the life process. Consequently, the ways of life that become meaningful in this context are the life of the person *qua* laborer and the person *qua* worker. These ways of life ultimately define the modern ethos and create particular problems for human rights.

2 *HOMO FABER AND ANIMAL LABORANS*

Arendt insists throughout her work that human nature is either unknowable or irrelevant. Human nature, those essential qualities without which we would cease to be human, is unknowable because these essential qualities can never be fully enumerated. Central to her political ontology is the idea that we are conditioned beings. Everything that we are in contact with conditions us. Anything we make therefore ‘makes us,’ in a sense, and thus whatever is part of the *world* becomes part of our *condition*. She writes, “men are conditioned beings because everything they come in contact with turns immediately into a condition of their existence . . . Whatever touches or enters into a sustained relationship with human life immediately assumes the character of a condition of human existence” (HC 9). This is why the only thing we are “by nature” is historically conditioned. In other words, the “reality” of the world affects human existence as much as human existence creates a world. This is an on-going process that never ends completely. We are never fully conditioned, but remain in a process of becoming.

That is why we must understand what has conditioned us in modernity. Arendt argues that in modernity, we have become conditioned by the worldviews of either *homo faber* or *animal laborans*. It is not that this is who we are by nature, but rather that we have been conditioned by these ways of viewing the world, by these standards of life. The modern age is essentially

defined by the activities that are considered most important. Yet the low status accorded to action is of no less significance than the high status accorded to labor and work.¹³

In *The Human Condition*, her phenomenology of modern life, Arendt is interested in explicating the three fundamental human activities—labor, work, and action. They are fundamental because they correspond to our basic human condition, that is, the conditions under which we experience life. Arendt's purpose is to understand how we have moved from thinking of the life of action as the highest human possibility—a life of public self-disclosure for the sake of the common world—to elevating the life of private consumption and pleasure embodied in labor. In this context, she presents her analysis of labor.

What does Arendt mean by labor? Her distinction between labor and work is by no means an obvious one. She takes this distinction from a phrase of Locke's, "the labor of our body and the work of our hands,"¹⁴ and finds supporting evidence for this distinction in the fact that many European languages have two different and unrelated words for these activities (for example, *travailler* and *ouvrir* in French, *arbeiten* and *werken* in German). In each language that makes this distinction, the term for labor, as opposed to work, always has the connotation of physical pain and childbirth. In general, we may say that labor concerns activities that sustain life, metabolize with nature, and leave no trace behind. Labor entails both production and consumption and is thus cyclical in nature. Work, as we will see, involves the activities of building and creating, and is characterized by the fact that it, unlike labor, always leaves behind a finished product.

Labor is most fundamentally the activity that sustains life. It is what allows us to interact with nature as part of the life process. Labor's most distinctive feature is its cyclical nature—it is a continuing process that leaves no end product behind. Hence the *object* of labor is simply life, and it includes all those endless tasks involved with sustaining the life process. Tilling fields, harvesting crops, preparing food are all part of labor. When food is then consumed, nothing is left behind from this process except the continuation of the life that has benefited from it.

Arendt stresses that labor has a dual nature: it entails both painful repetition and the most basic human satisfaction. On the negative side, because the processes of labor are endlessly repetitive and bound to the cyclical aspects of nature, labor is inherently connected to endless futility and inextricable necessity—labor is not something that can simply be denied or ignored. As she writes, "despite its futility, [it] is born of a great urgency and motivated by a more powerful drive than anything else, because life itself depends on

it" (HC 87). Labor, in attempting to stem the process of growth and decay, must engage in "daily chores" whose pain comes from their relentless repetition. Labor thus requires the virtue of endurance, not courage. In sum, labor, because it is the activity which tends to life, both of the world and of the person, necessarily moves in the same cyclical motion as the life process; endlessly repetitive and futile, labor is motivated by the most powerful drives we have and thus cannot be ignored.

On the other hand, Arendt argues that labor contains a fundamental element of *joy*. That is because labor moves in the same cycle as biological life, which is sustained through a cycle of laboring and consuming. The joy of labor is that effort and gratification follow upon each other in the same way that producing and consuming follow each other. She writes, labor is "the human way to experience the sheer bliss of being alive which we share with all living creatures" (HC 106). In this sense, "happiness" is concomitant with the process of labor and consumption (HC 108). Indeed, happiness for her is identical with the laboring processes that sustains life:

There is no lasting happiness outside the prescribed cycle of painful exhaustion and pleasurable regeneration, and whatever throws this cycle out of balance—poverty and misery where exhaustion is followed by wretchedness instead of regeneration, or great riches and an entirely effortless life where boredom takes the place of exhaustion . . . ruins the elemental happiness that comes from being alive (HC 108).

Arendt's view of labor is situated between the entirely negative view of labor in the ancient world¹⁵ and the positive view of it in the modern. In the ancient world, the chief characteristic of labor was its connection to need and necessity, since it was thought of as the activity that took care of everyday needs. Because of the general contempt for all things that were done out of necessity and therefore not free, labor was generally thought of very poorly. The contempt for labor in the ancient world was based on two of its features in particular. First, labor was considered the very opposite of the "passionate striving for freedom from necessity" that was characteristic of Greek political life (HC 81). Second, labor dealt with things that were inherently futile, that is, things that left no mark behind and were not worthy of remembrance. According to Arendt, the goal of the *polis* was to create a space of remembrance as a way of achieving a human and earthly immortality. Because of the futility of the laborer's work, he could not participate in this important activity of remembrance. By the fifth century B.C., all occupations were classified by the amount of labor and effort they required. Aristotle's contempt

for craftsmen was based on this in part, as he perceived them as having the occupation that required the most effort, the most labor, and thus that deteriorated the body most severely.¹⁶

Underlying these negative views of labor is the belief that any bodily labor, which is done for the sake of fulfilling a need, is *slavish*. This in turn meant that all activities that existed for the sake of satisfying the needs of life, and not for their own sake, were considered labor. This is the ground for the ancient justification of slavery. Labor was not despised because only slaves did it (as, Arendt claims, we are inclined to think in modernity). Rather, because all activities that served only the needs of life were slavish, slaves were thus needed (HC 83). One had to possess slaves because the nature of all activities related to fulfilling need and sustaining life was slavish. Aristotle, who was aware that the necessities of life had to be mastered before one could live the good life, considered slavery a human way of mastering the necessities of life. In other words, slavery was never a way of just having cheap labor or gaining profit, but a means of excluding labor, and thus necessity, from the human life.

Given labor's lowly status in the ancient world, its elevation in modernity is all the more surprising. The beginning of that ascent was the same event that marked the birth of human rights: the French Revolution. Here for the first time, the worker or laborer was raised to the status, at least in theory, of the wealthy landowner. Later, Karl Marx greatly solidified the high standing of labor in modernity. Three factors, articulated by Marx but arising from the experiences of the modern age, account for this rise: the realization of the "productivity" inherent in labor, the beliefs that labor and not God created man, and the contention that labor and not reason distinguishes man from other animals.

The "productivity" of labor, which was discovered in the modern age, was actually based on a confusion. According to Arendt, Marx distinguished between unproductive and productive labor: labor that does not enrich the world by leaving something behind and labor that does. Thus he confused "productive labor" with work, since that activity leaves something behind in the world, while "unproductive labor" is labor itself. Unproductive labor is exactly what slaves in the ancient world did—they labored so that the master could effortlessly consume and have time to be productive. The elevation of "productive labor" is in fact an elevation of work. To be sure, Marx did discover an important aspect of labor (according to Arendt, this is the "most original and revolutionary element of his whole system"). He discovered that labor actually produces human "power,"¹⁷ that labor can reproduce itself and can be used for the reproduction of more than one life (although it is still limited to the realm of life) (HC 88). But on the whole, Marx's analysis and

glorification of labor is really a glorification of work. To the extent that Marx looks down on “unproductive labor,” he is in line with the ancient world.

The two other ways of seeing labor—that labor creates us and makes us distinct from other animals—is fundamentally a result of Marx’s conscious challenge to tradition. The idea that labor created man rebels against the idea of God as a creator, and it implies that a person’s very humanity is the result of her own activity. His insistence that labor and not reason distinguishes humans from animals is a challenge to the Aristotelian tradition; what had traditionally been the most despised activity was now the source of a person’s humanity. Human beings are not *animal rationale* as Aristotle thought, but *animal laborans*. Marx is essentially challenging, according to Arendt, the notion of God as creator, the traditional conception of labor, and the traditional glorification of reason (BPF 22).

Labor assumed the place of the highest activity, the place held by political action in the ancient world, in part through Marx’s influence and in part through the experiences of the modern age (such as the French and Industrial Revolutions). With the rise of the social realm, the realm of the life process, labor was the key activity that existed to take care of the life process. Arendt argues that because of this elevated position and because of Marx’s confusion of work with labor, all work, all activities came to be seen in terms of labor, so all work, all occupations need to be thought of in terms of “usefulness” to the life process of society.¹⁸

The implicit connection between labor and happiness is essential to understanding the elevation of labor in modernity. One of the most profound changes from the ancient and medieval world to the modern was a change in the definition of the purpose of life and the meaning of happiness. For Aristotle, the purpose of life was virtue, for Christian thinkers like Augustine and Aquinas, it was the salvation of the soul. For neither group was happiness or the purpose of life understood as pleasure. By the time we reach the day of Bentham and Mill, happiness, and hence the purpose of both our individual pursuits and politics, is understood as pleasure and the avoidance of pain. If we agree with Arendt that labor brings with it one of the most elemental pleasures of life, we can see how the elevation of happiness as pleasure is tied to the elevation of labor in modernity.¹⁹

Yet modernity’s relationship with labor is not quite this simple. In fact, though modernity elevated labor to the status of the highest and most human activity (in part through Marx’s influence and in part through the French and Industrial Revolutions), there was a paradoxical tendency at work that aimed to eliminate labor and the need for labor from human life. Though people in modernity glorified certain aspects of labor, they were not unaware

of its inherent futility, painfulness, and endless repetitiveness. Labor, though glorious, was also seen as a burden. Paradoxically, along with the belief in the power and importance of labor came a belief that labor and biological necessity could be eliminated from life. Marx was the first to articulate this desire to be rid of labor in its most paradoxical form: even though labor is the most fundamental of human activities, his aim was to emancipate the person from labor and free her from necessity. That is because Marx still held that the realm of necessity and the realm of freedom were separated (as did Aristotle), and that only when laboring was abolished could we experience freedom.²⁰ Yet central to his philosophy was the importance of labor as the most productive and the most human of our activities; indeed, it is what distinguishes us from animals. This contradiction is not unique to Marx alone but is characteristic of the view of labor in modernity.²¹

Arendt is strongly opposed to the widespread belief that the elimination of necessity and labor is a legitimate goal of political life. She argues that necessity, desire, need, are all part of the human condition. The only way we could succeed in getting rid of necessity is through forcing someone (women, slaves, foreigners) or something (robots, machines) to carry this burden for us. Yet even in these cases, necessity is not eliminated but only hidden from sight. Further, the goal of eliminating necessity is also an attempt to rid life of pain and effort that are inherent in labor. But this, she argues, would take away one of the most basic aspects of life: labor (understood as painful exhaustion and pleasurable regeneration) is one of the most basic joys, and its elimination would rob “the specifically human life of its very liveliness and vitality” (HC 120). Her point is that the human condition entails this pain and effort, and they cannot be removed without also altering our condition. In Heideggerian language, she writes that pain and effort are “modes” in which life makes itself felt. A life without pain and effort is not a human life.

Arendt is concerned with the effect of simultaneously glorifying labor and yet eliminating the pain and effort that goes along with it. Recall that labor involves both painful exhaustion and pleasurable regeneration. Modernity elevates the pleasure involved in labor while seeking to eliminate the painful side of it. In her view, this is existentially dangerous because this would eliminate what produces the joy of life that comes from labor. Eliminating the burden of labor does not make people either happier or more free, because it throws out of balance this basic activity. It does not produce leisure but a deep unhappiness because of the lack of balance between production and consumption. Two other consequences follow from this.

First, having eliminated the burden of production, or at least the value of this activity, all that remains is the activity of consumption, which now

occupies the place of labor. Why is this the case? For *animal laborans*, the person conditioned by labor, spare time “is never spent in anything but consumption, and the more time left to him, the greedier and more craving his appetites” (HC 133). In other words, simply giving people material goods is not enough to eliminate the view that all life is a process of production and consumption; when we eliminate production from labor, we are left with consumption. Consequently, in a world dominated by the standards and values of *animal laborans*, if we remove labor from people’s lives, they will not be free for “higher” activities. It is not that *animal laborans* lacks the time or the power for other activities—it is that his worldview is so narrow that it forbids taking seriously other activities.²²

Second, in such a society, where we are “dazzled by the abundance of its growing fertility and caught in the smooth functioning of a never-ending process,” we are less likely to recognize the futility of life and our dependence upon a lasting, durable world (HC 135). As such, we would be made more vulnerable to necessity since it would be less recognizable as part of the human condition: “Man cannot be free if he does not know that he is subject to necessity” (HC 121). The satisfaction of necessity requires both production and consumption. If we were to eliminate labor but retain consumption, we would be no freer from necessity. “Painless and effortless consumption would not change” writes Arendt, “but would only increase the devouring character of biological life until mankind altogether ‘liberated’ from the shackles of pain and effort would be free to ‘consume’ the whole world” (HC 132). In other words, we would be left with only the need to consume, which would not diminish with the absence of labor.²³

To summarize, modernity was marked by an elevation of the activity of labor, the activity primarily concerned with the social realm, in part at least, because of its intrinsic pleasure—pleasure that comes from the regeneration and consumption that follow the activity of labor. Yet concomitant with this elevation was an attempt to eliminate the productive side of labor. When this happens, not only is the intrinsic happiness of labor eliminated, but the only activity that remains is consumption. The elevation of labor in modernity is really an elevation of consumption. Because consumption is detached from the laboring activity, it no longer has a natural limitation (that is, we no longer only consume what we produce). Consuming becomes the highest kind of life. In claiming that the worldview of *animal laborans* becomes the generalized view in modernity, Arendt is saying that (1) we see the activity of consumption, and ultimately the life of comfort and pleasure, as the highest human possibility, (2) that in principle there is and ought to be no limit to

this activity, and (3) the protection of this activity and way of being is the purpose of politics.

Homo faber's worldview is different from—though connected to—that of *animal laborans*. At its most general level, Arendt defines work as the activity that creates lasting objects and builds a *world*—what we enter into when we're born and what we leave behind when we die. Work is the most worldly and world-building of all activities so far discussed. Thus, *homo faber* is the human being *qua* creator, *qua* fabricator of human artifacts. The most important quality of the products of *homo faber* is their durability, since her products are not meant to be consumed immediately, unlike the products of labor. Their relative durability comes from the fact that they are independent from both the producer and the user; they have their own worldly existence. If the purpose of labor is to sustain the life process, the purpose or *telos* of work is to create objects that stabilize human life. This stability is due to the unchanging nature of man-made objects, their sameness, in which people can ground their identity. In our connections to the same objects over and over again, we are confirmed in who we are. This objective world exists in contrast to human subjectivity, though our subjectivity gets its stability from this objective world. In sum, fabrication is important because it gives us a dwelling place that is both more permanent and more stable than we are.²⁴

Objects of fabrication are fundamentally different from products of labor, insofar as the former are meant to be used while the latter are meant to be consumed. There is some overlap, however, since all use entails some consumption; to use something is to wear it out. But use is not just consumption at a slower pace. Use objects are fundamentally different. If an object for consumption, like an apple, is not consumed, it will rot, where as a use object, like a shoe, remains unchanged in the world. This again relates to the relative durability and worldliness of fabricated objects.

Let us recall that labor was defined as a metabolism with nature, that the laborer simply interacts with nature, taking life from it and returning life to it. In contrast, the meaning of work is to take something out of nature, to stop the natural processes that created it, and to make it into a thing, to reify it. It gains a certain solidity from the combination of natural material and human molding. Yet, though fabrication is what builds our world, we should not forget the element of violence and violation inherent in it. Fabrication entails violence because it interrupts the process of nature—the tree, for example, must be cut down to make wood. While *animal laborans* interacted with and became part of nature, *homo faber* must destroy nature. According to Arendt, this violence is the original experience of human strength, which the activity of labor, characterized more by pain and exhaustion, does not

share. Further, while labor is connected, as we have seen, with the joy of life and the basic happiness that comes from being alive, the pleasure of work is less and comes from the satisfaction of asserting strength.

What is important for our purposes is the mentality or attitude with which *homo faber* approaches the world and the categories with which she thinks, since this attitude is one of the “outstanding characteristics of the modern age from its beginning to our own time” (HC 305). This attitude can be generally summed up by the phrase “anthropocentric utilitarianism.” It suggests a confidence in tools and in the capacity for productivity of the person who uses them; a confidence that all problems can be solved with the principle of utility; a belief in her sovereignty over the natural world; an equation of intelligence with ‘know-how’; a contempt for all thought which does not lead to fabrication; and most importantly, an instrumentalization of the world.

As Arendt describes the fabrication process, all fabrication is guided by a model, an idea of what the end product should be. The product is an “end” both because all production comes to a stop when it is finished, and because the whole fabrication process was intended to produce this object (this is its teleological sense). In contrast, labor has no definite end, except to sustain the life process, since its activity is cyclical (everything labor produces is fed back into the life process which needs labor in order to sustain it). Most importantly, within this paradigm, the ends always justify the means—the end product justifies the violence done to nature in order to produce it, “as the wood justifies killing the tree and the table justifies destroying the wood” (HC 153). This is because, in part, everything is judged in terms of the expediency and usefulness in achieving a particular end; the end product, in a sense, organizes the whole process (it determines what workers are needed, how many, for how long, etc).

Right away, we can see the problem that *homo faber’s* attitude is based on an inadequate picture of the world. As Arendt argues, nothing can ever be judged according to the principles of utility alone, since everything *appears* in a common world. This is because everything that appears has a shape, and that shape transcends its functional use. This transcendence—its beauty or ugliness—is identical to what it means to appear publicly. Thus, the standards for judging can never be utility alone, “as though an ugly table will fulfill the same function as a handsome one” (HC 173); things are always judged according to their adequacy or inadequacy (either to a Platonic “form” or more simply to a mental image). Even use objects are judged not merely by the subjective needs of people, by what they can do for us, but also by objective, worldly standards, that is, by what they look like to others. In this

sense, the world transcends the functionality and utility of the objects produced for it. This space of appearance is created by *homo faber*, and to treat objects as purely instrumental denies the importance of their appearance in the common world. As a result, our sense of reality is lessened: “Without a space of appearance . . . neither the reality of one’s self, of one’s own identity, nor the reality of the surrounding world can be established beyond doubt” (HC 208).

Homo faber, then, judges the world and nature according to how they will help her achieve her end, that is to say, she judges things instrumentally. This in turn means that even the ends she has created turn into further means—the chair which she produced must be a means to some other end, either of more comfortable living or as a product of exchange. So the scheme of ends justifying means continues to apply even after the product has been finished. Arendt describes this process as a chain, where all ends eventually become means for other ends.

3 MODERNITY AND HUMAN RIGHTS

My claim in this chapter is that the ethos of modernity—primarily defined through the worldviews of *homo faber* and *animal laborans* within the context of the dominance of the social realm over the political—undermines human rights. We are now in a position to understand the ways in which the ethos of modernity subverts human dignity and consequently human rights. Concerning *animal laborans*, the elevation of biological life means a degradation of life in a deeper sense. It is an elevation of *zoe*, the Greek word that referred to the kind of life that we share with all living creatures, at the expense of *bios*, that which makes life genuinely human. Dignity, what is worth respecting about human life, is often thought to be precisely that which makes humans different from animals. But the worldview of *animal laborans* denies precisely this. Further, there is a danger that human beings will be thought of as merely part of the life process to be used and consumed like any other object. Consequently, human rights, the view that humans ought to be placed outside this process because they have an intrinsic dignity, become both necessary and impossible. Let us look at this more carefully.

First, human rights suppose the view that human beings have an intrinsic dignity and thus are entitled to special treatment; human beings cannot be treated like an inanimate object to be used or consumed at will. But there is a paradox: in this consuming society, everything is seen as an object of consumption—the world no less than people and ideas. In such a society, human rights cannot hold things (nature, resources, the earth)

or people outside of this system; they are bound to be devoured. The life process takes precedence. For example, if the life process of a group is in question, there is nothing to stop it from devouring the resources of another group of people, since this life process comes above all. The assertion of rights cannot stop the mechanism of consumption because rights are supposed to be grounded in something that elevates the human being, which is precisely what this ethos denies. In other words, if the highest end is the life process, a concept like human rights cannot place a limit on your capacity to consume since that ethos insists that there is nothing higher than the continuation of the life process.

Second, there is a certain dehumanization inherent in seeing the human being as *animal laborans* and this serves to denigrate rather than protect human dignity. For *animal laborans*, the highest human possibility is a life of comfort, a life that has eliminated all struggle and strife. For Arendt, the human being as laborer and consumer is only one aspect of life, but to focus on it at the exclusion of all other possibilities is to reduce human life to one level: the one which is closest to animal life. Political action, understood as self-disclosive words and deeds in a public realm, remains an essential part of a fully human life, but one that is eliminated by the elevation of *animal laborans*' worldview. To define the human being by his capacity for metabolizing with nature is to leave no room for self-disclosure or any opportunity to exercise power. Even though labor is necessary and even joyful, to reduce all life to it is extremely damaging.

Finally, we have not yet dealt with one of the key characteristics of *animal laborans* that makes her worldview unable to ground human rights. This is *animal laborans*' worldlessness. Labor is essentially a worldless activity—labor exists within the natural cycle and never transcends it, or frees itself from necessity. As such, the products of labor do not last, in the sense that they do not stay in the world long enough to become a part of the world. Thus *animal laborans* is worldless not because she has chosen to leave the concerns of the world, but because she is “ejected” from it; she is imprisoned in the privacy of her body, caught up in the fulfillment of bodily needs that cannot be shared or communicated fully. The activity of *animal laborans*, because her activity is essentially worldless, will never result in a common, durable world, no matter how much abundance is produced nor how little laboring time is expended.

This worldlessness manifests itself in a different way as well. In a laboring society, no matter how little labor is actually done, all work is turned into labor to sustain the life process and all worldly objects are turned into objects for consumption. Within our laboring society, we have produced a greater

and greater amount of wealth so that the accumulation of wealth seems to be unlimited. The problem is that individual consumption is limited such that the laboring process—production and consumption—is off balance. Arendt argues that the “solution” to this problem has been to turn all goods into consumer goods so there is more opportunity to consume what is produced. For example, a chair which previously would have lasted a generation, perhaps longer, is now consumed as fast as a piece of clothing like a dress; likewise, clothing is now consumed as quickly as food. This increase in our rate of consumption, besides the problems of over consuming, is problematic for several reasons. As Arendt asserts, this mode of interaction with things is inadequate to the way they are produced. For example, the chair was a product of workmanship, not of labor, and was designed to be used, not consumed. When all work becomes labor, the relatively durable use objects become consumer goods that immediately disappear. In turn, this means that the boundaries between the world and nature vanish, since it is the durability of human artifice that marks the limits of the world. According to Arendt, the ideals of *homo faber*, man *qua* worker, such as permanence, durability, and stability have been replaced by the ideals of *animal laborans*, namely abundance.²⁵ To summarize, as long as we remain in the paradigm of labor and consumption, we risk being overwhelmed by consumption, no matter how little labor is done. We stand more vulnerable to necessity since we are no longer even aware that we are subject to it, and we are not free simply because we can consume the whole world.

This aspect of worldlessness—both because *animal laborans* products are worldless and because she consumes the world—is extremely significant for human rights, especially in Arendt’s sense. Indeed, the decline of the common world created a fertile ground for totalitarianism’s destruction of human dignity. For Arendt, the degradation of the common world precedes the degradation of human life. The world is what separates and brings people together, and what gives us our sense of the real. The elimination of this throws us back into ourselves, into a kind of loneliness because our reality can never be confirmed. That *animal laborans* is separated from the world because of her worldlessness and consumption means that the common world, the ground of human rights, is threatened. When *animal laborans* rules, life is at the center, not the world. That is why the worldview of *animal laborans* undermines this aspect of human rights and as such is an inadequate view of the human person.

To be sure, life is not unimportant for Arendt, but she thinks that politics cannot only be about sustaining life, especially at the expense of the “world.” Ultimately the ability to protect *life* is predicated on the existence

of a shared common reality and common world. She argues against what she calls “materialism in politics,” namely, the idea that politics exists to take care of the material needs of people and to thus to sustain the life process. According to Arendt, all materialism in politics, however pervasive, is based on an error. It ignores that political action discloses a person. Human rights, then, cannot only be a matter of preserving life, but also a means of protecting the person. As such, human rights must be much broader in scope than the laboring society would allow, and this entails acknowledging that there is something more valuable than biological life. As I have been arguing throughout this book, Arendt’s focus is on understanding how a common, shared reality might be possible within the modern world. Ultimately, only by reestablishing the common world can we find a ground for human dignity.

How does *homo faber’s* worldview relate to human rights? Strictly speaking, we are not concerned with the worldview or attitude of *homo faber* itself. Restricted to its own domain, the domain of fabricating objects, this worldview is not at all problematic; in fact, it is the only way of creating objects and building a world. This is true also for the worldview of *animal laborans*. The problem arises when the experience of *homo faber* is *generalized*, as Arendt argues that it has been in modernity, and the standards of *homo faber*, along with that of *animal laborans*, become the standards for the world in general and the rules for society. The standards become generalized when *homo faber* is taken as the highest human possibility.²⁶

When the attitude of *homo faber* is generalized more broadly there are a number of consequences, both for the worldview of modernity and for human rights. The most obvious result occurs when we apply the means-end category outside the domain of fabrication. This undermines the idea that human beings are never merely a means to an end, which is a foundational assumption of human rights. Recall that for *homo faber*, the ends justify the means, and further, that all ends eventually become means in a never-ending chain. When this attitude is applied more generally, the result is that everything, including human beings, becomes part of this chain. In politics, no less than in daily life, nothing is spared the fate of becoming a means to a particular end—including human life.

Arendt characterizes this phenomenon in politics as “the traditional substitution of making for acting.” Politics, within the framework of *homo faber*, is a way of “making” a better society and thus all political action simply becomes a means to achieve a “higher” end.²⁷ Because of the dominance of this worldview, it is almost impossible to speak of politics without using the means-end category or without thinking instrumentally. Since violence is such an inherent part of fabrication, it also plays a large part in “making” a

society. The post-World War Two generation was the first to realize the horrific consequences entailed in the belief that all efficient means are permissible and justifiable to pursue a given end.

We can understand Kant's moral philosophy, in part, as a response to the predicament of *homo faber* described above. His insistence that the human being be understood as "an end in itself" is an antidote to the reductive tendencies of *homo faber*. For Kant, the human being is an end in itself because of the capacity for autonomy—our wills are not determined by nature but through our reason. We are able to take up the moral law for ourselves. This solution implies that we can place the human being outside the chain of means and ends by arguing that his value and meaning come from himself; these qualities are grounded on the distinctly human capacity for the free use of reason, rather than on what he is useful for.

Yet even Kant's solution fails to overcome the reductive mentality of *homo faber*. Given the attitude of *homo faber*, it is impossible to insist that the human being is an end in itself, something which cannot be used merely as a means, because as soon as something ceases to be an end (what organizes and guides production), it necessarily becomes just another thing from which *homo faber* chooses his means.²⁸ The very notion of something being an end-in-itself is, in this way, nonsensical. Something cannot be an end in itself simply because it has a unique property, such as reason, because we've lost the meaning of this concept (the 'in-itself') altogether. Arendt is trying to argue that within the means-end paradigm of *homo faber*, nothing is excluded, neither particular objects nor human beings as such. Thus, the attempt to make the human being an "end in himself," no matter what the philosophical basis, necessarily fails.

A second consequence for human rights is that the generalization of *homo faber's* attitude diminishes the possibility of making human rights an absolute standard (which, by definition, it is). *Homo faber's* attitude engenders *meaninglessness*, because it eliminates the notion of an ultimate end or ultimate meaning. This is primarily because for *homo faber*, there is no difference between meaning and utility. In the world of *homo faber*, everything is done in order to achieve something else. When this mentality gets generalized, the principle of utility becomes an ideal, so that utility itself becomes the highest end; the meaning of an action is its utility. This leads to a situation of meaninglessness because there is no answer to the question of why one should do something for the sake of utility; or, to use the terms Lessing did when he posed this question to the utilitarians of his day, we cannot answer the question "what is the use of use?" (HC 154). For Lessing, utility can never give a self-justifying principle and thus it remains bound up in

the never ending chain of means-ends.²⁹ Consequently, values and standards can only be relative for *homo faber*, even though his activity requires absolute standards. For us, the implications of this are that within the framework of *homo faber*, a value, such as human rights, remains within the values of the exchange market, valuable for the goods it can bring but lacking in intrinsic worth. Human rights are valuable only for what they achieve and cannot be pursued for their own sake.

To understand the situation of meaninglessness created when *homo faber's* attitude is generalized, we need to understand the nature of value within this paradigm. For *homo faber*, value always means exchange value because the intrinsic worth of objects no longer exists for him. Though they are produced in isolation, *homo faber's* products become public when they become objects of exchange, so the value of something is determined by what it can be exchanged for. Publicness is essential for this: "value is the quality a thing can never possess in privacy but acquires automatically the moment it appears in public" (HC 164). Though value is not inherent in a thing, it is also not something produced by human activity. Value is a matter of a relation and requires that an object be "drawn into the ever-changing relativity of exchange between the members of society" (HC 164). Following Marx, Arendt insists that things, ideas, or moral ideals (such as human rights) become values, and valuable, only in their social relations.

To summarize, inherent in the concept of value are (1) an idea of universal relativity—that a thing exists only in relation to other things, and (2) the loss of intrinsic worth—things no longer possess an objective value, independent of the ever-changing estimation of supply and demand. The "devaluation of all things" that Nietzsche forecast began when objects were transformed into values and placed in the exchange market. Implicitly, then, within the exchange market, no absolute values exist. Though it might seem like a matter of course, this implication is extremely problematic for *homo faber*, since his activity requires the constant use of measurements and standards. The loss of absolute standards is devastating for his activity. This contributes to the situation of meaninglessness of *homo faber*: values and standards can only be relative for him, even though his activity requires them to be absolute. For our purposes, this means that within the framework of *homo faber*, a value such as human rights remains bound by the exchange market: valuable only for the goods it can bring and lacking in intrinsic worth. In other words, it can be easily replaced by a substitute, or eliminated altogether.

The third consequence of extending *homo faber's* attitude is to undermine the premise that a human being has an intrinsic worth because the very

idea of intrinsic worth is eliminated. This arises as a result of *homo faber's* failed attempt to place the human being outside the means-end system. The consequence of this is to make the human being the center and master of the world. To be sure, this is not the human being *qua* human being, but rather the human being insofar as he is a user of the world. The world is thus related to the person as a consumer and user of objects. This relationship brings a degradation of the world of things, which now lose their intrinsic meaning and become valuable only insofar as they serve the needs of people. Through making the human being the highest end, the world loses its intrinsic meaning and inherent dignity. "The wind will no longer be understood in its own right as a natural force" Arendt writes, "but will be considered exclusively in accordance with human needs for warmth or refreshment—which, of course, means that the wind as something objectively given has been eliminated from human experience" (HC 158). Therefore, the idea of intrinsic meaning or value is lost and can no longer be applied even to the human being herself. Having eliminated the concept of intrinsic value, it becomes nonsensical to assert that human beings possess it. This is particularly troubling given that *homo faber's* aim is to build a world: it is as if the instrumentality necessary for him to do this ultimately renders the world worthless and meaningless, since it becomes a means merely to serve the ends of human beings.

Finally, the fourth consequence concerns the degradation or frustration of the person inherent in *homo faber's* view of the world. The reason for this is twofold. First, as Arendt points out, Plato was already aware of the consequences of making human beings the measure of the world, as Protagoras suggested.³⁰ The implication that Plato made explicit was that it was the person as user and consumer, not the person as actor and speaker, to whom the world was related. This was problematic for Plato, of course, since neither the fabricator nor the user is the highest possibility of the human being; to regard him as such is a gross perversion. To treat a human being as if her highest possibility is to be a user of things is to degrade her.

Arendt argues the same point in a different way. For *homo faber*, the exchange market is his public realm, the place where he shows his products and distinguishes himself through what he has produced. This implies that *homo faber* can only show himself through what he has produced and can only have relationships with people through exchanging products he produces in isolation. In the exchange market, people meet not only as fabricators but as owners of products, as well. But here, again, the ability to distinguish oneself through action and speech is absent. As Marx writes in his definition of self-alienation, people are treated as commodities because they are judged not as persons but as producers, according to what they produce

(or, if a laboring society is dominant, people are treated according to their function in the life process). In this sense, people who meet on the exchange market “are primarily not persons but producers of products, and what they show is not themselves . . . but their products” (HC 209). The act of appearing “primarily as a person” is missing from *homo faber’s* ethos. This leads to what Arendt calls the “frustration of the human person” that is inherent in a society of producers (HC 210). The tacit assumption in her argument is that the human being is always more or greater than what he produces, but this cannot be made manifest by *homo faber*.³¹

To summarize, *homo faber* denies the following three fundamental assumptions about human rights and as a result, his worldview necessarily conflicts with human rights. The first assumption of human rights is that the human being is *an end in himself* and cannot be used as merely a means to achieve some end. Because *homo faber’s* worldview demands that everything be a means for some end, his worldview denies this. The second assumption is that if human rights are to exist at all, they must be an *absolute standard*, something that other values cannot trump. As we have seen, absolute values cannot be established in this worldview. The third assumption is that the human being has an *intrinsic worth*, over and above what she does in society or what she produces. As we have seen, we often fail to treat human beings as intrinsically valuable ends in themselves because we are so caught up in the worldview of *homo faber* that we cannot see anything as having an intrinsic worth.

4 CONCLUSION

As we have seen, there is a constitutive tension at the heart of human rights, a tension that explains why human rights are often proclaimed in theory and ignored in practice. Human rights are needed precisely because the modern ethos threatens to turn everything into a means for some larger end, and reduce human life to something valueless. But the sheer dominance of the worldviews of *animal laborans* and *homo faber*, within the rise of the social realm, ultimately means that human rights can never be securely grounded. We need to assert human rights precisely when modernity threatens to eliminate human dignity, yet the modern ethos itself prevents human rights from being fully realized. This ethos presents a concept of the human being that is contradicted by modernity’s most central tendencies. In other words, our claims about human dignity and human rights in modernity are contradicted by our larger ethos, our attitudes, and our ways of understanding the world.

Given this analysis, it is easy to see why Arendt is not simply attempting to justify human rights with a compelling set of arguments. Any argument,

no matter how compelling, would still occur within this ethos and hence not be sufficient to overcome the obstacles to human rights implied by modernity. Any attempt to further human rights must take into account this ethos, and the rupture with reality that it entails. This is why one of Arendt's central goals is to demonstrate the intersubjective nature of the common world and hence rehabilitate that realm. Only by approaching human rights in this manner can we ground them in a way that is not thwarted by our ethos.

Chapter Three

The Common World

For respect for human dignity implies the recognition of my fellow-men or fellow-nationals as subjects, as builders of worlds or cobuilders of a common world.

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In *The Origins of Totalitarianism*, Arendt rejected a number of the ways that human rights were characterized throughout history. Analyzing the situation of refugees and minorities between the two world wars, she showed that we could no longer think of human rights as something that were natural and inalienable. Their experience demonstrated that the 18th century view that rights come from the “nature” of man, that they are valid even if only one person exists on earth, and that they are independent from plurality, was wrong. In other words, Arendt argued against the ideas that such rights were objectively real, had an independent life of their own, and were without need of outside authority to implement and protect them.

For Arendt, however, this never meant that human rights did not exist or that they were not real in some sense. She denied the totalitarian movement’s claim that rightlessness in the 20th century proves that human rights do not exist or that they are “hopeless idealism or fumbling feeble-minded hypocrisy” (OT 269). As such, she is denying that they are subjective illusions, mere “prejudice, hypocrisy, and cowardice” in light of the horrors of the 20th century (OT 269). For Arendt, human rights are neither subjective illusions, nor objective data in the world, independent of human action.

For Arendt, human rights arise because of the condition of plurality: “The only given condition for the establishment of rights is the plurality of men; rights exist because we inhabit the earth together with other men” (BT 437). Yet paradoxically, “rights spring from the mutual guarantees which alone can insure them” (BT 436–7). In other words, while

human rights emerge out of the conditions of plurality, they continue to exist through our intersubjective recognition and determination to guarantee them. Human rights exist because we are able to secure them through the strength of our decision.

Arendt's unorthodox view of human rights—as neither objective data, nor subjective illusion, but as a consequence of the conditions of plurality—can only be understood if we take into consideration her understanding of the common world as radically intersubjective. Yet, this is no easy task, given that one of the defining features of modernity is *world alienation*: the fact that we no longer trust our senses or have faith in a shared common reality. In modernity, we have lost the common sense that fits us into reality. As such, the intersubjectivity of the common world is not something that can be taken for granted.

But the intersubjective nature of the common world is of utmost significance for human rights because the decline of the common precipitates the destruction of human dignity. Because human rights are upheld through our commitment to them, without a sense of the common, a sense that the world outside of us depends on our action, there is no possibility of upholding human rights. Among isolated individuals concerned only with their private lives or the social realm, such a project becomes impossible. Consequently, one of Arendt's main aims throughout her life is to show how a common shared reality is possible within modernity, how a sense of commonness can exist without denying the specific conditions of modernity.

Therefore, we must read Arendt's work as an attempt to rehabilitate the ontological significance of the common realm by bringing to light the intersubjective nature of the common and political. Arendt's method is phenomenological. Rather than giving one sustained argument on the topic, she develops a number of portraits and examples of the intersubjectivity of the common realm.¹ After introducing the concept of intersubjectivity within the context of 20th century phenomenology, I will argue that three examples must be looked at: promise making, *doxa*, and judgment. Because she is a phenomenologist, we must approach Arendt's view of the common world through these three phenomena as they appear, rather than through dialectic argument. Promise making shows our potential to create a common space by binding ourselves to others in a way that does not reduce our freedom and power, but increases it. The Socratic concept of *doxa*, the opposite of Platonic truth, demonstrates how we are able to act in the common world from our own particular point of view. *Doxa* is the paradigm of intersubjective experience. Arendt's appropriation of Kant's reflective judgment for the political sphere suggests that even when we do not act, we are still part of the common

world. In her reading of Kant, we come to understand how the common world is formed and how we are able to interact with it. Through understanding these three phenomena, and through them, the common world, we can see why a sense of the common is so essential for human rights.

1 INTERSUBJECTIVITY

In Arendt's analysis, human beings move within two realms. The first is the realm of our private needs and interests, which are taken care of in the household. This is the most fundamental realm because it is the place where the urges of the life process are manifest in their almost overwhelming force. The second is the realm we have in common with others, a space that all of us share without owning. This is the space of appearance, where reality is what is seen by all. It includes—but is greater than—the political realm, for this common space is fabricated not only through action and speech, but through work as well. Art is an important part of this fabricated world. Thus the common world is both concrete (the result of fabrication) and ephemeral (the result of action). Arendt's analysis of modernity shows how modern experience is, for the most part, restricted to the realm of the private, while the common is held in suspicion. Yet this common world, and the potential that we have to create such a world, makes politics and political institutions possible.

As a phenomenologist, Arendt is concerned with how human rights work in this space of *appearance*, not with what they are in and of themselves. The view that human rights are intersubjective, created through our capacity for making promises, and guaranteed through the power that is rooted in natality, is grounded on a particular view of the common world. It is precisely because the common world is built through our action and interaction, that we can integrate a concept like human rights into it, and that these rights can be made real through this very process.

We must understand Arendt as a phenomenologist of human rights and view her ideas against the backdrop of her intellectual pedigree and context. As a student, Arendt was very much influenced by Martin Heidegger and Edmund Husserl, both of whom were her teachers.² The phenomenological movement stressed the understanding of things as they *appeared* to consciousness, not as they are or might be independent of human existence. Phenomenology is literally the science (*logos*) of appearance (*phenomenon*). Arendt's own concern for appearance within the political realm is evident throughout her work. Indeed, Dermot Moran even goes so far as to say that "it is difficult to understand the nature of her approach unless one appreciates its phenomenological nature as a genuine attempt to return to the things themselves."³

The key phenomenological concept that animates much of Arendt's work (though she rarely uses the term) is *intersubjectivity*. The common world is not only the product of fabrication, the work of our hands, but also of action and speech. As we act in the world and enmesh ourselves in the web of relations, we are constantly changing and interacting with the world through our action and speech. As such, while we build material objects through fabrication, we build political institutions through our political activities, action, and speech. As she writes in "What is Freedom?" "[p]olitical institutions, no matter how well or how badly designed, depend for continued existence upon acting men; their conservation is achieved by the same means that brought them into being. Independent existence marks the work of art as a product of making; utter dependence upon further acts to keep it in existence marks the state as a product of action" (BPF 153). In turn, we disclose our own identities and actualize ourselves through this process of forming a common world. To say this world is created intersubjectively means that it does not simply exist for us as private individuals, but also *between* our subjectivities. As such, we are as much a part of this common world as we are separated from it by our individuality. The term also implies that its existence depends upon those who hold it in common; thus, there is an element of activity and dependence implied by it. The term intersubjectivity evokes Arendt's sense of commonality, the fact that world exists *between* people.

