

A PLACE IN THE WORLD: HANNAH ARENDT AND THE POLITICAL
CONDITIONS OF HUMAN RIGHTS

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Hannah Arendt famously argued in the *Origins of Totalitarianism* that human rights were unable to protect the stateless people produced by the conflicts of the first half of the 20th century because they were unable to secure the 'right to have rights.' Commentators on her thought have puzzled over this phrase for over 50 years. The question is how to reconcile the clearly universalist spirit behind Arendt's reflections on rights and the clearly local character of her overall approach to politics. In this dissertation, I argue that Arendt's approach presents a profound critique of liberal human rights theory which is itself central to contemporary human rights theory. Specifically, I take up Arendt's claim that in order to be a bearer of rights, a person must have 'a place in the world'. I argue that Arendt's concept of 'world', an idea that she appropriated from Heidegger and outlined in *The Human Condition*, was already at work in *The Origins of Totalitarianism*. I further argue that it is only in light of her concept of 'world' that we can understand the 'right to have rights'. This dissertation is therefore both an interpretation the political thought of Hannah Arendt and an application of that thought to contemporary human rights theory and practice. It consists in an evaluation and critique of the role of human rights in international politics, engaging with normative human rights theory, as well as specific problems of statelessness, international responsibility and international intervention.

BIOGRAPHICAL SKETCH

Greg Dinsmore received his B.A. in Political Science from Université Laval in Quebec City, Canada in 1995. He received his M.A. from Cornell University in 2002.

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TABLE OF CONTENTS

Biographical Sketch.....	iii
Acknowledgements	iv
Table of Contents	v
Introduction.....	1
Chapter 1: Hannah Arendt and the Paradox of Human Rights.....	15
1.1 The Nation-State and the Perplexities of Human Rights.....	19
1.2 The Paradoxes and Perplexities of Human Rights	23
1.3 How to Understand the Right to Have Rights	28
1.4 Rightlessness and the Right to Have Rights.....	31
1.5 The Futility of Seeking a Ground for Human Rights.....	34
1.6 Sovereignty and Rightlessness	36
1.7 Rights, Politics and Plurality	42
1.8 The World as Crucial to the Right to Have Rights.....	44
1.9 Conclusion.....	47
Chapter 2: Natural Rights vs. Human Rights.....	51
2.1 Human Rights – Political, Not Metaphysical	55
2.2 Human Rights as a Common Concern	60
2.3 Sovereignty as Right to do Wrong	68
2.4 Conclusion.....	71

Chapter 3: Is There a Basic Right to Political Membership?.....	74
3.1 The Logic of Basic Rights	78
3.2 Liberal Conceptions of a Right to Membership	82
3.3 The Problems with a Right to Membership	86
3.4 The Boundary Problem.....	89
3.5 Political Membership Without Human Rights.....	92
3.6 Conclusion.....	95
Chapter 4: Arendt's Concept of 'World'.....	100
4.1 The World	107
4.2 Heidegger, Plurality and the World of Work.....	113
4.3 The World in the <i>Origins of Totalitarianism</i>	119
4.4 The World as Threshold Between <i>zoe</i> and <i>bios</i>	125
4.5 Conclusion.....	132
Chapter 5: Collective Responsibility	140
5.1 Responsibility in Arendt's Thought.....	145
5.2 Personal and Collective Responsibility	148
5.3 Personal Responsibility	149
5.4 Collective Responsibility	153
5.5 Common Responsibility	157
5.6 Collective vs. Common Responsibility	159
5.7 Promising, Consent and Obedience	162
5.8 Liberal Approaches to Political Obligation	164

5.9	Obligation, Consent and Obedience	166
5.10	Obedience, Consent and the Will	169
5.11	The Importance of the World to Promising	173
5.12	Conclusion.....	178
	Conclusion: Rights and Responsibility	180
	Bibliography.....	205

Introduction

Human rights stand at the centre of any contemporary consideration of international morality. Many would regard their enjoyment by everyone on the planet to be humanity's primary responsibility and, therefore, the fact that a large proportion of human beings cannot enjoy them, its biggest failure. However, what is most disturbing is that for the last century or so, as human rights discourse has gained strength and become incorporated into the relations between states through treaties and conventions, human suffering inflicted by humans seems to be on the rise. It is as though the more we affirm the innate dignity of human beings in global discourse, the more it is denied or denigrated in practice. One of the purposes of this dissertation is to explore this puzzle in an attempt to understand whether there is something in human rights discourse that contributes to the violation of its own principles or whether it is simply a matter of human cruelty and indifference outstripping our own ability to defend against it.

That human suffering might be linked to human rights was raised by Hannah Arendt after the Second World War as part of an attempt to understand how European society could have collapsed so completely to have allowed the atrocities of the Nazi and Stalinist regimes to have taken place. Her critique of human rights reprised Edmund Burke's at the time of the French Revolution. Burke argued that there was something paradoxical in

affirming the dignity of the human in general. For Burke, it was not the fact of one's humanness that conferred dignity but rather one's place in society. Similarly, Arendt was disturbed by conceptions of universal human rights that broke down as soon as human beings were no longer protected by their nation-state of birth.

Arendt's reflections on human rights are both promising and problematic. Unlike Burke who had no trouble dismissing the idea of the Rights of Man as dangerous, revolutionary nonsense, Arendt subscribed to the ideal of a common humanity that animates human rights discourse while remaining skeptical about human rights themselves. What struck her most forcefully was the insufficiency of human rights to the task of protecting and empowering human beings. It is for this reason that it is worthwhile to revisit her thoughts on the perplexities that surround human rights and the relationship between these reflections and her political theory more generally. Given the empirical inadequacy of human rights discourse to the task of protection human beings, it is worthwhile to reconsider, with Arendt, whether there is something about human rights discourse itself that gets in its own way. Arendt famously said that the point of her book, *The Human Condition*, was nothing more than to "*think what we are doing.*"¹ The point of this dissertation then is to think about what we are doing when we talk about human rights.