To understand this aspect of Arendt's philosophy, we may contrast intersubjectivity as it appears in her work with Husserl's use of the term. For Husserl, since the basis of phenomenology was the self-constitution of the ego, the experience of other egos became important in order to avoid solipsism. His concern was with what it meant to live in a world that was shared with others, and thus had shared objects, language, meaning, etc. I would like to focus on two aspects of Husserl's understanding of intersubjectivity: intersubjectivity as constituting a common but objective world and intersubjectivity as a ground for seeing that others are *like* ourselves.

For Husserl, the world that is intended and constituted is not a private, solipsistic world but rather, one that is intersubjective in the sense of being common and open to all. For Husserl, the world is always intersubjective. When I see a tree, for example, I know that others see this tree, not just as an object, but as a tree; my perception of a tree already implies that it is a tree for others.⁴ Yet for him, this common world is always rooted in the subject. He writes, "the world is continually there for us, but in the first place it is there for *me*."⁵ The world is common on a perceptual, sensory level—it can be seen, heard, tasted, smelled, and touched by many people—but it can also

be understood, thought about, and categorized by others as well. The world and its objects transcend me. Thus the world is common both on a perceptual and intellectual level. Yet Husserl insists that the world that we perceive is objective, that is, given independent of our perception of it.⁶

How does the existence of other people fit into Husserl's system? For Husserl, in Dermot Moran's words, "the other is a phenomenological modification of myself."⁷ Husserl claims that in the process of constituting a world, we begin to experience others as being *like* ourselves, as being subjects who experience things in the same way that we do. I realize others are like myself, and they in turn realize the same thing about me. The other is understood by analogy to myself; other people have the kinds of experiences that I would have if I were in their place. As Robert Sokolowski suggests, intersubjectivity is a way of understanding others, not in a direct way, but through our relation to the world, what we have in common.⁸

The differences between Husserl and Arendt on this topic are clear. First, for Husserl, the world becomes common because we perceive, think about and understand the same world. For Arendt, the emphasis is on the co-constitution of the common, that we build the world in common both through action, fabrication, and *judgment*. It is not common simply because it is perceived in common. While judgment is also important for Husserl, judgment always takes place via the transcendental ego, not by considering a plurality of standpoints. Further, Husserl's intersubjectivity is a way of understanding the objectivity of the world and thus of scientific knowledge. For Arendt, the intersubjective constitution of the common world does not lead to a Husserlian objectivity. As we will see in her treatment of judgment and *doxa*, for Arendt, intersubjectivity implies that its products are neither subjective nor objective. They are real and condition us, but are not objective in Husserl's sense.

Finally, and most importantly, Husserl's emphasis is on the sameness of our experience, that intersubjectivity allows us to see that others are like ourselves. The other for Husserl is a modification of myself and thus inherently like me. Husserl's sense of difference is always connected to the core transcendental ego, which is always the same. For Arendt, in contrast, we must remember that sameness is always tied to difference. Arendt denies the existence of a stable, core sense of self (a transcendental ego) but insists that we require others in order to understand who we are. Our ability to act in the common world is based on the fact that we are both alike (as Husserl stresses) and different—in other words, it is based on the idea of plurality. Once again, this will be clear from her discussion of judgment and *doxa*, which, though they relate to the common world, always arise from an individual's distinct place within it.

2 PROMISE MAKING

Promise making is one manifestation of intersubjectivity in the common realm. Arendt's concept of a promise shows how human commitment can generate reality. Her discussion of promise making in *The Human Condition* comes during her reflections on the frailty and "darkness" of human affairs. Though Arendt celebrates the potentialities of action, she admits that "[a]ction almost never achieves its purpose" (HC 184). Action rarely achieves its purpose partly because it occurs in the web of human relationships where innumerable wills and interests conflict. Arendt does not bemoan this but simply states it as part of the "many frustrations" involved in human togetherness (HC 182). What is particularly frustrating about action, what has given people since Plato the desire to substitute fabrication for action, is three fold. First, even though action has the unique power to reveal a person, this revelation is fleeting; the essence of a person can never be solidified through action. The second frustration is its irreversibility, the fact that once you begin an action, you can never undo what you have done, nor can you break the chain of events that you began. The third frustration is that the consequences of action are boundless and unpredictable. When an action is begun, it immediately interacts within the web of human affairs and begins all kinds of new actions. Action can never be restricted to something that occurs between two people, since it establishes new relations and cuts across boundaries. These consequences are unpredictable because the full *meaning* of an action can only be known when the action has ended and can only be revealed to the person looking back on the story. That is, the meaning of action is never revealed to the actor or "maker" of the story. Action is inherently unpredictable because it arises from the "darkness of the human heart," which means that we are unreliable and cannot guarantee today who we will be tomorrow (HC 244). Arendt notes that this inability to be in complete control of ourselves and our actions is the necessary price of freedom. She writes, "the impossibility of remaining unique masters of what they do, of knowing its consequences and relying upon the future, is the price they pay for plurality and reality, for the joy of inhabiting together with others a world whose reality is guaranteed for each by the presence of all" (HC 244).

In Arendt's view, the whole history of philosophy can be seen as an attempt to overcome the difficulties of human affairs that inevitably rob political action of its most important feature—its ability to reveal an individual. The traditional way of addressing this—from Plato through Hobbes to Heidegger—is to substitute fabrication for action.⁹ We seek to "make" a state or a political community rather than engendering a space in which people

are able to act and disclose themselves. Since fabrication has an intrinsic element of violence, such solutions must always resort to violence in order to achieve their purpose. Arendt seeks in her analysis a way of dealing with the darkness of human affairs that will leave action intact and will not resort to violence or compulsion.

As remedies, she proposes promise making and forgiving, both of which seem, within our tradition of political philosophy, simplistic and naïve. Yet if we share Arendt's understanding of the political realm, the human potential for action rooted in natality, and formation of the common world, we will be able to see that these are not merely idealistic solutions. Instead, as Arendt claims, they are the only alternatives to mastering the darkness of human affairs through violence and domination. Promise making, in particular, corresponds to freedom as non-sovereignty. In Arendt's critique, we have seen the sovereignty of nations is the reason human rights can never trump other interests. In *The Human Condition*, Arendt reveals the ontological reasons for this. She argues that sovereignty is the opposite of freedom, since, as we will see in the next chapter, freedom entails acting in concert with others, not acting in isolation. So to detach yourself from others, to be completely independent and self-sufficient, is not freedom but a condition that renders freedom impossible. If we reject sovereignty as an illusion, then promise making, as a way of binding people together with a common purpose, becomes essential. The danger and the advantage of a politics reliant on promise making is that it leaves the unpredictability and unreliability of human affairs as they are.

What is Arendt's understanding of a promise that is capable of binding people together and creating the possibility for freedom? For her, a promise has the power to create "an isolated island of certainty in a sea of uncertainty" (HC 244). A promise cannot cover the whole of the future or secure all areas, but must be restricted to a certain area. As such, it is like a guidepost of reliability. Further, she writes that mutual promise is a "force" that keeps people together, which in turn allows them to generate power, as only people acting together can. It allows us to deal with the future as though we were dealing with the present and thus represents a "truly miraculous enlargement of the very dimension in which power can be effective" (HC 245).

What lies behind a promise is our motivation to bind ourselves to others and create this area of power. According to Arendt, promise making arises directly from our "will to live together with others in the mode of acting and speaking" (HC 246). That is, I "will to live with others" so that I can disclose my identity and have the joy of making actual my potential self. The capacity for promise making, as with forgiveness, is a capacity to resist what happens automatically and by necessity, namely the boundlessness and

unpredictability of human affairs. We can thus act without fearing these consequences. Ultimately, these two human capacities allow us to experience action as what bestows “faith and hope, those two essential characteristics of human existence” on human affairs (HC 247). In the realm of politics, she notes, promise making “may well be the highest human faculty” (OR 175).

In order to understand Arendt’s conviction that promise making is the highest human faculty, a faculty that keeps power alive, let us look at her discussion of power and strength in *The Human Condition*. She defines strength as the possession of every person in his isolation against other people. Power, on the other hand, comes into being only when people join together for action and then disappears again when they disperse. This means that binding and promising are means by which power is kept in existence. It is a way of constituting a stable, worldly structure to house the combined power of action. There is a part of our world-building capacity in the capacity/faculty of making and keeping promises.

In *On Revolution*, Arendt gives us a concrete example of power created by people bound by mutual promise: the Mayflower Compact. This mutual promise engendered power and eliminated the unpredictability of human affairs without constraint or violence. The Mayflower Compact was an agreement drawn up on the Mayflower’s journey to America and signed upon landing. Though there is no documentation explaining why they did this, Arendt speculates that it was as a protection from the “state of nature” that awaited them in the new land. Yet it was not their fear that was so striking, but rather their confidence in their own power, a power that had not been granted to them and that was unsupported by any means of violence. They placed their faith in the power to bind themselves into a political body, held together solely by the strength of *mutual promise* in the presence of God and one another. For them, this promise was strong enough to enact and constitute all the necessary laws and parts of government. Their mutual promise onboard the Mayflower allowed them to form a political body; this agreement allowed them to form a political realm, in which they were entitled to claim rights without claiming sovereignty. Their rights were based on the fact that they were bound together, not on their isolation.

We can understand the Mayflower Compact as a kind of social contract. In Arendt’s analysis, there are two kinds of social contracts: one between individuals which gives birth to society (the Rousseauian model), and one between the people and a ruler which is meant to legitimate a government (the Hobbesian model). The former can be seen as a contract based on mutual promise, while the latter is based on consent to be ruled and a remittance of power. Arendt argues that even though these are two distinct kinds

of contracts, they are usually seen as merely two aspects of the same contract, and thus the decisive difference between them is ignored. She makes a clear distinction between the two kinds of contracts. The first kind, the contract between individuals to give birth to society, can be understood as a way in which people bind themselves together to form a community. The basis of this is reciprocity and it presupposes equality. The content of this agreement is a *promise* and the result is the formation of an alliance, which gathers together the isolated strength of individuals and binds them into a new power structure by virtue of their free and sincere promises. In contrast, the second kind of contract, between people and a ruler, is an alliance where each member resigns her isolated strength in order to constitute a government. Rather than gaining power, the person involved with such a contract gives up her power. She does not bind herself through promises, but simply expresses her consent to being ruled. The government resulting from this consent acquires a monopoly on power while the governed remain politically impotent. The act of consent is accomplished by an individual in isolation, while the act of mutual promise is done necessarily in the presence of other people. The Mayflower Compact represents the first kind of social contract.

In its words, we can see the remarkable confidence they had in each other's fidelity and resolution. The Mayflower Compact required that the colonists swear:

solemnly and mutually in the Presence of God and one another, [to] covenant and combine ourselves together into a civil Body Politick . . . ; and by virtue hereof [to] enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience (OR 173).

This faith in the potential of promise making was related to the particular American experience. In Arendt's analysis, the American experience taught the men of the revolution that action, though it begins in isolation and is decided upon by individuals with different motives, can only be achieved through a joint effort. The motivation of the individual is no longer important, thus there is no requirement that those engaged in such a project share a similar past or background in order to act together. The American experience taught that people in their singularity could bind themselves into a community, and thus human nature could be checked through common bonds and mutual promises. According to Arendt, this American story was

unprecedented and unique because action lead to the formation of power and the power was kept in existence through the newly discovered means of promise making and covenants.¹⁰ As Arendt claims, that this power should lead to a victory against England by the diverse individuals of its colony came as a surprise only in Europe. In America, 150 years of covenant making experience taught them the enormous power of binding through promise making. In America, the “grammar of action” (action is the only human faculty that demands plurality) and the “syntax of power” (power is the only human attribute that applies solely to the worldly in-between space through which people are mutually related) combine in the act of foundation by virtue of making and keeping promises.

Through promise making, then, we can see how the common realm is intersubjective. Promise making is so powerful because we build the common through our action and interaction with it, so that a promise, something that begins between individuals, may gain the force of reality.

3 SOCRATIC *DOXA*

Throughout Arendt’s work she attempts to reinvigorate the ontological significance of common realm through articulating it, and its possibilities, in various ways. One of the most significant attempts to articulate the meaning of the common world comes from her reading of Socrates and Plato in 1954, and her development of the concept of *doxa*, or opinion. In this work, Arendt defines *doxa* as what comprehends “the world as it opens itself to me. It was not, therefore, subjective fantasy and arbitrariness, but also not something absolute and valid for all” (PP 80).¹¹ This definition of *doxa* comes very close to embodying intersubjectivity as we have been discussing that concept. Her way of arriving at this definition, and articulating this space between absolute objectivity and subjective idiosyncrasy, is by contrasting Plato’s notion of truth to Socrates’ concept of *doxa*.

Arendt claims that our tradition of political philosophy began at the trial and death of Socrates, and in particular, with Plato’s resulting despair of political life. Socrates’ situation caused Plato to despair of political life because Socrates failed to “persuade” his fellow citizens of the truth of his position. For Plato, this called the very possibility of persuasion into question. According to Arendt, in the relatively new democracy of Athens, persuasion was considered the political kind of speech *par excellence*, insofar as it sought to convince people through words and not through compulsion. Rhetoric in Greece was the most important political art.¹² Thus, insofar as Plato holds persuasion in disrepute, he is questioning the very ground of political life.

In the aftermath of this experience, Plato's distaste for politics increased and his understanding of truth changed. In particular, he became very critical of *doxa*, and even went so far as to place *doxa* in opposition to truth. Truth, embodied in the idea of the unchanging forms, was now an absolute standard, something that was the same for everyone. *Doxa* became the opposite of this and gained the connotation of "mere *doxa*" or subjective opinion. His distrust of *doxa* intensified after the experience of Socrates' trial and death because Socrates had submitted his *doxa* before the "irresponsible opinions" of the Athenians, who were not able to judge his opinion. It thus appeared to Plato that without an absolute standard to distinguish truth from falsity, there was no way to distinguish the opinions of Socrates from the opinions of thoughtless people. In other words, the criterion for distinguishing truthful *doxa* from false *doxa* was not clear enough so Plato introduced the idea of absolute truth into the political realm. Truth in this absolute sense, then, became much more important than *doxa*, and indeed, excluded the possibility of *doxa* being truthful. This absolute standard became the one by which we *judge* all things, including the actions of people. Arendt labels Plato's conclusion here—that truth and opinion should be separated into opposite—as "the most anti-Socratic conclusion that Plato drew from Socrates' trial" (PP 75).

Plato was thus the first person "to introduce absolute standards in to the realm of human affairs, where, without such transcending standards, everything remains relative" (PP 75).¹³ The banishing of *doxa* and the imposition of absolute standards meant that the city was no longer governed through political persuasion, but rather in terms of eternal truths that did not allow for persuasion, only acceptance or denial. As a result, politics was no longer a matter of persuasion and *doxa*, but of truth and compulsion. This is why Arendt credits Plato with imposing a "tyranny of truth" on the polis (PP 78).

Arendt investigates what a politics based on Socratic *doxa* might have been like. A politics based on opinion and persuasion required the development of a separate and specific form of speech: *dialectic*. But this concept had a different connotation for Plato and Socrates. Plato understood dialectic as the opposite of persuasion and rhetoric.¹⁴ For Plato, dialectic was a dialogue between two interlocutors, a way of "talking something through with somebody," while persuasion was always addressed to the many (PP 80). Yet for Socrates, dialectic did not stand in opposition to persuasion, and the results of dialectic were certainly not the opposite of opinion. Socrates' understanding of dialectic stems entirely from his understanding of *doxa*. For him, *doxa* was the formula in speech of "what appears to me" (*dokei moi*), which was not the opposite of truth. Rather, *doxa* was the expression of how the world opens to you, how you experience the world from your

own specific standpoint. Foreshadowing her own intuition about the inter-subjective nature of the common world, Arendt writes:

the assumption [for Socrates] was that the world opens up differently to every man, according to his position in it; and that the “sameness” of the world, its commonness (*koinon*, as the Greeks would say, common to all) or “objectivity” (as we would say from the subjective viewpoint of modern philosophy) resides in the fact that the same world opens up to everyone and that despite all differences between men and their positions in the world—and consequently their *doxai* (opinions)—“both you and I are human” (PP 80).

For Socrates, the dialectic method not only is not opposed to *doxa*, but rather its function is to reveal the truth of *doxa*. Socrates even goes so far as to say that the goal of the philosopher in the city is not to rule the citizens or to educate them (as Plato argued), but to make the citizens more truthful by bringing out the truth of their *doxa*. This is Socrates midwifery. As Arendt interprets it, Socratic midwifery holds two convictions. First, every individual has her own *doxa*, her own way that the world opens up for her. Because of this conviction, argues Arendt, Socrates believes that he must begin by questioning people, since prior to this, he cannot know how the world appears to whomever he is talking to. His second conviction, and the one that is more important for our purposes, is that nobody can know by himself, and without further effort, the inherent truth of his *doxa*. This is why the job of dialectic, “talking something through with somebody,” is to reveal the truth within *doxa*, and not, contrary to Plato, to destroy *doxa*. Arendt hypothesizes that Socratic dialogues always end in *aporia*, an inconclusive puzzle, because “to have talked something through, to have talked about something, some citizen’s *doxa*, seemed result enough” (pp 82).

Arendt interprets Socrates’ famous cry of “know thyself” to be an expression of his particular understanding of truth and *doxa*. “Know thyself” expresses the sense that an absolute truth, something entirely unrelated to or independent of human beings, is impossible for us. It means that only by knowing what appears to us, that is, only by knowing what is related to our own concrete existence, can we ever understand truth. For Socrates, there can be no absolute truth for people—no truth that is unrelated to the self. The only access mortals have to truth is through their *doxa*, “to speak in a way that makes the truth of one’s opinion revealed to oneself and to others” (PP 85). In other words, Socrates was the wisest of men because he accepted the limitations of truth for mortals; he realized that truth for men consisted

in *doxa*, which “was neither subjective illusion nor arbitrary distortion but, on the contrary, that to which truth invariably adhered” (PP 85). Since truth adheres or sticks to your way of experiencing and understanding the world, it cannot be separated from it.

Doxa is related to politics in a few fundamental ways. We have seen that without the primacy of *doxa*, absolute truth, which does not admit of persuasion but only compulsion, becomes the center of political life. For Arendt, this destroys the very nature of political life, which is the constitution of a world created through discussing “how the world appears” to you. *Doxa* is also fundamental to politics because of its secondary connotations of splendor and fame. It is thus inherently related to the public realm, the place where fame is established. Arendt observes that to “assert one’s own opinion belonged to being able to show oneself, to be seen and heard by others” (PP 80). This being seen and heard by others in the public realm is the essence of politics; without something to show, that is, without *doxa*, there can be no public realm (since there is nothing to discuss) and consequently no authentic politics.

In sum, *doxa* is the paradigm of intersubjective experience because, as we have seen, (1) absolute truth unrelated to men is impossible, and (2) absolute subjective experience, or completely isolated opinion, is equally unsatisfactory because *doxa* requires “talking through” with other people. Further, for Arendt we all experience a common, shared world that is perceived differently by everyone. The difference in our perception of the world is expressed through *doxa*, our articulated opinion; far from undermining the reality of the common “objective” world, *doxa* becomes part of it, so that there is no common world aside from the many *doxa* that express it. In this sense, the world is not objective (independent of human relations to it) nor is it completely subjective (private and idiosyncratic); the common world is intersubjective in the sense just described.

Arendt’s analysis of *doxa* is important because she seems to imply that there is an intimate connection between *doxa* and the formation of a common world, that is: through our *doxa* we change the world, even if we do not act. This is because my expectations of other people are determined by how I see myself. The self for Arendt is a two-in-one, a plurality; the self that I know is not the self that others see, and it always remains mutable and equivocal. Yet when I am alone in thought, the self represents to me “all men, the humanity of all men” (PP 88). This is why my expectations of other people are grounded in my expectations of myself. To use Arendt’s example, a murderer must not only live with himself as a murderer, but also “he will see all other people in the image of his own action. He will live in a world of potential murderers” (PP 88). Thus, his *doxa* becomes as relevant as his murderous

act; for him, the world appears to be full of murderers and this is his reality. To the extent that we live with ourselves, “we all change the human world constantly, for better and for worse, even if we do not act at all” (PP 88). Because my view of the world affects what I expect from it and from other people, my *doxa* changes and becomes part of that common world.

Arendt’s analysis gives us a clear example of the meaning of intersubjectivity as well as an example of how we can interact with the common world, through the expression and discussion of *doxa*. *Doxa* as the expression of the world’s appearance to me resembles the notion of a political judgment. While both refer to the common world, judgment has the distinct quality of using my inner senses in conjunction with a common sense. As such, it gives us a richer explanation of the common world and our ability to interact with it.

4 JUDGMENT

Arendt’s reference to the *Critique of Judgment* as the political philosophy that Kant never wrote is surprising for a number of reasons.¹⁵ For one, it challenges the widely accepted notion that Kant has a political philosophy grounded in his view of morality—that all persons have the capacity to legislate the moral law for themselves. Further, it seems to blatantly ignore Kant’s essays on overtly political topics, such as “Perpetual Peace.”¹⁶ Yet perhaps the most surprising aspect of her statement is that it implies that a treatise ostensibly written about aesthetics should be the basis for Kant’s most important political work, and thus that politics and aesthetics are intimately bound together. In this section, I wish to explore this aspect of her claim. What Arendt considers political in Kant—and consequently what brings together politics and aesthetics for her—is the concept of intersubjectivity, the fact that both politics and aesthetics are the conditions and effects of what she calls “the common world.” As such, by analyzing judgment, we get a clear picture of how the common world—and our capacity to interact with it—is formed. By seeing the common world as intersubjective through the concept of judgment, we will better understand how a concept like human rights, which is also intersubjective, can become part of the common world.

4.1 Summary of the Analytic of the Beautiful

Before we look more carefully at Kant’s influence on Arendt, we must examine his notion of aesthetic judgment as he explains it in the “Analytic of the Beautiful,” especially since Arendt presupposes an understanding of this aspect of his writing. A judgment of taste has three essential features: the quality that is a disinterested feeling, the quantity that is subjective universality, and

its relation that is subjective purposiveness. A fourth element in a judgment of taste—its modality, which is the *sensus communis*—concerns the necessary demand for agreement, and thus, like its logical counter part, does not add anything new to the judgment. Rather, modality concerns a judgment's evaluative force and is its "supreme condition."¹⁷ In addition to these elements, there are two general features of a judgment of taste. The first is Kant's claim that a judgment of taste is *aesthetic* or based on feeling. A judgment of taste does not arise because an object is related to the understanding and therefore gives rise to a cognition of beauty. In other words, it is not a logical judgment. Rather, a judgment of taste is possible because the object in question is related to the imagination, and gives rise to a *feeling* of pleasure or displeasure.¹⁸ In this sense, an aesthetic judgment is indeterminate insofar as there cannot be a concept that determines our notion of beauty. The second important point about a judgment of taste, and one that will be particularly important for our purposes, is that it is *reflective*. Judgment in general is the ability to think the particular under the universal. A determinate judgment is one in which the universal is given and the particular intuition is merely subsumed under it. But a judgment of taste has no determinate concept under which it can subsume particular instances, because there is no concept of beauty. It is reflective, then, in the sense that only the particular intuition is given and the universal must be found.¹⁹

The "Analytic of the Beautiful" is divided into four moments. As we learn in the first moment, a judgment of taste must be disinterested. Disinterestedness means that we are not concerned with the existence of the object or any purpose the object might serve. To be disinterested means to be concerned only with the contemplation of an object. Beauty, what is liked in the "mere contemplation of it,"²⁰ can be contrasted to the agreeable, which is based on "what the senses like in sensation."²¹ Judgments about the good, which are based on a concept, are similar to those of the agreeable insofar as they both involve an interest. Taste, then, is the ability to judge an object by means of a feeling that is devoid of all interest.

The second moment argues that the quality of a judgment of the beautiful is its subjective universality. It is precisely because we call an object "beautiful" when we like it without interest that we expect the same judgment from everyone. In other words, since my judgment about the beautiful is not based on subjective conditions, it must be grounded in what can be presupposed to be common in everyone. This is what Kant means by subjective universality.²² We speak of beauty *as if* it were a property of the object and expect everyone to agree with our judgment, thus making it seem as though it has the universality of a logical judgment. Yet the kind of universality at play here is not

based on concepts (like a logical judgment), but on a feeling, and so must be considered as having *subjective* universality. It is universal insofar as it is true for all people at all times, but it is subjective as it is based on a feeling and not a concept. This is what allows us to claim that we speak with a “universal voice” when we judge.²³ To be sure, it’s not that we postulate that everyone *actually* agrees with our judgment of taste, but merely that everyone *should*.

In the third moment, we learn that what we like in an object of beauty is its form of purposiveness, which is perceived without the presentation of a purpose. This is the presumption that nature is subjectively purposive in the sense that it lends itself to being judged by us. The contingency of nature is seen as “lawful” for our purposes as judging subjects and as such, it appears that nature manifests a cognizable order. Since the purposiveness of nature is not based on an actual concept of purpose, it is merely subjective or “purposive without a purpose.” Our pleasure in judging such an object comes from the non-conceptual awareness of the object’s purposiveness for our judgment.²⁴

In the fourth moment, we learn that beauty involves a necessary liking that, as we have mentioned above, is not an additional feature of a judgment of taste, but rather an overarching condition of the possibility of such a judgment. A judgment of taste involves a necessary demand for agreement and this demand is based upon the idea of a common sense. The kind of necessity that belongs to a judgment of beauty is not objective necessity (that everyone *will* agree) but *exemplary* necessity. Exemplary necessity means that a judgment of taste has “a necessity of the assent of *everyone* to a judgment that is regarded as an example of a universal rule that we are unable to state.”²⁵ While Kant uses common sense in a number of different ways,²⁶ we can think of it as the ground for the necessity of a judgment of taste. Common sense is also what grounds our capacity for an enlarged mentality, although Kant does not include this specific quality in the four moments of the *Analytic of the Beautiful*. Since this idea is so important to Arendt, I will quote Kant’s discussion of it at length. The *sensus communis* is:

the idea of a shared *sense* [by all of us], i.e., a power to judge that in reflecting takes account (a priori), in our thought, of everyone else’s way of presenting [something], in order *as it were* to compare our own judgment with human reason in general and thus escape the illusion that arises from the ease of mistaking subjective and private conditions for objective ones, an illusion that would have a prejudicial influence on the judgment. Now we do this as follows: we compare our judgment not so much with the actual as rather with the merely possible judgments of others, and [thus] put ourselves in the position of everyone else, merely

by abstracting from the limitations that [may] happen to attach to our own judging.²⁷

By way of summary, we should keep in mind that for Kant, the universal communicability of a judgment of taste is based upon his description of the cognitive faculties that are at play. Kant suggests that what is universally communicable in a judgment of taste is the feeling of the mental state when the imagination and the understanding are in free play. He writes, “hence the subjective universal communicability can be nothing but [that of] the mental state in which we are when imagination and understanding are in free play (insofar as they harmonize with each other as required for *cognition in general*).”²⁸ Kant explicates this statement by telling us that nothing can be communicated universally except cognition.²⁹ But as we have seen, since a judgment of taste is aesthetic (i.e., one not based on an idea of an object but rather on a feeling), it is not, strictly speaking, cognitive. When he asserts that only cognition can be communicated, he seems to consider cognition as simply a way of presenting an object that has a “universal reference point with which everyone’s presentational power is compelled to harmonize.”³⁰ So, in the case of a reflective judgment, a given presentation must have a subjective reference point or determining basis, that is, one that does not involve a concept. Kant asserts that this can only be the harmonious mental state we experience when the imagination and the understanding are in free play. Therefore, because a judgment of taste requires the imagination and understanding to be in a certain indeterminate relation, that judgment is “cognitive” in this very restricted sense.

That our presentational powers are in free play means that there is no particular concept to limit or determine the imagination. Kant puts it figuratively when he tells us that each faculty is allowed to do what it wants without being restricted by the other, and thus they *play* freely together: “This sensation [the free play of the imagination and understanding], whose universal communicability a judgment of taste postulates, is the quickening of the two powers (imagination and understanding) to an activity that is indeterminate but, as a result of the prompting of the given presentation, nonetheless accordant: the activity required for cognition in general.”³¹ This *feeling* of free play must be communicable because it is a way of presenting the object that holds for everyone. That is, because it is based on the harmony of the cognitive faculties, just like cognition in general, a judgment of taste holds universally. Since we know that the free play of the cognitive powers, a subjective relation suitable for cognition, applies to everyone, Kant concludes that we can be sure that a judgment of taste is as universally communicable as any determinate judgment.³²

To put the issue in other terms, a judgment of taste can be communicated because it is a *reflective* judgment, and not merely an immediate sense perception. If it were akin to the latter, i.e. a judgment about the agreeable, it would only involve our senses and perceptions that are *de facto* different in every person. The reflective nature of a judgment of taste is significant because it involves our cognitive faculties. To be sure, it does not involve them in the same way that a determinate cognition (a judgment where the imagination is constrained by the concepts of the understanding) does. Rather, as we have seen, a beautiful object stimulates our cognitive powers to play freely together, and this causes us to feel a harmony of the faculties. In precisely this harmony of our cognitive faculties, we experience pleasure in the beautiful. So in a sense, we can say that the perception of beauty is an intellectual activity (insofar as it involves the cognitive faculties) that we only become aware of through feeling. Because cognitive faculties are common in all human beings (which we must presuppose to avoid skepticism)—something that cannot be said of sensibility—we can be sure that someone who experiences an object in the same way as I do (without interest, with a developed sense of taste, with attention to the formal purposiveness of the object, etc.) will have a similar cognitive experience and feel pleasure in the beautiful. Thus we are “entitled to assume” that a feeling of the beautiful is universally communicable without the use of concepts.³³

4.2 Arendt on Kant’s “Political Philosophy”

Arendt’s lectures on Kant’s political philosophy are revealing, not only about her view of judgment, but also about her view of the common world. The relationship between judgment and the common world is complex. First, as she writes in “Crisis in Culture,” “[j]udging is one, if not the most, important activity in which this sharing-the-world-with-others comes to pass” (BPF 221). In other words, judging is a way of *sharing* the common world. Yet there is a certain sense in which judgment *creates* a common space and allows *meaning* to emerge from this common space. In her lectures on Kant, she argues that the judgment of the spectators of a work of art creates the space without which objects—either of the virtuosity of the actor or the work of the artistic genius—could not appear. Of course, there must be these artistic products to create the space of appearance, but without someone to judge them, they would be *meaningless* and for all intents and purposes, worthless. The artist and his audience share the meaning of the event, and this meaning is created through the interaction of an artistic work with its spectators. In sum, the common world is common precisely because of the meaning shared between actor and spectator, between producer and judge.

For Arendt, judgment is essential because it confers meaning on action. But it is important for another reason as well. Indeed, judgment is the political capacity *par excellence* because it engages other people and the world in a way that does not rely on sovereignty and violence. Indeed, judgment is intrinsically linked to worldliness. Arendt describes the faculty for judgments as follows:

In aesthetics, no less than in political judgment, a decision is made, and although this decision is always determined by a certain subjectivity, by the simple fact that each person occupies a place of his own from which he looks upon and judges the world, it also derives from the fact that the world itself is an objective datum, something common to all its inhabitants. The activity of taste decides how this world, independent of its utility and our vital interests in it, is to look and sound, what men will see and what they will hear in it. Taste judges the world in its appearance and in its worldliness (BPF 222).

Arendt develops her notion of judgment in dialogue with Kant's *Critique of Judgment*. In her lectures on his political philosophy, she provides a clear picture of political judgment as central to political and human affairs. She draws on aspects of Kant's theory of judgment but departs from his view in certain places as well. In doing so, Arendt constructs a notion of political judgment that resembles the subjective universality of a judgment of the beautiful. Judgment, like all human affairs, is neither completely objective nor completely subjective. This ambiguity contributes to our understanding of the common world by showing the importance of this space of "subjective universality."

Impartiality is the "most important condition for all judgment," writes Arendt (LKPP 68). Impartiality requires both disinterest and an enlarged mentality. Arendt appropriates these two concepts from Kant but uses them in a slightly different way. Arendt does not look at the *Critique of Practical Reason* for Kant's political philosophy, in part, because the categorical imperative, the heart of this work, is based on the idea that one should not be in contradiction with oneself. The *Critique of Judgment*, however, takes as its starting point that it is not enough merely to agree with oneself. One must also consider the world and "think in place of everyone else"—that is, one must have an enlarged mentality. The enlarged mentality presupposes the condition of plurality. Thinking for Arendt is a silent dialogue with the self; yet in judging, even if I am alone, I anticipate community with others, whom I do not know yet, and with whom I strive to be in agreement. So, in order to judge, one must liberate herself from subjective, private conditions and idiosyncrasies, that is, one must transcend her individual limitation, in

order to take into perspective the viewpoints of others. However, we must keep in mind that even though we abstract from our private, subjective conditions, we still judge from our own place in the world and point of view. The following makes this point clearly:

I form an opinion by considering a given issue from different viewpoints, by making present to my mind the standpoint of those who are absent; that is, I represent them. This process of representation does not blindly adopt the actual views of those who stand somewhere else, and hence look upon the world from a different perspective; this is a question neither of empathy, as though I tried to be or to feel like somebody else, nor of counting noses and joining a majority but of being and thinking in my own identity where actually I am not . . . the better I can imagine how I would feel and think if I were in their place, the stronger will be my capacity for representative thinking and the more valid my final conclusion, my opinion (BPF 241).

Disinterestedness is a condition of an enlarged mentality equally necessary for impartiality. According to Kant, disinterest is the *sine qua non* of an aesthetic judgment, for if there is any interest at all, then it is a judgment about the agreeable and not the beautiful. For Kant, having an interest in something means that you want to possess it and not simply contemplate it. Arendt takes this basic idea of disinterestedness in aesthetic judgment and expands it so that it can be applied to politics. Arendt is aware that to be disinterested in politics and to be disinterested in art are not the same. For Arendt, disinterestedness “cannot arise unless we are in a position to forget ourselves, the cares and interests and urges of our lives, so that we will not seize what we admire but let it be as it is, in its appearance”; this distance presupposes that “the needs of the living organism have been provided for, so that, released from life’s necessity, men may be free for the world” (BPF 210).³⁴ Only when we are free from the “interests and urges of our lives” can we judge properly. To be disinterested politically, that is, to be disinterested in what we share in common, presupposes the private (the interests and urges of daily life) is taken care of. In other words, to be capable of political judgment and hence politics in general presupposes a basic level of material sustenance. While Arendt does not elaborate on this principle extensively, it nevertheless serves to nuance her understanding of the common world: that world is not completely separate and distinct from the private realm, but entwined with it. It also requires that the private realm be understood in a certain way. We will return to this important assumption in Chapter Four.

We have seen that for Kant, a judgment of taste is one that is based upon a feeling and not on a concept. This distinction is important since it distinguishes a reflective judgment from a judgment of taste. Importantly, it also allows Kant to prove that matters of taste *can* be disputed and that there can be agreement on them. Arendt's analysis of these judgments aims in a slightly different direction and asks how taste, the most private and subjective of all the senses, can be the vehicle for the faculty of judgment. In other words, how can what is so intimate, private, and tied to the urges of the life process produce something that can be understood and agreed to by others? The imagination is central to her answer, as it was for Kant. On the one hand, sight, hearing, and touch deal directly with objects; our perception of them can be communicated or shared precisely because they deal with the outside world. We can represent our experiences, that is, we can make a sight present to our mind even when it is absent. On the other hand, smell and taste are inner senses—they are private and incommunicable. They deal with objects that are, in a sense, inside of us and thus purely subjective. Yet their unique virtue is that they are discriminatory: the feeling 'this pleases me' or 'this displeases me' is immediate and overwhelming and cannot be withheld because it affects me directly.

At this point Arendt is still thinking in terms of what Kant would call the agreeable. But it ceases to be a question of the agreeable once we transform our immediate sense perception of taste into a *representation*.³⁵ Arendt stresses that there are two parts to a judgment of taste: a first impression and a "second operation" of judgment, the operation of reflection. This second step actually constitutes a judgment.³⁶ The imagination gives us the ability to transform objects of the inner sense into objects that can be judged like an objective representation. For Kant, the imagination is significant in a judgment of taste because it was not constrained by reason and so could remain in "free play" with the understanding. For Arendt, however, the imagination is central to judgment because it allows us to transform private impressions into objective representations. But this representation process also allows us to take objects of the objective senses—sight, hearing, touch—and change them into objects of the private sense of taste. We then judge the representation of the objective senses (for example, a beautiful sunset or a presidential address) as if it were a question of taste. We judge not the object itself, but its representation that is transformed through the imagination into an object of the inner sense. This transformation into a representation is important because it allows for distance and disinterest, while still keeping the judgment on the level of taste. As Arendt describes the process, one "then speaks of judgment and no longer of taste because, though it still affects one like

a matter of taste, one now has, by means of representation, established the proper distance, the remoteness or uninvolvedness or disinterestedness, that is requisite for approbation and disapprobation” (LKPP 67).³⁷ Representation is the necessary condition for impartiality and disinterest.

In the twelfth lecture, Arendt makes an interesting move in her interpretation of Kant. She notes that while taste chooses what it likes and what it does not after the imagination has made an object of the objective senses present as a product of the inner senses, there is still a further step. One can then approve or disapprove of a judgment, of the fact that something is pleasing or not. Here she refers to section 54 of the *Critique of Judgment*, where Kant notes that we can approve or disapprove of whether something gratifies us or not. But here he is not discussing judgment of the beautiful. Since Arendt is not referring to the private judgment of taste (i.e., of taste prior to representation by the imagination), she appears to be conflating two ideas in Kant—perhaps deliberately. Arendt thus breaks from Kant when she adds that there is a third step in judgment, which consists in our approving or disapproving of our judgment. This move emphasizes that unlike a logical judgment, a political judgment need not coerce or compel us. In *The Origins of Totalitarianism*, Arendt describes “the tyranny of logicity” that has a kind of inner compulsion and forces people to submit to logical reasoning. She is referring to the way the totalitarian movement used “ice-cold reasoning” and the “mighty tentacle” of logic to force people into submission. Arendt is thus careful to point out that political reasoning should avoid this kind of compulsion and constraint (OT 477–478).³⁸

How we decide whether we should approve of a judgment or not is determined by its communicability or publicness. Because political judgment, like aesthetic judgment, does not make use of a concept to determine it, communicability is essential. As Paul Ricoeur notes, the requirement of communicability in a judgment of taste is important for Arendt because it has an obvious affinity with the condition of plurality.³⁹ Yet the fundamental difference for Arendt is that she is not interested in the transcendental grounds of universal communicability, as Kant was. Her interest is much closer to “empirical” communicability. In other words, communicability for Arendt is the fact that a judgment is made within a plurality and could be expressed publicly. To use Arendt’s examples, I could disapprove of a certain judgment of hatred when I find that I am ashamed to express my feelings of hatred publicly; but I could approve of my judgment of grief or sorrow over the death of an excellent husband when I find that I could express this publicly. To be sure, it’s not that I must express my judgment publicly but only that I am able to do so. In this way, communicability functions as a test

of a fully formed judgment. So, though communicability is very different in form for Kant and Arendt (one is transcendental, one empirical), the function is the same: communicability is the test of the validity of a judgment of taste, for in both cases a judgment is only communicable if it is “pure.”

Arendt is clear and insistent that communication is more than just expression. Communication, much like speech in Arendt’s sense, is not just a means of self-expression, but also a way of self-disclosure that only works if others can understand it. Speech is necessarily public and inherently intersubjective. Judgment for both Kant and Arendt is dependent upon other people; it is “other directed.” Arendt turns to Kant in no small part because his notion of interdependence in the *Critique of Judgment* differs from all previous theories that stressed interdependence as a matter of our dependence on others for our needs and wants; here, our interdependence is based on the fact that at least one of our mental faculties—judgment—presupposes and even requires the presence of others. The link between plurality and judgment—communication—is grounded in the *sensus communis*.

Again, Arendt and Kant differ in their understanding of the *sensus communis*. For Arendt, the *sensus communis* is our sense of *realness*; it is the sense that fits all our other senses together. Without the realness guaranteed by the *sensus communis*, neither the senses nor the unity of the self and the common world would be coherent (LMT 51). For Arendt, the decline of common sense in the modern world did not lead to insanity (as Kant thought an absence of common sense would), but to a situation of meaninglessness and alienation: without a meaningful common experience, which is given and expressed through our *doxa* and judgment, we are forced to retreat into our own subjective experiences and feelings, which appear to be the only things that are real. On the other hand, common sense is the root of the common world. Common sense “discloses to us the nature of the world insofar as it is a common world” (BPF 221). This is why our “subjective” and private five senses and their data can “adjust themselves to a nonsubjective and ‘objective’ world which we have in common and share with others” (BPF 221).