¹ H. Arendt, *The Human Condition* (referred to below as HC), (Chicago: University of Chicago Press, 1958), p. 5.

Arendt famously argued in the *Origins of Totalitarianism* that human rights were unable to protect the stateless people produced by the conflicts of the first half of the 20th century because they were unable to secure the 'right to have rights.' Commentators on her thought have puzzled over this phrase for over 50 years. The question is how to reconcile the clearly universalist spirit behind Arendt's reflections on rights and the clearly local character of her overall approach to politics. In this dissertation, I argue that Arendt's approach presents a profound critique of liberal human rights theory which is itself central to contemporary human rights theory and practice. Specifically, I take up Arendt's claim that in order to be a bearer of rights, a person must have 'a place in the world'. I argue that Arendt's concept of 'world', an idea that she appropriated from Heidegger and outlined in the *Human Condition*, was already at work in the *Origins of Totalitarianism*. I further argue that it is only in light of her concept of 'world' that we can understand the 'right to have rights'. This dissertation is therefore both an interpretation the political thought of Hannah Arendt and an application of that thought to contemporary human rights theory. It consists in an evaluation and critique of the role of human rights in international politics, engaging with normative human rights theory, constructivist accounts of the effects of human rights in international politics as well as specific problems of statelessness, international responsibility and international intervention.

Hannah Arendt's reflections in the *Origins of Totalitarianism* on the difficulties raised by the Rights of Man remain relevant for us in that they address the puzzle of human rights from two sides. On the one hand, human

rights represent the assumption of responsibility for the World which was made *one* by the confluence of modern technology and imperialism. As a political doctrine, the Rights of Man asserts that we all belong to a common humanity, that we all inhabit a common global world in which actions in one part are likely to have repercussions in any other no matter how far away, and that we all have a responsibility to protect and enrich this one world. On the other hand, human rights, as they are understood within the liberal philosophical tradition, tend to downplay the importance and the complexity of the individual's relationship to the world. For Arendt, rights are at most a partial means of establishing a proper relationship between the individual and the world he/she shares with others. The liberal tradition from which the human rights doctrine emerged suggests that respect and enforcement of rights exhausts the responsibilities we have as human beings (as opposed to the greater obligations that we may have as citizens of a state).

That both sides of the historical debate around rights, the revolutionary version inspired by the American Founding Fathers, and the anti-revolutionary version raised by Burke should both find expression in Arendt's thought is what makes it both interesting and challenging. With her background in continental phenomenology, she does not come from within the liberal philosophical debates around human rights. Though she does not take rights to be foundational, as liberals do, she still considers them to be an important part of our collective political life. Despite her understanding of politics as a kind of collective action, she is not a communitarian. Though she takes the political community seriously, her critique of rights does not rely on a

conception of the individual's obligation to a cultural community. Her idea of community is not cultural or natural (she was harshly critical of tribal nationalisms)², but rather mediated by a relationship to a shared world. She is not a Marxist, though she worries about the excessive formalism of human rights, she does not dismiss rights themselves as purely formal. Instead, Arendt develops an original conception of our political life as a relationship to a shared world that creates the conditions for human freedom. Her conception of rights is based on that worldly conception of politics and her critique of liberal human rights theory is based on the fact that it does not recognize that our rights can only be made possible by the same conditions that make possible our political life more generally.

Arendt was well-known for her criticism of the liberal tradition. She believed that liberalism was so wary of the dangers of communal life that it viewed "freedom from politics"³ as the goal of political life. By focussing only on negative liberties, liberalism attempted to protect the individual only in his or her private life while understanding public life as simply the place to pursue our private goals in competition with others. This had a number of consequences. One is the instrumentalization of politics, which is viewed as the means by which one advances one's private ends.⁴ Second is the understanding of politics as the domain of command and obedience, which she took to be a relationship modelled on the despotism of the private

² OT p. 226-234

³ H. Arendt, 'What is Freedom?' in *Between Past and Future: Eight Exercises in Political Thought*, (New York: Penguin Books, 1993), p. 150

⁴ HC p. 228-229

household. Both of these devalue the political life, which Arendt sees as based on a plurality of people acting in concert in a public place. Liberalism, by seeing politics as the realm of the gaining of power to pursue one's private ends⁵ conceives of politics as being primarily about managing violence.

Liberalism, as part of the modern era's rejection of the authority of religious institutions, also had a part in raising life to the highest good. Putting life at the centre of public concern had the effect of turning people away from the world, which, for Arendt, is the context in which freedom occurs. Together, these trends have contributed to a growing erosion of the political activity of individuals. It is clear that she viewed liberalism as part and parcel of the increasing trend towards world alienation that she identified in modern western political history. For Arendt, human beings who are alienated from the world are susceptible to totalitarian ideologies of the sort that she describes in the *Origins of Totalitarianism*.⁶

My approach in this dissertation will be to look at Arendt's critique of liberalism from a different angle, that of the question of human rights. By starting from the relationship between the world and human rights, I hope to be able to raise questions that will allow me to engage with problems in contemporary liberal human rights theory. The point is to look at the intersection between Arendt's thoughts on human rights and the contemporary

⁵ H. Arendt, 'On Violence,' in *Crises of the Republic*, (New York, Harcourt Brace Jovanovich, 1972), p. 136

⁶ HC p. 257

liberal thought on human rights, inspired by John Rawls, to see if the meeting can produce insights for both approaches.

In the first chapter, I look at Hannah Arendt's thoughts on the paradoxes of human rights. I outline the paradox as she described it in the *Origins of Totalitarianism*. Though many commentators who apply Arendt's thought to contemporary international politics, such as Seyla Benhabib, Jeffrey Isaac and Peg Birmingham, have suggested that her idea of a right to have rights presupposes some global conception of human rights, I will argue that this interpretation is inconsistent with Arendt's more general understanding of politics. Rather, the 'right to have rights' points to the political conditions of rights themselves. For Arendt, rights can only be enjoyed by people who have a stable place in the world. Rights must be understood as the product of politics rather than the foundation of politics. To the extent that the right to have rights can be guaranteed, it is only as part of political structures and institutions that derive their legitimacy from outside of rights discourse.