Arendt understands the *sensus communis* in Kant to be a community sense, one that is distinguished from a merely private sense. Every judgment appeals to this sense for the special validity it grants. The “this pleases me” in a judgment of taste is rooted in this community sense and is thus open to communication (after, of course, it has been transformed by the imagination into a disinterested representation and after taking all other perspectives into account). To this extent, communicability depends upon an enlarged mentality: you can only communicate if you can think from the other person’s standpoint. Otherwise, you can never be sure you are speaking in a way that

another person will be able to understand. Paul Ricoeur considers the *sensus communis* in Arendt to be “both the condition and the effect of the life in common that is constitutive of a political body.”⁴⁰ Taking this a little further, I would say that the *sensus communis* in itself is not the condition and effect of the common world. But as it is embodied in art and politics, in aesthetic judgments and in political judgments, the *sensus communis* is the condition and effect of the common world.

5 CONCLUSION: THE *SENSUS COMMUNIS* AND HUMAN RIGHTS

The *sensus communis* has an interesting connection to human rights that appears when we look at Arendt’s examination of it in “Ideology and Terror,” the essay with which *The Origins of Totalitarianism* concludes. Here, we learn that the *sensus communis* is necessary for our existence in the common world and indeed for our very identities. It cannot be taken for granted, as it can be lost in a number of ways, most specifically through the isolation and loneliness brought about by totalitarianism, and through life in mass society. If we put these two discussions of the *sensus communis* together, we can see that judgment, what expresses the *sensus communis*, is necessary for the common world, since it allows us to fit in and be part of the world. Without this capacity, and thus without this common sense, we are left worldless. This worldlessness is shared with those who have lost their rights.

In “Ideology and Terror,” Arendt describes how totalitarian tools of ideological thinking and terror force individuals into isolation. Isolated people are necessarily powerless since they cannot act together with others. In such a situation, all contracts between people are broken. To be isolated means to be without people with whom you can act for a common concern. You can remain in contact with the world through fabrication and creation, but when you can no longer add anything to the common world, isolation becomes unbearable. This happens, as we have seen in Chapter Two, when all fabrication is transformed into labor, when all effort becomes the effort to stay alive. Here, “the relationship with the world as a human artifice is broken” (OT 475). In such a case, when *homo faber* is reduced to *animal laborans*, isolation becomes loneliness.

Isolation in public often leads to loneliness in the private realm. Indeed, while all tyrannies aim to destroy public life by isolating people and eliminating their political capacities, totalitarianism was novel in that it aimed to destroy private life as well. In fact totalitarianism was based “on loneliness, on the experience of not belonging to the world at all, which is among

the most radical and desperate experiences of man" (OT 475). Loneliness becomes unbearable because one's identity cannot be confirmed alone. To be lonely means to be surrounded by people with whom you cannot make contact. Even the two-in-one, the self thinking in solitude, is destroyed. This is because, even though I can always think when I am alone, I need contact with others to make me one again: "For the confirmation of my identity I depend entirely upon other people" (OT 476).⁴¹ One's identity is interdependent. That is why loneliness is so unbearable.

Loneliness involves not just a loss of other people, of equals who can confirm your identity, but a loss of worldliness. Loneliness becomes possible as a ground for totalitarianism because it is supported by the uprootedness and superfluousness of the modern masses of people. To be uprooted means "to have no place in the world, recognized and guaranteed by others" and to be superfluous means "not to belong to the world at all" (OT 475). Here, she defines this worldlessness as connected to a loss of common sense, which our experience in the sensual world depends upon. Our common sense is what "regulates and controls all other senses and without which each of us would be enclosed in his own particularity of sense data which in themselves are unreliable and treacherous" (OT 476). Only because we have this sense *in common* can we trust that sense experience. Common sense is a mutual guarantee that people need in order to live, experience, and understand life in a common world. In other words, common sense is essential for the common world. Having lost trust in yourself when, in isolation, your identity cannot be confirmed, you also lose confidence in the world: "Self and world, capacity for thought and experience are lost at the same time" (OT 477).

Recall that for Arendt, the "right to have rights" was the right to live in a place in the world where your actions were meaningful, to live in a place where you belonged. From this passage, we can see that the phenomenon of loneliness also leaves you without a meaningful place in the world. Refugees and the rightless are not the only people who can lack the right to have rights; such a loss can become a mass phenomenon, even when people have citizenship. Indeed, she writes that while loneliness used to be a marginal phenomenon, it is now an everyday experience. Such loneliness is a danger, not only for the lonely individuals, but for the world itself. Without this sense of the common, the common world is in danger of being reduced to private experience, which in turn would solidify loneliness, and hence rightlessness, all the more. The right to a place in the common world is under threat when the *sensus communis*, and hence judgment, are undermined. As such, we may say that our right to the common world is protected through the world sharing activity of judgment.

If the ontological basis of human rights is their emergence out of plurality and their continued existence is through the strength of our decision, then we can easily see why the decline of the common realm is so destructive for human rights in modernity. Because human rights are upheld by our commitment to them, without a sense of the common—a sense that the world outside of us depends on our action—we eliminate the possibility of upholding human rights. Consequently, Arendt's fundamental task is to reinvigorate the ontological significance of the common realm in a way that is suitable for modernity. Given that the decline of the common prepares the way for the destruction of human dignity, the reestablishment of this foundation is of utmost importance. Arendt is doing precisely this in her analysis of promise making, *doxa*, and judgment. She is articulating the way in which our actions and speech, especially our opinion and judgment, play a role in constituting the common world and come to be a part of the way that our shared reality is understood. Without this common world, human rights have only a shadowy existence.

Chapter Four

Two Realms of Existence

Nothing proved easier to destroy than the privacy and private morality of people who thought of nothing but safeguarding their private lives.

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The foundation of human rights for Arendt is the common world and hence her work is largely dedicated to rehabilitating the ontological significance of the common in modernity. There is, however, a subtle tension in her view. This tension concerns the relationship between the public, common world, and the private dimension of experience. Arendt's focus thus far, I have suggested, is on the common world as the ground of human rights, while the realm of private interest appears to be, at best, insignificant and at worst, pernicious for human rights. Arendt appears to be separating human rights from private interests. The problem is that human rights, by most definitions, are precisely about the protection of these private interests, and especially the protection of life and the life process. If Arendt's concept of human rights cannot account for this intuition, then her view would seem to be incompatible with our contemporary understanding of human rights.

The tension, however, is only apparent. Arendt's view is, in fact, that the public and the private realms are *interdependent* because of the ontological structure of human life. Human rights must concern both the private lives of citizens as well as their common life. Both realms are mutually enforcing. Without the protection of the private realm, you cannot have a public realm and hence no public rights; yet without public rights, with only the protection of the private realm of the life process, you engender alienation and meaninglessness, as human rights protects us only *qua* consumers not *qua* human beings.

Arendt's notion of "public rights" and "private rights" roughly maps on to the more common distinction between "civil and political rights" and "social and economic rights." Therefore, we can understand Arendt

as addressing the long standing debate over whether social and economic rights constitute genuine human rights. Her insistence that both are mutually dependent mediates two well known positions: the view that economic rights are prior to and more important than civil and political rights, and the view that economic rights are not genuine human rights. However, Arendt differs from most theorists by her insistence that public, not private, rights correspond with *freedom*. It is because of the requirements of freedom, as Arendt understands it, that public rights are justified.

Arendt gave a lecture on this topic very late in her life. Entitled “Public Rights and Private Interests,” the lecture makes two somewhat surprising claims.¹ The first is that private rights must be protected, and that they are more fundamental than public rights. This is surprising because people have often read Arendt as disparaging of the private realm and dismissive of its role in politics. The second claim is her insistence on the importance and possibility of public rights despite the almost universal consensus to the contrary. For Arendt, public rights must be understood as the right to participate in the common world and share in public activity. These two claims nuance Arendt’s view on the private dimension of human rights.

Arendt’s method for supporting her claims is both historical and philosophical. Historically speaking, Arendt demonstrates that these two dimensions of experience were not always separated. Indeed, the 18th century idea of “public happiness” originally had the sense of both private protection as well as public participation (though eventually these two senses melted into our current univocal understanding of happiness as something private). Philosophically speaking, she sees the French and American Revolutions as a battle between these two understandings of happiness. Though public rights lost the battle, Arendt argues that because of their inherent connection to *freedom*, they ought to be reconsidered. This is in part because, for Arendt, the meaning of politics, of action, is freedom, but for an action to be free, it can only be motivated by a principle. The most appropriate principle for politics is solidarity because of solidarity’s connection to the common world. The common and the private, solidarity and freedom, show their interdependence in this way as well.

1 “PUBLIC RIGHTS AND PRIVATE INTERESTS”

Arendt’s position on rights developed throughout her life. In *The Origins of Totalitarianism*, written in the 1950s, Arendt argued that the most fundamental right was the right to have rights, or the right to live in a place where one’s speech and action are meaningful. The primary right is the right to belong to

a political community. In her 1974 lecture entitled “Public Rights and Private Interests,” she develops this idea further and divides the idea of rights into two different categories. She distinguishes between public rights—the right to the freedom and happiness that can only be enjoyed in public, and private rights—the right to be left alone in pursuit of private interests and the right to have the life process protected. At this late point in her career, Arendt insists for the first time on the importance of private rights and claims that in a certain sense, they are even more important than public rights. Yet she still asserts that a loss of public rights marks a fundamental deprivation. Though these two sets of rights are distinct and function in two different realms, they nonetheless overlap and create a tension. Arendt’s aim in this lecture is not to resolve this tension, but to draw it out.

Arendt begins by saying that she is going to challenge the “almost universal consensus,” what has been the standard rhetoric in the West for centuries, that rights are private and obligations are public (PRPI 103). For Arendt, there are public rights that must be distinguished from private rights in both their aims and their chief concerns. Concerning private rights, let us recall that for Arendt, the privacy of the household means that we are subject to necessities of life that have an almost overwhelming force. Here, she insists that our private interests, our interests in sustaining the life process, must be protected—indeed that we have “the right to be protected in the pursuit of private interests” (PRPI 103). But concerning public rights, in addition to our private lives, citizenship gives us a “second life.” So throughout our lives, we move in “two different orders of existence”—in what is our own and in what is common with other people (PRPI 104).² This second order of existence concerns the “public good” or what citizens have in common because of the existence of the common world. Thus, public rights entail a right to participate in the public good or the common world.³ In an interview, Arendt offered this description of public happiness: “[w]hen a man takes part in public life he opens up for himself a dimension of human experience that otherwise remains closed to him and that in some way constitutes a part of complete happiness” (CR 203).⁴ The two sets of rights correspond to two different realms of existence.⁵

Having made these distinctions, Arendt goes on to point out that these rights often clash, and that the public good is often antagonistic to our private interests. Since the 17th century, we have been aware of the danger inherent in bringing concern for the public good into the realm of private life: it is always ruinous when the government attempts to regulate the private lives of its citizens. Arendt argues that it is just as dangerous and ruinous for private interests to interfere in the public good or common world. As she observes,

we influence the common world through our action and fabrication, and respond to it through our doxa and judgment; these are ways of interacting with the common world that are not based on private interests but not entirely severed from them either. Arendt stresses here that interacting with the common world solely on the basis of our private interests is dangerous for the common world, since such actions threaten the commonality of the common world.⁶ The problem, however, is that these rights are interdependent. We cannot have public rights or participation in common life without first protecting private life, yet private life cannot be protected without people acting in the public realm. But even as these two sets of rights are interdependent, they must remain separate.

This clash between the two sets of rights is important because it reflects a fundamental conflict of interests. It is a conflict between the interests we have as mortals and the interests we have in the world that we inhabit and share; it is a conflict between life, what is immediate and pressing, and the world, which is much more permanent and stable than the individual life. These rights are not equivalent because the interests that they represent are not evenly matched: the interest we have in private life has an “overwhelming urgency” that our interests in the common world, no matter how noble, simply do not. Arendt states this powerfully when she writes that “[f]or us as individuals, the privacy of our own life, life in itself, is the highest good, can only be the highest good” (PRPI 105).

This has an interesting impact on the concepts of impartiality and disinterestedness discussed in the last chapter. Recall that disinterested judgment requires that a person be free from the “interests and urges of our lives.” We see here that the impartiality so important for political judgments is resisted by the urgency of the life process. This seems to call into question the very possibility of disinterestedness and hence political judgment. While we may be tempted to see it this way, to be sure, that is not the conclusion Arendt is drawing. The difficulty everyday urgencies causes impartiality reflects not the impossibility of judgment, but rather the necessity of taking care of these needs before we can judge. The interests and urges of everyday life must be addressed before we can be free for the public realm. She suggests that private rights are not merely the rights to be left alone and protected, but they also require that such needs be met.⁷ While she never says explicitly what this means or what this would imply for the poor, the homeless, and others who do not have the resources to satisfy the material demands of life, her statement suggests that this notion was central to her political theory.⁸ In other words, it is not that economics is part of politics, but economics (the distribution of material goods in order to satisfy the life process) is a prerequisite for political life.

Arendt notes further that public rights and public happiness, understood as freedom and the life of the citizen, is a *luxury*, “an *additional* happiness that one is made capable of only after the requirements of the life process have been fulfilled” (PRPI 106). She means not only that public interests are less immediate and less urgent than private interests, but also that you cannot enjoy public happiness, nor be asked to sacrifice for the common good without first enjoying the protection of private interests. You cannot be expected to sacrifice for the public good unless you can share in it, and you cannot share in it unless your more immediate and urgent needs are taken care of. In other words, before one can act politically and be in the public realm, one must first have life’s needs fulfilled. She writes that it is sheer “idealism” to ask someone to sacrifice for the public good who cannot share in it; by idealism, she means that people, especially the poor, are being asked to sacrifice for the sake of an idea, not because of the very real public “happiness” that is supposed to compensate them: “Before we ask the poor for idealism, we must first make them citizens: and this involves so changing the circumstances of their private lives that they become capable of enjoying the ‘public’” (PRPI 107).

This marks an important change in the way Arendt speaks about poverty. Indeed, the sympathy with which she speaks of poverty here is very different from her tone in her other writings, most notably *On Revolution*. In this work, she stresses how the rise of poverty as a political issue almost eliminated the public realm. In that work, she implies that poverty is a threat to freedom, for “freedom had to be surrendered to necessity, to the urgency of the life process” (OR 60). In “Public Rights and Private Freedom,” she speaks of poverty, the inability to take care of the needs and urgencies of everyday life, as something that needs to be overcome for the sake of public freedom; it’s not that poverty must be kept out of politics, but rather, poverty must be overcome for the sake of political life. Unfortunately, she never explains fully what it would mean to change the circumstances of the private lives of the poor. One can speculate that this might have marked a shift in her thinking had she not died shortly after writing it. Nonetheless, it is an important nuance in her idea of human rights.

In this essay, we learn that Arendt does not dismiss economics as unimportant or irrelevant to politics. On the contrary, life in the public world is not possible without addressing economic questions, since they play such a large role in the way life’s urgent necessities are fulfilled. To be sure, economics is not so much a part of politics, but rather a prerequisite for political life. Further, she helps us understand that politics requires that the life process be taken care of, not because of some intrinsic selfishness on the part of human

beings, or as a result of capitalism, but because of the nature of biological life as compared with political life. Indeed, life is not the highest good of public life, but public goods cannot be addressed without first recognizing the importance of biological life.

2 SOCIAL AND ECONOMIC RIGHTS

Arendt's discussion of public and private rights above can be understood within the context of the debate over social and economic rights within the field of human rights. Social and economic rights refer to the rights that deal with goods like health, education, food, and water, and are opposed to "civil and political rights," such as the right to vote, the right to freedom of movement, etc. Social and economic rights became part of the human rights debate only during the drafting of the Universal Declaration of Human Rights (UDHR) in 1948, and were often referred to as the "new" rights. The touchstone of this document was Franklin Roosevelt's "four freedoms," which included the freedom from want. According to Mary Ann Glendon, the influence of Roosevelt's four freedoms was so strong throughout the world that there was never any doubt that social and economic rights, the rights that related to freedom from want, would be included in the document.⁹ But despite the consensus that social and economic rights should be included, the debate about how they should be articulated and by whom they should be implemented was the most time consuming, and in the words of René Cassin, the most emotional.¹⁰ These rights were not like the others in two important ways: first, they were essentially positive rights in that they articulate what ought to be done for people (and not just what should not be done to them), and second, more than the other rights, these were dependent upon a country's economic circumstances.

Not surprisingly, the communist countries wanted social and economic rights to be considered above political and civic rights, and they argued that all of them should be accompanied by corresponding civic duties and state obligations. Other countries argued that there should be a balance between traditional civil and political rights and the new social and economic rights. The United States was in favor of including them only on the condition that the methods for their realization not be specified.¹¹ While in one sense, the debate boiled down to face-off between the economic systems of the two superpowers (central planning vs. free market), the debate was much more complex. For example, social democrats from Latin America and Western Europe agreed with the Communist position that the state should play a large role in regulating wages and working conditions. The concern of many

liberal democracies was that these rights not dampen private initiative or give the state too much power.

The resolution that the delegates finally agreed upon can be seen primarily in article 22, which functioned like a *chapeau* or introduction to the social and economic rights. It reads,

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

According to Glendon, the notion that these rights are *indispensable* for the dignity and development of the human person answered the question of how social and economic rights were to relate to the political and civic rights. In short, they were a *prerequisite* for the traditional rights. That their implementation should be “in accordance with the organization and resources of each State,” showed that these rights left room for choice among the various means for their realization. In other words, implementation of these rights was not achieved by one economic system alone, but any system (free market or planned) could do. Finally, that the implementation of these rights was done in accordance with the *resources* of each state was important for poorer countries like Egypt and India, who were afraid of bringing back a completely unrealistic document to their home countries. In other words, the drafters of the declaration insisted that social and economic rights should be implemented gradually and according to a country’s resources.¹² While the implementation of these rights into the UDHR was a success that should not be underrated, this victory was only the beginning of a long road towards realizing these rights.

One of the sharpest critics of social and economic rights is Maurice Cranston.¹³ He argues that we must distinguish between genuine human rights, the rights that we all have as human beings (civil and political rights) and the rights that we have by virtue of our membership in a group. Social and economic rights, he argues, are the rights we have by virtue of being workers. So his project is to show why social and economic rights, specifically Articles 21 to 30 of the UDHR, are not genuine human rights.

Cranston argues that social and economic rights fail three tests of authenticity. The first test is practicability: is it possible for this right to be achieved? This presumes that although rights bear a relationship to duties, we have no general duty to do what is impossible. To use Cranston’s example, it

is not my duty to save a child drowning in the Thames if I am nowhere near the Thames at the time. He concludes that if it is impossible to do something, it is absurd to say that we have a duty to do it. He argues that article 24, for one, is just such an absurdity since it is impossible for every country to provide a paid holiday for its workers.¹⁴

The second test is the test of genuine universality. He argues that there are two kinds of moral rights. First, there are moral rights that we have by virtue of our position or situation. His example is the right a parent has to know about his child's health—this is a moral right in virtue of being a parent. Similarly, there are rights of doctors, of clergymen, of children, etc. These, however, should not be confused with a second kind of moral right—the rights of all people in all situations. Because these are genuinely universal, they are necessarily going to be few in number. The right to a holiday with pay can only be the right of someone who is paid, that is, a worker. Thus it cannot, by definition, be universal because everybody does not belong to this class.

Last, Cranston uses the test of paramount importance. To be a genuine human right, the right in question must be something absolutely crucial, not merely something nice. The right to life denied to Jews, the right to freedom of movement denied to black South Africans, the right to a fair trial denied to prisoners held indefinitely without trial are of a “totally different moral dimension from questions of social security or holidays with pay.”¹⁵ To be deprived of a genuine human right is something that constitutes a “grave affront to justice,” as in the cases mentioned above. Human rights ought to be limited to this class and not include what are essentially aspirations or ideals, i.e., what would be “nice to see done one day.”¹⁶

Amartya Sen takes a position in direct opposition to Cranston's. Sen analyzes what he takes to be the main criticisms against social and economic rights, which correspond roughly to Cranston's criticisms outlined above.¹⁷ The first he calls the institutionalization critique, a view that authentic rights must have correlative duties, and thus because social and economic rights cannot be institutionalized, they cannot be genuine human rights. In response, Sen makes a distinction between perfect and imperfect obligations. A perfect obligation is one that we are obliged to do under all circumstances (for example, we have a perfect obligation not to torture) while an imperfect obligation is more of a positive duty, such as the duty to work towards fulfilling a right (for example, we also have the imperfect duty to work towards conditions where torture does not occur). Human rights for Sen must be understood as engendering both sets of duties. To return to the question of social and economic rights, while they may not correspond to a perfect duty, they do correspond to imperfect duties. That is, we have a duty to seek the

realization of social and economic rights through institutional reform. We should note that this is what the drafters of the UDHR had in mind in Article 22, which proposes that implementation of these rights must occur gradually according to the country's capacity. Sen's contribution is to show how this can be understood as a kind of obligation.

Next, Sen addresses the feasibility critique (what Cranston called the practicability test). The idea is that even with the best effort and intentions, we cannot realistically arrange society so that we can realize social and economic rights for all. In Cranston's terms, we cannot have as a right something that is impossible to do. Sen argues that this rests on the mistaken assumption that human rights must be wholly accomplishable. The complete feasibility of a right is not a necessary condition of human rights. The point is that to establish human rights, we must work toward their realization.¹⁸ The goal of human rights is to make these rights more feasible. Since even the most basic human rights have never been easy to accomplish, why, he wonders, should achievement be the criterion? He explicitly denies the well known Kantian dictum, "ought implies can," because this would deny the ethical force of human rights, and imply that only fully realizable claims ought to be rights. In such a case, human rights would be few, if any, and not very ambitious ones at that.

We can clearly see, then, that philosophical issues surrounding the ontology of social and economic rights are still unresolved. Though the UDHR held that social and economic rights were indispensable for other rights, philosophical challenges, like the one from Maurice Cranston, have called this into question. While Amartya Sen's argument for social and economic rights provides a more sophisticated understanding of these questions, the inability or reluctance of governments to accept responsibility for social and economic rights remains a problem.

In light of this, we may find it useful to consider how Arendt would have understood this problem. First, I think she would claim that Cranston is wrong to see social and economic rights as the rights we have by virtue of our membership in a particular group of workers, mothers, etc. Recall that for Arendt, we move in "two different orders of existence"—in what is our own and in what is common with other people (PRPI 104). According to this analysis, a human life has two aspects: the public and the private. As private beings, we are embodied agents, always driven by the life process. The sheer necessity of this process is strong enough to overwhelm all other aspects of life; it cannot be overcome, but must always remain part of the human condition. Social and economic rights must, I think, be understood as the protection of the very bodily conditions of a human being. To deny

that these are genuinely human, as Cranston seems to, is to understand the human being as non-embodied. Social and economic rights, then, are indeed fundamentally human rights.

For Arendt, they must be understood as the ground of other rights: a prerequisite for everything else, especially for life in the public realm. She writes that in order to judge or be public, “the needs of the living organism [must] have been provided for, so that, released from life’s necessity, men may be free for the world” (BPF 210). But in such discussions, Arendt would object to the idea that the rights protecting life and the life process are the *only* rights that are important (and thus that life itself is the highest good). To be sure, understanding the human condition the way Arendt does supposes that social and economic rights, the rights that relate to the life process, are of primary and fundamental importance since they are the preconditions of life in the public realm.¹⁹

3 PUBLIC HAPPINESS IN THE 18TH CENTURY

Unique to Arendt’s analysis is her insistence that public rights are necessary because they, unlike private rights, are intimately connected to *freedom*. Hence, freedom is the justification of public rights. Her analysis of the 18th century revolutions, and the concept of “public happiness” in particular, paints the clearest picture of her understanding of freedom. We should note, in particular, how the concept of happiness changed during the course of the American Revolution. According to Arendt, happiness in the American Revolution originally meant the sharing of public business. Such participation was not seen as an obligation, but as the opportunity to feel a happiness unavailable elsewhere. John Adams believed that people went to town meetings because they enjoyed discussion, deliberation, making decisions, and not because of obligations or private interests. Likewise, for Thomas Jefferson, the notion of “public happiness” meant a citizen’s right to access the public realm and to share in power. This, of course, is contrary to how we think of happiness, namely, as the right to be protected by a government so that we can be left to our private pursuits. For Jefferson, it was clear that people could not be happy if their happiness was enjoyed only in private. According to Adams, what moved people to enjoy this public happiness was a “passion for distinction.” She quotes Adams as saying, “every individual is seen to be strongly actuated by a desire to be seen, heard, talked of, approved and respected by the people about him” (OR 119). At its best, this passion for distinction has its virtue in emulation, the desire to excel another. The opposite of this, its vice, is ambition, which similarly aims at distinction but

by means of power.²⁰ For Arendt, it is this desire to excel that makes men love the world, enjoy their peers, and move about the public realm.

The transition from this original sense of happiness (as a sharing in public) to our understanding of it (as something that occurs in private) came about when, in the Declaration of Independence, Jefferson spoke of the “pursuit of happiness” and not “public happiness.” Without the qualifying adjective of “public,” happiness could be understood however one pleased. As a result, public happiness was confused with private welfare. Indeed, this was part of Jefferson’s own understanding of happiness. While he had a sense of public happiness, he also understood happiness as something outside the public realm, in the domain of family, neighbors, books, and his farm. According to Arendt, the clause “the pursuit of happiness” contributed more than anything else to a specifically American ideology—an ideology based on a misunderstanding that “holds that men are entitled to ‘the ghastly privilege of pursuing a phantom and embracing a delusion’” (OR 128).²¹

Yet despite Jefferson’s explicit comments about the importance of private happiness, Arendt argues that Jefferson’s “true notion of happiness” comes out more clearly later in his life. She examines a discussion he had with Adams concerning the possibility of an afterlife, and argues that when seen without its religious connotations, the exchange reveals his real ideal of human happiness. The afterlife he hopes for, the eternal bliss that he imagines, consists of a life in Congress, filled with the joys of discourse, of legislation, of persuading, and of being persuaded.²² A vision like this stands in stark contrast to someone like Thomas Aquinas or Plato, for whom perfect happiness consisted of a vision of God or the contemplation of the eternal forms, and the presence of companions was not required. For Arendt this demonstrates that Jefferson’s view of happiness was not essentially a matter of private pursuits.

She argues that even though the Declaration of Independence blurs the distinction between public and private happiness, Jefferson still intended it in its two-fold meaning, namely as including both a sense of private welfare and public participation in politics. Yet the second meaning was quickly forgotten and along with it the *spirit* of the revolution. By this, she means that the “taste of public liberty,” the desire to found public freedom that inspired the revolution was the first thing to disappear. The secondary sense of happiness as liberation from necessity and private welfare remained, but this was not what the American Revolution was originally and primarily about. Even Tocqueville noticed that of all the sentiments that brought the revolution into being, the “taste of public liberty” was the first one to fade away.

This conflict between private and public rights was as much a problem in the 18th century as it is today. Indeed, as Arendt sees it, the conflict

between public and private rights shaped both revolutions, even though it took very different forms in America and France. The question in America was whether a new government should constitute a realm for “public happiness” or whether its goal should be to ensure the private happiness of its citizens. The French question was slightly different, namely whether the end of a revolutionary government should be to establish a constitution that guaranteed civil liberties and rights, or whether, in order not to end the reign of public freedom, to maintain the revolution as ongoing and permanent.

Both revolutions started with the modest hope at reforming their systems and establishing a constitutional monarchy, yet the aim of both was quickly changed to establishing a republican government. Arendt attributes the change to the discovery in the course of the revolution of a new experience, the experience of an essentially “public happiness”: “The impact of this experience had been sufficiently profound for them to prefer under almost any circumstances . . . public freedom to civil liberties, public happiness to private welfare” (OR 134). If the end of a revolution spelled the end to this kind of happiness, wasn’t it desirable to continue the revolution? Is there a way to create this kind of happiness in non-revolutionary times? These were questions that Robespierre and everyone after him had to answer. Robespierre’s answer was that the revolution should be permanent.

In America, the end of the revolution marked a shift away from public freedom to civil liberties, that is, from the contents of the constitution (the creation and partition of powers) to the Bill of Rights (the constitutional restraints upon the government). In other words, it shifted from a concern for sharing public affairs, to the process of guaranteeing that the pursuit of private happiness would not be constrained by the government. Though there was initially a tension between Jefferson’s drive for public happiness and the anti-political desire to be rid of all public cares and duties, the double sense of happiness dissolved into a single sense of protection of private self-interest.

Arendt’s analysis in *On Revolution* differs to a large extent from her analysis in “Public Rights and Private Interests.” In *On Revolution* Arendt took public rights or public happiness to be the opposite of private rights, and she even seemed to imply that one had to be chosen over the other. Though her analysis of the French and American Revolutions certainly shaped her understanding of public happiness, we can say that she moved beyond the view that public happiness was opposed, at least in theory, to private rights. In “Public Rights and Private Interests” her position is that both public and private rights need to exist simultaneously, though she never explains how this would work in practice. Indeed, her analyses focus on the difficulties

involved in maintaining public rights along side private rights. The project of achieving this balance remains a goal for the future.

4 THE FAILURE OF PUBLIC RIGHTS IN AMERICA

Despite all the praise Arendt has for America and the founding fathers, she nonetheless maintains that the revolution and its highest achievement, the constitution, cheated the American people out of their highest possession. This is due in part to the conflicting nature of a revolution. The spirit of the revolution has two potentially irreconcilable elements: the act of founding which involves a concern with stability and durability, and the experience of the revolution itself, the “exhilarating awareness of the human capacity of beginning, the high spirits which have always attended the birth of something new on earth” (OR 223). In a sense, a revolution combines two opposing sentiments, that of conservatism (concern with stability) and progressive liberalism (love of beginnings and change). Although the American Revolution succeeded in establishing a republic, it failed to establish the institutions that protect the revolutionary spirit. That is, in the republic, there was no space left for “the exercise of precisely those qualities which had been instrumental in building it” (OR 232). The founders managed to institute everything except that which they learned was the most valuable, the greatest political possession, “the potentialities of action and the proud privilege of being beginners of something altogether new” (OR 232). In a sense, embodying the spirit of the revolution, the spirit of beginning, would be self-defeating, since the revolution aimed to bring about something lasting and stable. Freedom, then, had to be sacrificed for the sake of foundation, and the right to public freedom and public happiness had to remain the privilege of the founders.

Jefferson himself perceived this flaw in the structure of the republic. He counted the rights to rebellion and revolution as part of the inherent and unalienable rights of all people. This is why he proposed a scheme of recurring revolutions, where each generation had the right to tear down the government and build it up again. Of course for Arendt, this is absurd, since it would throw things out of order and debase the act of foundation itself by turning it into a mere routine performance. What this does show us about Jefferson, according to Arendt, is that he knew that while the revolution had brought about freedom, it had failed to provide a space where that freedom could be exercised. In other words, only the representatives had the opportunities to engage in the activities of freedom (of expressing, discussing and deciding), but not the people.²³ In a republic based on representation, the only activity the people participate in is voting.

Arendt insists that the choice between direct democracy and representation was not a neutral one, made simply out of pragmatic concern, but actually a statement on the very dignity of the political realm. The choice of representation means that citizens surrender their power, so that “all power resides in the people” only on election day. In her most critical representation of the current form of government, Arendt writes that in a representative government, the government has become administration, and the public realm has vanished so that there is no more room for action, discussion, or deliberation. Political matters are decided by the experts and governing remains the privilege of the few. This is why Arendt claims that the spirit of the revolution was lost. In such a government, there is no remedy to this problem, no way to allow more than a few people the privilege of participating in governing.²⁴ The major difference between this and an aristocratic or kingly government is that now a person who wants to enter politics badly enough can do so. But the elite structure of it has not changed.

For Jefferson, the alternative to this system of representation is the ward system, which according to Arendt is the only non-violent alternative to his earlier desire for recurring revolutions. This system would create a “small republic” where every person could participate in the common business of governing. For Jefferson, this was the ultimate end of the republic, as it is the only space in which freedom could appear. The ward system reveals Jefferson’s basic assumption that no one could be called happy who did not share in public business or public freedom.

The main problem with a system of representation is not that it is based on the expert who “knows” and the people who were simply to follow, but that the citizen’s ability to act and form her own opinion is suppressed. For Arendt, politicians in a representative government represent people’s private interests, not their opinions. This is because the only things that can be represented and delegated are interests, and not action or opinions. Opinions are only created in the process of open debate and with a concern for the common world at its root. Through pressure groups, lobbies, and other devices, voters can influence the actions of their representatives with respect to their interests. That is, they can *force* their representatives to execute their wishes at the expense of the wishes and interests of another group, but they cannot *persuade* them. The communication between representative and voter is never communication between equals, and thus can never be persuasion, except in its most cynical sense. Here, power resembles coercion or blackmail and not the power that arises out of joint action and joint deliberation. In such a situation, people are acting out of a concern with their private lives and well-being, not a concern for the common world.

Arendt takes it as obvious that representative government is not a democracy since the power of the people is curtailed and controlled; such a form of government is an oligarchy. Democracy today is a form of government where the few rule in the interest of the many, in the interest of popular welfare and private happiness. We can call it oligarchic in the sense that *public* happiness and *public* freedom are the privilege of the few. According to Arendt, defenders of the present system must deny the existence of public happiness and insist that politics is a burden. We have to act as if there is, and has never been, any alternative to the present system.

Even though Arendt argues that representative government limits the people's capacity to act, she is quick to point out that it does not eliminate it. The political passions of courage, the pursuit of public happiness, the taste of public freedom, and ambition for excellence, she argues, are not as rare as we are inclined to think, although they are certainly out of the ordinary. One of Arendt's main political insights is that we need to take seriously the regular emergence, during revolutions, of a form of government that resemble Jefferson's ward system. This is the council system, which emerged and re-emerged out of every revolution from the French Revolution to the Hungarian Revolution of 1956.²⁵ During the French Revolution, there was the Paris commune that, rather than being formed in order to send representatives of the poor to the National Assembly, instead formed a revolutionary municipal council that eventually played an important role in the revolution. Other examples are the councils, the *Räte*, and the soviets that were the result of the Russian Revolution. This, as Arendt puts it, is the only new form of government born out of revolution. Its chief characteristics were spontaneity and its origins in the conscious and explicit desire for direct participation of every citizen. The councils were essentially a challenge to the party system in all its forms.

We need to look at the Russian Revolution of 1917 and the Hungarian Revolution of 1956 to see what a government based on this system would look like. In both cases, councils or soviets arose everywhere, independent of one another. In Russia, the councils consisted of workers, soldiers, peasants; in Hungary, they consisted of writers, artists, youth, university students, workers in factories, soldiers etc. This turned an essentially accidental proximity into a political institution. In both cases it took a short time (weeks in Russia, days in Hungary) to form higher councils of regional or provisional character. In other words, the federal principle, understood as a league and alliance of separate units, arose out of the elementary conditions of action itself.

Arendt does not believe that the political way of life has ever been or could be the way of life of all citizens. Rather, she is concerned that current

forms of government have become the government of the elite and thus exclude all the public rights of the majority of people. The modern age, with its insistence on universally equalizing society, has changed the nature of the elite. Instead of the pre-modern elite of birth and wealth, modernity's elite arises from the people. The system of government has never and nowhere enabled the people *qua* people to become actors in the public life. The relationship between the ruling elite and the people, the few who live public lives and the many who do not, has remained unchanged even though the material conditions have improved. Yet this right to the public space remains important because, as we will see, it remains the foundation of freedom.

5 THE GROUND, ESSENCE, AND OBJECT OF POLITICS

Given the historical absence of public rights, Arendt's insistence on public happiness as a right does not make sense unless we understand the relationship between public happiness and freedom. Therefore, I want to turn to a short text written around the same time as *The Human Condition* that explicitly addresses this connection between freedom and political action or public happiness. The text is entitled *Qu'est-ce que la politique?* and as the title indicates, it is a direct attempt by Arendt to define the nature of politics.²⁶ In doing this, she shows the close link between the capacity for public happiness and freedom. Here, Arendt breaks down her understanding of politics into four categories—the ground, essence, object and meaning—that help nuance her discussion of political action described elsewhere. The ground of politics is plurality; the essence of politics is not a quality in human beings but a relation between people; the object of politics is not people but the world itself; and ultimately, the meaning of politics is freedom.

Plurality is the ground of politics, according to Arendt. In *The Human Condition* she defines plurality as the basis of all action and speech. It has the twofold character of equality and distinction: we are all equal insofar as we can understand each other, and yet we are distinct in that through action and speech, we reveal ourselves as entirely unique beings. Thus, politics is essential since we are distinct and have different needs, wants, ways of seeing the world, etc., and yet politics is also appropriate for us since we do have the ability to understand each other and the meaning behind words and actions. Plurality is the ground of speech and action, which comprise the essential features of action for Arendt. Action and speech are ways of being with others that establish the reality of both the world and the self. She writes that

“without a space of appearance and without trusting in action and speech as a mode of being together, neither the reality of one’s self, of one’s own identity, nor the reality of the surrounding world can be established beyond doubt. The human sense of reality demands that men actualize the sheer passive givenness of their being not in order to change it but in order to make articulate and call into full existence what otherwise they would have to suffer anyhow” (HC 208).

Yet why should this simple, in some ways obvious, claim be the basis for politics? The answer is that for most of our political history, this seemingly simple fact has been ignored. In *Qu’est-ce que la politique?* Arendt reminds us of a number of such cases: the philosophical focus on the nature of “man” in the singular, the theological focus on God’s creation of “man,” the insistence within politics on treating “humanity” as a single individual. In all these examples, the twofold nature of plurality has been undermined. The sameness of human beings has been emphasized at the expense of difference. In doing this, we necessarily eliminate action—as the expression of one’s unique self and, in Dante’s words, the disclosure of one’s own image²⁷—or reduce it to something expected or necessitated. Not only does this process eliminate our ability to distinguish ourselves through action, but it also forbids us from recognizing genuine novelty, the “miracles” of everyday life. In Arendt’s terms, it forbids us from appreciating natality. The price of ignoring plurality, of eliminating the ground of politics, is that everything we do or say is expected and every important occurrence is the result of necessity.

Her second category of analysis is the essence of politics. Here one might expect Arendt to argue in an Aristotelian vein that the essence of the human being is political. However, that is precisely what she denies. Her claim is that we are *not* political animals. She denies that there is something *in* the human being that makes her political or that there is an essence to the human being that is political. In fact, she even goes so far as to say that “man is apolitical.”²⁸ This break with Aristotle’s definition of man as a *zoon politikon* is significant for a number of reasons. First, it complicates Arendt’s claims about the importance of political action. In particular, it nuances her assertions in *The Human Condition* that imply that without participation in politics, people lose something essential to human beings. She writes that without participating in political action, a life “has ceased to be a human life because it is no longer lived among men”; further, that that the initiative of action is something that “no human being can refrain [from] and still be human” (HC 176). In light of her statement here, we must understand the imperative to action in a different way.

Arendt claims that politics exists in the space between people and so constitutes a relation. That is, though action reveals the self, political action is not primarily about the self but rather a way of relating to other people through what we share in common. She notes that the revelatory quality of action and speech can only happen when people are *with* other people, and neither for nor against them, i.e. “in sheer human togetherness” (HC 180). Without this disclosure or revelation of the individual, the action loses its specific character and becomes merely an achievement, a means to some other end. This happens when there is no human togetherness, as in the case of modern warfare, where you are either for or against everyone; where speech is just propaganda and reveals nothing; and the deed does not disclose an agent’s unique identity and so it remains meaningless. Thus though political action serves to disclose the self, its more fundamental purpose is to connect people. Therefore, it is grounded on our capacity for human togetherness.

Arendt writes that most speech and action is concerned with the space between people, even though most speech and action aim at an objective, worldly reality. This objective reality also constitutes what lies between people, namely their worldly *interests*. Here, Arendt takes the word in its literal significance—*inter-est*—as what lies between people and thus both separates and relates or binds people together (HC 182). This sense of interest is, of course, opposed to the kind of private interests that for Arendt are ruinous for the public realm. Action and speech are concerned with this in-between (which is different depending the group of people), thus “most words and deeds are *about* some worldly objective reality in addition to being a disclosure of the acting and speaking agent.” But this disclosure becomes part of the worldly reality. Consequently, the “worldly in-between along with its interests is overlaid and, as it were, overgrown with an altogether different in-between which consists of deeds and words and owes its origin exclusively to men’s acting and speaking directly *to* one another” (HC 182–183). Thus, there is an objective, worldly in-between, as well as a subjective, non-tangible in-between that results from speech and action. Yet this non-tangible in between is no less real than the objective, visible in between. She refers to this non-tangible in-between as the “web of human relationships.”

The problem with what she calls materialism in politics is that it ignores the fact that this non-tangible reality, created through speech and action, is as important as the tangible and has consequences all its own. A political theory as old as Plato and Aristotle, materialism holds that political communities exist for the sake of material necessity (HC 183).²⁹ This ignores the fact that, even when he’s attaining an objective, material end, the actor

puts himself into the web of human relations and interacts in this particular reality as well. Human affairs, regardless of their worldly aims, take part in this web of relationships.

Finally, the object of politics is the world.³⁰ Although we have already looked at Arendt's conception of the common world and its relation to politics in the last chapter, I want to briefly summarize her position here. Arendt defines the world most generally as the space between people and the result of human fabrication and human action. In *Qu'est-ce que la politique?* Arendt writes that "[d]efinitively, the world is always the product of man, a product of the *amor mundi* of man" (QP 190).³¹ That the world is created through our action and fabrication, and is not merely given, is important if we recall Arendt's central claim in *The Human Condition* that human beings are conditioned beings. By this, she means that we are conditioned by what we have made and what we come into contact with, namely the world: "The world . . . consists of things produced by human activities; but these things that owe their existence exclusively to men nevertheless constantly condition their human makers" (HC 9).