The second chapter explores the ways that liberal theory has responded to the challenge of constructing a political conception of human rights. Liberal conceptions of rights, such as those inspired by John Rawls, see a 'political' conception of rights in opposition to a 'metaphysical' conception. As a result, they attempt to develop justifications for human rights that are independent of comprehensive theories about the nature of the Good. Many contemporary human rights thinkers such as Charles Beitz, Thomas Pogge and Joshua

Cohen work on the implications of Rawls' ideas to international politics. I argue in that chapter that contemporary human rights practice cannot be completely separated from the liberal rights tradition. Even if it is possible to separate human rights from their traditional metaphysical justifications, it is not possible to separate them from the understanding of politics embedded in liberalism since its inception. Whatever else human rights are, they imply a conception of politics that makes the individual the source of legitimate state power. It is this conception, rather than any specific justification for it, which creates the paradoxes outlined in chapter 1.

Chapter 3 asks the question: is there a basic right to political membership? From a liberal perspective, the most common and straightforward understanding of Arendt's idea of a 'right to have rights' takes the form of the idea of a right to political membership. This seems straightforward because Arendt identifies the loss of human rights as being concurrent with the loss of a political community. Those who were cast out of the society of nations found themselves without any institution to guarantee their rights. It seems natural to go from her negative claim that the absence of membership in a national state led to the loss of human rights, to the positive claim that the right to have rights is the right to membership in a political community. Many thinkers, such as Seyla Benhabib and Frank Michelman, have interpreted Arendt's reflections on rights according to some form of this logic. In this chapter, I argue that if there are any basic rights at all, in the sense that they are described by Henry Shue, then we must understand the right to political membership as one of them. However, once we recognise the importance of political membership it

becomes clear that its conditions have the effect of denying the logic of basic rights. The problem of a liberal right to membership shows similarities to the boundary problem in democratic theory. Just as the democratic polity cannot be determined by way of a democratic decision, a limited political community that guarantees individual rights cannot derive its authority from the rights of its members. The distinction between member and non-member is not something that can be determined prior to a full understanding of the relationship between the individual and the political community to which they belong. Though it cannot help but be arbitrary from a moral point of view, membership cannot be considered a matter of Justice or Rights. Rights do rely on membership but membership relies on a much more complex set of political relations than can be guaranteed by rights.

In the fourth chapter, I return to Arendt's thought in order to outline what it means to have 'a place in the world.' For Arendt, the world refers to those things that are created by human activity – everything from buildings to political institutions. Human rights, like all elements in the world, are a product of human artifice. They are emphatically not natural. Following Dana Villa, I argue that the primary connection to the world – the basis for the 'right to have rights' - is productive or 'equipmental' before it is participatory. This is a counter-intuitive claim because, as I mentioned above, Arendt is harshly critical of instrumental or utilitarian approaches to politics. Nevertheless, by looking at the importance of Heidegger's influence on Arendt's conception of the world it is clear that 'usefulness' provides an important connection to the world. Drawing Margaret Canovan's interpretation of Arendt, I then go back to

the *Origins of Totalitarianism* to show that this equipmental conception of the world was operating in that book and that it is directly connected to her thoughts on the paradoxes of human rights. This treatment of the equipmental aspect of Arendt's concept of world refutes the argument, made by many Arendt commentators, that the right to have rights should be understood as a right to politics.

Chapter Five examines Arendt's conception of 'collective responsibility' as a further expression of what it means to have a place in the world. She argued that we are vicariously responsible for actions taken by our political community or in its name. She distinguishes responsibility from guilt. We are guilty when we commit wrong actions, but we are responsible for things that we ourselves have *not* done. As such responsibility is a feature of living in a political community to which *we do not choose* to belong. However, while this may often be thought of as a burden, Arendt suggests that it is considerably better than to be in a condition of absolute innocence. Absence of responsibility is, for Arendt, a sign of worldlessness and rightlessness. If we take this idea seriously, then there must be a connection between responsibility for a community, political participation, and the exercise of rights. Being part of the world means interacting with others within an artificial 'world' for which we assume a collective responsibility. Understanding that rights emerge out of our collective responsibility for an objective world that we share in common allows us to begin to think of political relationships that are not derived from the individual will. The Kantian inspired liberal tradition is concerned with deriving political obligation from the will of the individuals who

make up the state. While this is clearly true for Habermas, who sees his discourse ethics as a form of will formation, this is also true of the Rawlsian tradition, despite its attempt to escape liberalism's metaphysical legacy (see chapter 2). Understanding politics as based on collective responsibility allows us to conceive of spatially limited political units that are not based on sovereignty, which Arendt sees as the manifestation of the will in politics. Contrary to the liberal tradition, which derives political obligation from a kind of contract, Arendt, for whom promising is also a fundamental aspect of political life, sees promising as anchored in the world. In effect, promising requires the existence of political responsibility between many people in order to be realised.

That human rights might be related to collective responsibility for a spatially limited state certainly seems counter intuitive. However, most of the aporias that surround human rights are based on the tension between the universalist justification for human rights and the territorially delimited modern state. The liberal tradition is only really able to understand political inclusion and exclusion in legal terms. Arendt gives us a richer account of the character of political boundaries while acknowledging their necessity in creating the space where rights can be enjoyed. In the concluding chapter, I will summarise the argument of the dissertation and bring out the fundamental question raised by the dissertation – how should we understand the political world that is the basis for our having rights in Arendt's thought? How should we think about a worldly conception of political boundaries.