What is striking about this claim is that while fabrication leaves behind tangible worldly objects, action does not; in fact, it leaves nothing at all behind, except for the stories that can be fabricated from it. Action is essentially worldless and yet, Arendt claims that we build a world with it and that it conditions us and becomes part of who we are. How can we understand this claim? It is precisely this space between people or the "web of relations" that is born from action, not production (QP 172). Precisely because it is more intangible, this space is more difficult to destroy.

She writes, "at the center of politics, one always finds a concern for the world, not for man" (QP 58). The idea that man is the center of our current concerns, and that our concern ought to be with protecting him and his life process is profoundly "non-political" in her view. Though we build the world through fabrication, we become part of it by inserting ourselves into it through our actions and speech. The impulse to act and speak comes from our nature as beginners and the condition of natality.

6 THE MEANING OF POLITICS: FREEDOM

Central to Arendt's understanding of politics is the idea that the *meaning* of politics is *freedom*. It is important to understand what she means by freedom, and also the notion of freedom that she is trying to distance herself from. For Arendt, freedom must be understood as being identical to spontaneity. The miracle of freedom is the power to begin (QP 71).

Freedom is “the freedom to call something into being which did not exist before, which was not given, not even as an object of cognition or imagination” (BPF 151).

Arendt insists that the meaning of politics is freedom. She is careful to distinguish between the meaning (*le sens*), the goal or aim (*le but*) and the end (*la fin*) of politics.³² The meaning of an activity resides within that activity and persists only as long as the duration of the activity. In contrast, a goal only becomes real when the activity has ended, just as an object comes into existence when the worker has finished her work on it. The goal is what the action seeks to achieve. Arendt defines the end of an action as what we orient ourselves toward and what inspires us to act (QP 177 fn 61). We may recall the Greek sense of the term end, the *telos*. Like the goal, it is exterior to the action and has its own independent existence. Like the meaning of an action, however, it is much less tangible than the goal. The end is important since it is the criterion by which all that has been done is *judged*. Thus, it transcends what has been done in the way that all criteria transcend what they measure.

To summarize, we can say that a goal is what action pursues, the end or *telos* is what it has in sight and what it orients itself towards, and the meaning of an action is what is revealed as the action unfolds. Arendt argues that these categories are so different from each other that they can be contradictory within a single action, and thus throw the actor into great conflict. For example, the goal of revolution is freedom³³ and its end is peace. But because the goal is often achieved by violent means, its meaning is “the monstrous power” of constraint, and it is entirely independent of the goals for which the violence is mobilized.³⁴ While the goal must be able to justify the means necessary to obtain it, the end must limit both the goal and the means. In our example, peace must be a constraint on freedom and thus that end must limit the dangers inherent in it (QP 181).

When Arendt argues that the meaning of politics is freedom, she is arguing that freedom resides within action itself, and is neither its goal nor its end; it's not something aimed at or pursued in action, but simply part of action. Freedom, the fact of being free, is already contained in political activity. It is tempting, Arendt points out, to see freedom as the goal of politics, that is, to see the point of all political activity as making us more free, but that view would miss the point. Further it implies that freedom only lasts as long as action lasts. This, as we will see below, goes against an understanding of freedom as an internal state or a quality of the will that holds that I am free as long as I am unimpeded. Finally, though freedom is short-lived and leaves nothing behind, it is nonetheless the criterion by which action

is judged. In other words, an action is judged not according to the end it achieves but according to the freedom it creates.

Arendt is aware that it is counterintuitive to claim that the meaning of politics is freedom, especially to people living at a time when political action can mean nuclear annihilation. In the two most fundamental experiences in modernity, the totalitarian regimes of the Second World War and the threat of nuclear conflict, all aspects of life were subordinated to the demands of politics. So it should seem natural that politics and freedom are opposites, and that politics can only be a means of continuing life and assuring the satisfaction of vital needs. If politics is about assuring life, both the very existence of humanity as well as the lives and needs of individuals, then politics must appear as a necessary evil to protect humanity. Freedom, then, is the freedom from politics. In this case, the meaning of politics is the very absence of meaning. She is arguing against precisely this absence. According to Arendt, it makes all the difference whether you consider life or freedom to be the highest good, the norm with which all political activity is judged and judges itself.

But it is not merely the experiences of the 20th century that have led to the conclusion that freedom and politics are separate. This was the conception of political philosophers in the 17th and 18th centuries, as well. They often equated political freedom with security, and thus, the highest end of politics was to guarantee the security that made freedom (as the freedom from politics) possible. Through the 19th and 20th centuries, especially with the rise of the social sciences, the idea developed that the role of government was not only to guarantee security from a "violent death" (Hobbes) but more importantly, to guarantee the unhindered continuation of the life process of the whole of society. When people did demand a share in government in the modern age, this demand was not out of a desire for freedom, but because of a mistrust of those who had power over their lives and their possessions.

In this context, freedom means the freedom of the will, the freedom to choose between two given things, between good and evil. This corresponds to a transposition of freedom from the political realm to the inward domain of the self. This kind of "inner freedom," or the *feeling* of freedom, is the opposite of the freedom that Arendt is trying to articulate. The former is politically irrelevant because it is without outward manifestation and originated from an estrangement from the world (with the Stoics in general and Epictetus in particular). In this sense, no matter what external conditions are like, whether you are in complete isolation or you are a slave working for his master, there is a place of inwardness where you can always escape constraint and feel free. Freedom is not dependent upon either the world or on other people.

But freedom was not always understood in this way. Originally, in the Greek world, freedom was understood neither as a quality of the will nor of thought, but rather the status of the free man. Being free meant that you were able to move around, to leave home, and to be in the world through speech and action. While this necessarily presupposed liberation—that is, liberation from necessities of life and concern for its preservation—it was not sufficient. Real freedom required other people who were in the same liberated state who could meet in a public area in order to share words and deeds.³⁵

For Arendt, freedom is neither a quality of the will nor the status of a free man. If it is neither of these, where does it come from and on what faculty does it depend? For Arendt, as we have already mentioned, freedom is the power to begin and equivalent to spontaneity. She argues that in order for an action to be free, it must be free both from a motive on one side and from an intended goal, its predictable effect, on the other. An action should be free of these not in the sense that they are absent, which is an impossible condition, but that they do not determine the action, that the action is able to transcend them. If the action is guided by an aim that the intellect has chosen as desirable and then calls on the will to achieve, the action is determined. This is because to recognize an aim is not a question of freedom but of judgment; the will simply follows judgment, that is, it “commands its execution.” But, as Arendt tells us, “[t]he power to command, to dictate action, is not a matter of freedom but a question of strength or weakness” (BPF 152).

For Arendt, we cannot be free alone; freedom only comes about through acting, which is always done with other people. We can contrast Arendt’s picture of freedom as the “performing self” (where I am free when, and only when, I am acting in concert with others) with the traditional view of freedom as a “willing self” (where I am free if I can do what I will, if my will can carry out what my intellect has judged to be a desirable aim). For Arendt, the ideal of freedom as a state of being manifest in action is virtuosity, the excellence we associate with someone in the performing arts, such as dance, music, and drama. She takes this model from Machiavelli’s definition of *virtu*, “the excellence with which man answers the opportunities the world opens up before him in the guise of *fortuna*” (BPF 153). In this example, Arendt is trying to show that freedom is achieved in the performance, not the product. Anything created by action, such as political institutions, depends on further actions for its continued existence.³⁶

By contrast, freedom as free will holds the ideal of freedom to be *sovereignty*, utter independence from other people and the ability to prevail against them. Arendt considers this identification of freedom with sovereignty to

be the “most pernicious and dangerous consequence of the philosophical equation of freedom and free will” (BPF 164). That is because it leads either to a denial of freedom (since to define freedom by what people can never really be, i.e., completely independent, is to deny its possibility), or to the realization that the freedom of one person, group, or nation can be purchased only at the price of freedom (sovereignty) of others (since freedom as sovereignty is the freedom to exercise my will both over myself and over others and the world). Further, “the famous sovereignty of political bodies has always been an illusion, which, moreover, can be maintained only by the instruments of violence, that is, with essentially nonpolitical means” (BPF 164).

In her analysis of freedom, Arendt is showing that freedom and non-sovereignty can exist together, that there is a way of understanding freedom that relies on human plurality and not domination. This is of central importance to her understanding of human rights. In fact, for Arendt freedom and sovereignty cannot even exist together, since freedom requires human plurality, the fact that action requires people working together and not in isolation. To be sovereign means to submit to the oppression of a will, either my own, another person's or a group's. She writes, if “men wish to be free, it is precisely sovereignty they must renounce” (BPF 165). Understanding why this is the case will help us get to the heart of Arendt's thought. Let us recall that action occurs in two stages. The first stage is the beginning, where something new comes into the world. In this sense, freedom is a kind of spontaneity. But in order for an action to finish what it starts, it needs the help of other people to carry it through. So the ruler or leader who, in the original sense, begins the action, is dependent upon the people to carry it through; the people in turn are dependent upon the leader for an occasion to act. Seen in this light, the freedom manifested in action forbids sovereignty and is radically interdependent.

7 THE PRINCIPLE OF POLITICS: SOLIDARITY

We need to return to the question of how an action can be free. We said above that an action must be done independent of both motive and aim, that is, an action must be determined neither by the intellect nor the will (though they are needed in order to achieve an aim). In order to explain how freedom of action may be independent of intellect or will, Arendt introduces the idea of a principle.³⁷ She defines a principle, psychologically, as the fundamental conviction that a group of people share.³⁸ A principle does not merely motivate an individual in isolation. Principles work by inspiring

action from outside the self, not from within, as motives do. They are general and thus cannot give specific goals, but they allow us to judge any particular action. The principle shares a common meaning with action in that it arises through the performing of the action.³⁹ As Arendt writes, “[f]reedom or its opposite appears in the world whenever such principles are actualized; the appearance of freedom, like the manifestation of principles, coincides with the performing act. Men *are* free . . . as long as they act, neither before nor after; to *be* free and to act are the same” (BPF 152–153).

Arendt gives revealing examples of how an inspiring principle can incite people to act and nourish their actions. Historically, that principle is honor in monarchies, virtue in republics, fear in tyrannies, glory in the Homeric world, and freedom in Athens. We must note that a principle can also have a negative side—fear, distrust, or hatred can be as much of a principle as honor or glory. In this, we can see the “problem” with freedom: it does not necessarily lead to what we consider to be the good.

The difficulty in understanding principles is that they are different for each form of government and in each epoch; moreover, that which constitutes a principle of action at one time, could constitute an end or a goal in another. For example, the immortal glory that inspired action in the Homeric world was a principle, but eventually became an end in Antiquity. Glory becomes not what inspired action, but the standard of measurement for action. Arendt also gives the example of liberty as an inspiring principle in Athens, one that became the end of a monarchy, the criterion for judging whether a monarch had overstepped his power. This, in turn, was transformed into a goal during the revolutionary period.

What is the principle that inspires and nourishes political action today? While she makes no mention of this in her discussion of the topic in “What is Freedom?” she does make a suggestion in *Qu’est-ce que la politique?* Here, she claims that one potentially inspiring principle, one that applies to our epoch more clearly than any other, is justice or equality of condition understood as the conviction of original human dignity.⁴⁰ Such a principle can be seen as inspiring human rights today.

This breakdown of the components of action is not simply an academic exercise for Arendt. Indeed, it can help us understand where political action goes wrong. In *On Revolution* Arendt argues that one of the downfalls of the French Revolution was its confusion of a principle with a sentiment. By looking at this example, we will see the importance of analyzing action in this way and also the importance of choosing a principle of action. For Arendt, solidarity is the cardinal political principle. This is particularly important for our understanding of human rights and the motivation for human rights

policy. All too often, the very compassion that spurs a concern for human rights may, if Arendt is right, actually become an impediment to the protection of human rights. For Arendt, human rights based on solidarity is much more effective.

In the French Revolution, the misery in society moved people to feel pity and to act on this pity. This social sentiment was not apparent in the past, not even when Christianity, with its emphasis on mercy and compassion, dominated Western political life. Compassion had always operated outside of the political realm. But for the actors of the French Revolution, compassion was abundant as a political motivation. From then on, the passion of compassion was to play a large role in all revolutions.

According to Arendt, the key phrase for understanding the French Revolution is *le peuple*. The term arises from the point of view of someone watching the spectacle of suffering but who does not participate in it. This is the point of view of the spectator. For the first time, *le peuple* refers not simply to those who do not participate in government or aristocracy. Nor is it a term of contempt for the lowly. Instead, it became a term of deeply felt compassion: *le peuple* are now the equivalent of misfortune and unhappiness. This becomes significant because, from this point on, power derives its legitimacy from the capacity to suffer with *le peuple*. Compassion, then, became the highest political virtue.⁴¹

For Robespierre, the job of compassion was to unite the different classes of people in France into one nation. In other words, compassion *unified* those who suffered with those who did not suffer. Compassion magically opened the heart of a person to the suffering of others, and thus confirmed a natural bond between people. In turn, this led to a denunciation of reason. Since thought and reason were the opposites of passion, it must be reason that prevented people from being compassionate. Reason made people selfish. Although we are inclined to think of this rebellion against reason as a 19th-century romantic phenomenon in contrast with the worship of reason in the 18th century, we cannot ignore the role passion played in the French Revolution.

As Arendt sees it, compassion is problematic because it destroys the worldly space between people and the capacity for communication. By feeling-with someone, you move away from your own difference, as if to become one. In other words, it abolishes plurality. This is why it should not be in the realm of politics and why it cannot build lasting, worldly institutions. When compassion sets out to change the world, it cannot do so with the tools of persuasion, negotiation, and compromise (that is, through law and politics) but only with swift, direct, and often violent

action. Violence is the necessary result of a compassion that cannot be articulated into speech; this was the ground of the French Revolution.

There is, of course, a place in politics for the sentiments that suffering arouses in us. Yet pity, a sentimental perversion of compassion, is not the only choice. Arendt's alternative is the principle of solidarity. Unlike a sentiment, solidarity is a principle that can motivate, inspire, and guide action. People may be moved by pity for the poor and suffering, but only through solidarity can they deliberately and dispassionately establish a community with the oppressed and exploited.

Solidarity might seem cold and less immediate than compassion or pity, as it is attached to ideals like honor, greatness, dignity, and not simply to the "love" of mankind. But we must remember that pity doesn't look upon fortune and misfortune, only suffering. We can say, therefore, that it has a vested interest in the existence of the suffering. Pity, as a sentiment, can be enjoyed for its own sake. As the spring of virtue, pity "has proved to possess a greater capacity for cruelty" (OR 89). In the language of a petition to the National Convention, we see the essence of pity: "Par Pitié, par amour pour l'humanité, soyez inhumains." Pity's cruelty can be easily rationalized; it's like the helpful surgeon who cuts off a gangrenous limb in order to save the body of the sick man.

Arendt distinguishes between solidarity, which is a principle, compassion, which is a passion, and pity, which is a sentiment. Sentiments, as opposed to passions, are boundless. Compassion necessarily turns into pity the moment it ceases to be directed at a single person and tries to encompass a multitude. This precisely describes the progress of Robespierre. He lost his ability to feel-with people in their singularity and got swept up in emotion. As Arendt notes, it's as if the turbulent sea of emotion within and the ocean of suffering around him caused him to forget all specific considerations. This "boundlessness of sentiment" has made all revolutions since (and including) the French Revolution so curiously insensitive to reality in general, or to the person in particular. Revolutionaries feel no compunction in sacrificing a person, or even a people, to their principles: the course of the revolution, the course of history, etc. This emotionally laden insensitivity to reality is a defining feature of the French Revolution.

Solidarity plays on our common interest, namely the honor of the human race, or the dignity of man. Because solidarity is grounded in reason, it can be generalized. Therefore, solidarity is able to conceptualize a multitude, not merely a class or a nation or a race, but potentially all of mankind. Solidarity may be aroused by suffering, but it is not guided by it. It comprehends the strong and the rich, as much as the weak and the poor, and in this

sense, it has the capacity to be truly universal. In terms of our questions, this means that human rights can only be based on this kind of solidarity, and not on pity or compassion.

8 CONCLUSION

Arendt's contribution to human rights offers us a way out of the dehumanizing model of human rights discussed in Chapter Two. In that chapter, we saw that when human rights are based on the person *qua* consumer or fabricator, they do not succeed in protecting human dignity. By emphasizing public rights as a way of supplementing private rights, Arendt suggests a way that human rights can be understood as protecting the person *qua* person. This is because the right to public participation or public happiness as it was called in the 18th century, is essentially the right to action and freedom. Through acting and hence being free, we are disclosed primarily as persons (and not consumers, fabricators, or laborers). Through public action, our interests in the common world are brought together with our selves, our distinct identities, which shape the common world. Because we must act with other people, Arendt has provided a way to think about freedom in terms of human togetherness, rather than sovereignty.

We can easily see the relevance of her critique of sentiments in the French Revolution to the way human rights are often discussed. If concern for human rights is based on a passion like compassion, human rights threatens to eliminate plurality and the worldly space between people. To be sure, to be moved by the suffering of others is not wrong, but to let this feeling become the prime motivation for action may have pernicious consequences. That is because it would eliminate the possibility of action since feelings cannot be mediated through persuasion and discussion, only through direct and violent action. It is not unusual that feelings of pity and compassion justify some of the most horrendous deeds; likewise, compassion for those who have lost their human rights can just as easily justify violating the rights of a different group. In other words, feelings, no matter how noble, can be destructive in the political realm because they eliminate plurality and render action impossible.

Solidarity, because of its intrinsic link with the common world, avoids these shortcomings. Through solidarity, Arendt insists, a community can be established between the oppressed and exploited and those who seek to help them. Solidarity is based on a common interest and ultimately grounded upon our existence in the common world. For it is only in the common world that we have a vested interest in the honor of the human race and

in the dignity of all humanity. Solidarity allows us to transcend our private interests and experiences and incorporate our interest in the common world and in humanity. This is why solidarity is universal and able to bring together the rich and the poor, the strong and the weak. While solidarity brings people together, it does not put people into a hierarchy where the strong help the poor or the poor take from the rich. For human rights to be based on solidarity, the human rights of all of humanity would have to be grounded upon a common interest and emerge from the action of everyone (not the just the strong, powerful, wealthy, etc). Solidarity is what ties together individual action and our interest in the common world; it mediates between public rights and private interests.

Chapter Five

The Foundations of Human Rights

Understanding, while it cannot be expected to provide results which are specifically helpful or inspiring in the fight against totalitarianism, must accompany this fight if it is to be more than a mere fight for survival. . . . For, although we merely know, but do not yet understand, what we are fighting against, we know and understand even less what we are fighting for.

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Living as we do in an era when human rights play such a fundamental role in politics, it's easy to ignore questions about the foundation of these rights. Questions about human rights policy or legal decisions rarely discuss the philosophical grounds for their positions. Yet human rights have not yet reached the status of unquestionable truths, but rather must continually overcome skepticism (such as from cultural relativists, international "realists," and others). Further, human rights need to be *interpreted* by people who use them—whether in law, advocacy, or policy—and interpretation requires an understanding of the source of our ideas. As such, questions about the foundations of human rights are far from academic, and need to be returned to continually so that our belief in human rights does not grow "dull and torpid," as John Stewart Mill feared was the fate of opinions too easily taken for granted.¹ With this in mind, I turn to the philosophical debate over the foundations of human rights.

The goal of this chapter is to situate Arendt's voice within the contemporary debate over the foundations of human rights. As I have stressed throughout this book, Arendt's concern with our ability to guarantee human dignity was a lifelong preoccupation, one that is reflected in many of her works. Yet because Arendt was idiosyncratic in her approach to philosophy and politics, we cannot easily see how she fits into the debate on the foundations of human rights as we understand it today. She never developed a

systematic theory of human rights, she avoided discussions of normativity, and she never explicitly said how human rights were justified. But nonetheless, her work can be seen as part of the same project as contemporary philosophers of human rights: the attempt to understand what human rights are and how they can be made more effective. As this chapter's introductory quotation illustrates, Arendt's goal is not so much to defeat all injustice so much as to understand what we aspire to with our political concepts such as human rights. In order to *understand* what we are fighting for, and not merely what we are fighting against, we must first understand what precisely human rights are and how they are justified.

For the purpose of outlining various answers to this question, I have divided the different positions into two groups: the essentialists and the anti-essentialists. By essentialists I mean all those people who believe that human rights are grounded in some essential feature of the human being, in human nature, or in morality. In this group I include David Little, Jack Donnelly, Alan Gewirth and Amartya Sen. I have also included H.L.A. Hart who, though a legal positivist, holds that there is at least one natural right. By contrast, the anti-essentialists hold that human rights cannot be grounded upon human nature or morality, and so search for a different kind of justification. The anti-essentialists include Michael Ignatieff, Beth Singer, Richard Rorty, John Rawls and Thomas Pogge. Because Arendt grounds human rights in a historically adapted human condition (not human nature), she is not an essentialist. Yet she differs from the anti-essentialists because she gives us a strong reason for believing in human rights (which, I argue, the anti-essentialists do not). Arendt's phenomenology is situated between these two poles, and as such, offers us an alternative understanding of human rights.

1 ESSENTIALISM

The most basic ideas behind human rights, as they are generally understood, are that they exist independently of any laws or practices of a state, and that human beings possess them just in virtue of our being human. This idea of human rights evolved from a concept of natural rights, which in turn came from a tradition of natural law. Natural law can be understood in opposition to positive law, law created by humans. For John Locke, the natural law could be found even in the state of nature and proscribed human behavior even before there was a government to enforce it.² These laws structure the cosmos and were given by God. In violating a natural law, you violate the harmony of the cosmos or God, not an individual. According to Thomas Pogge, the shift to natural *rights* language brings with it the idea that because rights

belong to the individual subject, to violate a natural right implies that you have violated a particular subject who has this right. Natural rights implied that the subject had certain rights by nature that simply should not be violated and indeed, ought to be protected. Human rights, rights all humans have, grounded in the nature of a human beings, arose from this idea.³

It is often said that the modern rights tradition began with the Declaration of the Rights of Man and Citizen in the French Revolution. This tradition culminated, we might say, with the Universal Declaration of Human Rights (UDHR) in 1948, which attempted to bring together previous understandings of human rights with the recent experiences of the Second World War. This document in turn inspired all of the post war covenants, treaties, and laws on human rights, both domestic and international. If we assume that the UDHR is the most important human rights document, then we must note how the language of natural rights, especially the assumption that human rights are grounded in something natural to the human being, became a part of this document. The first article reads, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience . . ."⁴ As Mary Ann Glendon points out, the drafters of the UDHR traced its legitimacy to a fundamental aspect of human nature: human dignity. This makes it possible to claim that human beings are "born" free and equal and "endowed" with reason and conscience.⁵

The assumption of natural human dignity became part of the UDHR despite attempts by the drafters to keep the language neutral on this topic. René Cassin, one of the drafters of the UDHR, wrote that the difficulty in writing the introduction was "to find a formula that did not require the [Human Rights] Commission to take sides on the nature of man and society, or to become immured in metaphysical controversies."⁶ The extent to which "nature" should be called upon to ground human rights became one of the central debates of the whole drafting process. The Human Rights Commission was comprised most notably of Eleanor Roosevelt (chairman); Charles Malik, a Lebanese philosopher who studied with Martin Heidegger and Alfred North Whitehead (secretary); and the Chinese statesman, Confucian philosopher, and playwright P.C. Chang (vice chairman). Despite Malik's Heideggerian influence, he insisted that the Declaration be anchored in the idea of "nature."⁷ I mention this debate only to point out that though the UDHR is based on an essentialist view of the human being, it was not written without an awareness of the difficulties that comes with that essentialism.⁸

David Little defends the naturalness and objectivity of human rights in an article entitled "The Nature and Basis of Human Rights."⁹ Little argues that there are "universal, and even 'objective,' moral standards (and concomitant

beliefs) that are in part associated with existing human rights norms.”¹⁰ In other words, human rights are grounded upon moral norms that exist independently of human acknowledgement. To be sure, this means that human rights exist in distinction from law and are prior to law; human rights are a standard for creating, interpreting, and criticizing the law. Thus they “exist” independently of any human institution, insofar as they act as something that can be appealed to independently. I put his view in the essentialist camp because even though his emphasis is not on the nature of the human being, he implies that human rights are rooted in the unquestionable naturalness of morality. Little’s position is based on a view of moral intuitionism—namely, the view that the wrongness of certain actions is so intuitively clear that it does not require a further explanation or theoretical ground to show it is wrong.

Little begins by drawing on the work of William Gass entitled “The Case of the Obliging Stranger,” in which Gass lays out a thought experiment:

Imagine I approach a stranger on the street and say to him, ‘if you please, sir, I desire to perform an experiment with your aid.’ The stranger is obliging, and I lead him away. In a dark place conveniently by, I strike his head with the broad of an axe and cart him home. I place him, butchered and trussed, in an ample electric oven. The thermostat reads 450 F. Thereupon I go off to play poker with friends and forget all about the obliging stranger in the stove. When I return, I realize I have over baked my specimen, and the experiment, alas, is ruined.¹¹

For Little, the point of this thought experiment is to show that the narrator’s actions are so transparently wrong that they need no explanation. Further, he argues that it shows that moral “reasons” for condemning baking the stranger seem strange and out of place. For example, “baking this fellow did not serve the greatest happiness of the greatest number” (utilitarian explanation) or “I acted wrongly because I could not consistently will that the maxim of my action become a universal law” (Kantian explanation).¹² It is precisely because moral theories sound so strange when used to explain our reaction to baking the stranger that Little can claim that the wrongness of this action is apparent. Additionally, Little claims that moral theories are judged by how they respond to an action like baking the stranger—any moral theory that does not condemn this vicious action is a moral theory that ought to be rejected.

He goes on to argue that the transparent wrongness of baking a stranger can be applied to certain cases of torture. For example, actions like torturing a child in front of his parents are “simply and transparently wrong in themselves, whoever may perform them and in whatever culture.”¹³ He distinguishes his

kind of rational intuitionism from the sensational intuitionism of Hutcheson and Shaftsbury. In his view, the wrongness is “cognizable” and human beings may be expected to “know” that something is wrong. To this extent, a person who sees nothing wrong with things like arbitrary suffering through torture may be described as “handicapped” or “pathological” in some way.¹⁴

We must ask whether or not this is a sound basis for human rights. Little readily admits that there may be certain cases of torture that are not transparently wrong (for example, torturing a terrorist to get information about a bomb in order to prevent the death of a number of people) and further, that there may be disputes as to what constitutes torture in particular cultures. This raises a possible objection to his theory: even if *some* human rights violations might be transparently wrong, it does not follow that *all* violations are. Indeed, the hardest cases are precisely those that are not transparently wrong. For example, generations of people did not see racial discrimination as wrong; rather, they saw it as good and beneficial for society. This shows, then, that intuitions about the moral truth of human rights are not a solid enough foundation to ground human rights. Often the cases in which the wrongness of an action may not be obvious are also the ones in which we want to insist that human rights are really at play. Further, we want to say that human rights violations are wrong whether or not it seems obvious. To be sure, the writer is aware that the “primary intuitions” of things that are obviously wrong is limited. But nonetheless, our moral intuitions may give us a strong sense of how to live and which actions to condemn, but they cannot be the ground for human rights. To quote Leo Strauss, “indignation is a bad counselor. Our indignation proves at best that we are well meaning. It does not prove that we are right.”¹⁵

I would like to turn now to the work of Jack Donnelly, who approaches the question of the ground for human rights in a different way. In his study, *Universal Human Rights in Theory and Practice*, Donnelly argues for the universality of human rights which he understands as claims that are historically specific and contingent, but not culturally relative.¹⁶ He defends human rights as universal in the sense that (1) since they are rights that we have simply as human beings, then they are held “universally” by all humans; (2) they are held “universally” against all other institutions and individuals;¹⁷ (3) they have a “moral universality” in the sense that they take priority over other moral, legal, and political claims; and finally, (4) they are universal in the sense that they are almost universally accepted by the nations of the world as ideal standards (this is its “international normative universality”).¹⁸ Donnelly’s main concern is to defend human rights from attacks by cultural relativists.

It is helpful to keep his project in mind as we turn to his definition of human rights. Donnelly puts the question succinctly: if human rights are the

rights that one has simply by being human, how does being human give rise to rights? In order to answer this, he begins by addressing the question of what it means to “have” a right. Rights are entitlements, for “to have a right to x is to be specially *entitled* to have and enjoy x .”¹⁹ But in the particular case of human rights, “having” them is only important when we are in some sense denied them. Human rights raise a strange paradox: we can both have human rights and not have them at the same time. Donnelly calls this “the possession paradox.”²⁰ This is the distinction between possessing a right and being able to enforce it, and the two senses often do not go together. What is important is that, contrary to the positivist school that we’ll examine below, they are separate: our having of human rights is independent of whether or not they are enforced or protected.²¹

In a second sense, human rights are a particular kind of right, the highest kind, which can be appealed to legally when other avenues fail. Donnelly uses a case of race discrimination as an example. When faced with an instance of race discrimination, the most immediate source of redress is the “lowest” right—for example, does this violate an employment contract? If it does not, then you might have to look at local human rights ordinances or statutes. If there is nothing in those that prohibits race discrimination, you might have to look “higher” to a federal statute or even the constitution. If the wrong still cannot be redressed, you can then turn to international human rights instruments.²² Because of its “height,” human rights challenge current legal institutions and practices. Thus human rights exist both as something essentially extralegal and as a form of legal redress.

While Donnelly’s description of how human rights work is elucidating, his understanding of the ground of human rights is more problematic. Donnelly asserts that the source of human rights is man’s *moral* nature.²³ Human rights are needed, not to sustain life in a biological sense or to satisfy needs, but to sustain dignity. They arise from the “inherent dignity” of the human person.²⁴ He defines dignity as an expression of the “inner (moral) nature and worth of the human person.”²⁵ He argues that because theories of human nature are impossible to reconcile and we can never agree on a final answer, we should not rely on a theory of human nature. And yet he claims that the source of human rights is our moral nature. He goes on to stress that human rights arise from human action (and are not given by God or nature) but nonetheless, the ultimate source is something natural within us.

Donnelly argues that to claim this origin of human rights is different from claiming that they originate in human nature. He does this by rejecting the scientific account of human nature, which defines human nature in terms of our needs. The problem with his view is that to posit that human

rights emerge out of a person's moral nature and our inherent dignity is to posit a particular view that human nature is intrinsically moral and dignified. Whether we agree that this is right or wrong, it is certainly clear that it is an assumption about human nature.

Donnelly's definition of human rights is more complex. He goes on to say that human rights "arise from human action; they are not given to man by God, Nature, or the physical facts of life. Human rights represent a social choice of a particular moral vision of human potential."²⁶ Since human rights are a social practice that aims to realize a particular vision of a dignified life, they require certain institutions. Donnelly's position is noteworthy because, as with Beth Singer and Hannah Arendt, it stresses that human rights require human action: all three stress the importance of a political community in making human rights operative. He differs from them insofar as our choice to instantiate a particular vision of human potential rests on an assumption of human dignity, and "on a particular substantive account of the minimum requirements of a life of dignity."²⁷ To be without human rights is to be "estranged from one's moral nature."²⁸ Human rights go beyond actual conditions and describe what a life of dignity, a truly human life, would look like. This, no doubt, presumes that we know what a truly human life is, which implies a conception of human nature.

Donnelly understands human nature both as something given and as a social project. In accord with Arendt's notion of intersubjectivity, he argues that there is an interaction between the moral vision that human rights represents and the political reality that arises as a result; there is also an interaction between the individual and the state, which is shaped through human rights.²⁹ He writes that human rights are a self-fulfilling prophecy: "Treat people like human beings—see attached list—and you will get truly *human* beings."³⁰ The possession paradox is a different way of understanding this interaction or dialectic between the real and the ideal.

Amartya Sen's article, "Elements of a Theory of Human Rights," begins by defending the need for a theory of human rights, one that provides a foundation capable of addressing the widespread and genuine intellectual skepticism about human rights. Although people who aim to protect human rights are impatient with such a project because it interferes with the more urgent business of responding to human rights violations, Sen recognizes that "conceptual doubts must also be satisfactorily addressed, if the idea of human rights is to command reasoned loyalty and to establish a secure intellectual standing."³¹ The goal of establishing "reasoned loyalty" to human rights and providing them with a "secure intellectual standing" is indeed a valuable pursuit. This is especially true in an age when unconventional wars (like the

“war” on terror) challenge so many of our standard political notions, including human rights and prohibitions against torture.

According to Sen, human rights are primarily ethical demands that can survive open and informed scrutiny. They are not simply ethical claims that are universally held to be true and unquestionable; that is, they are not justified because they already take part in universal values. Nor are they ethical claims without any ground except authority, and thus they are not completely relative. Let us look more closely at the two sides of Sen’s definition. First, in saying that human rights are “quintessentially ethical articulations,” he is trying to distinguish such claims from legal claims.³² He is explicitly opposing the positivist conception of human rights that people like Jeremy Bentham proposed. For Sen, though human rights *may* inspire the law, they are not essentially legal or proto-legal. Second, these ethical principles are ones that, though perhaps not discovered by reason, can withstand the “interactive process of critical scrutiny.”³³ This Rawlsian public reason approach entails that the interlocutors have information about other societies and are open to arguments that are different from their own positions. Through such open dialogue, he believes we will be able to settle some disputes but not all; this indeterminacy, however, is nothing to be embarrassed about because it is merely a part of what a theory of human rights must contain. Being able to debate human rights—rather than come to a singular and final understanding—is part of the meaning of human rights, since this engagement is the only way a theory can contain a lot of internal variation.

Though his theory is promising, he makes a number of controversial assumptions. For example, he seems to assume a kind of moral realism: that moral principles exist independently of human recognition or power relations, and that they simply need to be discovered. Sen does not take into account *moral skepticism*, the view that morality is a human convention that masks power relations, when he posits his definition of human rights. Such skepticism, which has been articulated from Thrasymachus to Nietzsche, needs to be addressed before the idea of human rights as ethical claims can command “reasoned loyalty.” Also, his reliance on public reasoning, unobstructed discussion, to determine which ethical claims can survive takes for granted (1) that such reasoning, as “objective” as we can make it, is neutral in respect to power relations, and (2) human rights norms, or any ethical practice, are based purely on reason. Both assumptions are questionable, but Sen does not address those questions. People do not necessarily arrive at the conversation table as equals; refugees, minorities, people in extreme poverty, etc., are not in the same position to speak as a university-educated person from a dominant group. It is even hard to imagine how groups who cannot speak—stateless people,

internally displaced people, women in certain repressive countries—could be included in a public discussion where supposedly “no one is excluded.”³⁴ Arendt would no doubt point out here that this is why the right to have rights is the most basic kind of right: if debating is part of human rights, then the ability to speak and act (and thus debate) precede the establishment of human rights norms.

Sen makes a compelling point that human rights generate duties that can be understood as imperfect obligations. Concerning the human right to be free from torture, one could say that there is the perfect obligation not to torture, which would be an uncontroversial statement. What Sen adds to this debate is that human rights entail *imperfect* obligations, as well. In the case of torture, the imperfect obligation is “to consider the ways and means through which torture can be prevented and then to decide what one should, thus, reasonably do.”³⁵ He is drawing on Kant’s language in *The Groundwork for the Metaphysics of Morals*, where Kant distinguishes between a perfect duty (following the categorical imperative), which cannot have any exceptions, and an imperfect duty (such as improving yourself), which is less stringent. This distinction corresponds roughly to the difference between a negative duty (the duty to refrain from doing something) and a positive duty (the duty to do something for someone). Sen uses this distinction to ground his view that we must solidify human rights through three different approaches: recognition, agitation, and the law. Recognition includes things like the UDHR, which is not a legal statement, but a general standard of achievement. This point underscores the fact that human rights require social recognition independent of legal or institutional recognition. Agitation implies advocacy for compliance with human rights norms through public discussions and criticisms. He uses NGOs as his model; they affirm that human rights can be claimed independently of legal mechanisms and in the absence of legal backing. Legislation is but the final way that human rights are brought to life. We might say that the recognition and agitation routes are grounded in our imperfect duty to further human rights (and not merely to avoid violating them).

Alan Gewirth presents a different version of the essentialist position. For him, human rights are grounded neither in human nature *per se*, nor claims about the nature of morality,³⁶ but on a human characteristic: rational agency. Human rights arise from the necessary conditions for human action.³⁷ His argument is a logical one: because all human beings are rational agents, we must hold (on pain of contradiction) that we have the right to the necessary conditions of action, without which no one could act. These are the conditions that “must be fulfilled if human action is to be possible either at all or with general chances of success in achieving the purpose for which

humans act.”³⁸ The conditions necessary for action, and successful action, are freedom and well-being. He defines freedom as “controlling one’s behavior by one’s unforced choice while having knowledge of relevant circumstances,” and well being as “having the other general abilities and conditions required for agency.”³⁹ This, he clarifies, is not a phenomenological description of action but, rather, what is logically entailed in the structure of action. That is, since we all act for a reason or purpose (regardless of how good or bad this purpose is), we must think of the necessary conditions that make action possible as necessary goods. Consequently, he refers to freedom and well-being as *generic features* of action, since they are what characterize all action.

Without being able to do justice to Gewirth in this short summary, I mention his complex work only as an example of human rights based on a human capability, i.e., human agency. This is particularly important since Arendt seems to base her view of human rights on the same concept. However, their views of action and freedom are different in significant ways. For Gewirth, action is a synonym for anything we do that fulfills an intention, whether this means doing things with others, building a house, or raking the leaves (i.e., he includes all human activities, labor, work and action, into his account of action). In order to do these things, we require freedom in the sense of non-constraint. For Arendt, action refers to a very particular phenomenon that necessarily involves other people and whose ultimate significance is self-disclosure. Freedom is not the prerequisite for such action, but coeval with it. While Arendt seems similar to Gewirth in grounding human rights in the capacity for action, the differences between them are much more significant than their similarities.

I want to turn now to a school of thought called legal positivism. This school is characterized by a denial that there are any rights outside of the law; thus, it denies natural, *a priori*, or human rights and holds that moral norms are not inherently related to the law. Jeremy Bentham originated this position in his criticisms of the Declaration of the Rights of Man and Citizen. In “Anarchical Fallacies: A Critical Examination of the Declaration of Rights,”⁴⁰ Bentham argues that the basic assumptions of the Declaration of the Rights of Man are fallacious and will ultimately lead to anarchy. In attacking article 2 of the Declaration, which claims that “the end in view of every political association is the preservation of the natural and imprescriptible rights of man,” he argues that there are no rights anterior to the establishment of a government. Natural rights, since they stand in opposition to legal rights and the government, cannot exist: “*Natural rights* is simply nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts.”⁴¹ In Bentham’s view, the supposition of natural rights is not merely a mistake

but a danger to the state, since it inspires “a spirit of resistance to all laws—a spirit of insurrection against all governments.”⁴²

Bentham’s dismissal of natural rights as nonsense may seem outdated, given the tremendous impact human rights have had since the time of his writing, but his critique had a number of important consequences. His way of viewing rights made legal reform a pressing issue—one central to human rights. His view was part of the impetus to translate abstract declarations of natural rights into positive law, and ultimately, into international law. The movement toward legal positivism is the reason why human rights law has become such an important part of human rights.

A good representative of legal positivism in the 20th century is H.L.A. Hart, who was a professor of jurisprudence at Oxford. Hart is a positivist in the sense that, for him, laws are merely rules posited with political authority, and law and morality are ultimately separate and non-overlapping. Yet even Hart acknowledges the importance of natural or moral rights in his article “Are There Any Natural Rights?” by arguing that *if* there are any moral rights, then there is one natural right and this is the right of all men to be free.⁴³ To state his argument very broadly, he shows that since people ascribe “special rights” to others by making promises and entering contracts, it follows that without such “special rights” or contracts, people must have a “general right” to not be interfered with. Without any special conditions, the individual has the right not to be coerced or restrained by anyone, and can do any action that does not coerce, restrain, or injure anyone else. The right to be free is a *natural* right because it is the right every person has if she is capable of choice, which we all have *qua* persons (not in virtue of being a member of a certain society or class); and this right is not instituted through voluntary action (i.e., it is not based on anything we do or have done). While this is not the strongest case for the existence of natural rights (as even Hart admits), it does show that even someone committed to a positivist position can acknowledge the existence of at least one right outside of the law.⁴⁴

There are, of course, a number of problems with a strict positivist position that allows no rights outside of what are granted through law. First, the most obvious problem is that it would eliminate perhaps the most important aspect of human rights: they can be claimed and demanded precisely when they are denied by the law. Human rights are meant to challenge unjust laws and governments, not merely to reflect them. Even if human rights ultimately become laws, it does not follow that they are essentially the “children of the law” (Bentham’s phrase), as Amartya Sen argued. Second, positivism actually limits the possibility of international law because it places so much emphasis on national sovereignty. If rights are what the law, authorized by a sovereign

government, says they are, then there can be no principle outside of the nation that can shape this, including international law. Finally, as Mary Ann Glendon observes, while legal positivism flourished in the United States, Europe, and Soviet Union, the legally sanctioned atrocities committed in Nazi Germany caused the world to question whether there is no higher law than the laws of the nation state. In order to criticize the Nazi regime (which was lawful), there must be a higher legal standard than the laws of a nation-state.⁴⁵ In sum, while the basic assumptions of positivism may be highly questionable, its contribution to human rights in the form of inspiring legal reform (making human rights principles into law) cannot be denied.

The legal tradition has also given human rights the notion of a claim right. The legal theorist W. N. Hohfeld argued in 1919 that the term “right” can be used in a number of ways and placed it into four classes: liberty rights, claim rights, power rights, and immunity rights.⁴⁶ Hohfeld’s theory substantially helped to clarify the relationship between rights and duties. Liberty rights and claim rights have become especially important in discussions of human rights. The essential difference is that a claim right implies a duty while a liberty right does not. For example, the right to an education is a claim right in the sense that there exists an entity from which I can claim it, such as the school board or local government. Such a right would be worthless without the ability to claim it. There can be two kinds of claim rights: positive and negative. A positive claim right means that someone has a duty to provide me with this right, the negative claim right means that someone has the duty not to interfere with my enjoyment of this right. The right to a periodic holiday with pay is a liberty right, since there is no one who can grant me this right. In other words, a claim right entails duties, while a liberty right does not.⁴⁷

In a similar context, Joel Feinberg adds the idea that human rights are moral claims rights.⁴⁸ Human rights entail a demand against others that they fulfill whatever I have a right to. He argues for this by looking at the fictional town of Nowheresville, a town that is exactly like ours except that the people have no rights. Feinberg asks: what difference would this make, especially if the people of this town were filled with benevolence, compassion, sympathy and pity, and helped each other from compassionate motives? He responds that the most important thing missing is the activity of claiming, that when the Nowheresvillians have their rights violated, they are unable to make any sort of demand for them. Because they have no rights, they have no sense of what is due to them, and thus, they cannot make any claims. Feinberg asserts that “claim rights,” in the sense defined above, are genuine rights, while liberties, immunities, and powers are only confused rights. Accordingly, if human

rights are essentially claim rights, rights logically entail other people's duties. Yet according to Feinberg, this does not adequately account for the fact that claim rights are prior to and more basic than their correlative duties: "the language of claims and claiming are essential to a full understanding not only of what rights are, but also why they are so vitally important."⁴⁹ Feinberg goes so far as to claim that "what is called 'human dignity' may simply be the recognizable capacity to assert claims. To respect a person then, or to think of him as possessed of human dignity, simply *is* to think of him as a potential maker of claims."⁵⁰

Feinberg is intent on distinguishing human rights as valid claims from human rights as human needs. All human needs may be claims (i.e., the need for food may entail a claim to food), but they are not all valid claims in the sense of being the grounds of other people's duties. Thus for Feinberg, economic and social rights are not really human rights since in most cases they cannot have a corresponding duty.⁵¹ He does agree that the "manifesto" sense of rights does imply a duty, if only upon a hypothetical person in the future. Claims based on needs that can only be fulfilled in the future are the ground of future rights. In other words, social and economic rights (manifesto rights) are not actual rights, but rights that ought to be recognized by states; they are potential rights that should determine present policies. Human rights, for Feinberg, are only valid claims; if we cannot make a claim for it, it is not a valid right. A person has a moral right if he can make a claim backed up by moral principles. A claim does not need to be based on the law, but can also be based on moral principles: "To have a right is to have a claim against someone whose recognition as valid is called for by some set of governing rules or moral principles."⁵² Because Feinberg takes for granted the moral principles grounding claims to human rights, his position fits with the essentialist group.

To be sure, Feinberg is not saying that the potential of making a claim constitutes our dignity; rather, it is the actual ability that constitutes our dignity for Feinberg. This position is notable because the conditions that make claiming a right possible are not mentioned by the author. To make a claim requires that you be part of a community in which your claim can be recognized. This demonstrates that there is a more basic right to belong to a political community where your rights can be recognized (even if they exist outside of this political community). Further, in order to make a claim, one must be able to speak and act in such a way that action and speech are meaningful. In other words, those who lack the "right to have rights," as Arendt called it, are in no position to make claims since the act of claiming is denied to those outside of a political community.

I have grouped together a number of very diverse positions under the essentialist category because they all share a view that human rights are in some way related to an essential feature of the human being or morality. They have in common a reliance on metaphysical principles, though there is considerable variation in which principle they rely upon. David Little's intuitionist approach holds that human rights are grounded in moral principles whose existence are so obvious that they require no justification. Jack Donnelly holds that the source of human rights is our moral nature and that they arise from our inherent dignity. Amartya Sen holds that human rights are moral claims that survive open scrutiny. These moral claims are not obvious and given, but must be discovered through reason. Nonetheless, because he holds that moral claims exist independently of human recognition, I put him in this camp. Alan Gewirth takes a slightly different position, arguing that human rights are grounded not in our nature or in morality, but in a distinctly human characteristic: rational agency. Hart, though a legal positivist, argues for the existence of one natural moral right, the right to be free. In this sense, he is an essentialist, if only in a limited way, because he sees morality as existing independently of human institutions. Finally, for Joel Feinberg, human rights are moral claim rights that can be grounded either in the law or in moral principles. Again, because he holds that moral principles exist independent of human recognition, his position is grounded in a metaphysical assumption.

The essentialist position concerning human rights is the most common position, since historically, human rights have been thought to derive from natural rights. Metaphysical assumptions have been part of human rights since their inception. Even the drafters of the UDHR found metaphysical assumptions ineluctable, although they were conscious of the difficulties associated with them. Indeed, this continues to be part of our everyday understanding of human rights and the understanding employed by human rights activists and supporters. There is good reason for this. If rights follow tautologically from the definition of a human being, then there is good reason to demand that they be upheld. Perhaps the biggest advantage of this position is that it gives us a way of understanding how human rights can exist even when they are not recognized in institutions.

But despite their historical influence and pragmatic usefulness, such positions are open to scrutiny. Indeed, Darren O'Byrne claims that natural law theories "invite criticism and controversy."⁵³ One possible objection is posed by authors like Richard Rorty and Michael Ignatieff concerning the theoretical limitations of metaphysical foundations. The above positions hold that we can *know* either the nature or essence of the human being, or the

nature of morality. But since we cannot in fact know these things for certain, they have the status of assumptions. So human rights only become applicable to those who share assumptions such as the natural dignity of human beings or the reality of moral norms. The above mentioned positions are guilty of the “naturalistic fallacy”: the attempt to derive norms from human nature.⁵⁴

Arendt might also make a practical objection to these positions. Historically, the assumption that human rights are natural has meant that little emphasis was placed on the structures that made rights real. This was a particularly glaring mistake for those who experienced the condition of being rightless. Indeed, saying that human rights are natural means that any structures set up to enforce them are only secondary, an afterthought. The claim that human rights are intrinsically bound up with the political system that keeps them alive places the emphasis on the act of making human rights actual and operative (as opposed to existing no matter what we do). It means that systems that enforce rights are as important as rights themselves.

2 ANTI-ESSENTIALISM

Is it possible to avoid these problems and still create an effective theory of human rights? The authors I will consider below (Ignatieff, Rorty, Singer, and Rawls) certainly think this is a possibility. Their positions aim to ground human rights on something other than an assumption of human nature or the reality of moral life. I call these theorists anti-essentialists because they make no claims about the essence of the human being to support their arguments. As with the essentialists, however, there is a tremendous amount of variety in these positions.

For Michael Ignatieff, human rights ought to be “political” in the sense of being necessary for the adjudication of conflicts (though not necessarily to bring them to a resolution) and grounded on human history, not in nature, the dignity of man, or morality. Ignatieff explicitly denies that there is anything important about being human or having human dignity that entitles us to respect (as someone like Jack Donnelly holds). According to what he calls a *humanist* position, there is nothing sacred about human beings and nothing that entitles them to ultimate respect. The only thing we can say about human rights is that we have learned from history that they are necessary to prevent violence.⁵⁵ Further, he even denies Dworkin’s well-known claim that rights are trumps. For Ignatieff, human rights are not above politics; they are not a moral trump card that can bring disputes to a close.⁵⁶

In *Human Rights as Politics and Idolatry*, Ignatieff argues against what he sees as the idolatry of human rights. He notes that human rights have become

part of a secular culture or, in the words of Elie Wiesel, “a world-wide secular religion.”⁵⁷ Ignatieff means that when human rights are grounded in metaphysical assumptions about the human being they essentially become articles of faith. He argues that while we may be tempted to think of human rights as being grounded in innate or natural dignity and as having an intrinsic worth, the problem is that this entails a confusion, and results in an idolatry of human rights. This essentialism confuses an *is* with an *ought*; it confuses how we would like people to be with what we empirically know them to be. Though on occasion we do act with dignity, he argues that we can just as easily see human rights as intending to correct our natural tendency towards particularistic and exclusivist circles of care and concern. According to Ignatieff, our natural tendency, what is most clear when we examine human life, is that we are indifferent to people outside of our circle of friends, family, and possibly people of our same ethnic, linguistic, religious, or national origin. Any idea that we have a natural concern for others, and certainly for all of humanity, is contradicted by experiences like the Holocaust. This is why, according to Ignatieff, we should build a foundation for human rights on human history, and not human nature. He insists that we must avoid foundational arguments altogether and instead build support for human rights on what we know that they can do for people. Human rights, for Ignatieff, ought to be grounded in a prudential or practical ground, one based on human history not metaphysical assumptions.

Ignatieff seems most concerned with the use of human rights for political ends by those who would say those rights are politically neutral. For example, people who argue for the human rights of Palestinians do so knowing that they are taking a position against Israel, even as they claim to be neutral and only concerned with human rights. The practical application of human rights means that neutrality and impartiality are impossible, as are equal and universal concern for the human rights of all people. He argues that everyone’s universalism is ultimately anchored in concern for a particular group or people. We ought to recognize that human rights require us to take sides. This means that we cannot have a truly universal conception of human rights; they cannot be built upon universal human solidarity.

Further, human rights are fundamentally in conflict, according to Ignatieff. For example, in most Western states, human rights are a part of foreign policy, but they often conflict with other foreign policy goals. It might seem incoherent for a country like the UK or USA to condemn Indonesia or Turkey for its human rights record while continuing to supply it with military weapons, but these countries are important allies in part because of their location in hostile parts of the world. Therefore, the values of human rights

are unable to constrain UK or American national interests in that country.⁵⁸ This, for Ignatieff, is not merely hypocrisy, the refusal to match word and deed; it also reveals a fundamental conflict of principles. The simple assertion that human rights are trumps does not resolve the problem. This is not to say that human rights are not part of the equation, but only that they are not, and cannot be, the last word. This is especially true today because we face threats not only from tyranny (a government which flouts respect for human rights), but civil war and anarchy (the absence of a nation-state which can guarantee and protect human rights). As Ignatieff writes, “[h]uman rights is nothing other than a politics, one that must reconcile moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends, but between ends themselves.”⁵⁹ Human rights are inescapably in conflict.

In her introduction to Ignatieff’s essay, Amy Gutman, argues that, rather than disputing whether human rights should have a historical foundation or a metaphysical one, we should understand human rights as having a plurality of foundations. No single theory, either religious or secular, needs to be considered definitive for all people who are concerned with human rights.⁶⁰ In fact, this is a requirement in a pluralistic world. The reasons noted above—history, human dignity, human agency—are not mutually exclusive, according to Gutman. The only thing that is incompatible would be a denial of the moral worth of an individual. Yet this seems to be precisely what Ignatieff is defending—that we can ground a theory of human rights even though we do not believe that there is anything special or important about being human. Nonetheless, while it might be true that a pluralistic society demands a plurality of reasons for accepting human rights, and it might also be true that foundations are secondary to the protecting of rights, these realities still do not eliminate the fact that the search for a better and more solid ground for human right is an important task and one worth arguing about. We might even say that there is a plurality of foundations for human rights precisely because of this search for the best possible ground.

Richard Rorty has posed one of the biggest challenges to foundational theories of human rights. The starting point of Rorty’s analysis is that the main problem in human rights is not defining what rights are but who counts as human. Often when human rights are violated, the people doing the violation do not see their victims as humans. The Serbs did not consider Muslims as fellow human beings, but as Muslims; the Crusaders distinguished between humans and infidel dogs; even Thomas Jefferson could assert that all people were endowed with inalienable rights and still own slaves (he assumed of course that Blacks were not full human beings). In fact, like the Nazis before

them, the Serbs thought that they were doing humanity a favor by purifying it of something that was not truly human. This attitude of excluding certain groups from humanity is not the exclusive domain of tyrants; Rorty argues that distinguishing between humans and not-fully-humans is much more prevalent than we would like to admit. He cites the mistreatment of black people in the US and South Africa as examples. Likewise women were also considered permanent children and thus justifiably denied education, money, or power. In order to establish a definition of "human," philosophers since Plato have tried to define what humans have in common and to articulate why they are worthy of respect. Philosophers like Nietzsche, however, have responded by saying that human nature is nasty and dangerous, and that all attempts to stop this nastiness are doomed to fail.

The great advance of this century (according to Rorty) is a decline in the debate between Plato and Nietzsche, and ultimately, a decline in theories of human nature in favor of theories about what humans can make of themselves. Thus, concerning human rights, foundational questions are not even worth considering. Indeed, "the question whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising."⁶¹ His aim, however, is not to dismiss human rights. Rather, he sees his task as making the culture of human rights more self-conscious and more powerful.

The goal of philosophy, then, is to summarize "our culturally influenced intuitions about the right thing to do in various situation."⁶² The aim is not to give independent support for these summaries based on claims about the nature of the human being. For example: Plato's claim that moral intuitions are recollections of the Form of the Good, or Kant's claim that human beings differ from other kinds of animals because we have dignity and not just value, are claims about human nature. Likewise, Nietzsche's assertion that humans aim for nothing more than the will to power is also a claim about human nature. These claims are invoked in order to correct our moral intuitions. But Rorty, as a pragmatist, asks: is the work of changing our moral intuitions better done by increasing our knowledge or manipulating our feelings? His answer is that concern for human rights seems to come not from an increase in moral knowledge, but in hearing sad, sentimental stories.⁶³

Rorty's main premise is that if something (such as the idea of a universal human nature) serves no purpose, then it probably isn't true (and there probably is no such nature). Thus, the best reason for giving up on the quest to find a foundation for human rights is that such a structure serves no purpose. We would be more efficient if we concentrated our energies on "manipulating sentiments, on sentimental education."⁶⁴ The purpose of such an education would be to encourage us to see people different than themselves as fully

human. Recall that according to Rorty this refusal to see all people as fully human is the reason that human rights are often violated. Traditional moral philosophy, from Plato to Kant, focused on how to convince someone to be good, to act in a moral way, and to avoid becoming an egotist. This emphasis allowed us to neglect a more crucial issue, namely, the person who does not think that certain people are worth treating with dignity and respect. "The rational egotist is not the problem," says Rorty. "The problem is the gallant and honorable Serb who sees Muslims as circumcised dogs."⁶⁵ In other words, the central problem of moral philosophy, and consequently the philosophy of human rights, is to figure out how to convince people that all people belong in the category of human.⁶⁶ The question should not be: why be moral? It should be: why should I care about a stranger, even a person I find disgusting? This is no simple task, since most people outside the educated, post-Enlightenment circle do not see why simply being human entitles you to membership in a moral community (perhaps, Rorty speculates, because it is too dangerous to extend one's circle of care outside of the immediate family or tribe).

To achieve this, reasonable explanations have had little effect. Just understanding Kant will not get us to see people differently, especially people who we think are different from us in any significant way. Rorty recognizes that people's identities are bound up with who they see themselves as not being, who they see themselves in opposition to. In other words, I must see people as "other" than human in order to see myself as a human being. To be sure, this is not the case for all people: people who have been brought up with an awareness of the Holocaust, for example, may understand the dangers of considering certain groups as morally irrelevant. Such people, he writes, are eager to define themselves in a non-exclusionary way. Raising people in this way is, in part, necessary to create a global human rights culture.

The mistake, however, is to see intolerant people as irrational, as if they simply do not know or understand something that we, as tolerant people, do. According to Rorty, the difference between considering race, religion, gender, and sexual preference as morally irrelevant is no more rational than considering them relevant. The problem is their sentimental education, that the intolerant were brought up seeing whatever group is excluded from their definition of humanity as less than fully human. They are deprived not of knowledge but of security and sympathy. By "security" he means "conditions of life sufficiently risk-free as to make one's difference from others inessential to one's self respect, one's sense of worth." These are the conditions, he claims, usually enjoyed by people in the West.⁶⁷ He defines sympathy only by example: it is what white people in America had more of after reading *Uncle Tom's Cabin*. You need security in order for sympathy because you cannot be afraid, tense,

or scared if you want to be genuinely open to listening to the experiences of others. Rorty advises what Annette Baier called “a progress of sentiments,” an attempt to increase our ability to see others who are quite different from ourselves as being like ourselves.⁶⁸ Seeing strangers and even people we might consider disgusting as human is done not by rationally convincing people that they ought not to see the world like this, but through sad, sentimental stories.

Rorty’s contribution to the philosophy of human rights is to challenge the very necessity of a foundation for them and to add that an education in human rights must be more than rational, must affect us on a deeper level. This goes against the work of people like Amartya Sen who argue that gaining respect for human rights is a matter of showing clearly and reasonably why we ought to adhere to them. I do not think that these two positions are mutually exclusive. Rorty suggests that pursuing the rational project in addition to the sentimental education is a waste of time. Yet if he had not taken the time to explain his position in a rational manner, he could not have made a case for sentimental education—so there is at least some work still to be done. Nonetheless, Rorty’s position is an important challenge to the foundationalism of the authors we have looked at previously, and his injunction to develop sentimental education as part of human rights points us to a new way of understanding the potential of human rights: it can help transform our imaginations and thus, how we see the world, and how we can imagine the world to be.

Beth Singer presents an altogether different version of an anti-foundationalist defense of human rights, but one that is in line with the pragmatist tradition.⁶⁹ She rejects some of the main assumptions in traditional conceptions of human rights that Arendt also rejected, for example, that human rights are *a priori* (that they are self-evident and not dependent upon membership in a community) and *essential* (that human rights are located in our human nature).⁷⁰ Instead she argues, that human rights are conferred by a community⁷¹ through the establishment of norms and therefore, rights are not *a priori* or antecedent to membership in a community. This is because, in order for a right to be “operative,” that is, for a right to exist, it must be institutionalized in a community; thus to say that a right is antecedent to society is false by definition. But someone like Jack Donnelly might object and assert that we have rights even when they are not operative, that is, when they are not institutionalized in a community. Let us recall that, for him, human rights exist precisely in this paradoxical formula: they exist even when they seem not to exist and we have them even (and especially) when we don’t seem to have them. Singer’s response is that to say that you have a right that is not operative in a community is to say that you believe that you and

others *ought* to have this right. In a situation of rightlessness, it's not that we have rights but they are unprotected; rather, it's that we *ought* to have them, since they are a condition for human action; they *ought* to be made operative through human determination and institutions. This position is helpful because it allows us to respond to the important idea that we have rights even when they aren't being protected, but without resorting to a naturalistic theory of rights.

For Singer, human rights are usually thought of *a priori* in the sense that they are self-evident and antecedent to, and not dependent upon, membership in a community. These are the two basic assumptions of rights theorists like Jack Donnelly and Amartya Sen. That human rights are held to be self-evident is a "rationalist" view, the belief that human rights can be discovered by reason.⁷² That human rights are *a priori* in the sense of being self-evident can be seen in phrases from the Declaration of Independence such as, "we hold these truths to be self evident." Singer's criticism of this view follows upon Margaret MacDonald's criticism of the supposed self-evidence of natural rights. MacDonald points out that all natural rights theories rest on a failure to make a distinction between three kinds of statements: tautologies, statements of fact, and assertions of value. As she claims, "[r]ights taken to be 'natural' are not supposed to be established by any positive law or human commitment."⁷³ Human rights seem to follow tautologically from the definition human nature. Singer points out that the naturalness of human rights is a conclusion drawn tautologically from a definition, rather than a simple matter of fact. The existence of such rights cannot be determined independently of the definition. In other words, saying that there *is* such a thing as human rights really means that there *ought* to be such rights: "Saying that 'there is' such a law states an ideal, which, rather than being a fact, sets up a standard for human society."⁷⁴ In other words, human rights claims express value judgments, but not the judgments of those who make the statement. Such judgments express the fundamental values of a society, and this why they seem "natural." In other words, for both Singer and MacDonald, human rights are decisions. They are not things that can be proved true or false, real or fake, and thus the question of whether we can know that human rights exist is a false one. "Not only are human rights not self-evident," writes Singer, "but as values, they cannot be asserted with either logical or empirical certainty."⁷⁵ For Singer, to say that there *are* human rights is to say that there *ought* to be such rights, and nothing more.

Human rights are also considered to be *a priori* in the sense that they are antecedent to membership in any political community. Singer takes issue with this assumption as well. She draws on the work of Hart who, as we saw

above, argues that there is at least one natural right that we have before we form communities, make contracts, etc. This notion can also be found in the work of Donnelly when he asserts that we have rights even when there is no one to enforce them. We assume this if we assert that human rights exist just in virtue of our being human. But for Singer, rights cannot be operative except within a political community.

She critiques essentialism because it also requires that rights exist prior to membership in a community. An essentialist holds that human rights are located in human nature, either human nature as such, or in a characteristic or power thought to be essential to a human being. All natural rights philosophers, from Kant to Alan Gewirth, fall into this category. For Kant, humans have special rights because they are ends in themselves, not merely means. Alan Gewirth holds that human beings have rights because of a particular feature, rational agency. Given that we are all rational agents, Gewirth argues, one must, on pain of contradiction, hold that we have rights to the necessary conditions of agency—the conditions without which we could not act (freedom and well being). For Singer, this view is ill founded because human rights are characteristics of the communities in which they are operative, they are not the characteristics of individuals, since rights are ultimately social institutions. Human rights are grounded in “the nature of community or in the requirements of social interaction,” not the individual human being.⁷⁶ Thus, human rights are justified by the requirements of social interaction. These norms are needed to organize behavior, to understand what to expect of others, to have a common purpose, and goals. Rights norms thus regulate “the mutual relations of individuals in pursuit of their own goals and their other values—in pursuit, that is, of those things, statuses, liberties, powers, and so on, that have come to be judged valuable by the community.”⁷⁷

To summarize Singer’s position, we can say that she holds that human rights are not *a priori*, nor are they prior to our membership in a political community. For a right to be operative, for a right to exist, it must be institutionalized in a political community (understood in either a wide or narrow sense). Singer has tried to show that the natural rights position, which holds that human rights are antecedent to society, is false by definition. Singer proposes that anyone who claims a right, must also be willing to respect this right in others, and thus in claiming a right we are affirming its universal existence. This constitutes a “normative community” in that this is a group of people who share a certain set of norms. While human rights may be universal in the sense that everyone in this community treats others as if they have rights, human rights are only *operative* within this community.⁷⁸ However, there is no universal human community where human rights are

universally operative. To claim that an outsider to the normative community has a right is to say that this person *ought* to have that right. Thus human rights can be universal but without being universally operative. The ground of human rights is not human nature or a human characteristic, but social interaction. Consequently, human rights are nothing but “modes of behavior, institutionalized ways in which the members of a community behave toward one another and which must be learned.”⁷⁹

Singer is important because she highlights the role of a community in making human rights operative in a real sense. Singer’s position is significant because it reinforces Arendt’s own arguments against seeing rights as *a priori* and essential. Most importantly, they share a belief that human rights are only operative within a community. Though Arendt does not make a distinction between existing rights and operative rights, she would no doubt have followed Singer on that point. They also share a belief that human rights are not given or natural but the result of a decision. Arendt goes further than Singer, however, because she emphasizes the importance of belonging to a community. If it is true, as Singer claims, that human rights can only be operative within a community, then we must follow Arendt’s argument that the right to belong to a community is the most fundamental human right. To be sure, however, their understanding of a community is very different. For Singer, a community is a group of people who share certain norms. For Arendt, a community is the occasion for self disclosure, not a group grounded upon norms or rules of behavior. Finally, Singer is important in this debate because she shows how, even when we assert that human rights are only made real in a community, we can still have rights when they are not operative.

For another anti-foundationalist, John Rawls, human rights are not substantive in the sense that they do not require a metaphysical view of the human being. However, they are procedural in the sense that they set up a reasonable procedure in which rational parties pick principles of justice. His theory does not depend on a particular comprehensive moral doctrine or understanding of human nature (as the natural law theorists do). The reason he rejects this is practical: any such theory would require a deep philosophical base that could appear exclusively “Western” or “liberal,” and limit the scope of human rights to those groups that accepted the underlying philosophical theory. His view is simply that human rights “express a minimum standard of well-ordered political institutions for all peoples who belong, as members in good standing, to a just political society of peoples.”⁸⁰ In other words, without defining the foundation or content of human rights, Rawls wants to argue that they function as the criteria for a minimally just society. Human rights serve three roles: (1) they are the necessary conditions of a regime’s

legitimacy and of the decency of its legal order; (2) they are sufficient to exclude intervention; (3) they set a limit on pluralism, of what should be tolerated among peoples. Respect for human rights is merely the standard for whether a political regime is admissible as a member in good standing into a just political community. It's the basis for judging political regimes.⁸¹

Rawls shares with Singer the view that human rights are primarily about guiding action and, in Rawls' case, they are a way to define what a just society might look like. Rawls avoids the deeper metaphysical questions by showing how human rights are norms that would be chosen under "veil of ignorance" conditions. That is, if people were to choose a constitutional structure for their political community behind a veil of ignorance about their particular circumstances, then they would certainly agree that each person should have basic human rights. This is his justification for human rights.⁸²

Thomas Pogge gives an illuminating interpretation of the Rawlsian view of human rights. Pogge, like Rawls, stresses the importance of social institutions. For Pogge, human rights must be understood as an assertion that each society ought to be organized so that every person in the society has secure access to those rights.⁸³ In general, human rights refer to a special class of moral concerns that we see as the most weighty, unrestricted, and broadly shareable. To say that human rights are weighty means that they should play a role in our reflections about social institutions and our conduct. By unrestricted, Pogge means that respect for such rights does not depend on culture, religion, citizenship, etc., but that they apply to all people in all times and places. They are broadly shareable in the sense that they can be understood and appreciated by everyone. He claims that "human" rights differ importantly from "natural" rights because human does not suggest an ontological status that is independent of human effort, decision, and recognition—or deny such a status. According to Pogge, human rights are "political not metaphysical" (Rawls's phrase) and thus that they avoid the metaphysical issue by implying nothing at all about their ontological status. This position, he thinks, will satisfy people who reject moral realism, those who believe that human rights rest on our profound moral commitment and determination to grant human beings a particular status.

For Pogge, human rights thus require both recognition and commitment. Human rights entail that we *recognize* that someone is a person, with a past and potential future, with an ability to engage in "moral conversation" and other practices that give rise to weighty moral concerns.⁸⁴ If we do recognize people in this way, we give rise to a *commitment* to oppose official disrespect for these rights in our own society. Indeed, one of the most striking contributions that Pogge makes is his demand that human rights

require “a vigilant citizenry that is deeply committed to this right and disposed to fight for its political realization.”⁸⁵ Such a citizenry is more reliable than the government, but it also encourages respect from the government. Ultimately, though governments have primary responsibility for protecting human rights, citizens are the ultimate guardians, both for protection against a government’s potential disrespect for human rights and for the insistence that human rights be embodied in political institutions. Human rights thus make demands upon citizens—especially upon more privileged citizens. Human rights entail duties for Pogge: we have the duty to ensure that those living in our political community do not endure human rights violations. This duty may mandate that I have the obligation to support literacy programs, increase unemployment benefits, etc. For example, in countries where domestic servants work under degrading conditions, it is up to the citizens to change things through education, legislation, and the creation of a “culture of equal citizenship.” This position, he claims, falls between a minimalist account (one that holds that human rights are purely negative, i.e. that we simply must refrain from violating them) and a maximalist account (one that holds that human rights entails that each right has a positive duty).

Pogge’s explanation touches upon the core of human rights for Arendt: ultimately human rights must be grounded upon individual commitment and determination. His emphasis on the role of citizens in protecting human rights comes the closest to Arendt’s position (although Arendt does go further in suggesting an ontological ground for such a view of human rights).⁸⁶ His view highlights a second important element as well. For Pogge, our responsibilities for ensuring human rights extend only to those who are in our social system, in particular, to those who are fellow citizens. This is reflected in the fact that he understands human rights as the means of organizing society so that each member has secure access to these rights. His position implicitly stresses the importance of belonging to a political community. Pogge’s conception of human rights needs to be supplemented with a theory that applies to people outside of a political community. For Pogge, the right to belong to a political community seems to be the ground of human rights, although he does not acknowledge this explicitly.

The authors above, despite the tremendous variation in their views, share a refusal to employ metaphysical principles. Ignatieff calls positions with metaphysical grounds idolatry and insists that human rights are grounded in history. For him, human rights do not reflect natural dignity but serve as a correction for the limitations we see in our selves. For Rorty, violations of human rights are really about excluding certain groups from humanity, and the way to remedy this is not through rational discourse but

through sentimental education. Singer argues that because human rights are only operative within a community, they cannot exist *a priori*. For her they are characteristics of a community, not individuals, and justified by the requirements of social interaction. Similarly, Rawls and Pogge avoided any metaphysical assumptions about human rights and stressed the importance of human rights in building political institutions.

Perhaps the biggest critique of positions that reject the ideal of human nature is that they are not as forceful or convincing as essentialist theories. Ignatieff, for example, never gives us a reason for why we should temper our natural inclinations and recognize human rights. Nor does Rorty persuade us of this. He does not give us a reason for upholding human rights though sentimental education; he only claims that this is the best way to do it. In contrast, we can see the strength of theories that assume the inherent dignity of the person. Nevertheless, these anti-essentialist positions are important because they point out some of the limitations and weaknesses of the essentialist positions.

3 ARENDT AND THE CONTEMPORARY DEBATE

Arendt's phenomenology of human rights differs from both the essentialist and the anti-essentialist positions. Her view differs from the essentialist position in that she explicitly denies that we can ever know our essence or nature (or even that we have one for sure) (HC 10). The only thing we can say about the nature of a human being is that they are conditioned, that everything we make in turn conditions us. But even the conditions of human existence can never fully explain who or what we are because we are never conditioned absolutely; the capacity for action and its inherent freedom means that we are always in the process of creating things which will in turn condition us.

For Arendt, human rights emerge because of human plurality but exist because of our capacity for action. The necessary ground for human rights is the common world because without a concern for it, we cannot generate the power necessary to sustain human rights as a human institution. Because of the centrality of action for human rights, the most basic right is the right to belong to a political community. Such belonging confers not merely a legal status but a place in the world where your speech is meaningful and actions significant. Though Arendt relies heavily on a phenomenological description of the human condition, she does not posit any essential features of human beings or morality. As such, she avoids the criticism made by ethical skeptics about the essentialist view of human rights.

Though Arendt's position is clearly distinct from that of an essentialist, I think she is also significantly different from the anti-essentialist positions that we have seen. For Arendt, human rights are the conditions that make human life, understood biologically and existentially, possible. Consequently, they are both important and necessary. Arendt's position, then, gives us a strong reason to believe in human rights but without relying on a naturalistic conception of them. For Arendt, human rights create the possibility of both equality and distinction. For Arendt equality is not something natural but something that emerges from our condition and is sustained by our capacity for action. Yet equality is one of the conditions for political action—we can only act with others who are our equals. In this sense, the conditions for action rest upon human rights, insofar as they guarantee our equality. Since acting is necessary for my own self-disclosure, my full human existence is dependent upon instituting human rights. The motivation to insist on human rights is not merely an abstract belief nor a practical concern to avoid the horrors that we saw in WWII, but an attempt to assure the conditions for my own full humanity as a being who is both the same as others and completely unique. As such, Arendt gives us a strong motivation for believing in human rights.

Human rights are the conditions of the possibility of human life, understood in both its biological and existential senses within a community defined by plurality. They are grounded in the conditions of human existence (not in the human being) since they are the rights that make an individual life within a plurality possible. We have these rights not by virtue of being a certain kind of creature or agent or having a certain moral status, but because we share the human condition. To use Giorgio Agamben's distinction, human rights ought to be concerned with life both in the sense of *zoë* (bare or biological life; a way of living that's common to all living beings) and *bios* (life lived with others, life proper to human beings).⁸⁷

Arendt falls between the essentialist and the anti-essentialist positions with regard to the ontology of human rights. For the essentialists, human rights exist because they are tied to something natural. For the anti-essentialists, they exist only in the sense that they are necessary to achieve certain ends (Ignatieff) or are helpful (Rorty). Human rights exist, for Arendt, out of our determination to create equality, but though they depend upon our action for their continual existence, they come to have their own reality in the sense that they in turn condition us. They come to condition how we perceive the world, what we expect from it, and how we are motivated to act within it. They originate from us but become part of our reality. Again, this idea is grounded on Arendt's intersubjective view of the common realm—it is not something purely given or objective, and it is certainly not subjective,

but rather the result of an interaction between people. Donnelly suggests something close to this when he argues that human rights, though grounded upon our moral nature, come into being as a social project. They are not simply given. He argues that one of the ways that they come into being is through the interaction between the “moral vision” of human rights and the political reality that arises as a result.⁸⁸

4 CONCLUSION

Arendt’s biggest contribution to the philosophy of human rights is in showing that belonging to a community is a precondition for human rights. For Arendt, the right to belong to a political community is primary for two reasons. First, it means that one’s human rights can be protected by a government. Even though they may exist in theory without government protection, Arendt’s experience as a stateless person taught her that their protection is no small part of the meaning of human rights. Second, belonging to a political community means that you have a place in the world where you can speak and act meaningfully. This means that life in both its biological and existential senses can be protected. This view of human rights has a number of implications. First and foremost, it forces us to rethink our policies concerning people who are outside of a political body: stateless people, internally displaced people, migrant workers, refugees, and asylum seekers. If we agree with Arendt that the right to belong to a political community is the most basic right, then this belief ought to be reflected in our policies towards these groups. Her position makes it clear that it is not enough to proclaim that people in these groups have human rights without also granting the conditions under which these rights can be made real.

Another implication of Arendt’s view is that there is an existential side of human rights—that our concern should not only be with protecting life in its purely biological sense but also about life in its most human sense. Arendt’s understanding of modernity and the origins of totalitarianism taught her that alienation and the loss of meaning as mass phenomena have grave political consequences (namely they prepare people for totalitarianism) and need to be protected against. This gives a deeper dimension to the term “human dignity” that is so often used in human rights discourse. I think for Arendt, a life of dignity is a life protected against alienation, where our opinions are meaningful and our actions effective. To be sure, Arendt leaves open precisely what constitutes meaningful speech and action. But debating this, either here, in China, India, or South Africa, would be the kind of action she encourages.

Finally, if we agree with Arendt’s analysis that human rights can only be sustained through action and commitment to them, we must accept that

it is not enough to institute norms and legal protection (though this is an important part of it). To borrow Thomas Pogge's phrase, Arendt shows us why we need a "vigilant citizenry" to ensure both that human rights are not violated and that we work towards creating the structures and institutions that protect human rights.⁸⁹ Human rights, then, must have not only a legal/political dimension, but also a popular dimension. Arendt's work makes human rights both broader and deeper and augments our traditional understanding of them.

Chapter Six

Conscience, Morality, and Judgment

If you examine the few, the very few, who in the moral collapse of Nazi Germany remained completely intact and free of all guilt, you will discover that they never went through anything like a great moral conflict or a crisis of conscience . . . Hence their conscience, if that is what it was, had no obligatory character, it said, “This I *can’t* do,” rather than, “This I *ought* not to do.”

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In the final chapter of this book I would like to turn to Arendt’s work on conscience and argue that it can function as an intersubjective foundation for human rights. Although conscience is rooted in the subject, it is not *merely* subjective or idiosyncratic. Arendt’s understanding of conscience, as the ability to be with and think with myself, can be situated between two traditions. In both the Western tradition of natural rights (from which human rights emerge) and in some non-Western traditions, human rights are justified, in part, because of their appeal to conscience, and not simply because they issue from a divine source or human reason. That is, they have a subjective foundation that is the fundamental ground of their legitimacy. In contrast, contemporary justifications of human rights either look for an objective foundation or simply assert the pragmatic importance of human rights as their justification. In contrast, Arendt’s understanding of conscience is a secular alternative to both a non-secular version of conscience, and the denial of conscience implicit in contemporary theories. This is a way of understanding an intersubjective foundation for human rights that is rooted in the subject. In comprehending her view of conscience, we will see that conscience can play a role in our understanding of human rights. Indeed, in times of moral crisis, conscience is a better safeguard against human rights violations than moral norms alone.

1 A BRIEF SURVEY OF CONSCIENCE

The question, “Why be moral?” has, since Thrasy macus’ fundamental challenge and Plato’s response to it, remained perennial in philosophy. The justification of human rights hinges on our ability to answer it, and to respond to the basic question: Why should I care about the suffering or oppression of others? To such a question, a number of answers have been given. Michael Perry argues that the only way we can justify the core idea of human rights—that human beings are sacred—is through religion, that is, through appeals to a transcendental foundation.¹ The limitations to this position are obvious. Since human rights are supposed to apply universally, they cannot rest on a foundation that only some people may adhere to. For Alan Gewirth, as we saw in the last chapter, the answer to this question is that we are logically constrained to respect the agency of others.² While this answer is intellectually compelling, it fails to convince us on a deeper, existential, or subjective, level.³ It is not enough to support or reveal what is so essential about human rights. A third response is to avoid the question of the justification for human rights altogether and simply assert their pragmatic importance. As discussed in the last chapter, this is the route that writers as diverse as Richard Rorty, Michael Ignatieff, and John Rawls have taken (sometimes referred to as the “definitional strategy”).⁴ While this might be the most practical solution, it remains insufficient to explain to someone why he should care about human rights in the first place. It does not justify morality at all and hence, is open to the ancient objection that right is a matter of power.⁵

All of the above explanations are contemporary ones. How were human or natural rights justified prior to the 20th C? The usual answer, at least in the West, is that natural rights were given by God, who created the universe. Because the universe was created by God, it has a natural law that governs it, which limits our conduct towards each other, and gives rise to our natural rights. But this is only partly true. If we look back to the father of natural law, Thomas Aquinas, we see that there is another aspect to this theory. Aquinas does not argue that natural laws are justified simply because we know that God created them. Rather, we know that natural laws are right through their impact on our conscience. This step is crucial because it implies that the standard of telling right or wrong comes from within us, and so we must look within ourselves to decide what is just and what is unjust.⁶ “Laws framed by men are either just or unjust,” writes Aquinas. “If they be just, they have the power of binding the conscience from the eternal law whence they are derived. . . . On the other hand, laws may be unjust in two ways: first, by being contrary to the human good . . . Such are acts of violence

rather than laws. Therefore such laws do not bind in conscience.⁷⁷ I want to emphasize that for Aquinas, we do not look solely to an outside source, such as the Commandments or church teaching, to tell us what is right or wrong; we must also rely on our innate ability to make this distinction.

In the Muslim world, some scholars have identified conscience as the root of their law as well. Abdullah Ahmed An-Na'im argues that Shari'a, the ancient basis for contemporary Islamic law, including the three Islamic declarations of human rights,⁸ was not originally a set of laws, but a set of guidelines that affected one's conscience. Shari'a is derived from the Quran and the Sunna.⁹ According to An-Na'im, Shari'a is not a comprehensive legal system, but a body of jurisprudence with many diverse and diverging opinions on the meaning of the Quran. He argues that the Muslim jurists who wrote the Shari'a were primarily interested in moral duties, rather than legal obligations. "In other words, Shari'a addresses the conscience of the individual Muslim, whether in a private, or public and official, capacity, and not the institutions and corporate entities of society and the state. Each Muslim is in theory entitled to follow whatever view is acceptable to his or her private conscience."¹⁰ Once again we see the central role that conscience plays in justifying and supporting legal and moral norms.

Since conscience was understood as our internal connection to a divine or transcendent source, we should not be surprised that it dropped out of fashion in the West in the 20th century. With Nietzsche's declaration of the death of God and the post-metaphysical climate of contemporary philosophy and political justifications, conscience would seem incapable of playing a role.¹¹ Yet if we follow the work of Charles Taylor, we see that having a subjective foundation of human rights is even more necessary in the modern era. According to Taylor, this is because in modernity subjectivity takes on a particularly important role in morality. Morality in modernity can be seen as driven, at least in part, by an "ethics of authenticity," that is, a drive to achieve a unique and original identity. Without this kind of authenticity, life is thought to be lacking something essential and human fulfillment becomes impossible. The key is that the way I find my originality or uniqueness is by listening to my inner voice. Being "true to myself" means being able to have a relationship to myself, being able to listen to my self. Thus morality has a strongly subjective basis. In other words, I discover my moral obligations by looking within, and not simply by following an external code or law.¹² Yet for reasons mentioned above, philosophers of human rights have largely stayed away from the subjective foundation of human rights in the late 20th and early 21st centuries.