In the last section, I also use the concept of responsibility developed in the dissertation to look at the *Responsibility to Protect* – an attempt to reformulate the norm of sovereignty by the Canadian sponsored by International Commission on Intervention and State Sovereignty. I show that some the conceptual difficulties in that document become visible when one bears in mind Arendt’s conception of collective responsibility for a shared political space.

Understanding the importance of having a place in the world to the enjoyment of rights brings to light the difficulties that emerge from the legalistic and individualist language of contemporary human rights theory. There is no doubt that Arendt personally supported what she called, the “idea of humanity” – the principle that all human beings should have equality within a 'polis' . However, the question is whether this principle is best expressed in the language of human rights. This dissertation suggests that the most urgent moral challenges in international politics – notably, how to respond to humanitarian crises such as genocide and ethnic cleansing – may not best addressed through the language of human rights. This does not mean that we should not support international interventions in these crises. It is simply that we must acknowledge that even the most urgent international disasters are likely to resist a uniform legal response. Moreover, securing rights on a more permanent basis requires rebuilding the connection between people and their shared world. As such they require rebuilding the political institutions which

themselves can secure the rights of populations. This is difficult to accomplish within the framework of the current human rights regime.

The challenge of this dissertation is the attempt to make Arendt's political theory and contemporary liberal rights theory speak the same language. From a Rawlsian perspective, Arendt's is simply one more comprehensive conception of how political life might be organized and not a particularly persuasive one at that. From an Arendtian perspective, liberalism champions a freedom *from* politics, an unwillingness to acknowledge the unpredictability inherent in political life, which at its worst can lead to a desire to eliminate that contingency altogether. There is indeed a wide gulf separating these approaches. The effort is nevertheless worthwhile. Human rights are far from realized globally and often seem little more than an empty ideal deployed to justify less than noble actions. Given that Arendt starts with the claim that there is something about the historical articulation of the Rights of Man that contributed to the rise of totalitarianism, it is worth looking at her thought to see if there is something in the contemporary articulation of human rights that contributes to their current failure to secure something like the 'right to have rights.' It is my contention that Arendt's thought has quite a bit to contribute to questions raised within the Anglo-American thought on rights. With some exceptions,⁷ her thought does not receive very much attention in that tradition. It may therefore prove more fruitful to consider her approach in light of the

⁷ See for example, J. Waldron, "Hannah Arendt's Constitutional Politics," in D. Villa, ed. *The Cambridge Companion to Hannah Arendt*, (Cambridge, Cambridge University Press, 2000), pp. 201-219.

liberal tradition rather than the point of view of Habermas's discourse ethics, which is already very familiar with her approach.⁸

On the other side of this exchange, as rich and original as Arendt's thinking is, it is open to the charge of utopianism from even her sympathetic readers. It is important to see whether her original yet idiosyncratic view of politics can engage with more mainstream political thought. This dissertation applies her thought to the question of how to think about humanitarianism and international moral theory beyond the terms set by human rights discourse.

⁸ See M. Canovan, "A Case of Distorted Communication: A Note on Habermas and Arendt," *Political Theory*, (11:1, 1983), pp. 105-116 and S. Benhabib, *The Reluctant Modernism of Hannah Arendt*, (Thousand Oaks, CA: Sage Publications, 1996)

Chapter 1: Hannah Arendt and the Paradox of Human Rights

There is little doubt that the role of human rights in international politics has been increasing since the end of the Second World War. Their protection has been the guiding principle behind military interventions by the UN and NATO into Kosovo, East Timor and, belatedly, Rwanda. That they are even invoked in support of interventions which are clearly not (at least not only) about protecting human rights is further testimony to their importance. It has become almost universally accepted that, besides self-defence, the protection of human rights is the only legitimate reason for international military action.¹ Though some international relations scholars continue to argue that that their influence is considerably less than the relative power and interests of states, it is clear that, for the most part, moral action, whether by states or NGO's has been expressed through the protection and promotion of human rights.

The moral authority evoked by the idea of human rights brings them into frequent conflict with the sovereignty of states. Since the Treaty of Westphalia, sovereignty has come to signify the state's ultimate authority over all matters, moral, religious or otherwise that fall within its jurisdiction. The realist tradition in International Relations takes as its first principle that sovereign states either should or do pursue their national interest above all other considerations – especially moral considerations. Proponents of human rights therefore see state sovereignty as the biggest obstacle to the enjoyment

¹ Michael Doyle, "The New Intervention", *Metaphilosophy*, 32 (1-2, 2001) p. 222.

of human rights by everyone on earth. In Jack Donnelly's words, human rights offer the possibility of a "new standard of civilization... needed to save us from the barbarism of a pristine sovereignty."² Similarly, Jurgen Habermas argues that "(t)he rights of the world citizen must be institutionalized in such a way that it actually binds individual governments."³

However, the relationship between human rights and state sovereignty is considerably more complicated than both the liberal proponents of global rights and the realist proponents of state authority recognize. Christian Reus-Smit⁴ has persuasively argued that the moral authority that allows a state to be recognized as sovereign varies in different historical periods. He claims that in the modern international system, legitimate state sovereignty is itself based on the liberal conception of rights that developed in the 17th and 18th centuries. Once one accepts that the modern conceptions of sovereignty and human rights share a common historical origin then it becomes difficult to accept the aforementioned liberal position that they are fundamentally antagonistic. It raises the question of whether some of the negative aspects of the sovereign state system may have some connection to human rights and therefore raises doubts as to the ability of human rights to serve as a corrective to the problems of the international political system.

² J. Donnelly, 'Human Rights: A New Standard of Civilization?', *International Affairs*, Vol 74, no. 1 (Jan. 1998) 15-16.

³ J Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight' trans. J Bohman, in J. Bohman and M. Lutz-Bachmann eds, *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, (Cambridge, MA, MIT Press , 1997), p. 127

⁴ C. Reus-Smit, *The Moral Purpose of the State*, (Princeton, Princeton University Press, 1999).

A half century ago, Hannah Arendt expressed similar doubts about the adequacy of human rights to the task of rehabilitating international politics in large part because of their philosophical and historical entanglement with the sovereign authority of the Nation-State⁵. Her rather melancholy reflections on the paradoxes of human rights in a system of nation-states remain significant because we continue to live in a world that regards sovereignty and human rights as two mutually antagonistic regimes⁶. Some authors, such as Seyla Benhabib, Jeffrey Isaac and Peg Birmingham⁷ have argued that Arendt's reflections point the way towards the admittedly difficult task of securely grounding human rights on a global scale. Against this position, I will argue that Arendt's reflections in the *Origins of Totalitarianism* and in her later writings constitute the basis for a thorough problematisation of the liberal conception of human rights.

While Arendt certainly applauded the principle of humanity that inspired many Enlightenment thinkers and can still be said to animate human rights thinkers and activists today, the enshrinement of this principle in a conception of human rights that is still intimately linked to the sovereignty of states is far from being up to the task of guaranteeing what she called 'the right to have

⁵ H. Arendt, *The Origins of Totalitarianism* (referred to below as OT), (Harcourt Brace Jovanovich, New York, N.Y, 1973). 267-302.

⁶ See C. Reus-Smit, 'Human Rights and the Social Construction of Sovereignty', *Review of International Studies* 27, p. 519-538.

⁷ S. Benhabib, Seyla, 'Political geographies in a global world: Arendtian reflections', *Social Research*, (New York, 2002) 539-566. P. Birmingham, *Hannah Arendt and Human Rights*. (Indianapolis: Indiana University Press, 2006). J. Isaac, 'A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights', *American Political Science Review* (90, March 1996), 61-73.

rights.' I argue that the 'right to have rights', a formulation that, for obvious reasons, lends itself to multiple interpretations, is not best understood as an attempt to find a more secure ground for human rights than the one that was furnished by Enlightenment reason. For Arendt, the idea of a 'right to have rights' makes the point that the connection of individuals to a shared human world (the true condition of having rights, in Arendt's view) cannot be fully understood in the language of rights. It is not that human rights can have no philosophical ground, it is rather that such a ground would have no political consequence.

In this chapter I will outline the difficulties Arendt raises in the liberal conception of human rights. I will begin by explaining the paradoxes that arose in a system of nation-states based on the 'Rights of Man'. I will then argue that her well-known concept of a 'right to have rights' cannot be understood in the terms of liberal human rights theory and that those authors that attempt to do so achieve this only by dropping fundamental aspects of Arendt's political thought, most notably the understanding of human rights as part of a limited, shared political world and her understanding of the relationship of philosophy to politics. Finally, I will argue that Arendt's later thought can contribute to a better understanding of the relationship between human beings and their shared world in order to shore up that connection and prevent people from falling into the condition of rightlessness.

1.1 The Nation-State and the Perplexities of Human Rights

Writing shortly after the Second World War, Hannah Arendt was one of the first to reflect on the paradoxes of universal rights in a world characterized by multiple sovereign nation-states. The chapter entitled the “Decline of the Nation-State and the end of the Rights of Man” in the *Origins of Totalitarianism* examines the complexities of the relationship between rights and sovereignty and their ultimate connection to the Holocaust. While this chapter is sometimes read as a precursor to the liberal view, that the protection of human rights requires the establishment of global restrictions on state sovereignty, Arendt’s emphasis on the interrelatedness of these two ideas suggests that they cannot be conceived of except in relation to one another. Arendt’s reflections represent a thorough problematisation of the individualist conception of human rights that is prevalent in the liberal tradition.

Arendt was rather ambivalent about the value of the nation-state as a political form. On the one hand it is closely tied to dominance of biological concerns at the expense of genuine politics because it treats the nation as one large family or household, something that she criticises relentlessly⁸. She understood the troubles of the first half of the 20th century to be caused in part by the 'conquest of the state by the nation'⁹ - the undermining of the rule of law that occurred when the state was conceived of being in the service of the nation. On the other hand, at the beginning of the 20th century, it remained a

⁸ H. Arendt, *The Human Condition* (referred to below as HC), (Chicago: University of Chicago Press, 1958), p. 28

⁹ OT p. 185

limited political space that recognised the equality of its citizens – something she understood as fundamental to a stable political order. “(I)nsofar as the establishment of nation-states coincided with the establishment of constitutional government, they always had represented and had been based upon the rule of law as against the rule of arbitrary administration and despotism.”¹⁰ Flawed as it was, it was the nation-state system that was the last political barrier to fall before the onslaught of totalitarianism.

The acquisition of foreign lands and foreign peoples during the imperialist era strained the foundational principles of the nation-state. The nation-state in the modern period was based on the equality of citizens within a limited territorial space. As the imperialist states acquired more and more overseas territories, they acquired dominion over more and more people that they could not recognise as equals. What Arendt calls ‘race-thinking,’ the idea that inherent, hereditary differences justified political domination, was invoked to legitimise the domination of foreign peoples by the imperialist powers. “Imperialism would have necessitated the invention of racism as the only possible ‘explanation’ and excuse for its deeds, even if no race-thinking had ever existed in the civilized world.”¹¹ The difficulties involved in incorporating imperialist possessions into a national state set up a conflict between, on the one hand, the imperialists’ desire for infinite expansion and the arbitrary (proto-totalitarian) methods used by colonial administrators and, on the other, the desire of the political state to follow legal procedures which would recognise the claims of the colonised. In the Western European states these

¹⁰ OT p. 275

¹¹ OT p. 183-184

contradictions did not lead to totalitarian governments in the metropole because the national state had strong historical grounding and the imperialist possessions were in far-off lands¹². However, in Eastern Europe, where the national state was a recent and not fully realised achievement, a kind of continental imperialism developed in the form of the pan-germanic and pan-slavic movements that brought to the forefront contradictions that the nation-state system could not withstand.