Despite the absence of theoretical discussions of conscience in the 20th century, the very idea of human rights as we currently understand it

is rooted in it. This is because conscience, understood as the ability to tell right from wrong, is presupposed in our moral, political and legal theory. For example, in all post-war criminal trials, from Nuremberg to Abu Ghraib, there is an assumption that the soldiers should have known that their actions were wrong, even if they thought such behavior was legal. The foundation of human rights *presupposes* this judgment: our ability to recognize the moral correctness of an action without relying on pre-given norms or laws. Yet despite this, conscience is rarely theorized, thus leaving its capacities and functioning a mysterious presupposition.

Is there a way of understanding conscience as a subjective foundation for human rights in the 20th century? To answer affirmatively is to assert that there is a reason why I, as an individual, should uphold human rights for reasons other than (1) it's the law; (2) its "objectively" compelling, that is, I am obliged on pain of contradiction to accept them; or (3) that it coheres with my religious beliefs. Arendt's work suggests that yes, conscience can be understood as a subjective but not arbitrary foundation for human rights, which, while not sufficient on its own, certainly gives an important ground to human rights understood as moral and legal norms. Through thinking and judging, we give human rights an authentic basis in experience and make them meaningful (as opposed to merely expedient or consistent).

2 THE EXPERIENCE OF MORALITY IN THE 20TH CENTURY

Arendt's observations on morality in the first half of the 20th century, led her to theorize conscience in her essays, "Some Questions of Moral Philosophy" and "Thinking and Moral Considerations."¹³ The collapse of the seemingly eternal and inevitable—traditional morality—characterized this period. She quotes Winston Churchill, who describes this basic experience: "Scarcely anything, material or established, which I was brought up to believe was permanent and vital, has lasted. Everything I was sure, or was taught to be sure, was impossible, has happened" (RJ 50). European society presumed that the standards of morality—the ability to tell right from wrong—was one such thing that was supposed to be "permanent and vital." In fact, they broke down almost overnight. It seemed to her that morality returned to its original sense of "mores," that is, customs or habits that, like table manners, can easily be exchanged.¹⁴ Morality seemed to have lost its authentic ground or anchor and became no more than a way of acting that was socially sanctified.

Arendt is especially interested in the matter-of-course collaboration, on all levels of Germany society, with the Nazi movement in this period. It was not merely rabid anti-Semites or those brainwashed with ideology who

followed Hitler's new morality, but ordinary German citizens. The genuine moral problem is that, for almost everybody, morality collapsed into a set of manners and customs, and "as long as moral standards were socially accepted, [people] never dreamt of doubting what they had been taught to believe" (RJ 54). People accepted whatever set of moral norms were put in front of them. Nobody objected when "thou shalt not kill" became "thou shalt kill." The moral collapse of respectable society during the first half of the 20th century taught her that people who hold fast to moral standards simply because they are the standards of society, are not reliable because these norms can easily be changed.

By contrast, there were a number of people in Germany who did not participate in Nazi crimes in any way. This group is remarkable, as Arendt understands it, because these individuals did not go through a great moral conflict or ponder the various issues—the lesser evil, loyalty to one's country, the good of one's family, etc.—and conclude that it was wrong to participate. They simply did not doubt that crimes remained crimes despite their legality, and that it was better not to participate in these crimes under any circumstances. They did not act out of an external obligation, but from something that was self-evident to them, even though it was not evident to so many around them. Though they might have been religious, they did not justify their actions in terms of avoiding sin or fear of eternal damnation. They simply thought that they could not bear the responsibility for their deeds (RJ 63).¹⁵ They did not say, "I *ought* not to do this" but rather, "I *can't* do this" (RJ 78). As Arendt understands it, the "I can't" means that *I can't murder innocent people just like I can't believe that 2+2=5*. This leads her to conclude that, "[m]orally the only reliable people when the chips are down are those who say 'I can't'" (RJ 79).¹⁶

In sum, in times of moral crisis, those who depend on moral norms are not reliable. By contrast, there are some people who retain the ability to tell right from wrong even when doing so goes against the standards of society or the commands and duties of citizenship. How are they able to do this, especially at times when others fail to? For Arendt, in order to understand this, we must first understand the nature of conscience.

3 CONSCIENCE

Generally speaking, we can understand conscience as the voice that every sane person carries within herself that tells right from wrong, regardless of the law or the opinions of people around her. This is connected to Arendt's understanding of morality. For her, moral conduct must be sharply separated

from obedience to the law, either the law of God or the laws of a country. We must distinguish between legality and morality. She argues that legality is morally neutral, that is, a legal order does not require moral integrity, only law abiding citizens.¹⁷ Here, as in a religious framework, obedience is required, and this requirement is backed up by the threat of punishment. However, we must distinguish legality from morality, which is binding not merely because it corresponds to the law and is supported by the threat of punishment. Morality presumes that we have the ability to determine right and wrong, independently of the law. In order to account for this ability, one must assume the phenomenon of conscience.

Arendt goes on to make the somewhat controversial claim that morality depends primarily on the relationship a person has with herself (RJ 67). We can see what she means when we look at three of the most famous moral precepts—love your neighbor as yourself (Torah or Old Testament),¹⁸ do unto others as you would have them do unto you (New Testament),¹⁹ and Kant's categorical imperative. In all of these statements, moral rectitude depends on your understanding of yourself as a person with whom you are willing to live. For Kant, the penalty for not following the categorical imperative is self loathing, so our self respect is in question in a moral action. In all three cases, the standard of action is the self, and one's interaction with the self. Arendt thinks this will strike us as surprising because morality is usually thought of as promoting the good of other people instead of one's self. Yet even the commands of Jesus, perhaps the most selfless of all moral philosophies in her view, are ultimately grounded in our relationship to our selves.

We can now begin to understand how conscience is connected to morality. Conscience, in many languages, is originally not a faculty of knowing and judging right from wrong, but the faculty by which we are aware of ourselves, what we would now call *consciousness*.²⁰ Arendt is trying to articulate the intimate connection between self awareness and the ability to judge right and wrong. Ultimately, conscience is grounded on the ability to live with yourself, which, for Arendt, is a precondition of *thinking*. The precondition for conscience is neither intelligence nor sophistication, but "the disposition to live together explicitly with oneself, to have intercourse with oneself" (RJ 45).²¹ In order to understand how she arrives at this, we must examine her reading of Plato's *Gorgias*.

4 THE GORGIAS

Arendt's reading of Socrates in the *Gorgias* focuses on one of Socrates' key statements: that it is better to suffer wrong than to do wrong. For Socrates,

the worst state is self-alienation and self-contradiction. He claims that, "it would be better for me . . . that most men should not agree with me and contradict me, rather than that I, being one, should be out of tune with myself and contradict myself" (482b-c). The key for Arendt is the phrase "I being one," for it implies that even though Socrates is an individual, a single person, he is also related to himself in a way that makes it possible for him to be out of tune with himself. He is a two-in-one, in Arendt's phrase.

Within this two-in-one, harmony is especially important because I cannot detach myself from it. If I do not agree with others, I can simply walk away from them, but I cannot walk away from myself. So it is better to suffer wrong than to do wrong because "I am condemned to live together with a wrongdoer in unbearable intimacy; I can never get rid of him" (RJ 90). To be at odds with one's self means to live and have daily interaction with your own enemy. This fate, both Socrates and Arendt agree, is something that no person can want. Therefore, for Socrates, I must be in agreement with myself before I take others into account.

There is another reason why this harmony is so important, both for Socrates and consequently Arendt. This has to do with the possibility of thinking.²² For Arendt, thinking must be distinguished from knowing. We are thinking beings in the sense that we have "an inclination . . . to think beyond the limitations of knowledge, to do more with [our] intellectual abilities, [our] brain power, than to use them as an instrument for knowing and doing" (RJ 163). She bases her understanding of this on Kant's distinction between thinking and knowing, or between reason, which seeks to understand (like thinking) and the intellect, which seeks certain, verifiable knowledge (like knowing). Thinking, for Arendt, corresponds to questions with no definite answers, and is more like a quest for meaning than a scientific desire for knowledge. The problem with thinking is that, unlike knowing, it does not produce concrete results (like scientific formulas or facts about the world), but must be repeated anew each day. Thinking is antithetical to the "ice-cold reasoning" of logic or ideology that she so strongly opposes.

We actualize conscience in the thinking process, where we realize that we are related to ourselves in an intimate way and that we must rely on ourselves to make sense of experience, that is, to think. Consequently, my relationship to myself is not one of self-love, but rather dependence. My self is a silent partner and I am at its mercy. My conscience limits what I can do based on what I am willing to live with. The penalty for going against my conscience is that I am not able to be with myself in this intimate way; I lose the ability to think, to have a conversation with myself. "Not only grief and sorrow," writes Arendt, "but also joy and happiness and all the other emotions

would be altogether unbearable if they had to remain mute, inarticulate” (RJ 96). That is, these experiences would be unbearable if we were not able to think about them.

We can now see that the relationship between morality and conscience is quite clear. The answer to the questions “what ought I to do” and “how can I tell right from wrong,” do not need to depend on either customary morality or on divine or human command; they depend on “what I decide with regard to myself,” and how *I want to live with myself*. Arendt gives two examples from the history of philosophy that support this idea. The first is a statement by Cicero. After discussing the conflicting opinions of various philosophers, he suddenly rejects the idea that there is some objective truth in determining which of the opinions is right. Instead, he introduces a different set of criteria. He writes that, given the choice between the opinions of the Pythagoreans and Plato, “By God I’d much rather go astray with Plato than hold true views with these people” (SMQP 110). The second example comes from Meister Eckhart, the 14th century mystic. In one of his sayings, Eckhart supposedly meets the happiest man in the world, and he turns out to be a beggar. This beggar bases his happiness on his love of God and the idea that you always have present to you what you love. When asked if he would still consider himself happy if he found himself in hell, he replies in the affirmative: “I’d much rather be in hell with God than in heaven without him” (RJ 111). For Arendt, the point of these two rather unusual quotes is that there comes a point where all “objective” standards—truth, rewards and punishments in the afterlife, etc.—yield to the “subjective” criterion of the kind of person one wishes to be and to live with.

The consequences of not being able to be with one’s self are great. We have already noted that this precludes the possibility of thinking, and therefore of making sense of one’s experiences. There are other reasons as well. Arendt identifies three modes of being with one’s self: solitude, isolation and loneliness. Solitude is the mode that I am in when I think. That is, I am not really alone, but am in silent dialogue with myself; I am a two-in-one.²³ Only when the thinking activity is interrupted do I become one again. Isolation occurs when I am neither with myself nor in the company of others, but concerned with the world. This is the condition of work, the way a person is when she is concentrating on a task, such building a house or reading a book. When you are in isolation, other people and even your own thoughts are a distraction. These two modes can be contrasted to what she calls “the nightmare of loneliness.” In loneliness, I am neither with myself nor engrossed in the world, but am utterly alone. I am neither with others nor with myself, and hence the experience of being by myself pains me existentially. The only

way to escape loneliness is to reestablish the intimate relation to one's self through thinking.

There is another, more existential, reason for the importance of thinking. Thinking constitutes a human being as a person. For Arendt, thinking and remembering are ways of taking root in a world in which we all arrive as strangers. In this process of striking roots, a person or personality emerges that allows one to be distinguished from a human being in general, a nobody. If a human being is a thinking being, rooted in thought and remembrance, who knows that she has to live with herself, then there must be limits to what she can permit herself to do. Yet these limits will not come from the outside but will be set by the self. Arendt admits that this may not lead to universal, unquestionable standards, but such personal standards may prevent the most severe kind of evil. Limitless, extreme evil, the kind Arendt witnessed in the Holocaust in general and in her experience with Adolf Eichmann in particular, is only possible, she argues, when these "self-grown roots" that automatically limit possibilities are absent (RJ 101).²⁴ She writes, "[w]e could say that wrongdoers who refuse to think by themselves what they are doing and who also refuse in retrospect to think about it, that is, go back and remember what they did . . . have actually failed to constitute themselves into somebodies" (RJ 112). The greatest evil is that which is perpetrated by these nobodies: human beings who refuse to be persons

To be sure, a morality rooted in conscience is not an everyday morality. For the most part, our moral conventions will do just fine. In times of crisis, however, a system of externally imposed moral norms will not hold up. As such, Socratic morality is only apparent in times of crisis, "when the chips are down," as Arendt puts it. This is perhaps the strongest reason that conscience can be a model for human rights. For the most part, human rights are not part of our daily life. They only become important to us when they are under threat, that is, in times of crisis. If that is the case, and Arendt is right, then the person who says "I cannot" will be far more reliable than the person who refers to a set of norms to decide whether he ought to do something or not.

5 ARBITRARINESS AND JUDGMENT

Above, I have suggested that conscience is a way of understanding the legitimacy of moral norms like human rights, even though the fluidity of conscience speaks against the absolute nature of human rights. One might argue that conscience is too subjective to ground morality. Any morality that is grounded in this way is necessarily going to be idiosyncratic. Seyla Benhabib expresses this criticism succinctly when she asks whether Arendt's view of

conscience makes her a “quasi-intuitionist”: “For if the basis of the validity of our moral judgments is that they allow us ‘to be at home with ourselves,’ are we not in fact making validity a matter of idiosyncrasies of the individual psyche? Was not one of the most perplexing characteristics of Eichmann, in Arendt’s eyes, precisely the fact that he was ‘at home’ with himself?”²⁵

Below I will argue that this criticism is not correct; even though conscience is rooted in the subject, it is not arbitrary in the sense of only reflecting a personal, idiosyncratic preference. In response to this criticism, I will show that judgment and conscience can be linked, even though Arendt does not explicitly do this. I will argue that the *content* of our conscience, what we can allow ourselves to do, is determined, at least in part, through reflective judgments. Certainly, in her strict separation of morality and politics, Arendt does not make this connection herself.²⁶ However, she does suggest in a number of her essays that there is a subtle connection between political or moral judgment and conscience.²⁷ This can be understood, I argue, as how one’s conscience is formed. While it is no doubt true that our conscience is formed through our social environment and what we are explicitly taught, this is not the whole story. Ultimately, we will see that conscience can be understood as an intersubjective basis for human rights.

In the essay “Personal Responsibility Under a Dictatorship,” Arendt returns again to those people who were able to resist the Nazi movement in Germany. In this essay, she discusses this phenomenon in terms of judgment. How were they able to *judge* right from wrong even when everyone around them had formed a different judgment? She claims that what happened in Germany was not so much a breakdown of personal responsibility, but of personal judgment: “We were left without categories and general rules under which to subsume our experiences” (RJ 25).

This suggests the deep connection between the ability to judge without categories (reflective judgment) and the conscience, which is a byproduct of thinking (insofar as in thinking, we become aware of ourselves as a two-in-one and hence the need to be able to live with ourselves). These same people were able to judge the situation for what it was and their consciences did not permit them to take part in the genocide. Judgment and conscience share a capacity to comprehend a situation without pre-given categories or norms. For Arendt, it is hard to get people “to start thinking and judging instead of applying categories and formulas which are deeply ingrained in our mind, but whose basis of experience has long been forgotten and whose plausibility resides in their intellectual consistency rather than in their adequacy to actual events” (RJ 37). My suggestion is that the content of conscience is determined, in part, through the judgments we make about moral and political situations.²⁸ To see

why this entails that conscience is not arbitrary, we must look more closely at the idea of reflective judgment as Arendt took it from Kant.

As was discussed in Chapter Three, Arendt describes Kant's work on aesthetic judgment, *The Critique of Judgment*, as "the political philosophy that Kant never wrote."²⁹ She makes this comment because in *The Critique of Judgment*, Kant outlines a mode of judging particulars where the universal is not given, a process Arendt likens to the way we make political judgments. Unlike determinate judgments, reflective judgments are able to evaluate things like the beautiful and the ugly, which do not correspond to concepts. We do not have the concept "beautiful" and simply subsume all beautiful things under it. Rather, the beautiful produces a "free play" of the faculties, the pleasure of which makes beauty undeniable. As we saw for Kant, though these judgments are subjective, that is, based on feeling, they also have a universality. This universality is grounded in the *sensus communis*, the common sense that we share with all others. Given this, and the fact that Kant presupposes that our cognitive faculties are the same, he argues that we can assume that everyone who judges in a disinterested way will arrive at the same conclusion. In sum, reflective judgments are ones we make without a concept, and though they are not objectively valid, they have a subjective universality.

There is another important feature of this kind of judgment. When we judge the beautiful, we don't judge the object itself, but rather our representation of it, as it is presented to us in the imagination. Through the imagination, I make present to my mind something that is not there. Besides representing objects, imagination allows us to take into account the viewpoints of other people. This is precisely because aesthetic judgments are rooted in the *sensus communis*. Kant writes that the *sensus communis* is:

the idea of a shared *sense* [by all of us], i.e., a power to judge that in reflecting takes account (a priori), in our thought, of everyone else's way of presenting [something], in order *as it were* to compare our own judgment with human reason in general and thus escape the illusion that arises from the ease of mistaking subjective and private conditions for objective ones, an illusion that would have a prejudicial influence on the judgment. Now we do this as follows: we compare our judgment not so much with the actual as rather with the merely possible judgments of others, and [thus] put ourselves in the position of everyone else, merely by abstracting from the limitations that [may] happen to attach to our own judging.³⁰

This idea is key for Arendt. The essential aspect of political and moral judgments is that we are able to judge when no concept is available, but these

judgments do not remain purely subjective or arbitrary. This is so because of the “enlarged mentality” that is inherent in the *sensus communis* in reflective judgment. Judgment, then, does not depend only upon my own experiences or perceptions, but the way I am able to imagine things from the point of view of others. Imagination allows us to “think in place of everybody else” so that we can develop examples that help us in our judgment (as opposed to concepts). In Arendt’s framework, when I take others into account, I am not simply conforming my judgment to theirs, nor am I simply counting numbers. I still speak with my own voice. But the point is that my judgment is no longer subjective in the sense that I arrive at my conclusion only by taking myself into account. The more points of view that are present in thought, the more representative and valid my judgments will be. Note that these judgments are not objectively certain, nor are they subjective in the sense of depending on a whim or preference. They are *intersubjective* (RJ 141). They contain an implicit reference to plurality.

This process of employing an enlarged mentality to arrive at judgments that are intersubjectively valid explains why conscience, insofar as its content is determined through these kinds of judgments, is not wholly arbitrary. What I can allow myself to do, that is, who I can allow myself to live with, is determined in part through reflective judgments that take other people into account. For example, when I see people living on the street and I represent to myself the view points of those living there, I may judge the situation to be one of unjustified misery and suffering. If I am a landlord with tenants who are unable to pay their rent due to illness, can I live with myself if I throw them out? Given my judgment that living on the street is equivalent to misery and suffering, my conscience would determine that I cannot do such a thing. This is the way that conscience and judgment are related. Although the fundamental task of conscience is to determine what I can and cannot do and still remain in harmony with myself, that it is formed in this manner means that it is not based solely on preference, whim, or feeling. Though conscience is concerned with a unified self that may be at odds with the world, it is formed not through a purely subjective or introspective experience, but by taking the world into account. The self is a unity but remains linked to plurality.

6 CONCLUSION

In the above exposition, I have been arguing that conscience is grounded in the experience of thinking, and formed through judging. So understood, conscience can be seen as a subjective foundation for human rights, but one

which is not arbitrary. My suggestion has been that even though human rights are formal categories, grounding them in conscience gives them an authentic link to their basis in experience. Human rights should not become a stale set of formulas, the experiential roots of which people do not remember or consider plausible any longer. Human rights should not, and indeed cannot, be justified solely because they are intellectually consistent or logically compelling. Through conscience, human rights can be grounded in our most basic experiences, namely the experiences of being a thinking, remembering, and judging being.³¹

This view has a number of advantages for human rights. First, it is more compatible with a recognition of human autonomy. Autonomy implies that we, as individuals, are able to choose the best course for our lives. Having a subjective grounding, human rights norms can be seen as originating from within us, rather than as a set of external norms or laws that are imposed through sanctions. Second, this understanding of morality is more suited to plurality, the sense that though we are similar in our humanness, we are each unique individuals. Arendt's view of morality respects plurality because it holds that each person has the ability to arrive at a conclusion about right and wrong by herself, though intersubjectively. It takes into account that we are not fabricators who can control the effects of our actions, but considers us as individuals who reveal our uniqueness in unpredictable and uncontrollable ways, and are shaped by our interaction with others. Finally, perhaps the greatest advantage of this view is that, if Arendt is right, it may indeed be the most effective morality in avoiding atrocities. Recall that the people who resisted the Nazis did not say "I ought not do that" but rather "I can't." Likewise, it would be far better if people were to say "I *cannot* violate human rights" rather than "I shouldn't" because of the consequences that will follow. In times of crisis, in times where human rights come into question, such a morality would be far more reliable.

If philosophers from Plato to Kant are right, then regardless of our moral norms, our decisions about right and wrong will ultimately depend upon the company we keep. The way we choose our company is through thinking and judging. What if, Arendt imagines, a person thinks that they should prefer the company of a villain like Iago or Richard III? That is, what about the person who doesn't have a conscience and could not care less about being alone with himself? The only thing we can do, she responds, is make sure that they don't come near us. That is, if somebody is without a conscience, then we certainly cannot trust or rely on them, and they can only be constrained by law and punishment. But in Arendt's view, willed or radical evil is rare. The far more likely and dangerous scenario is that a person will say that she does not

care who her company is, and that anybody will be good enough. This indifference is the danger. It is grounded on the modern refusal to judge, which is a refusal to choose one's company and relate to others through our judgment. This refusal is dangerous because indifferent people remain unrooted and recognize no limitations to their actions. For such a person, we could only follow Socrates and try to teach her to how think and judge, and hence to realize limitations on action inherent in these. Ultimately, in times of moral crisis, these are the only activities we can rely on.

Concluding Remarks

In the early 1930s, Hannah Arendt lived out the fate of millions of people in the 20th century—she became a stateless person.¹ Born a German Jew in 1906, Arendt was forced to flee Germany in 1933 during the rise of the Nazi party. She took up residence in France and worked with a number of Jewish political organizations before she was put in an internment camp in Gurs. After escaping from this camp, she realized she could no longer stay in Europe and was fortunate enough to receive an emergency visa to come to the United States. She left France in 1941 with her mother and husband, came to the USA via Spain and Portugal, and received American citizenship in 1951. That is where her similarity with the millions of stateless people in the 20th century ends. Unlike them Arendt found a home where she could live out her life with her family, friends, and a career until her death in 1975. These 18 years of statelessness, being without political rights, never left Arendt; it was one of the first topics she turned to when she was able to return to her academic work.

Her intellectual work was not influenced by this experience alone. Before she fled Germany in 1933, she received her Ph.D. in philosophy under the direction of the existential philosopher Karl Jaspers, with whom she remained close friends throughout her life. Her intellectual vision was no doubt also shaped by her contact with the preeminent German philosopher of the 20th century, Martin Heidegger, with whom she both studied and had a lasting personal relationship. She was very much shaped by the schools of phenomenology and existentialism that began to flourish at that time. They always remained two important trends in her thinking.

I mention these two experiences—of being a stateless person and of studying phenomenology and existentialism—because they are essential to understanding her view of human rights. These two factors may explain why her views on human rights are so unorthodox. As I've argued throughout

this book, her methodology is thoroughly phenomenological: she presents thoughtful meditations on particular phenomena and produced new ways of seeing and understanding them. She applies her phenomenological method to her experience of being stateless. That is, she treats having human rights, or being deprived of them, as a lived experience and attempts to explore what this means, rather than coming to human rights as a concept to be analyzed. Further, as we have seen, her understanding of human rights brings with it an existential concern—human rights are not just a matter of securing rights to life in a biological sense, but to life in a fuller or deeper sense, one that entails the possibility of human flourishing. The centrality of being able to live a meaningful life (and not just life *tout court*) is no doubt due to the influence of her existential readings of the history of philosophy and her teacher, Karl Jaspers.

Arendt's interest in human rights and human dignity spans her career—from her first major work, *The Origins of Totalitarianism*, to her later work on *doxa* and judgment. Written in 1948, *The Origins of Totalitarianism* is Arendt's attempt to understand the conditions, both historical and existential, that made the phenomenon of totalitarianism—the most radical deprivation of human dignity imaginable—possible. The background of this work is her search for a new guarantee for human dignity valid for all humanity (OT ix). She argues that the phenomenon of rightlessness was a novel situation and a radically new condition of the 20th century. Further, the systematic deprivation of human rights by totalitarian movements was necessarily preceded by making people stateless. It proved impossible to protect human rights once an individual had lost her place in a political community. This illustrates for her that what had been called “human” rights were rights that can only be enjoyed within a state: “No paradox of contemporary politics is filled with more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as ‘inalienable’ those human rights which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves” (OT 279). Indeed, as soon as people were stripped of everything except their humanity (their citizenship, social status, identity as an individual), it became hard to recognize them as human.² To be sure, this did not lead Arendt to a positivist position—she does not hold that rights were only guaranteed by the state. Her understanding of the treatment of minorities, and especially the Jews, taught her that because human rights almost always went against the perceived good of the state, the state could not be trusted to ensure human rights. Her position is that there are certain rights that are more fundamental than the rights of citizens; she calls them “the right to have rights,” which “means to live in a

framework where one is judged by one's actions and opinions, and the right to belong to some kind of organized community" (OT 296–7). This is the right to belong to humanity, understood both politically and ontologically. Politically, Arendt insists that inclusion in a community is the most fundamental human right since without this, it is impossible to have one's rights either recognized or protected.

Ontologically, belonging to a political community is not only necessary because it brings with it a legal identity and a body to protect your rights, but also because without the capacity to speak and act, we are deprived of a fundamental dimension of our existence. Belonging means being able to live within a framework where you are judged according to *who*, and not *what*, you are; it is to be treated as a person based on your words and deeds, and not merely on your membership in a category.³ This is the existential dimension of human rights unique to Arendt's analysis: they are not just about legal entitlements from the state, but a matter of how we understand ourselves and are recognized by others. If we cannot act, we cannot have a life of happiness in the private sphere. Instead, as Arendt observes of the modern world, we are left with a life of alienation, a loss of meaning, and a loss of being at home in the world and with others. Understood in this context, the right to have rights guarantees that one has access to that part of existence.

In order to understand this aspect of her claim, let us recall her phenomenology of modern life in *The Human Condition*. For Arendt, life is given to us under certain conditions: mortality and natality, the fact that we are born into a given world and die eventually. There are certain activities that correspond to the conditions under which life has been given to us—labor, work, and action. Labor is the most basic way of relating to life in all of its biological necessity. It is what fights against the mortality of human life by struggling with nature. Work corresponds to our worldliness, the fact that we live in the world as a home. Action corresponds to the fact that we live with other people; it is the only activity that goes on directly between people in a public space. Through action, we disclose our singularity. Action also corresponds to plurality, the fact that we are all alike in our humanity and completely distinct as individuals, a truth that is the *sine qua non* of political or public life for Arendt. A fully authentic human existence includes at least the potential for meaningful speech and action. Without action, which includes speech, we are left only with the private struggle with necessity and the fabrication of worldly objects. The right to have rights guarantees that one can speak and act in a meaningful way.

In *The Origins of Totalitarianism*, we also discover the claim that human rights are not given by nature or granted by the state, but created through

human decision and determination. Human rights are guaranteed in a way that is distinctive to the realm of human affairs. They are created through our intersubjective political commitment and instantiated through our action. Because we are conditioned creatures, everything, including human rights, conditions us in turn. She writes, “we are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights. Our political life rests on the assumption that we can produce equality through organization” (OT 301). As a phenomenon that appears in the world, human rights cannot be grounded in nature or given by God, but made real only through human action and our determination to keep them in place. Human rights, for Arendt, require the active participation of individuals to keep them alive and make them real. It is not enough to decide upon norms; human rights can only be made real through action and sustained by power.

This aspect of Arendt’s claim needs to be grounded in her belief in the intersubjective nature of the common world. For Arendt, the world is built through work—the creation of buildings, art, etc., that transform the earth into a home for us. But the public realm is created through our actions and so the world we have in common is preserved through our acting. If we look closely at Arendt’s work, especially her work on Socratic *doxa* and Kantian judgment, we see that Arendt is trying to articulate how our actions and speech, especially our opinion and judgment, play a role in constituting the common world and come to be a part of the way that our shared reality is understood. The actions of others in turn condition us and become a part of who we are. So to say that human rights exist on the basis of action is to say that they become part of our common world and a part of who we are. To say that they exist on the strength of our decision is not a weak claim but an insistence on the importance of action to constitute the common world.

That human rights are not given by God or found in nature does not mean that they are simply conventions. The right to have rights, I believe, is part of the human condition since belonging in the human community is necessary for plurality—the equality and difference that is so essential for political life. Yet they are not already found in the world; like all institutions, they are built through our work and action. Thus the right to have rights can only be guaranteed through collective action that generates the power to support this institution. Human rights must be understood as human institutions kept alive through our collective *power*.

Like many of the terms Arendt employs, power has a distinct meaning. Arendt’s most detailed discussion of power comes from an essay entitled “On Violence,” where she argues, contrary to the almost universally accepted view,

that violence and power are opposites and that violence is not simply a manifestation of power. For Arendt, power is not the ability to force people to do what you want, but the ability to act in concert with others. The power invested in a government is but one kind of power. This can be distinguished from strength (a property inherent in a person or object, marked by independence), force (the energy released in a physical or social movement, such as the force of nature), and most importantly, violence. She defines violence as tied closely to strength but requiring implements or tools. Violence is always instrumental in nature (CR 143).⁴ She adds that violence is a way of acting without argument or speech, and without considering consequences (CR 161).

The brief but consistent emergence of councils in almost all revolutions—collectives of people working together in a non-hierarchical way—speaks to the fact that power, in Arendt's sense, emerges consistently throughout history. Rare though these councils are, they speak of a human potential that has been denied or forgotten. But power is not only what emergences in times of revolution; power, in the sense of people's active support, is necessary for *all* governments and all institutions. A government can rely on authority or violence only for a time; ultimately it will need of the support of citizens, in an active, deliberate way, through their consent.⁵ This is why Montesquieu, according to Arendt, claims that a tyranny, being the most violent form of government, is also the least powerful; its citizens have the least power with which to support the government (CR 140).

It follows then that power, understood in this sense, is essential for a human institution like human rights. She writes, "all political institutions are manifestations and materializations of power; they petrify and decay as soon as the living power of the people ceases to uphold them" (CR 140).⁶ For Arendt, the significance is that power enlivens our institutions, such as human rights. Norms are less important than the fact that people believe they are entitled to be treated with dignity and have the power to make this so for other people. To be empowered in this sense means that your actions have consequences, that you are able to act from a principle and not merely for an end. This marks a fundamental reorientation in the question of how to secure human rights. The question is no longer only about how we should understand the conditions of their implementation, but how we can enliven power within a given political community.

When Arendt was writing *Origins* at the end of World War Two, she analyzed a problem that she did not believe would end when totalitarianism was vanquished. Indeed, though much has changed concerning the protection of human rights and their implementation into legal codes, the condition of statelessness and its implications remains largely unchanged.⁷ Indeed,

it remains part and parcel of modernity.⁸ The right to have rights has not been taken seriously as a fundamental, foundational human right. In the sense of a political right to belong to a state, Arendt's work has not had any impact in changing our thinking. This is testified to by the continued existence of millions of stateless people. In discussions of refugee policy, the right to belong is almost never mentioned.⁹ Nor has the ontological dimension of the right to have rights been taken seriously. In losing their homes, the stateless lose the ability to build a common world in which they can act, speak, and exchange opinion. While legal protections of the stateless have been given much attention, this dimension of human experience and its necessity for a fully human life, has not.

Why is this the case? There are two reasons. First, the tension between human rights (in particular the right to belong) and national sovereignty remains as strong today as ever. The practical consequences for states that might accept large numbers of stateless people are often dire. Stateless people require a tremendous amount of resources and so economically, stateless people pose a challenge to the well-being of a nation. But further, the arrival of unwanted stateless people threatens the very identity of a country, which may understand itself by its ethnic, racial, religious, or linguistic origins. Within the bounds of closed nation-states in which national sovereignty is the highest value, the right to belong threatens to undermine this fundamental structure.

But there is a deeper, ontological reason that the right to have rights has not been taken more seriously, one that Arendt suggests and Giorgio Agamben develops. This has to do with the concept of *life*, at work in the notion of human rights, as it is widely understood. The idea of human rights—from its 17th century conception to our 21st century understanding—is predicated on the notion of the supremacy of human life. Just being a human being is thought to be sufficient to entitle a person to particular treatment. What Arendt points out—and what is symbolized by the stateless person or refugee—is that when one becomes *nothing but a human being* human rights actually fail to have any significance. Becoming nothing but a human being happens when a stateless person loses her public persona, her legal status, all distinctions that can be recognized publicly, and ultimately her unique identity. In such circumstances, the stateless person must fall back upon her mere givenness, her bare status as a human being. At this point, precisely, one can no longer claim her human rights. This is the deep paradox of human rights. The stateless person then represents, in Agamben's succinct phrase, "the hypocritical dogma of the sacredness of human life."¹⁰

For Agamben, the refugee represents precisely what our modern political institutions want to cover over: that bare life cannot be contained within

our political system and thus must be excluded or transformed. Bare life, *zoe*, can only be included by way of an exclusion. Though as Foucault pointed out, modernity is characterized by the entrance of *zoe* into politics, that is, by the politicization of bare life,¹¹ bare life cannot ultimately be handled by the sovereign state. This distinction between bare life (*zoe*) and life in the distinctly human sense (*bios*) goes back to Aristotle, who defined politics by excluding *zoe*. In *The Politics*, he writes that we are “born with regard to life, but exist essentially with regard to the good life.”¹² In other words, though life in its most basic sense has a kind of “natural sweetness”¹³ our existence is nonetheless oriented towards a higher kind of life, the life of politics. Agamben argues that by excluding bare life from politics, Aristotle inadvertently includes it since politics is now defined by this exclusion. By excluding *zoe* from politics, Aristotle suggests that politics is what transforms *life* into *the good life*. Thus, according to Agamben, Aristotle shows that politics requires the politicization of *zoe*.

Modern democracies seem to exist as a vindication and liberation of *zoe*. This can be seen in any of the various human rights declarations that have arisen in modernity. The French *Declaration* states that “men are *born* and remain free and equal in rights” (article 1), a statement echoed verbatim in the Universal Declaration of Human Rights in 1948 (“all human beings are born free and equal in dignity and rights,” article 1). This is connected to the rise of the life of *animal laborans*, which, according to Arendt, is the highest way of living in modernity. For *animal laborans*, as for modern political institutions, life—bare or biological life—is the highest good and the end for which everything aims. This is what Agamben means by saying that modern democracies exist as a vindication of *zoe*.

Yet both authors point out that despite this ostensible view of bare life, bare life actually has very little meaning for us. For Arendt, this is seen in the paradox of human rights: when one is nothing but a bare life, human rights cannot be protected. For Agamben, this is also embodied in the refugee who, as the symbol of bare life, cannot be included in politics based on national sovereignty. Again, as for Aristotle, bare life must be politicized, transformed, before it can be brought into the realm of the common. A human being must be transformed into a citizen before her humanity can be recognized.¹⁴ Thus, bare life is included in politics only by way of its exclusion or transformation.

Given all this, we can understand why Arendt’s plea for the right to have rights has failed to have a deeper impact. Not only is it politically impractical, it contradicts our deeper political ontology that calls for an exclusion of bare life from politics while at the same time, proclaiming bare life as the highest value. In other words, we are unable to conceptualize *zoe* without

bios. In holding this view of *life*, we have failed to grasp the importance of those things that make *bios*, a fully human life, possible—speech and action within a common realm.¹⁵ This is why I interpret Arendt as calling not for a wholesale acceptance of *zoe* in political life, but as demanding that the conditions which allow the transformation from *zoe* to *bios*—speech, action, and opinion, in a common realm which can be seen and judged by others. Consequently mere legal protection or humanitarian assistance will not be sufficient to address the problem of statelessness as it appears in modernity.

If what Arendt has demonstrated remains correct, then we must conclude that the way stateless people are conceptualized and dealt with is woefully inadequate. As we have already discussed, the international community has failed to take seriously the idea that human rights are grounded on the deeper right to belong and that human rights can only be made meaningful within a state. Though the deprivation of human rights of refugees is often discussed—their lack of access to food, water, education, security, etc.—few people note that their very being without a state ought to be understood as a fundamental human rights violation. This, of course, would not fit easily with our current paradigm of human rights. It is not clear who would have the duty to provide this right and hence who would be at fault in not providing it. Nonetheless, this failure to recognize the political and ontological significance of the deprivation of the right to belong means that stateless people continue to be treated as politically irrelevant.¹⁶

Because we have failed to recognize the political and ontological deprivation the stateless suffer, stateless people have been largely considered the domain of *humanitarianism*. While humanitarian organizations may temporarily alleviate suffering, they cannot radically alter the form of the problem. Further, even the most important of the organizations that deal with refugees and stateless people—the United Nations High Commissioner for Refugees—is consistently under funded.¹⁷ Indeed, this is to treat a question of rights as if it were a matter of charity. As Arendt remarks, it's a very sad thing when an organization designed to aid stateless people more closely resembles the Society for the Protection of Cruelty to Animals than a human rights organization.¹⁸ Because they are not connected to national interests and often considered politically inexpedient, refugees and stateless people are frequently simply “abandoned.”¹⁹ It is clear that if human rights are to genuinely protect the dignity of all, then the way we understand statelessness must be reconceived.

Yet despite this, we find ourselves in a situation in which there is room for hope. To be sure, there are more people living outside the framework of the nation-state than in Arendt's time, and individual human rights continue

to be violated not only by despotic regimes but by liberal democracies as well.²⁰ On the other hand, however, we are witnessing numerous examples of collective action generating power, some even on a global scale. For example, the ever increasing global justice movement seems to have discovered the concept of power that Arendt thought so important—namely, that power is generated when people work together for a principle that transcends themselves. Arendt shows that such movements and forms of political engagement are not peripheral or secondary to human rights but are essential to them.

Human rights and the right to have rights can never be guaranteed once and for all for the simple reason that as human institutions, they must be sustained through the generation of power.²¹ It is not possible to eliminate the negative consequences of action, its unpredictability and irreversibility. To try to “make” human life by eliminating its unpredictability is to destroy the human condition. That we cannot change the human condition and eliminate the “dark side of human affairs” is not to be bemoaned for Arendt since this is what it means to be human and to live together with others. Indeed, she stresses our capacity to overcome the darkness of human affairs and the “dark times” that we occasionally pass through. Let us remember the tremendous hope that is embodied in Arendt’s vision. Our capacities for action, promise making, and forgiveness—what allows us to deal with action’s unpredictability and irreversibility—are rooted in the human capacity to begin. As she reminds us, every end, no matter how dark, contains a new beginning. Arendt consistently cited a line from Augustine throughout her life: “that a beginning be made man was created.”²² For her, the possibility to begin, to act, is guaranteed by each birth, by each human life. Human rights, accordingly, are always within the realm of human possibility. While this may not have the unconditional certainty of the 18th century views or the thoroughness of contemporary normative conceptions, it is perhaps the most fitting standpoint for human rights in a global plurality.

Notes

NOTES TO THE INTRODUCTION

1. Though Arendt is, of course, not the only non-foundationalist thinker in the 20th century, I argue in Chapter Five that her view is unique even among non-foundationalists. Unlike Rawls's liberal proceduralism, Rorty's sentimentalism, or Ignatieff's humanism, Arendt's phenomenological view of human rights is able to give us a more solid understanding of why we should be concerned with human dignity in the first place.
2. Daniel Maier-Katkin and Birgit Maier-Katkin note that over 200 books, in five languages, have been written about Arendt, most of which were produced in the last decade. They write that, "[a]s the 100th anniversary of her birth approaches, Hannah Arendt's controversial thought about human rights, totalitarianism, crimes against humanity, reconciliation, judgment and responsibility in everyday life, and the prospects for peace in the Middle East are still *au current* in scholarly and public discourse." "Hannah Arendt and Martin Heidegger: Calumny and the Politics of Reconciliation," *Human Rights Quarterly* 28.1 (2006): 86.
3. Jean-Marie Rouart, "Hannah Arendt: la passion de penser librement," *Le Figaro* June 27, 2002. "Ses livres n'ont cessé d'acquérir un regain d'intérêt comme si le monde d'aujourd'hui ne cessait de confirmer ses intuitions et sa vision."
4. "As we think about all of this, I'd like to recall the words of a philosopher, Hannah Arendt, who once observed that nations are driven to an endless flywheel of violence because they believe that one last, one final gesture of violence will bring peace. But each time they sow the seeds for more violence." Nancy Pelosi, May 24, 2007.
5. Elizabeth Young-Bruehl's recent book, *Why Arendt Matters*, is an attempt to articulate precisely what this connection is. *Why Arendt Matters* (New Haven: Yale University Press, 2006).
6. "We Refugees" (January 1943) in Hannah Arendt, *The Jew as Pariah: Jewish Identity and Politics in the Modern Age*, ed. Ron H. Feldman (New York: Grove Press, Inc., 1978).