The difficulties Arendt describes turn on the historical convergence of the 'Rights of Man' and the nation-state. Whereas during the Absolutist period, the power of the monarch was derived from his relationship to God, since the French Revolution, sovereign power was increasingly understood to rest on the prior inalienable Rights of Man.

Since the Rights of Man were proclaimed to be 'inalienable,' irreducible to and undeducible from other rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal. No special law, moreover, was deemed necessary to protect them because all laws were supposed to rest upon them. Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people's sovereignty (different from that of the Prince) was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the 'inalienable' rights of man would find their guarantee and become an inalienable part of the right of the people to sovereign self-government.¹³

The 'Rights of Man' and state sovereignty are therefore inherently linked but also in tension. The sovereignty of the state and the authority of the law

¹² OT p.243

¹³ OT p. 291

rested on them but, at the same time, limited their scope. Thus the constitution of national government was seen as the realisation of the 'Rights of Man'. The 'Rights of Man' could not impose any limit upon state power since to do so would involve constituting a second authority higher than that of the state, which could only rest on the same source.

This tension between the nation-state and the Rights of Man remained latent as long as the number of people who found themselves at odds with their governments was relatively small. Exceptions could be handled with laws granting asylum to those persecuted within their own states. However, these exceptional measures proved inadequate to the phenomenon of mass population movements that occurred in the interwar period. The failure of the nationality principle in the 'belt of mixed populations' led to millions of refugees and stateless people who suddenly found themselves unwanted in their nominal state of origin and unwelcome anywhere else. It quickly became clear that, in a world where human rights find their expression in membership in a national state, to be stateless was equivalent to being rightless¹⁴

Rightlessness is a condition far worse than that of being deprived of any specific right. For Arendt, rightlessness consisted in being without a place in the world where one can be recognised as an equal by one's peers.

Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his

¹⁴ OT p.292-294.

treatment by others does not depend on what he does or does not do.¹⁵

The effects of the perplexities surrounding human rights turned out to be profound. The nation-state system was built on the idea that the human rights were the most basic values in the secular political world. Yet it turned out that something more basic had to exist – membership in a community – in order to guarantee these rights. This meant that even though political power was thought to rest on human rights it turned out that practically, rights could only exist if they rested on political power. This paradox was embodied in the stateless person. As a person who had lost all specific political protection, she/he was the quintessential bearer of human rights: a human being *tout court*. As it turned out, that person was the one who found her/himself in the condition of rightlessness.

1.2 The Paradoxes and Perplexities of Human Rights

Hannah Arendt refers to the difficulties surrounding the emergence of human rights alternatively as a paradox and as perplexities. To call it a paradox implies an internal contradiction within the doctrine of the Rights of Man itself whereas perplexities imply multiple complications which might be both theoretical and practical. Since she tends to use the terms interchangeably, it is difficult to zero in on what constitutes *the* paradox.

¹⁵ OT p. 296

One understanding of the paradox of human rights seems to be the idea, according to the formulation offered by the French Revolution, that the source of individual human rights was the same as the nation's source of power and legitimacy. According to the Declaration of the Rights of Man and the Citizen, both the inalienable rights of Man and the power of the French nation were to be derived from the innate dignity of Man. The consequence of this is indeed a paradox. It meant that, practically, the Rights of Man could only be claimed as a citizen of a particular nation and that exclusion from a nation state became equivalent to exclusion from humanity itself.

The same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations, the same nation was at once declared to be subject to laws, which supposedly would flow from the Rights of Man, *and* sovereign, that is, bound by no universal law and acknowledging nothing superior to itself.¹⁶

Arendt goes on to show that in a system of nation-states, deriving law and power from the same source – Man – had the effect of subsuming the individual into a people. Though the Rights of Man were seen as self-evident, their only legal expression came in the form of national laws. If a people were denied their Rights, they were expected to fight for them. The principle of national self-determination was that each nation was responsible to guarantee the rights of its citizens. There was a need for a people to earn their rights. The problem is that the individual, whose rights were supposedly the source of all legitimate political power, was again subsumed into a people¹⁷. This result

¹⁶ OT p. 230

¹⁷ OT p. 291

was all the more problematic because of the mixing of populations, especially in Eastern Europe.

The practical consequence of this paradox is that the human being, stripped of her membership in a nation-state, turns out to have no rights at all. To the extent that these are human as opposed to civil rights, they are supposed to be the rights inherent in the fact of being human, prior to any political organization. The problem was that, as a practical matter, as soon as one found oneself as a human being tout court, that is, as soon as one found oneself in the situation that Human Rights are designed to provide for, it is at this precise moment that one finds oneself in the condition of rightlessness.

The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general – without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself – *and* different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.¹⁸

Thus human rights, the inalienable rights of human beings as human beings, served a source of legitimacy for the national state by authorizing its political power. The national state was then responsible for protecting the rights of its citizens. As a consequence, the only people who could expect to enjoy the benefits of human rights were those that were solidly incorporated into a national state. As soon as one found oneself without nationality – a

¹⁸ OT p. 302

human being as such – one found oneself in the condition of rightlessness. *The paradox is therefore that human rights authorize national rights which cancel out human rights.* Arendt presents human rights as, in Jacques Rancière's words, the 'rights of those who have no rights'¹⁹

Arendt draws on Edmund Burke's critique of natural rights at this point to show that the 'pragmatic soundness'²⁰ of Burke's critique of human rights comes from this recognition that individual, natural human rights did nothing for individual humans. It is important to note that Burke's Rights of Englishmen are not the Rights of Man as embodied in the laws of the United Kingdom but rather the inherited Rights that Englishmen acquire by their birth into the British legal system. They are not the particular expression of a universal law, but a set of recognized privileges whose particularity runs all the way down. Moreover, since rights could only be enjoyed from within a community anyway, the demand for natural rights that underpinned all political authority could only undermine those rights that had been inherited by virtue of membership within a community. It did so for two reasons. First, by deriving equality from a natural attribute of humans, it had the effect of diminishing the importance of the artificial, worldly rights that were guaranteed by history, tradition and circumstance. Second, it brought to bear what Arendt saw as Man's 'natural' suspicion of the natural.

¹⁹ J. Rancière, "Who is the Subject of the Rights of Man?" *South Atlantic Quarterly* (no. 103 (2-3) p. 302

²⁰ OT p. 299

Though Arendt never gives an unambiguous account of this 'natural' suspicion, she refers to it on at least two separate occasions. First, in discussing Conrad's *Heart of Darkness* in the *Origins of Totalitarianism*, she argues that the 'natives' inspired hatred and brutality on the part of the European settlers because, having not built an artificial world for themselves, they seemed not human and, at the same time, they clearly were. They inspired hatred because they were an unwelcome reminder of the natural side of human beings. The second reference to this question of the natural occurs later, in *The Human Condition*. There, she claims that one of the features of modernity is that human beings are only able to know what they make themselves. Knowledge of nature or scientific knowledge, is generated by artificially recreating nature by means of the experiment. The corollary is that modern human beings are unable to understand anything they have not made themselves²¹. An understanding of rights based on their inherence in human nature is highly problematic in a modern world that is suspicious of anything that is not 'made'.

If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually, the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.²²

²¹ HC p. 290-292, See also OT p. 298

²² OT p. 300

Another perplexity raised by Arendt's account of human rights is the problem that the loss of human rights does not correspond the loss of any of the rights enumerated as human rights. One could be deprived of any combination of the rights listed (the right to life, the right to free expression etc.) without being deprived of human rights in general and, conversely, one could find oneself in full enjoyment of all these basic liberties and still be in a condition of rightlessness²³. Having rights is not simply a matter of being able to move or speak freely, one must be able to stake a claim. The troubling condition of rightlessness as opposed to the situation of being deprived of certain rights leads Arendt to the ambiguous and possibly paradoxical formulation of the "right to have rights."²⁴

1.3 How to Understand the Right to Have Rights

The idea of the 'right to have rights' can best be illustrated by making a distinction between a *violation* of rights and a *denial* of rights. A *violation* of rights is a deprivation of one or more of the rights listed in the various declarations – free speech, assembly, property etc. If one is retried for a crime for which one was acquitted, one's protections against double jeopardy have been violated, but not one's right to trial, legal representation etc. A *denial* of rights is an action of placing a group of people in a situation of rightlessness. It does not deprive one of any of the rights that might be recognized in one of

²³ OT p. 295

²⁴ OT p. 296

the myriad documents in the human rights tradition. It put one in a condition of being unable to make a rights claim at all. In the current system, it is the condition in which people without states who recognize them find themselves.

Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.²⁵

The only way to make sense of this within the liberal tradition is as a kind of right to inclusion or right to membership which grounds, but is not included in, the enumerated list of 'rights'. This is the direction that Benhabib and Isaac seem to want to push Arendt, but, as Frank Michelman points out, this is not a productive way to understand Arendt's phrase, since it posits an idea of rights grounded in something we have 'naturally' by virtue of being human – something that Arendt argues against and that was a source of the paradox to begin with. Michelman suggests that the right to have rights points rather to the "irreparable groundlessness of rights"²⁶ and the necessity of protecting human rights as a kind of collective political challenge. This is probably right as far as it goes, but it begs the question of what the conditions of the practical, political protection of rights might be. But this just restarts the vicious circle by asking what are the conditions of the 'right to have rights'. It is just one iteration removed from the question of what are the conditions of

²⁵ OT p. 297

²⁶ F. Michelman, *op cit.* p. 207

having rights at all that inspired the paradoxical phrase in the first place. I will discuss the difficulties in thinking about a right to membership in Chapter 3.

The last element of the paradox is the fact that the emergence of humanity as an ‘inescapable fact’ actually cemented the condition of rightlessness among those who were stateless. Now that the entire planet is covered by treaties that reciprocally recognize the citizenship laws of each state, there is nowhere one can go to escape the condition of rightlessness. The paradox lies in the fact that every emergence of a universal humanity had the effect of further excluding certain people from the category of holder of human rights. The political emergence of universality cemented human rights as only enjoyable as particular, civil rights. It makes it clear that the condition of rightlessness is itself a product of the emergence of human rights on a global scale. As a product of civilization, rightlessness is as much an artificial condition as being a rights-holder. It is a product of civilization – manufactured barbarism.

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organised community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.²⁷

This phrase, ‘the right to have rights’ carries within it the paradoxes that produced our awareness of it. I argue that the paradoxes that Arendt discussed continue to plague contemporary human rights theory and practice.

²⁷ OT 296-297

1.4 Rightlessness and the Right to Have Rights

The recognition of the fact that the discourse of human rights had failed those who needed it most and contributed to the collapse of the nation-state system is the basis for Arendt's scepticism of human rights as being capable of guaranteeing human dignity. She argued that the events leading up to the end of the War served as an "ironical, bitter, belated confirmation" of Edmund Burke's arguments that the 'Rights of Man' were merely an "abstraction" and that "it was much wiser... to claim one's rights to be the 'rights of an Englishman' rather than the inalienable rights of man."²⁸ In spite of this, it has been argued that Arendt's concept of a 'right to have rights' is in fact an attempt to ground human rights more securely than they were in the first half of the 20th century. This leads to an interpretation whereby the proper body to guarantee the right to have rights would have to be some kind of supranational or international organisation.

The idea that Arendt believed that there ought to be some international guarantee of human rights is certainly not unreasonable. Consider the following quotation.