7. This is quite opposite to Julia Kristeva's view of being a foreigner in France today. According to her, foreigners are either met with very positive or very negative feelings, but never with neutrality. She writes that the best place to be a foreigner today is France because "you are not an ordinary, negligible presence, you are not Mr. or Mrs. Nobody. You are a problem, a desire—positive or negative never neutral." Kristeva, *Strangers to Ourselves*, trans. S. Roudiez (New York: Columbia University Press, 1991) 39. In this respect both Kristeva and Arendt seem to agree that it is better to be hated than completely ignored.
8. In *The Human Condition*, Arendt discusses the purpose of the monuments to the "Unknown Soldier." What was lost for these soldiers with their identity was not their achievement, but their dignity. "The frustration of this wish and the unwillingness to resign oneself to the brutal fact that the agent of the war was actually nobody inspired the erection of the monuments to the 'unknown,' to all those whom the war had failed to make known and had robbed thereby, not of their achievement, but of their human dignity" (HC 181).
9. *Love and Saint Augustine*, eds. Joanna Vecchiarelli Scott and Judith Chelius Stark (Chicago: University of Chicago Press, 1996) (original 1929).
10. This is Jerome Kohn's phrase. Jerome Kohn, "Freedom: The Priority of the Political," *The Cambridge Companion to Hannah Arendt*, ed. Dana Villa (Cambridge: Cambridge University Press, 2000) 115.

NOTES TO CHAPTER ONE

1. The full quotation is as follows: "If it is true that the elements of totalitarianism can be found by retracing the history and analyzing the political implications of what we usually call the crisis of our century, then the conclusion is unavoidable that this crisis is no mere threat from the outside, no mere result of some aggressive foreign policy of either Germany or Russia, and that it will no more disappear with the death of Stalin than it disappeared with the fall of Nazi Germany. It may even be that the true predicaments of our time will assume their authentic form—though not necessarily the cruelest—only when totalitarianism has become a thing of the past" (OT 461).
2. Marie-Claire Caloz-Tschopp develops this aspect of Arendt's work in *Les sans-Etat dans la philosophie d'Hannah Arendt: Les humains superflus, le droit d'avoir des droits et la citoyenneté* (Lausanne: Editions Payot Lausanne, 2000).
3. Seyla Benhabib gives very precise definitions of these terms. One is a stateless person "if the state whose protection one has hitherto enjoyed withdraws such protection, as well as nullifying the papers it has so far granted." One is a minority "if the political majority in the polity declares that certain

groups do not belong to the supposedly ‘homogeneous’ people.” *Transformations of Citizenship: Dilemmas of the Nation State in the Era of Globalization* (The Netherlands: Koninklijke Van Gorcum, 2001) 14.

4. This process of the “internationalization of human rights” can be traced back to the 19th century and the treaties to ban the slave trade and to protect Christian minorities in the Ottoman Empire. The latter treaty, the Treaty of Berlin of 1878, even granted some rights to religious groups and thus served as a model for the Minority Treaties of the 20th century. See Thomas Buergenthal, et al., *International Human Rights in a Nutshell*, 3rd ed. (St Paul, MN: West Group, 2002) 7.
5. Not surprisingly, this is a difficult number to determine. Those who were “officially recognized” included only those nationalities that had representatives in at least two succession states, but did not include those who had no government of their own. Arendt estimates that in some circumstances “nationally frustrated people” comprised up to 50 percent of the population (OT 272).
6. As proof of the little value that human rights had at the time, Arendt notes that they were not even included in the constitution of the League of Nations (i.e. in the Covenant of the League of Nations, the 1920 document which established the League and acted as its constitution).
7. Even though the Minority Treaties, which the League of Nations was mandated to enforce, were colossal failures for the millions of people who were deprived of rights, it is interesting to note that history still remembers that system as “relatively effective and quite advanced for its time” (Buergenthal 12).
8. Perhaps the reason that the United Nations did not insist on the protection of minorities for many years after its inception is due not to “lack of interest,” as Judge Thomas Buergenthal, Judge of the International Court of Justice and former president of the Inter-American Court of Human Rights, suggests, but more to the structural conflict (between rights and sovereignty, or the inability of a government to protect rights of non-citizens) that Arendt’s analysis brings to light.
9. According to a French delegate, “the process at which we should aim is not the disappearance of the minorities, but a kind of assimilation . . .”; according to a British representative, “the object of the Minority Treaties [is] . . . to secure . . . that measure of protection and justice which would gradually prepare them to be merged in the national community to which they belonged.” (both quoted in OT 272–3 fn10).
10. Zygmunt Bauman, *Modernity and Ambivalence* (Ithaca: Cornell University Press, 1991). By modernity Bauman means “a historical period that began in Western Europe with a series of profound socio-structural and intellectual transformations of the 17th century and achieved its maturity: (1) as a cultural project—with the growth of Enlightenment; (2) as a socially accomplished form of life—with the growth of industrial (capitalist, and later also communist) society” (Bauman 4).

11. Bauman 7.
12. Bauman 7–8.
13. Bauman 8.
14. Speaking of the experience of Jews in Poland, Artur Sandauer writes that “to assimilate” means to “stay, defenseless, under the gaze of the others and to accept without murmur the judgmental canons and the aesthetic criteria of others. By so doing, the assimilating individual must also consent to his own ugliness. Jewishness was declared ugly, and so were all the so-called Jewish-traits. One could do something (at least in theory) to escape the ugliness of Jewish religion—by conversion, or of Jewish habits or manners of speaking—by self drill. There was nothing one could do about one’s look—and this heinous gift of the genes tended to emerge unscathed from no matter how many buckets full of the baptismal water.” “On the Situation of the Polish Writer of Jewish Origin in the Twentieth Century” in *Pisma Zebrane, Vol 3* (Warsaw: Czytelnik, 1985) 468. Quoted in Bauman 115.
15. The fact that the right of asylum ceased to exist could be seen in the fact that it could not be found in any law, constitution, or international agreement of the time, and the League of Nations did not even mention it.
16. Even the Nansen passport declared its bearer as a “person of Russian origin” because, as Arendt puts it, you wouldn’t dare tell a Russian émigré that he was without a nationality (OT 383 fn33). The Nansen passport was created by Fridtjor Nansen, Norway’s delegate to the League of Nations, as a international travel document for refugees and stateless persons. See Darren J O’Byrne, *Human Rights: An Introduction* (Reading, MA: Pearson Education, 2003) 354.
17. The tenacity with which minorities clung to their nationality could be seen in the stance of the “Congress of Organized National Groups in European States,” the congress formed by the minorities themselves. Though they organized themselves *qua* national minorities, they met not as “abstract minorities” but as individuals who, according to the Chairman of the 1933 Congress, “belong body and soul to a specific people.” (OT 274 fn15).
18. Arendt rightly notes that the Jewish problem was only settled at the end of the war with the foundation of Israel. This however meant colonizing and conquering a territory and leaving a new group of people (approximately 700,000 to 800,000) stateless and rightless. Once again we have an example of the double edged sword of national sovereignty: sovereignty of the Jews was seen as the only way of guaranteeing their rights, but this meant that they had to violate the human rights and deny the sovereignty of another group of people.
19. We will return to this tension between man in his naked naturalness vs. man as protected by a legal or social persona below. Arendt, it would seem, wants to fight against this tendency in modernity to celebrate the person *qua* human being, in her raw metabolism with nature. For Arendt, we are always

more than that. At the very least, we are people who act in and change the common world, and as such, we have a unique identity.

20. Arendt does not discuss the American *Declaration of Independence* or *Bill of Rights* because, according to her, it simply did not have the impact that the French Revolution and the *Declaration of the Rights of Man* had. Indeed, throughout the 18th and 19th centuries, people often thought that the French Revolution happened before the American Revolution and that the former must have influenced the latter. Since the French *Declaration* proved to be more influential historically, it should be seen as the source of our understanding of human rights. This is not to say that the American experience is without merit. To be sure, we will return to the American conception of human rights in Chapter Four.
21. Arendt saw this as an attempt to reintegrate themselves in their own national community and to fight against being considered merely stateless people. Russian refugees were the first to do this, and “since them, not a single group of refugees or Displaced Persons has failed to develop a fierce, violent group consciousness and to clamor for rights.” They demanded rights, not *qua* human being, but *qua* Jew, Pole, German, Russian, etc. In other words, they first demanded the right to be recognized in their identity and only secondarily did they demand civic rights. As we will see, this is compatible with Arendt’s claims that there are certain rights which are more fundamental than civic rights (to anticipate, these most fundamental rights are the right to meaningful action and speech, which are essentially the rights to recognition and self-disclosure).
22. To be sure, Arendt is aware of the problematic nature of Israel’s founding, and the homelessness that it created, which she makes clear in other writings.
23. As we noted above, stateless people often clung to their nationality rather than submit to being nation-less, that is, being simply human. Arendt sees this, their distrust of the natural and preference for national rights, as being the natural outcome of the realization that natural rights are even granted to “savages.” It is precisely the “savage” who has nothing to fall back on other than the fact of his human origin.
24. Arendt notes that the authentic political refugee, someone who has done something for which she is being persecuted, is not the person affected by these circumstances. Authentic political refugees are necessarily few in number and still have the right to asylum in many countries. For them, the right to asylum is a “genuine” substitute for national law (OT 295).
25. In line with Arendt, Kristeva argues that one of the defining features of foreignness is the impotence of speech. For Kristeva, to be a foreigner is “to be of no account to others. No one listens to you, you never have the floor, or else, when you have the courage to seize it, your speech is quickly erased by the more garrulous and fully relaxed talk of the community. Your speech has no past and will have no power over the future of the group: why should

- one listen to it? You do not have enough status—‘no social standing’—to make your speech useful.” Julia Kristeva, *Strangers to Ourselves* (New York: Columbia University Press, 1991) 20.
26. Two activities in the *vita activa*—labor and work—will be discussed in greater detail in Chapter Two.
 27. This can be understood in opposition to Heidegger’s view of action (*praxis*). As Jacques Taminiaux explains, like Arendt, Heidegger argues that action has a greater “ontological dignity” than fabrication. Yet Heidegger interprets *sophia*, “the authentic understanding of Being,” as a form of *action* since it aims at conquering the unveiling of Being. Contemplation and action are not separate activities for Heidegger, as they are for Arendt. *Sophia* (contemplation outside of plurality) is of a higher order than practical wisdom or *phronesis* for Heidegger because it is through *sophia* that the highest meaning of human existence is revealed. Heidegger appropriates from the Greeks the distinction between fabrication and action, and changes their meaning. He essentially removes action from plurality and is never concerned with how Being should act, only by how it should understand itself. While Plato and Aristotle agreed that the life of contemplation was the highest form of *praxis*, Aristotle was clear that not all *praxis* was contemplation. Heidegger on the other hand, eliminates the connection between *praxis* and plurality, and makes all authentic action into solitary contemplation. Ideally, the ambiguity of plurality ought to be eliminated and the state transformed into a giant workshop, where everybody has a an assigned, definite task. Interaction between people in any other way is simply fallenness. See Jacques Taminiaux, *The Thracian Maid and the Professional Thinker: Arendt and Heidegger* (Albany: SUNY Press, 1997) for the most thorough examination of Arendt’s philosophical relationship with Heidegger. While some commentators have suggested that because of their personal relationship, Arendt remained intellectually subservient to and dependent upon Heidegger, Taminiaux argues that through her life she was in a “constant, and increasingly ironic, debate with him” (Taminiaux ix). He shows clearly Arendt’s independence and originality concerning political ontology.
 28. Benhabib argues that action ought to be interpreted upon two models. The first is the “narrative model” which holds that action is characterized by the telling of stories and the weaving of narratives. The second is the “agonal model” where action makes manifest “who” you are. The latter reveals an essence, while the former implies that the self is created through the process of action and narrative. Action for Arendt is part essentialist, part constructivist. Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* (New York: Rowman & Littlefield Publishers, Inc., 2003) 125–6.
 29. Arendt is not wholly consistent on this. Earlier in *The Human Condition*, she states that none of the human activities and capabilities she is discussing constitute a human nature or essence. Neither these activities nor the ones

she leaves out (thought, judgment, etc) “constitute essential characteristics of human existence in the sense that without them this existence would no longer be human.” Even with the most radical alteration in the human condition—the emigration from earth to another planet—we would still remain human (HC 10).

30. Benhabib points out that the idea that the self is constituted by action goes contrary to the tradition of modern philosophy. Either the self is the underlying substrata of an action (like the Kantian “I” which accompanies all representations) or it is the self of a thinker removed from the world. The self for Arendt is the self of a human community, which is formed through and cannot exist without interacting in the world. Seyla Benhabib, “Judgment and the Moral Foundations of Politics in Arendt’s Thought,” *Political Theory* 16:1 (1988): 33.
31. “One who is incapable of participating or who is in need of nothing through being self-sufficient is no part of a city and so is either a beast or a god.” Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984) 1253a28.
32. Dana Villa criticizes Arendt because he reads her as saying that political action has no end aside from its own exercise. But if we take seriously the disclosive aspect of action, we can see that Benhabib’s interpretation is more accurate. The end of action is the revelation of who a person is. Dana Villa, *Arendt and Heidegger: The Fate of the Political* (Princeton: Princeton University Press, 1996) and Benhabib, *The Reluctant Modernism of Hannah Arendt* xvi-xvii.
33. Elias Canetti, in describing the modern phenomenon of the “crowd,” claims that absolute equality among members of a crowd is one of its defining attributes. He writes, “one might even define a crowd as a state of absolute equality. A head is a head, an arm is an arm, and differences between individual heads and arms are irrelevant.” Although it is beyond doubt that this demand for abstract equality was a feature of people living under totalitarian regimes, it is not so clear whether we, as members of post-totalitarian societies, have escaped this kind of abstraction. Elias Canetti, *Crowds and Power*, trans. Carol Stewart (New York: Noonday Press, 1998) 29.
34. This aspect of Arendt’s thought clearly seems indebted to Kant’s *Critique of Judgment* that was so important to her later work. Here, Kant argues that our capacity to make a claim about the beautiful, that is, a pure judgment of taste, is rooted in our shared faculties (or “powers”). Judgments of taste are grounded in the conditions of cognition that are shared by all judging subjects. Immanuel Kant, *Critique of Judgment*, trans. W. Pluhar (Indianapolis: Hackett Publishing Company, 1987), see especially the section entitled, “Deduction of Pure Aesthetic Judgments.” We return to Arendt’s reading of Kant in Chapter Three.
35. It is interesting to note that Aristotle’s critique that Plato’s *Republic* is excessively concerned with unity is rooted in this very idea. For Aristotle, the city

is a “multitude” or plurality—a situation where all its members are equal (in so far as they can speak, act, and be understood), but completely distinct from every other person (otherwise there would be no need for action). As such, according to Aristotle, unity or equality should not be emphasized at the expense of crushing distinction among people, for this would be untrue both to the nature of the polis and to the nature of an individual. Aristotle, *The Politics*, book II, ch 1–5.

36. Specifically, this quote is from “Truth and Politics,” in *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1993), 241.
37. This existence, “all that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds,” can be dealt with only with friendship, sympathy, or “the incalculable grace of love” (OT 301).
38. Arendt can be rightly criticized for the racism implicit in her remarks. Despite her stern opposition to racism and colonization, she nonetheless recapitulates the common idea at the time that many people outside of Europe and North America lack culture and are not “civilized.”
39. Contrary to this, Benhabib has argued that Arendt “can offer no solutions to the dilemmas of the ‘right to have rights.’” *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004) 22.
40. We will examine this—Arendt’s understanding of intersubjectivity and her description of human rights in terms of it—more closely in the following chapters.
41. Benhabib, *The Reluctant Modernism of Hannah Arendt* 197. She even goes so far as to say that what “constitutes the greatness” of Arendt’s account of totalitarianism is her ability to get away from the foundationalist thinking of Heidegger and focus on specific phenomena rather than metaphysical abstractions (Benhabib 69). Nonetheless, she maintains that her lack of foundations is problematic.
42. “Arendt’s skepticism that moral beliefs and principles would ever be able to restrain or control politics in the twentieth century, and give it a direction compatible with human rights and dignity, leads to a normative lacuna in her thought” (Benhabib, *The Reluctant Modernism of Hannah Arendt* 193).
43. Benhabib, *The Reluctant Modernism of Hannah Arendt* 82. Arendt’s refusal to answer these questions is part of her refusal to give normative foundations to her thought.
44. Understanding, she thinks “will certainly more effectively prevent people from joining a totalitarian movement than the most reliable information, the most perceptive political analysis, or the most comprehensive accumulated knowledge” (UP 311).
45. Jacques Taminiaux pointed out this aspect of normativity. *The Thracian Maiden and the Professional Thinker: Hannah Arendt and Martin Heidegger* 33.
46. For Jeffrey Isaac, Arendt’s disavowal of foundations is not as problematic and he speculates that this is perhaps the reason why she was able to analyze

rights in a way that others have been unable to. Despite her refusal to speak in the language of justification and rights, securing foundations for rights and respect for them was central to everything Arendt wrote. Further, he argues that even though she puts forth a powerful critique of human rights, she does not disparage the notion of human rights. He argues that we ought to see her work as an attempt to conceptualize a new guarantee for human dignity within the context of circumstances that make genocide possible and renders human beings superfluous. See Jeffrey Isaac, *Democracy in Dark Times* (Ithaca: Cornell University Press, 1998) 74 and “Hannah Arendt on Human Rights and the Limits of Exposure, or Why Noam Chomsky is Wrong about the Meaning of Kosovo,” *Hannah Arendt’s The Origins of Totalitarianism: Fifty Years Later in Social Research*, 69: 2 (2002): 511.

47. Margaret Canovan affirms a similar, although slightly different hypothesis when she argues that *The Origins of Totalitarianism* must be understood as the backdrop of all her subsequent writing. This is the main thesis of her second book on Arendt, *Hannah Arendt: A Reinterpretation of her Political Thought* (Cambridge: Cambridge University Press, 1992).
48. He points out that Arendt’s continued appreciation of the state is by no means obvious since she could have gone the route of Albert Camus who believed that the state could no longer be trusted because it lived according to a murderous code (Isaac, *Democracy in Dark Times* 95).
49. Isaac, *Democracy in Dark Times* 98.
50. Peg Birmingham, *Hannah Arendt and Human Rights: The Predicament of Common Responsibility* (Bloomington: Indiana University Press, 2006) 3.
51. Birmingham 8.
52. Birmingham 57.
53. Birmingham 76.
54. Hannah Arendt, “Karl Jaspers: Citizen of the World?” in *Men in Dark Times* (New York: Harcourt Brace, 1983).
55. Recall that for Bauman, the main drive of modernity was the elimination of difference or otherness. We can think of a world government, as Arendt conceived it, as being in line with this project. It is precisely because ambiguity or otherness cannot be eliminated that a world government, which attempted to do so, would necessarily be tyrannical.
56. See Romeo Delair’s *Shaking Hands with the Devil: the Failure of Humanity in Rwanda* (Toronto: Random House Canada, 2003) for an interesting contemporary discussion of the same topic. He argues that the reason the United States did not act to stop the genocide in Rwanda was because it was not expedient in terms of national politics. That is, they failed to help humanity because of the interests of state politics. They essentially defined which lives were important (former Yugoslavia) and those who were not (Africans). Such events make us question whether the term “humanity” has any meaning for us.

NOTES TO CHAPTER TWO

1. For a good explanation of the realist school, see David Forsythe, *Human Rights in International Relations, Second Edition* (Cambridge: Cambridge University Press, 2006).
2. Two proponents of this view are Michael Perry and Jean Bethke Elshtain. See, Michael Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998) and Jean Bethke Elshtain, "The Dignity of the Human Person and the Idea of Human Rights: Four Inquiries," *Journal of Law and Religion* 14:1 (1999–2000): 53–65.
3. Implied here is a rather large claim: prior to the modern age, human dignity was universally accepted and unquestioned. This, of course, goes against the more dominant understanding of modernity, which holds that it is only in modernity that people began to appreciate human dignity, while in pre-modern times, individuals were not thought of as being valuable in and of themselves. In contrast, I want to suggest that prior to modernity, at least in the West, human dignity was universally accepted, largely because of the dominance of the Christian worldview, one of whose central tenets of faith is universal human dignity. However, this dignity did not, of course, give rise to rights, that is, to special treatment. I am arguing that human rights emerge as a way of protecting dignity only when human dignity gets challenged in modernity. Human rights, in this sense, emerge as a reaction to a specific degradation of human dignity. This chapter attempts to understand what causes that degradation. Unfortunately, it goes well beyond the scope of this chapter to defend the original claim that prior to the modern age, human dignity was a given.
4. Since the ontological dimension has already been discussed in detail in the introduction, this chapter will focus solely on the political dimension.
5. Her notion of action is intrinsically tied to the public realm. According to Arendt, this is where action must occur. For Seyla Benhabib, Arendt moves between two understandings of the public—the public as a space of appearance and the public as an institutional space. In her reading, not all action has to be done in the light of the public realm; some action just needs to appear, and this can be done on a much smaller, more intimate scale. This interpretation implies that action is not something restricted only to the great people of any society, but something that everybody does, or can, participate in. This also helps to explain how people can "appear" even when the fragile public realm has disappeared (such as in concentration camps). Benhabib is distinguishing between an ontological and an institutional dimension of the public realm. In other words, the space of appearance, where people come together to speak and act (the ontological dimension), is prior to and different from the public sphere as a formal, state instituted space tied to a form of government (the institutional dimension). See Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* 126–7.

6. It is significant that, in the ancient world, the public political realm was thought of as the realm of freedom while necessity was considered private and pre-political. This is because necessity, it was believed, can only be conquered through violence and this liberation from necessity, precisely because it entailed violence, was pre-political.
7. In a laboring society, our political telos is precisely the opposite: politics is for the sake of life. We will see the significance of this more clearly later in the chapter.
8. Arendt's negative evaluation is particularly difficult for us to understand given that, for us, one of the primary questions of politics is economic: how do we distribute resources, deal with poverty, collect taxes, etc? For Arendt, these are not political questions because they are not matters for debate. Essentially they rely on the knowledge of experts and hence are technical questions, not political ones. However, nothing in history has ever supported the idea that poverty can be eliminated, or that it is a technical question, not a political one. As such, Arendt's position leaves her looking at best hopelessly naïve or at worst, cruel.

Seyla Benhabib offers the best resolution to this problem. She argues that Arendt's separation between the social and the political occurs on three levels. The first level is the level of *content*. Economic distribution is social while constitutional debates are political. The second level is one of *attitude*. The social is an attitude where concern for economic well-being, wealth, and consumption dominate, while the political is grounded in a concern for the common world. With the attitude of the social, we may see other people merely as an end to our social or economic well-being. The third level is that of *institutions*. The social refers to the economy, while the political refers to the state and its institutions. Benhabib's conclusion is that the second level, the level of attitude, is the most tenable and productive way of understanding the distinction. In saying this, Benhabib rightly rejects Arendt's assertion that there are some topics that are not open for debate, but ought to be left to experts in administration; as Benhabib points out, even the question of what should be debated and what should be left to experts is essentially a political question. Benhabib, *The Reluctant Modernism of Hannah Arendt* 139–140.

9. The one exception to this is pain, which Arendt argues is perhaps the only experience that cannot be transformed into something public (HC 50).
10. Arendt does not deny that this point is in dispute in the modern age, where the public is considered irrelevant and where "enchantment with small things" reveals that greatness has given way to charm (HC 52).
11. Arendt follows Augustine in arguing that the only thing that is strong enough to bond people together once the common world ceases to relate them is charity. But while this was sufficient as the primary principle of Christianity, it is not sufficient for a political community whose very foundation is a common world (HC 53–4).

12. Arendt gives a much more in depth discussion of loneliness in mass society and its political consequences in *The Origins of Totalitarianism*, especially chapter 10, "A Classless Society." She writes, "the truth is that the masses grew out of the fragments of a highly atomized society whose competitive structure and concomitant loneliness of the individual had been held in check only through membership in a class. The chief characteristic of the mass man is not brutality and backwardness, but his isolation and lack of normal social relationships" (OT 317).
13. A good part of *The Human Condition* is devoted to analyzing the nature of the activities in the *vita activa*, the way they have been understood, and the way the order and importance of these activities have shifted around. Since this historical analysis is not of central importance to my thesis, I will not go into it in detail. The central point for my argument is that action and speech (and thus the person *qua* speaker and actor) have been subordinated to the activities of labor and work, with labor ultimately becoming the dominant activity.
14. Locke, *Second Treatise of Civil Government*, section 26, quoted in HC 79.
15. For example, Aristotle's view of labor, typical of the classical world, was distinctly negative. It was what had to be taken care of, not for its own sake, but so that one could be free in the public realm. In the household, neither ruler (father) nor ruled (wife, children, slaves) were free, since freedom could only exist among equals. However, Aristotle was even more scornful of the craftsman and his way of seeing the world, than he is of slaves. See Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984) 1260a1: "For the vulgar artisan is under a special sort of slavery."
16. This is why he argued that they should not be given citizenship. A shepherd, on the other hand, who received his food without labor, was not held in contempt since he had the leisure time necessary for political life. Aristotle 1258b35.
17. "Power" is perhaps the one connection between labor and action, since both activities produce power. See "On Violence" for Arendt's analysis of power as opposed to violence and an analysis of the role of power in action. "On Violence," *Crisis of the Republic* (New York: Harcourt Brace, 1972).
18. This, in part, accounts for the bad reputation of intellectuals in the modern age. Intellectuals, Arendt argues, want to seem "useful" and thus count themselves among the workers. But since the activity of thinking is so inherently unproductive and leaves nothing behind, the intellectual is at best a "menial servant" (Adam Smith's term), who tends to "the upkeep of the various gigantic bureaucratic machines whose processes consume their services and devour their products as quickly and mercilessly as the biological life process itself" (HC 93).
19. To be sure, it's not that there was a conscious elevation of labor because of its inherent pleasure. Rather, if we take seriously the idea that labor brings with it a kind of pleasure or satisfaction, then the fact that this experience is

elevated in modernity (unlike in the ancient world where the pursuit pleasure was not a large part of the life of excellence) is going to be significant for this activity.

20. For “the realm of freedom begins only where labor determined through want and external utility ceases,” where “the rule of immediate physical needs” ends. (Quoted in HC 104, from *Das Kapital* III, 873).
21. Concerning this, Arendt writes, “Such fundamental and flagrant contradictions rarely occur in second-rate writers; in the work of the great authors they lead into the very center of their work” (HC 105). Marx’s contradiction is that though we are fundamentally *animal laborans*, his ideal is a society in which this most fundamental human power is no longer needed: “We are left with the rather distressing alternative between productive slavery and unproductive freedom” (HC 105).
22. Martha Nussbaum has suggested precisely the opposite in her article “Aristotelian Social Democracy.” According to her, Aristotle was a socialist in the sense that he was concerned with the material well being of all members of society. As Nussbaum reads him, he believed that if everyone was given sufficient material goods and education, they would be free to pursue higher and more distinctly human activities and, ultimately, choose a life that resembles the life of excellence he described. Based on this, Nussbaum argues that in contemporary society, if people have all the necessary material and institutional goods, they will choose things like education over pleasure. This is the foundation of her argument that the government ought to ensure that all members of society have the basic material and institutional goods. Martha Nussbaum, “Aristotelian Social Democracy,” *Liberalism and the Good*, ed. Bruce Douglass (New York: Routledge, 1990). While I have sympathy for Nussbaum view, I think that she is incorrect to hold that when people have material and institutional goods, they will choose higher activities like education over pleasure. That prospect is unlikely as long as we live in a laboring society.
23. In a lot of ways, Arendt’s description of *animal laborans* resembles Nietzsche’s description of the “last man.” According to Nietzsche, with the death of God and all this represented, came the death in all belief that there was something worth striving for, that there was a better and worse way to live. This is what Nietzsche means by nihilism. In this situation, the “last man” emerges, whose highest goal and ambition is happiness in the sense of comfort, superficial contentment, and easy satisfaction. To be sure, happiness for the last man is not an Aristotelian striving for excellence or an openness to “higher” activities, but a mediocre satisfaction that excludes all pain; happiness for the last man can only be achieved by getting rid of all unhappiness, all ambiguity, all pain and striving that an excellent life might require. The last man, like *animal laborans*, aims to be rid of the pain of labor in order to have more comfort. This connection might help us understand why, for

Arendt, *animal laborans* cannot be the highest potential of human life, even though she understands the experience of joy that is at the basis of it. See Friedrich Nietzsche, *Thus Spoke Zarathustra: A Book for None and All*, Walter Kaufmann trans. (New York: Penguin Books, 1966) 16–19.

24. Though this is the ideal, in a laboring society, the aims of *homo faber* get perverted. Instead of using his tools to build a world and create a stable place for human life, *homo faber* uses his skills simply to make life easier and labor more bearable. This leads us to forget that work is intended to build a world, to create something more stable and durable than human life, and not simply to assist the life cycle.
25. One of the surest signs that we live in a society dominated by the ideals of *animal laborans* is our “waste economy”: an economy where everything is consumed or discarded almost as quickly as it appears in the world (HC 134).
26. According to Arendt, the three *vitae* are distinguishable by their definition of human greatness. For *animal laborans*, life is the highest of all goods; for *homo faber*, his products are greater than he is; and for the person of action, greatness manifests itself in her own appearance and actualization. It follows that you judge public activities by their “higher” end, which for *homo faber*, is to make the world more beautiful and for *animal laborans*, to make life easier and longer.
27. These “higher” ends are as follows: in antiquity, it was the protection of good men from rule of bad, and the safety of philosophers; in the middle ages, it was salvation of souls; and in the modern age, it is productivity and progress of society, as well as comfort and security (HC 229).
28. For Arendt, meaning, by definition, is permanent and does not change in character whether it is achieved or not. This is another reason why *homo faber* cannot understand the concept of meaning: for him, everything that is an end always becomes a means to something else. An end never remains meaningful or able to guide once it has been achieved.
29. Only speech and action can save *homo faber* from his predicament of meaninglessness, as they produce meaningful stories. In other words, it is something outside the fabrication activity that redeems the person *qua homo faber* and *animal laborans* (HC 236).
30. Arendt refers to a quotation from Protagoras: “man is the measure of all use things (*chremata*), of the existence of those that are, and of the non-existence of those that are not,” quoted from *Theaetetus* 152 and *Cratylus* 386E. Protagoras did not write that man is the measure of “all things,” as is often thought, since *chremata* means, specifically, things used, needed, or owned by people (see HC 157–8, especially footnote 23).
31. In this context Arendt discusses the genius, the highest ideal from the Renaissance to the end of the 19th century. The genius was idolized because his work was supposed to embody the elements of distinctness and uniqueness that are usually only found in speech and action. The genius was the

highest legitimization of *homo faber's* conviction that a person's products may be greater than he is. Contrary to this idolization, Arendt argues that a person must remain greater than her work. A person cannot be reified by herself; a piece of art cannot fully mirror a living person. Thus, the idolization of the genius is just another example of the degradation of the person inherent in commercial society.

NOTES TO CHAPTER THREE

1. Isaiah Berlin criticized Arendt for precisely this. His negative view of her was rooted in the fact that instead of writing closely argued treatises, she gives only "thumbnail sketches." See Ramin Johanbegloo, *Conversations with Isaiah Berlin* (London: Peter Halban, 1992) 82–83.
2. Arendt studied phenomenology at Heidegger's seminars in Marburg and attended some of Husserl's lectures in Freiburg. Arendt's intellectual relationship with Heidegger has been examined thoroughly elsewhere. As such, this chapter focuses on Arendt's difference from Husserl, a topic that has received much less attention. For an analysis of Arendt's intellectual relationship with Heidegger, see Jacques Taminiaux, *The Thracian Maiden and the Professional Thinker: Hannah Arendt and Martin Heidegger*, trans. Michael Gendre (Albany: SUNY Press, 1997).
3. Dermot Moran, *Introduction to Phenomenology* (New York: Routledge, 2000) 292.
4. This is Dermot Moran's example. Moran 175.
5. Edmund Husserl, *Formal and Transcendental Logic*, trans. D. Cairns (The Hague: Nijhoff, 1969) 242.
6. "I am aware of a world, spread out in space endlessly, and in time becoming and become, without end. I am aware of it, that means, first of all, I discover it immediately, intuitively, I experience it. Through sight, touch, hearing, etc., in how spatially distributed are *for me simply there*, in verbal of figurative sense 'present,' whether or not I pay them special attention by busying myself with them, considering, thinking, feeling, willing." Edmund Husserl, *Ideas: General Introduction to Pure Phenomenology*, trans. W.R. Boyce Gibson (New York: Collier Books, 1962) 91.
7. Moran 177.
8. Robert Sokolowski, *Introduction to Phenomenology* (Cambridge: Cambridge University Press, 2000) 152.
9. The relationship between action and fabrication is central to Heidegger's fundamental ontology. According to Jacques Taminiaux's reading, Heidegger places action higher than fabrication. This is because Heidegger, like the Greeks, understood the end of action to be within itself, while the end of fabrication was external. Thus, action had a greater "ontological dignity." Yet Heidegger interprets *sophia*, "the authentic understanding of Being,"

as a form of *action* since it aims at the unveiling of Being. Contemplation and action are not separate activities for Heidegger. *Sophia* (contemplation outside of plurality) is of a higher order than practical wisdom or *phronesis* because through *sophia*, we perceive the highest meaning of human existence. *Sophia* leads the philosopher to *eudemonia*, which Heidegger translates as authenticity (*Eigenlichkeit*). Taminiaux 7.

As already discussed, Heidegger appropriates from the Greeks the distinction between fabrication and action, and changes their meaning. He essentially removes action from plurality by insisting on being towards death, anxiety, existential solipsism, absence of dwelling, and the non-relational character of authentic existence (Taminiaux 40). Heidegger is never concerned with how Being should act, only by how it should understand itself. While Plato and Aristotle agreed that the life of contemplation was the highest form of *praxis*, Aristotle was clear that not all *praxis* was contemplation. Heidegger eliminates the connection between *praxis* and plurality, and makes all authentic action into solitary contemplation. For Heidegger, the ambiguity of plurality ought to be eliminated and the state transformed into a giant workshop, where everybody has an assigned, definite task. Interaction between people in any other way is simply fallenness.

Arendt responds to Heidegger's conflation of action and contemplation. Indeed, her re-appropriation of the Greek tradition is more understandable if we see it as a response to Heidegger. Let us remember that for Heidegger, the life of contemplation is the highest, but it is also solitary and private. The self is isolated. All worldly activities such as production, public interaction and speaking, are part of fallenness. In *The Human Condition* and *The Life of the Mind*, Arendt is looking at contemplation, action, fabrication, *doxa*, the public/private distinction and *phronesis* from an entirely different perspective. Needless to say, she reaches entirely different conclusions. Her most basic task is to separate the life of action from the life of contemplation, and to restore the unique dignity of action.

10. By contrast, during the French Revolution, the French understood power as a "natural" force, a violence that no institution could withstand. The actors of the French Revolution confused power with violence and thus opened the political realm to this pre-political, natural force and were thus swept away by it.
11. Hannah Arendt, "Philosophy and Politics," *Social Research* 57:1 (1990): 73–103. As mentioned above, this lecture was given in 1954 but was not published (in a revised form) until 1990. Though this lecture foreshadows a number of themes that arise later in Arendt's work, it has received relatively little attention. The major exception to this is Taminiaux 168–198.
12. At this point, Arendt fails to make any distinction between rhetoric, as she celebrates it here as the art of political persuasion, and sophistry, in the negative sense of winning an argument for the sake of winning, which for all

intents and purposes is also an art of persuasion. The presumed difference between Socratic discourse and Sophistic rhetoric is a concern for the truth. But as we will see, Arendt interprets the truth as standing in opposition to *doxa* for Socrates.

13. Relative, that is, to humans and to our human condition. Arendt, to be sure, is no relativist in the sense of someone who believes that because there are no objective standards of right or wrong, anything that a person believes is right is in fact right. Relativism, in this sense, represents the kind of subjectivism Arendt is fighting against.
14. Arendt notes that already by Aristotle's time this distinction, between dialectic and rhetoric, was taken for granted. See Aristotle's *Rhetoric* 1354 a 1, "the art of persuasion [and therefore the political art of speech] is the counterpart of the art of dialectic [the art of philosophical speech]" (Arendt's translation, PP 79).
15. In "Crisis in Culture," she says that the *Critique of Judgment* "contains perhaps the greatest and most original aspect of Kant's political philosophy" (BPF 219). In her *Lectures on Kant's Political Philosophy*, she writes that besides the *Critique of Judgment*, "Kant did not write his political philosophy" (LKPP 61). Hannah Arendt, "Crisis in Culture," *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1993). Hannah Arendt, *Lectures on Kant's Political Philosophy*, ed. Ronald Beiner (Chicago: University of Chicago Press, 1992).
16. "The ironical tone of *Perpetual Peace*, by far the most important of [his political writings], shows clearly that Kant himself did not take them too seriously" (LKPP 7).
17. Henry Allison, *Kant's Theory of Taste* (Cambridge: Cambridge University Press, 2001) 78.
18. "If we wish to decide whether something is beautiful or not, we do not use understanding to refer the presentation to the object so as to give rise to cognition; rather, we use imagination (perhaps in connection with understanding) to refer the presentation to the subject and his feeling of pleasure or displeasure." Immanuel Kant, *Critique of Judgment*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, 1987), 44.
19. Kant 18.
20. Kant 45.
21. Kant 47.
22. "He must believe that he is justified in requiring a similar liking from everyone because he cannot discover, underlying this liking, any private conditions, on which only he might be dependent, so that he must regard it as based on what he can presuppose in everyone else as well." Kant 54.
23. Kant 59.
24. Arendt does not explicitly take up the idea that reflective judgments are "purposive without a purpose," and so it will not be discussed here.

However, we should note that her idea of political judgment is also similar in form: in a political judgment or opinion, we do not judge with a particular concept or idea in mind (such as what the “right” thing is); yet there is a purpose to our judgments, namely to create and fit us into a common world. In this sense, Arendt too understands political judgment to be “purposive without a purpose.”

25. Kant 85.
26. Allison has argued that Kant uses *sensus communis* in at least three distinct senses: as a feeling, a principle or norm, and a faculty. Allison 156–7.
27. Kant 160.
28. Kant 62.
29. Kant 61.
30. Kant 61.
31. Kant 63.
32. Kant 62.
33. Kant 159.
34. We will look at some of the difficulties involved in this claim in the next chapter.
35. This is important for Arendt as without the operation of reflection the conditions for disinterest, as we will see, could not be established.
36. In contemporary Kant scholarship, this position is best argued by Paul Guyer. According to Guyer, there is a first act of “simple reflection,” which is merely a taking-in of the object. This leads to a feeling of pleasure as the faculties of imagination and understanding engage in free play. The second act of reflection requires that one look at the experience itself in order to determine where the pleasure comes from. In this second act of reflection, we make sure that the pleasure is not due to our subsumption of the object under concepts, or that our feeling arises from any interest; in other words, we make sure that it is a pure judgment of taste. Hence, it is the second act of reflection that constitutes a judgment proper. See Paul Guyer, “Pleasure and Society in Kant’s Theory of Taste,” *Essays in Kant’s Aesthetics*, eds. Ted Cohen and Paul Guyer (Chicago: The University of Chicago Press, 1982) 24–25.
37. Arendt seems to be suggesting that there is a difference between the “objective” world as it is experienced through the objective senses, and the objective world as it is “represented” to us through our inner senses and judged. Our *doxa* is formed through our experience of the latter.
38. Totalitarianism is a matter of “exchanging the freedom inherent in man’s capacity to think for the strait jacket of logic with which man can force himself almost as violently as he is forced by some outside power” (OT 470).
39. Paul Ricoeur, “Aesthetic Judgment and Political Judgment According to Hannah Arendt,” *The Just*, trans. David Pellauer (Chicago: University of Chicago Press, 2000) 103.
40. Ricoeur 103.

41. “[I]t is the great saving grace of companionship for solitary men that it makes them ‘whole’ again, saves them from the dialogue of thought in which one remains always equivocal, restores the identity which makes them speak with a single voice of one unexchangeable person” (OT 476).

NOTES ON CHAPTER FOUR

1. Hannah Arendt, “Public Rights and Private Interests,” *Small Comforts for Hard Times: Humanists on Public Policy*, eds. Michael Mooney and Florian Stuber (New York: Columbia University Press, 1977). This essay came out of a conference that she participated in at Columbia University in 1974 entitled “Private Rights and the Public Good.” Because of its late date, this represents Arendt’s most mature thinking about the nature of rights.
2. To have something in common means that “it is localized in the *world* which we have in common without owning it.” Later, she says that we share something outside of ourselves that is “not subjective, and this I think is quite important” (PRPI 105).
3. As an example of a public right that we still use, Arendt offers the right to voluntary association.
4. This is from an interview with Adelbert Reif in 1970 entitled “Thought on Politics and Revolution: A Commentary,” *Crisis of the Republic* (New York: Harcourt Brace, 1972) 199–233.
5. The distinction between the public and private refers primarily to the location in which a person moves. In her example, physicians have different rights, obligations, liberties, and constraints in the hospital than they do at a social gathering.
6. One example of this is lobbying, which Arendt refers to as a degeneration of the right to voluntary associations. Lobbying, for her, is the organization of private interest groups for the purpose of influencing public, political decisions.
7. She states this explicitly in “Crisis in Culture”: disinterestedness required for political judgment presupposes that “the needs of the living organism have been provided for, so that, released from life’s necessity, men may be free for the world” (BPF 210).
8. Peg Birmingham makes a common criticism of Arendt when she claims that Arendt does not take bodily existence seriously. In Birmingham’s discussion of Henry Shue’s view that basic rights are always embodied, she notes, “[i]t is striking that Arendt ignores this dimension of freedom. While she writes eloquently and at length on freedom as the freedom to move, she seems to forget entirely that this movement is always an embodied movement” (Birmingham 62). My suggestion is not that she ignores this, but rather that she takes for granted that liberation is a necessary condition for freedom, and thus that embodied existence does have a kind of primacy. But unlike most liberal theorists, Arendt does not hold that liberation is sufficient for freedom.

9. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001) 42.
10. Glendon 42 and 116.
11. Glendon argues that Eleanor Roosevelt's influence on US policy was most evident in her ability to persuade the State Department to include social and economic rights in the declaration (Glendon 43).
12. Glendon 187–8. She also points out that while many of these rights were already part of many liberal democracies (such as good working conditions, paid vacations), others were much more radical (such as the right to work, the right to equal pay for equal work without discrimination, the right to a decent standard of living for the worker and his family, the right to an education, non-discrimination for children born outside of marriage) (Glendon 189).
13. Maurice Cranston, "Human Rights, Real and Supposed," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon House, 2001) (originally published in 1967) 163–173.
14. Article 24 reads, "Everyone has the right to rest and leisure, including reasonable limitation of working hours and period holidays with pay."
15. Cranston 171.
16. Cranston 172. One way of imagining the right to a holiday with pay is a vacation in Greece for the middle class Western worker. Indeed, this may not seem like something that is morally compelling. Contrast this with some of the well-known stories of sweat-shop workers in India, Bangladesh, China, etc. who work 18 hour days, 7 days a week. The absence of a periodic holiday with pay does seem to be an affront to justice in such cases and of the utmost moral significance.
17. Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy and Public Affairs* 32:4 (2004): 315–356.
18. If this is indeed the essence of human rights, then Arendt's suggestion they depend upon our determination and struggle is a more fitting way of understanding human rights.
19. Arendt's main limitation appears at this point. While Arendt seems to suggest that social and economic rights, the rights that take care of the life process, are of fundamental importance, she does not suggest how they can be realized. Further, given her elimination of any questions of economics from politics, it is not clear either how we could come to a solution in these matters (since it is not a political question) or whom we could turn to for it (given that "experts" have always failed to do this).
20. See this idea with reference to Benjamin Disraeli in *The Origins*, whose "passion for distinction" was merely a way to gain social respect and a thin disguise for his political ambition.
21. Here Arendt is quoting Howard Mumford Jones.
22. Jefferson finishes a letter to Adams with the following: "May we meet there again, in Congress, with our antient (*sic*) Colleagues, and receive with them

the seal of approbation ‘Well done, good and faithful servants.’” Letter of April 11, 1823 (OR 131). Arendt reminds us that this idea of eternal happiness as entailing an expansion of one’s circle of friends is reminiscent of the passage in Socrates’ *Apology* where he states that all he could hope for in an after life is to talk to people with whom he could not talk in this life (Homer, Hesoid, Orpheus).

23. We should note that this is one of the few instances where Arendt fills in the content of action, namely “expressing, discussing, deciding” (OR 235).
24. In this work, the idea of the public realm seems to be the realm of those who participate in politics and governing, while in other works, as I have tried to point out, the idea of the public refers to a more general activity of speaking and acting with others.
25. I think Arendt would agree that some of the revolutions of 1989 would also count as examples of popular movements that functioned in a direct, non-violent way (especially Poland, the Czech Republic, and Hungary). These revolutions, like the French and American revolutions before them, ended with a constitutional, representative government being established. She might have included, as well, the current popular global justice movements that have mobilized people from all different levels of class and economic background in a large number of countries throughout the world.
26. Hannah Arendt, *Qu’est-ce que la politique?* trans. Sylvie Courtine-Denamy and ed. Ursula Ludz (Paris: Éditions du Seuil, 1995). Since this text has not been translated into English, all translations are my own.
27. Arendt quotes Dante as saying, “in every action what is primarily intended by the doer, whether he acts from natural necessity or out of free will, is the disclosure of his own image. . . . Thus, nothing acts unless [by acting] it makes patent its latent self” (HC 175).
28. “[L]’homme est a-politique” (QP 42).
29. She quotes Aristotle’s *The Politics*: “the *polis* comes into existence for the sake of living, but remains in existence for the sake of living well” (Aristotle 1252b29). She also refers to Plato’s *Republic* where the *polis* seems to come into existence because of our lack of self sufficiency (Plato, *Republic* line 369).
30. Essence and object of politics are connected insofar as Arendt defines the world as “l’espace entre les hommes” (QP 59).
31. “En définitive, le monde est toujours le produit de l’homme, un produit de l’amor mundi de l’homme. L’oeuvre d’art humaine.”
32. See especially *Qu’est-ce que la politique?* 177. There is also a discussion of the motives and goals of action in “What is Freedom?” (BPF 151). In *Qu’est-ce que la politique?* she also includes the *principle* of politics, which we will return to shortly.
33. To be sure, “freedom, which only seldom—in times of crisis or revolution—becomes the direct aim of political action, is actually the reason that men

live together in political organization at all. Without it, political life as such would be meaningless” (BPF 146).

34. In fact, Arendt writes that “le seul sens qu’une action accomplie avec les moyens de la violence puisse révéler et rendre visible dans le monde, est-il la puissance monstrueuse due à la contrainte qui régit les relations des hommes entre eux” (“the only meaning an action accomplished with violent means can reveal and make visible in the world is the monstrous power which comes from constraint which regulates the relations of men with each other”) (QP 183).
35. This is an interesting aspect of Arendt’s thought—freedom requires other *free* people. Thus, in a sense, one’s own freedom is tied into the liberation of others. So if we really understood our own freedom, we would see that working for the liberation of others was in our own interest. Frustratingly, Arendt seems to pass over this presupposition of liberation too quickly and never speaks in more detail about what is entailed, whether liberation as a general phenomenon is possible, etc.
36. “Political institutions, no matter how well or how badly designed, depend for continued existence upon acting men; their conservation is achieved by the same means that brought them into being. Independent existence marks the work of art as a product of making; utter dependence upon further acts to keep it in existence marks the state as a product of action” (BPF 153). We may certainly see human rights as an “institution” in this sense.
37. Arendt discusses this both in BPF 152 and QP 178.
38. “Si l’on cherche à comprendre ce principe d’un point de vue psychologique, on peut dire qu’il consiste dans la conviction fondamentale que partage un groupe d’hommes” (QP 178). We should note that this is not the conviction that an individual holds in isolation, but the conviction that is *shared* with all members of the group.
39. Unlike the goal, it can be repeated over and over again, and unlike the motive, it is valid universally since it is not particular to a person or a group. This seems to contradict what she says in *Qu’est-ce que la politique?* that principles are different for each kind of government and in each epoch.
40. “De telles conviction fondamentales, qui ont joué un rôle au cour de l’action politique, nous ont été transmises en grand nombre, . . . l’honneur dans les monarchies, la vertu dans les républiques. . . . La justice, mais également l’égalité à condition d’entendre par là conviction de la dignité originelle de tous ceux qui ont un visage humain” (QP 178–179).
41. Historically speaking, this came to pass only when the Girondins failed to produce a constitution and establish a government. According to Arendt, the seizure of power by the Jacobins, lead by Robespierre, marked a turning point in the revolution not merely because they were more radical, but more importantly because they no longer were concerned with forms of government. Their interest was in the people, not the republic. This is marked by

Robespierre's insistence that laws should be made in the name of the people, rather than the French republic.

NOTES TO CHAPTER FIVE

1. John Stuart Mill, *On Liberty*, ed. John Grey (Oxford: Oxford University Press, 1991) 20–62.
2. John Locke, *The Second Treatise of Government*, ed. C.B. Macpherson (Indianapolis: Hackett Publishing Company, Inc., 1980) 8–14.
3. Thomas Pogge remarks that this shift from natural rights to human rights entails a secularization of moral constraints (i.e., now the point of natural rights is to protect other people and not merely to keep the natural, God-given order in tact) and a narrowing of the content of rights (i.e., natural rights as a concern for others means that our religious duties, our duties towards animals and our duties towards ourselves are made less important). Thomas Pogge, "How Should Human Rights be Conceived?" *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon House, 2001) 187–173.
4. To be sure, this was not easily agreed upon during the drafting process of the document. The Iraqi representative A. Abadi argued that it is not possible, logically, for a person to be both free and equal since inequality necessarily results when people are allowed to use their freedom to develop their talents. Mary Ann Glendon points out that Robert Nozick makes this same argument much later. Glendon 148.
5. Glendon 175.
6. Quoted in Glendon 68. While Cassin claimed to be the author of the first draft of the UDHR, his work was based on a preliminary draft written by the Canadian lawyer John Humphrey, who wrote the initial draft based on core human rights documents. According to Glendon, Humphrey's document was a "distillation of nearly two hundred years of efforts to articulate the most basic human values in terms of rights" (Glendon 57).
7. Glendon 134. Chang believed that the Declaration should be vague enough that each culture could supplement the document with its own account of a philosophical ground for human rights.
8. Though in article 1, the term "by nature" was explicitly dropped, its spirit was clearly present.
9. David Little, "The Nature and Basis of Human Rights," *Prospects for a Common Morality*. eds. Gene Outka and John P. Reeder, Jr. (Princeton: Princeton University Press, 1993) 73–92.
10. Little 74.
11. William H. Gass, "The Case of the Obliging Stranger," *Philosophical Review* 66: 2 (1957): 193.
12. Little 79.
13. Little 80.

14. Little points out that people such as the Iks of Uganda would fall in this category since they, supposedly, act with disregard for the taboo against gratuitous suffering, as would the people who committed atrocities in the name of fascism and colonialism (Little 84–85). Though it is tempting to want to call the cruelty of certain regimes “pathological,” the term seems to take away the responsibility from the person who acted in this way. Further, to say that whole groups (the Germans? The Hutus? The Serbians?) are pathological if they (as individuals) do not recognize a prohibition against arbitrary torture does not seem to explain why people do in fact commit such harm. Sadly, human history has shown that it is all too “normal” to cause gratuitous suffering.
15. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953) 6.
16. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989) 1.
17. This sense of universal is the one that the drafters of the UDHR had in mind in calling it a “universal” declaration. According to Mary Ann Glendon, one of the final changes made to the UDHR was to officially change it to a universal declaration from an “international” declaration. For René Cassin, this change implied that the declaration was morally binding on everyone, not just the governments. As Glendon writes, “it was addressed to all humanity and founded on a unified conception of the human being” (Glendon 161).
18. Donnelly 1. We should note the difference between Donnelly’s sense of universality and a stricter Kantian universality. For Kant, something is universal when it is necessary and *a priori*; for example, the categories of space and time are universal because they are the necessary and *a priori* conditions for the possibility of experience. Universality, as it is used by Donnelly and others, seems to conflate the *wide spread* acceptance of human rights with a genuine universal acceptance.
19. Donnelly 9.
20. Donnelly 11.
21. He claims even further that systematically violated human rights put us in a powerful moral position to attack such treatment. Arendt, I think, would point out that if your rights were really systematically violated, that is, if you had lost the capacity for meaningful speech and action by being outside a political community, then this position of moral indignation would be meaningless. The Jews during the Holocaust, for example, having been denied statehood, were in no position to mount a moral attack, except in the most theoretical sense since no one took them seriously.
22. For example, homosexuals in the US may want to make a claim for discrimination based on sexual orientation as a human rights violation because US courts have held that constitutional and statutory prohibitions of discrimination do not apply to sexual preference. Donnelly 14.

23. Donnelly 17.
24. This phrase can be found in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR).
25. Donnelly 66. In a separate line of argumentation, Donnelly asserts that human rights “are a particular social practice that aims to realize a distinctive substantive conception of human dignity” (Donnelly 67). Further, only certain regimes, namely liberal ones, can do this adequately. He argues that there is a structural connection between the “liberal” understanding of dignity and the practice of human rights. “Internationally recognized human rights require a liberal regime” (Donnelly 67).
26. Donnelly 17. The problem, which we will return to, is how to balance the idea that human rights exist independently of any political or legal institutions, and the fact that they arise out of social institutions. Arendt, of course, stresses the latter.
27. Donnelly 15.
28. Donnelly 19.
29. This is an extremely important point for human rights and one that Arendt is particularly helpful with. Arendt, through phenomenology, explains more carefully how our interaction with human rights comes to shape us and the world accordingly.
30. Donnelly 15.
31. Amartya Sen, “Elements of a Theory of Human Rights” in *Philosophy and Public Affairs* 32: 4 (2004): 317.
32. Sen 321.
33. Sen 321.
34. Sen 349 fn 57. Sen points out in this footnote that although his discussion of public reason is procedural, it does have a substantive element, namely that of equality, that open public discussion means that no one is excluded. The difficulties involved in having equals as discussion partners are not mentioned.
35. Sen 322.
36. He does say however that human rights are essentially moral ideas that become legal and political only because of their moral importance. Alan Gewirth, *Human Rights: Essays on Justification and Application* (Chicago: The University of Chicago Press, 1982) ix.
37. He claims that this is the most distinctive thesis in his book (Gewirth x).
38. Gewirth 3.
39. Gewirth 47.
40. Jeremy Bentham, “Anarchical Fallacies: A Critical Examination of the Declaration of Rights,” *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon Press, 2001) 119–125.

41. Bentham 124.
42. Bentham 124. While Bentham was not wrong about this, he certainly underestimated the benefit of such a spirit of resistance to undermining unjust regimes.
43. H.L.A. Hart, "Are There Any Natural Rights?" *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon Press, 2001) 151–162. Originally published in *Philosophical Review* 64 (1955).
44. Natural rights, according to Hart's theory, are limited to a single one, the right to be free. All other rights are not unconditional or absolute and can be justifiably restrained under certain circumstances. His position is made even weaker by his assertion that even the one natural right is conditional (he argues that only *if* there are moral rights then there is the natural right to be free).
45. The UDHR explicitly rejected the positivist position by stating that fundamental rights are *recognized* rather than *conferred* by a government. Glendon 176.
46. Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, ed. Walter Wheeler Cook (New Haven and London: Yale University Press, 1919) 35–64.
47. James Griffin categorizes Hohfeld's account as a conceptual account (as opposed to a substantial account) of human rights insofar as it tries to map the connection between legal rights and things like duties, powers, liberties etc. The problem with this view, in Griffin's opinion, is that it doesn't explain what "human" rights are. Nor does it really help us to decide what rights there are or how to resolve conflicts between rights or other values. Only a substantive account, one that gives content to the idea "human," can (Griffin p. 308). "First Steps in an Account of Human Rights" in *European Journal of Philosophy* 9:3 (2001): 306–327.
48. Joel Feinberg, "The Nature and Value of Rights," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon Press, 2001) 174–186.
49. Feinberg 180. There are a number of ways that the connection between rights and claims can be conceived: some say that rights are claims, some define rights as justifiable claims (claims that others will recognize), some define rights as valid claims (Feinberg's position) (see Feinberg 182–3).
50. Feinberg 182.
51. Sen's responds to precisely this claim: even if a government is not in a position to fulfill social and economic rights right now, there is still the duty to work towards this end.
52. Feinberg 185.
53. O'Byrne 38.
54. Jeremy Waldron, *Theories of Rights* (Oxford: Oxford University Press, 1984) 3.
55. It might be observed that these two premises cancel each other out. If there is nothing sacred or ultimately important about the human being, then why is it necessary to prevent violence against them? Perhaps we could follow Hegel and say that it's the "slaughter bench of history" that brings progress, and that wars, colonial expansion, etc., are needed for us to progress

as a society. If Ignatieff is going to deny that there is something ultimately important about the human being, he needs to show us why we ought to care about protecting universal human rights at all.

56. In making such a statement, Ignatieff is gainsaying Ronald Dworkin's thesis that rights must be understood as "trumps" over political decisions based on the perceived good of a community. For example, a utilitarian theory holds that a community is better off if its members are on average happier or have more of their preferences satisfied. If, for example, banning pornography means that more people are happier or satisfied, then this society might want to ban pornography. But, according to Dworkin, the right to moral independence *trumps* this utilitarian consideration, and forbids banning pornography. See Ronald Dworkin, "Rights as Trumps," *Oxford Readings in Philosophy*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984). I have shown in Chapter Two why for Arendt this will ultimately fail—you cannot simply put something (a person, human rights) outside of the utilitarian means-end category given that this has become our ethos, our way of thinking.
57. Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001) 53.
58. Another example of the conflict between human rights and other interests is that of China. China justifies its human rights abuses as necessary for having a united nation-state, one that is not torn apart by regional, ethnic, and religious conflicts. In other words, human rights violations are claimed as necessary for preventing civil war. While this might seem like an excuse, it is possible, Ignatieff writes, that pursuing human rights might actually undermine the stability of the state. All this shows is that human rights require a concern for other values like stability, and this conflict should not simply be ignored. Ignatieff 23.
59. Ignatieff 21–22.
60. This seems to be the position that the drafters of the UDHR were aiming for as well. They tried to be as neutral as possible on the question of the foundation of human rights so that each culture could understand it as they saw fit. The project of articulating human rights could be achieved without agreeing on the foundation for these positions. "If there are some things so terrible in practice that virtually no one will publicly approve them, and some things so good in practice that virtually no one will oppose them, a common project can move forward without agreement on the reasons for those positions" (Glendon 78). In other words, the lack of a consensus on the foundation for human rights was not fatal for human rights.
61. Richard Rorty, "Human Rights, Rationality, and Sentimentality," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon Press, 2001), 245.
62. Rorty 246.
63. Rorty 247–8. This claim goes against Kant's well known dictum that sentimentality has nothing to do with morality, but that morality is based on something transcultural and transhistorical, namely moral obligation.

64. Rorty 248.
65. Rorty 249–250.
66. “For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense—the sense in which rational agency is synonymous with membership in *our* moral community.” Rorty 250.
67. Rorty 253.
68. Annette Baier, *A Progress of Sentiments: Reflections on Hume’s Treatise* (Cambridge, MA: Harvard University Press, 1991).
69. Beth J. Singer, *Pragmatism, Rights and Democracy* (New York: Fordham University Press, 1999). In the preface of the book, she writes that she considers herself to be in the pragmatist tradition.
70. She also rejects the *individualist* approach (that only individuals can have rights) and *adversarialism* (that human rights are primarily claims against other persons or society), which Arendt does not comment on.
71. Singer defines a community as “the indispensable context and condition of individuality and identity as well as rights” (Singer xii).
72. She traces this back to the Christian tradition of natural law, and to Hugo Grotius for giving it its secular interpretation. For Grotius, natural law is a body of rules that people are able to discover by their reason. Both Hobbes and Locke base their views in this formula of natural rights. Singer 6.
73. Singer 8. This is precisely Arendt’s criticism of natural rights.
74. Singer 8. She is drawing on Margaret MacDonald’s work, “Natural Rights,” *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1994).
75. Singer 8.
76. Singer 34.
77. Singer 34.
78. Singer argues that a normative community is “a prerequisite of human life as we know it” and “a necessary condition of human existence” (Singer 30). Though she wants to deny that human rights can be grounded upon any essential feature of human life, it seems clear that she relies on a particular notion of human life, namely one that is dependent upon a normative community.
79. Singer 35.
80. John Rawls, “The Law of Peoples,” *The Politics of Human Rights* ed. Obrad Savic (New York: Verso, 1999) 32.
81. The legal theorist Fernando R. Tesón holds a similar position. He writes that, “Observance of human rights is a primary requirement to join the community of civilized nations under international law. It follows that there cannot be a federation of peace alliances with tyrannical states . . . Domestic freedom is a primary credential required from any state for it to become a legitimate member of the international community.” Fernando R. Tesón, *A Philosophy of International Law* (Boulder: Westview Press, 1998) 7.

82. Alan Gewirth critiques Rawls' position as being circular. According to Gewirth, Rawls can reach an egalitarian conclusion only because the agents were egalitarian in the premises. But in reality we are not ignorant of the particulars of our situation, he argues. Thus it is hard to see why any rational person would accept equal moral rights that are based upon us as ignorant of particulars (Gewirth 44).
83. Thomas Pogge, "How Should Human Rights Be Conceived?" *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul, Paragon Press, 2001).
84. Pogge 193.
85. Pogge 198.
86. We might say that in a sense Arendt's project is to give an ontological ground to human rights, understood as engendered through human determination and commitment.
87. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998) 1.
88. Donnelly 31.
89. Pogge 198. Jeffrey Isaac also stresses this point, that for Arendt the impetus for human rights relies of the praxis of citizens (Isaac, *Democracy in Dark Times*, 95–96).

NOTES TO CHAPTER SIX

1. His thesis is that the idea that the human being is sacred, "the conviction that every human being is 'inviolable,' has 'inherent dignity,' is 'an end in himself' or the like—is inescapably religion." That is, this view can only be supported by a conviction that the world is a meaningful place and such a conviction is only consistent with religious frameworks. An antireligious cosmology, which holds that the world is meaningless, or cosmological agnosticism, which neither affirms nor denies the meaningfulness of the world, are insufficient. The idea of the sacredness of the human being is only justifiable within a religious framework. Michael Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998) 16.
2. "Now, this worth or dignity that the agent logically attributes to himself by virtue of the purposiveness of his actions, he must also attribute to all other actual or prospective agents. For their actions have the same general kind of purposiveness that provides the ground for his attribution of dignity to himself . . . In this way, the necessary attribution of inherent dignity to all human beings is dialectically established, for, as was indicated above, all humans are actual, prospective, or potential agents." In short, his argument is that because we all have ends, we must think ourselves worthy of these ends, and hence as bearers of dignity. Agency is the ground of dignity. As the quote above indicates, we must also recognize others as agents or potential agents and hence bearers of dignity. Gewirth's intention is to justify human rights on

- the ground of agency (instead of another human attribute like reason or feeling). While this is logically compelling, it is at best an intellectual motivation for human rights, but does not get at why human rights are existentially or subjectively compelling. Alan Gewirth, "Dignity as the Basis of Rights," *The Constitution of Rights: Human Dignity and American Values*, eds. Michael J. Meyer and William A. Parent (Ithaca: Cornell University Press, 1992) 23.
3. To borrow a phrase from Charles Taylor, such arguments lack a "driving force," a foundation that is more than just epistemic, more than just an argument in justification of an idea. A suitable "driving force" ought to be moral or spiritual in nature. Charles Taylor, *A Catholic Modernity?* (Oxford: Oxford University Press, 1999) 25.
 4. Michael Perry coined the term "definitional strategy" for this approach, which he contrasts with the "self regarding strategy" (which holds that it is good for yourself/family/tribe, etc., that certain things not be done to people). The definitional strategy grounds human rights not on an aspect of human beings (like dignity, agency, reason, etc.) but on the premise that impartiality requires it. Perry 29–32. For examples of the definitional strategy, see: Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001); John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 2001); and Richard Rorty, "Human Rights, Rationality, and Sentimentality," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon House, 2001).
 5. When Athens was about to invade Melos in 416 BC, some people from Melos were sent to try to dissuade the Athenians from their plan. Thucydides reports the Athenian reply as, "you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must." Thucydides, *The Peloponnesian War* (New York: Modern Library, 1951) 331.
 6. This is why the standard for morality in the Catholic faith is ultimately one's conscience. The Catholic Catechism demands that a "human being must always obey the certain judgment of his conscience." This is true despite the fact that "conscience can remain in ignorance or make erroneous judgments." Your conscience can be wrong, in which case you are still responsible, but it is still the foundation of morality. Pope John Paul II, *Catechism of the Catholic Church*, second edition (New York: Doubleday, 1995) 1800, 1801.
 7. Thomas Aquinas, "Summa Theologica," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon House, 2001) 47.
 8. The Universal Islamic Declaration of Human Rights (1981), the Cairo Declaration of Human Rights in Islam (1990), and the Arab Charter on Human Rights (1994).
 9. The Sunna is the prophet Muhammad's elaboration of the meaning of the Quran. It remained an oral tradition for a long time, and was collected, verified, and recorded over two centuries after Muhammad's death in 632AD.

10. "Human Rights in the Muslim World," *The Philosophy of Human Rights*, ed. Patrick Hayden (St Paul: Paragon Press, 2001) 320.
11. The closest allusion to conscience in contemporary discourses of human rights is Michael Perry's idea that human rights require an "existential affirmation": "We should neither doubt nor forget . . . that the sacredness of every human being has been, at best, a merely intellectual affirmation much more often than it has been a truly existential one" (Perry 12). He does not develop explicitly what this existential affirmation might mean for him.
12. To be sure, Taylor is not claiming that morality is subjective in the sense of being based on arbitrary preference or whim. He makes a distinction between the form of morality, which is introspective, and the content, which must be other-centered or grounded in the "horizons of significance" which shape us. I am arguing that this inward relation to the self that is so important in modernity has been ignored by human rights theoreticians. See Charles Taylor, *The Malaise of Modernity* (Ontario: Anansi, 1995).
13. Both essays are found in Hannah Arendt, *Responsibility and Judgment* (New York: Schocken Books, 2003).
14. To be sure, Arendt is not saying that morality *is* merely customary, but that at this period it was no more solid than this. Morality had become a set of conventions with no solid foundation. She finds it "frightening" that morality should have become nothing but this (RJ 50).
15. Arendt is not concerned with religion as a resistance to immorality because, though she considers it important, "at the moment morality collapsed they [religious precepts and beliefs] played hardly any role" (RJ 63). She goes on to say that religion had become so private that it could no longer play a public role, that is, it was not considered a suitable justification for one's public actions.
16. Arendt quotes Nietzsche to affirm this: "if someone told us he needed a reason to remain decent we could hardly trust him any longer; certainly, we would avoid his company." This is so because he could always change his mind (RJ 131).
17. This is connected to her understanding of Kant, who claimed that we could organize a state even for a race of devils, as long as they're willing to obey the law.
18. Leviticus 19:18.
19. Matthew 7:12.
20. In both Latin and Greek, the word for consciousness was taken over to indicate conscience, while in French, *conscience* has both its moral and cognitive meaning (RJ 76).
21. It might be objected: what about people who do not have this disposition? It is even likely that the worst people do not have this disposition. We will return to this problem below. To anticipate, Arendt suggests that we had better avoid such people. However, such people are not her primary concern.

She is not concerned with those who deliberately will evil, but those, like the ordinary people of Germany, who mean well but commit a kind of banal or thoughtless evil. While the former is quite rare, the latter is quite common.

22. To this extent, Arendt points out, morality is a precondition of philosophy itself, since morality is the implied condition of the silent dialogue that is thinking (RJ 95).
23. Take for example Cato's statement, quoted by Cicero, "never was he less alone than when he was alone" (*numquam minus solum esse quam cum solus esset*). For Arendt, this could have been translated as "never was he less lonely than when he was in solitude" (OT 476) (Cicero, *De Re Publica*, I, 17).
24. What a person will allow herself to do will change "considerably and uncomfortably" between people, cultures, and time periods, in both quality as well as dimension. This is why Socrates thought it was better to teach people *how* to think instead of *what* to think (RJ 101).
25. Seyla Benhabib, "Judgment and the Moral Foundations of Politics in Arendt's Thought," *Political Theory* 16: 1 (1988): 45.
26. The reason that the realms of morality and political judgment are strictly separated for her is because the standard of morality is the integrity of the self, while the purpose of politics is the world. Political action, then, must take the world into account, and not merely the harmony with the self. For an engaging discussion of this problem see Garrath Williams, "Love and Responsibility: A Political Ethic for Hannah Arendt," *Political Studies* XLVI (1998): 937–950. For a more critical treatment of Arendt's separation of morality and politics, see George Kateb, "The Judgment of Arendt," *Judgment, Imagination and Politics: Themes from Kant and Arendt*, eds. Ronald Beiner and Jennifer Nedelsky (Maryland: Rowman and Littlefield Publishers, Inc., 2001) and his extended treatment of Arendt, *Hannah Arendt: Politics, Conscience, Evil* (New Jersey: Rowman and Allanheld, 1984).
27. My thesis here goes against Seyla Benhabib's claim that Arendt fails to show us how the Socratic conscience and the enlarged mentality of moral reflection can be reconciled. She writes, "[i]n fact, the capacity for enlarged thought may well lead to moral conflict and alienation, but in a world in disarray, an attitude of moral alienation may be more at home in the world than an attitude of simple harmony with oneself" (Benhabib 45). I hope to show that it is not so much that our conscience needs to be consistent with our moral reflection and enlarged thought, but that enlarged thought is part of the formation of conscience.
28. Arendt discusses the complex relationship between thinking and judging at the end of "Thinking and Moral Considerations." She writes, "Thinking deals with invisibles, with representations of things that are absent; judging always concerns particulars and things close at hand. But the two are interrelated in a way similar to the way consciousness and conscience are interconnected. If

thinking, the two-in-one of the soundless dialogue, actualizes the difference within our identity as given in consciousness and thereby results in conscience as its by-product, then judging, the by-product of the liberating effect of thinking, realizes thinking, makes it manifest in the world of appearances, where I am never alone and always much too busy to be able to think . . . And this indeed may prevent catastrophes, at least for myself, in the rare moments when the chips are down” (RJ 189).

29. In “Crisis in Culture” she says that the *Critique of Judgment* “contains perhaps the greatest and most original aspect of Kant’s political philosophy” (BPF 219). In her *Lectures on Kant’s Political Philosophy*, she writes that besides the *Critique of Judgment* “Kant did not write his political philosophy” (LKPP 61). “Crisis in Culture,” *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1993). *Lectures on Kant’s Political Philosophy*, ed. Ronald Beiner (Chicago: University of Chicago Press, 1992).
30. Immanuel Kant, *The Critique of Judgment*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, 1987) 160.
31. Human rights create obligations, both positive and negative. Concerning the right to life, I have an obligation not to violate this through my actions. Concerning the right to an education, I have the obligation to work towards ensuring this right for all people. Conscience can help us to understand where these obligations come from and why we ought to fulfill them. The reason I should not violate the right to life is not merely because it goes against the law, but because such an action is impermissible to my conscience. In this sense, it is not that I *should* not violate this right, but that I *cannot*, even if it were legal. If Arendt is correct, then such a foundation will make human rights much more reliable than any “objective” explanation of rights by itself.

NOTES TO THE CONCLUSION

1. For more details on Arendt’s life, see her biography written by Elizabeth Young-Bruehl, *Hannah Arendt: For Love of the World* (New Haven: Yale University Press, 2004).
2. It is interesting to note how this position resembles her own experience with assimilation. “But before you cast the first stone at us, remember that being a Jew does not give any legal status in this world. If we should start telling the truth that we are nothing but Jews, it would mean that we expose ourselves to the fate of human beings who, unprotected by any specific law or political convention, *are nothing but human beings*. I can hardly imagine an attitude more dangerous, since we actually live in a world in which human beings as such have ceased to exist for quite a while” (JP 65) (italics added).
3. The distinction between a “who” and a “what,” that is, a person as a unique individual, vs. a person as a woman, minority, homosexual, etc., is made in *The Human Condition* 178–9.

4. Ultimately, the problem with violence will prove to be that the means always overwhelms the ends. Whenever violence attempts a goal, it always ends by producing more violence and rarely achieving its goal.
5. This point is highlighted by Iris Marion Young who writes, “[t]he successful achievement of any socially organized ends depends on power.” Iris Marion Young, “Power, Violence, and Legitimacy: A Reading of Hannah Arendt in an Age of Police Brutality and Humanitarian Intervention,” *The Political*, ed. David Ingram (Malden: Blackwell Publishers, Inc., 2002) 95.
6. Further, this is why opinion (*doxa*, an expression of how the world appears to you) is so essential to politics.
7. We must make a distinction between Arendt’s understanding of statelessness and the legal definitions that are employed today. Arendt’s understanding of statelessness was very broad—it included any person who was not able to receive the protection of his or her government, for whatever reason (denaturalization, exile, etc). The larger category that the stateless fall into is that of superfluous people. Superfluous people were those who were not rooted in a class, society, country or nation; they were people who were not needed or wanted, and whose deaths made little difference to anyone. This fundamental rootlessness, usually accompanied by loneliness, prepared Europe for totalitarianism, but did not end once totalitarianism was over. Stateless people were superfluous in the sense that their existence was politically irrelevant to either the country of their citizenship or the country to which they had fled, and consequently, to the world at large. Their defining characteristic is that they do not matter, that they are of no importance. This was an existential condition as much as a political one. For Arendt, the stateless include all those who are denied the right to have rights, the right to be protected by a state and the right to act in and build a community.

The legal definitions of statelessness differ from Arendt’s and the defining characteristic is not an existential condition, but a legal status. The first attempt to define stateless people came after the Second World War, in the United Nations Convention relating to the Status of Refugees (1951). This Convention gave the term refugee a very precise definition: a refugee is one who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or unwilling to return.” The precision of this definition allowed governments to make a clear distinction between those who “counted” as refugees and those who did not. Consequently, it excluded large numbers of people who, though having lost the protection of their national government, did not qualify for the protection of the international community. Today, for example, of the 32.9 million people who are “of concern” to the UN High Commissioner for Refugees, only 9.9 million are considered refugees according to this definition (see www/unhcr.org/home).

Of the other groups left out of this definition, three are most important. First, there are people who, though persecuted and denied government protection, are unable to leave the borders of their country. These are *internally displaced persons* (IDPs). There are currently 12.8 million internally displaced people in the world, as compared to the 9.9 million refugees. Nowhere are IDPs given the same protections or even recognition as refugees. Because they remain within the borders of the country that is persecuting them, they exist in a situation that is even more fragile than the tremendously precarious situation of refugees. IDPs are sometimes referred to as the “forgotten refugees” since they are not even afforded the minimal legal protection granted to legal refugees.

Second, the Refugee Convention definition excludes people who are stateless in the sense that they have no passport or other documentation, and consequently do not have citizenship in any country. For example, people of Haitian descent who are born in the Dominican Republic are regularly denied birth certificates or other documentation. Such people are stateless in the most radical sense, since many of them have never belonged to a state. Today, there are at least 5.8 million stateless people, though this number is one of the most unreliable since many governments do not keep track of stateless people within their borders.

Finally, the Refugee Convention leaves out people who are forcibly displaced from their homes—either through natural or environmental disaster, wars or revolutions, or extreme poverty. They are left out because such migration is considered “voluntary.” It is assumed that they had the choice to remain where they were, while refugees, fleeing persecution, are thought to have left against their will. While it is hard to see how there is a genuine alternative to migration in either case—the “choice” to stay and die from hunger seems no more rational than the choice to stay and be tortured by a government—this vague notion of choice separates people who are afforded legal protection from those who are not.

Clearly, this definition of a refugee is not meant to accurately delineate and solve the problem of statelessness. The definition is meant to be politically expedient—it is intended as much to keep some people out as it is to allow refugees in.

8. Kristeva also agrees that the problem of refugees and foreigners in general can be traced to the heart of modernity. For most of history, she tells us, the foreigner was simply an enemy to be destroyed. Yet within the bounds of religion, the foreigner became something to be embraced. We need only think of the importance of caring for the alien, orphan, and the widow in the Bible to see what she means. Indeed, the central meaning of the escape of the Israelites from Egypt in the Old Testament is the importance of caring for the other: “you shall not molest or oppress an alien, for you were once aliens yourselves in the land of Egypt” (Exodus 22: 20).

Kristeva points out that despite the political or ethical limitations of Judaism and Christianity, these traditions remained a genuine barrier against xenophobia. Yet with the decline in transcendence characteristic of modernity, these religions also lost their weight and could no longer act as such a barrier. Thus, she characterizes the problem of the foreigner as a genuinely modern problem since it only became a problem when the religious traditions could no longer act as a barrier. For Kristeva, all groups follow a certain logic. They define themselves by those who they exclude but use other structures—moral and religious—in order to confront what has been excluded and set aside. Yet without these structures in place, that which is excluded cannot be confronted. Hence the situation of the foreigner arises—the person who is excluded from citizenship cannot be confronted or dealt with through religion or any other non-political means. Kristeva 2.

9. The two most comprehensive studies on refugees and refugee policy are Arthur Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century* (Oxford: Oxford University Press, 2003) and Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993). Neither discusses belonging as a fundamental right.
10. Giorgio Abamben, *The Coming Community*, trans. Michael Hardt (Minneapolis: University of Minnesota Press, 2005) 86.
11. Michel Foucault, *History of Sexuality: An Introduction, Volume 1* (New York: Vintage Books, 1990), especially part five, “Right of Death and Power over Life.”
12. Aristotle, *The Politics* 1252b 30.
13. Aristotle 1278b 23–31.
14. This is a point that Arendt, Agamben, and Kristeva all make concerning the *Declaration of the Rights of Man and Citizen*. All three authors remark that the human being as understood in article 1—the person as bare life, as they are “born”—is immediately swallowed up into the figure of the citizen in article 2 (“the goal of every political association is the preservation of the natural and inalienable rights of man”). Bare life immediately becomes political and tied to national sovereignty. As Kristeva points out, it was precisely this slippage that led to the creation of nation-states and the nationalist movements of the 19th and 20th centuries. The French Revolution initiated a demand for national rights of peoples rather than universal rights for mankind. Kristeva 150.
15. Jacques Taminiaux makes the connection between *bios* and action clear. According to him, action is “the life of someone, not as an ephemeral temporal flux admits the cycles of nature, but as the irreversible sequence between life and death of singular events that can be told” (Taminiaux 29). In other words, action constitutes one’s *bios*, one’s biography. Without the capacity for action, then, it is impossible to transform *zoe* into *bios*.

16. Except, of course, when they are considered a security threat. The Army field manual on counterinsurgency makes this clear: “An insurgency often creates many groups of internally displaced persons and refugees on short notice . . . in [counterinsurgency] operations, internally displaced person and refugee security may take on heightened military importance. Traumatized and dislocated persons may become vulnerable to insurgent threats and recruitment.” This is the only capacity in which stateless people are politically important. U.S. Army, *Counterinsurgency Field Manual*, Ch 8, paragraph 8–41, December 2006.
17. “Humanitarian organizations working with refugees are finding it more and more difficult to secure funding for many of their projects. This is in part due to the increase in displaced people and therefore needs, but is also a by product of an unwillingness of the wealthier nations to make commitments to development aid and humanitarian action programs.” As Ruud Lubbers, former UN High Commissioner for Refugees put it: “It is bad enough that one-fifth of humanity consumes four-fifths of global income. But on top of this, to allow humanitarian programs aimed at assisting some of the world’s most vulnerable people—refugees—to remain grossly under-funded year after year is shameful.” In 2002 the UNHCR reported a short fall of some 100 million US dollars. Both quotations are from Lluís Magrina, “Forced Displacement at the Beginning of the 21st Century,” Jesuit Refugee Service meeting, Cairo, Egypt, August 2003, 8.
18. Samantha Power testifies to the depth of this problem. She argues that the non-governmental organizations that have emerged since Arendt’s day are the best hope that we have for securing human rights. This is because governmental organizations and states always have to keep the interests of their constituents in mind, and most often, the people of a state will be more interested in their own well-being than in protecting the human rights of those they have no connection to. Yet despite this, non-governmental organizations are not able to overcome the structural problems of human rights and, consequently, basic rights, such as the right to life, remain “insecure, arguably *as* insecure as it was during World War II.” Samantha Power, “The Lesson of Hannah Arendt,” *New York Review of Books*, April 29, 2004: 36.
19. As Antonio Guterres, High Commissioner for Refugees, recently commented: “There is not enough attention on the fact that four million people have been displaced and they live in very, very difficult circumstances, some of them, both inside Iraq and outside Iraq. And the expression of international solidarity is absolutely crucial because, until now, let’s be honest, they have been basically abandoned by us all.” Antonio Guterres, “UN Urges Help for Iraqi Refugees,” *BBC News*, April 17, 2007.
20. See for example, Amnesty International’s 2005 Report: “The blatant disregard for international human rights and humanitarian law in the ‘war on terror’ continued to make a mockery of President George Bush’s claims that the

USA was the global champion of human rights. Images of detainees in US custody tortured in Abu Ghraib prison in Iraq shocked the world. War crimes in Iraq, and mounting evidence of the torture and ill-treatment of detainees in US custody in other countries, sent an unequivocal message to the world that human rights may be sacrificed ostensibly in the name of security.”

21. Jeffrey Isaac puts this problem succinctly: “the human condition is a condition of plurality that requires human rights, but also renders human rights a never ending political—and imperfect—project rather than an achievable end-state.” Jeffrey Isaac, “Hannah Arendt on Human Rights and the Limits of Exposure, or Why Noam Chomsky is Wrong about the Meaning of Kosovo,” 532.
22. Arendt cites this quote from Augustine throughout her life: it can be found for the first time in her earliest work, her doctoral dissertation *Love and Saint Augustine*; it is the last sentence in *The Origins of Totalitarianism*; it is in her essay, “What is Freedom?”; and it is the last line of her last work, *The Life of the Mind*: “The purpose of the creation of man was to make possible a *beginning*: ‘That there be a beginning man was created, before whom nobody was’—‘Initium . . . ergo ut esset, creatus est homo, ante quem nulus fuit.’ The very capacity for beginning is rooted in *natality*” (LMW 217). According to the editor’s postface in this work, these words were written five days before Arendt died.

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