"This new situation, in which 'humanity' has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself."²⁹

²⁸ OT p. 299

²⁹ OT p. 298

She argues here that since humanity has become the source of political legitimacy, it is only humanity that could guarantee the right to have rights. Given Arendt's other work, such as *the Human Condition* and *On Revolution*, which emphasise local political deliberation, no one seriously believes that Arendt would endorse anything like a world state. Her experiences in the Second World War clearly convinced her that a world state could too easily be turned against its original purpose.³⁰ Nevertheless, some commentators do think that some form of international institutional guarantee for the 'right to have rights' follows from Arendt's reflections. Jeffrey Isaac argues for the recognition of a conception of 'human dignity' in Arendt's work that must be guaranteed by "a new law on Earth."³¹ Seyla Benhabib, while recognising that Arendt was reluctant to endorse a specific form of politics on moral grounds, sees this hesitation as a by-product of Arendt's fascination for Greek forms of political life. Benhabib believes that we need to think 'with Arendt against Arendt,'³² by recognising that her thought requires a 'normative core' in order to be made coherent. That normative core, for both Benhabib and Isaac, is apparent when we look at Arendt's commitment to the plight of the stateless and her insistence on the importance of political action for all human beings. They both read her thoughts on human rights in light of this implied universalism.

Arendt is not willing to go all the way with Burke... She cannot agree... that one's moral status is determined exclusively by one's local habitus, wholly "the offspring of convention," for if this were the case there would be little ground on which to condemn

³⁰ OT p. 298-299

³¹ J. Isaac, "A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights," *The American Political Science Review*, (Vol. 90, No. 1, Mar 1996), pp. 61-73

³² S. Benhabib, *The Reluctant Modernism of Hannah Arendt*, (Thousand Oaks, CA: Sage Publications, 1996), p. 198

the suffering and disempowerment of those stateless, homeless, marginal persons who fall between the cracks of national or other authoritative political identities and outside officially recognized categories of membership. And there would be just as little basis for the defense of the principle of human dignity, an emphatically universalist principle, one that Arendt insists must – the imperative is ethical – find a new guarantee.³³

Both of them take Arendt's clear sympathy for stateless people as a sign that she must endorse some form of institutional guarantee to prevent people from finding themselves in this position. Practically this means that the protection of 'the right to have rights' involves the recognition and adoption of human rights norms in international institutions, in the work of international human rights organisations, international tribunals for the prosecution of crimes against humanity, and even the tentative steps by the UN to intervene militarily in humanitarian disasters.³⁴

While Arendt would no doubt applaud many of these developments, it is my contention that understanding her as a kind of cosmopolitan *manquée* is wrong. One could certainly think that the expression 'right to have rights' is a call for re-evaluation of the rights we currently hold as fundamental in favour of another right even more fundamental. However, as Frank Michelman argues, the first 'right' cannot be conceived as a right at all but rather a recognition of the fact that human rights cannot be held as the fundamental political value in the way that liberal theory envisions because she refuses to let them be grounded in some 'feature of *us*'³⁵ Rather, for Arendt, rights themselves

³³ Ibid. p. 64

³⁴ S. Benhabib

³⁵ F. Michelman, *op. cit.* p.206

depend on political organisation for their appearance, their recognition and their enforcement. In Arendtian language, they depend on the existence of a shared human world.

1.5 The Futility of Seeking a Ground for Human Rights

A similar argument is made by Peg Birmingham in *Hannah Arendt and Human Rights*. Birmingham argues that Arendt did indeed provide an ontological grounding for human rights – in the twin principles of natality (initium) and givenness – in the combination of our capacity for initiating new beginnings with the fact of our individual uniqueness. She argues that human beings are *inherently* public³⁶ and that it is on this that the right to have rights, understood as the right to belong to a political community that ensures the freedom of expression and association, is grounded.

(T)he right to have rights, which is established through the principle of initium restated as the principles of publicness and plurality, is the right to belong to a political space. These principles carry the rights of freedom of expression and association.³⁷

I will discuss Birmingham's argument for grounding human rights in our 'second' birth in language at greater length in chapter 4. For now, it is enough

³⁶ P. Birmingham, *op. cit.* p. 69

³⁷ *Ibid.* p. 59.

to point out that interpreting the right to have rights as an attempt to point to a new grounding for human rights misses the point of Arendt's critique. Within the framework of Arendtian thought, one searches in vain for a ground for any of her political opinions. A philosophical reading of Arendt's political theory is already a distortion of her thought. She has explicitly described her work as an attempt to view politics "with eyes unclouded by philosophy."³⁸ Any attempt to ground human rights philosophically would represent an attempt to reconstruct a 'banister' which would release us from the responsibility of deciding for ourselves what must be done. Any attempt to implement such a philosophical conception of rights would be at best futile (because philosophical truth has no necessary compatibility with political action) and would likely be counter-productive because it either represents empty speech (promises with no hope of fulfilment) or is dangerous because it would involve the introduction of an absolute into the world.

However much Arendt differed with Burke in her insistence that equality was the condition of political life, she certainly agreed with him that the search for a philosophical justification for rights does nothing to secure rights for people. The only evidence we need for the political irrelevance of grounding the right to have rights can be ascertained by Arendt's discussion of human nature. Arendt does not deny a human nature, she denies an unchangeable human nature. Human beings, for Arendt, have the capacity for freedom – the ability to initiate a new chain of events. But this capacity is not permanent.

³⁸ H. Arendt, "What Remains? The Language Remains: A Conversation with Ginter Gaus," in *Essays in Understanding, 1930-1954*, ed. Jerome Kohn (New York: Harcourt Brace, 1994), p. 2.

The evil of totalitarianism is that it sought to change human nature, to destroy the human capacity of action. If this is possible then it makes no sense to speak of a ground for human rights.

1.6 Sovereignty and Rightlessness

On the other side of the question, Giorgio Agamben argues that Arendt's reflections on the Rights of Man pointed to a fundamental flaw in the Western tradition's understanding of politics. Unlike the liberal interpretations of the right to have rights mentioned above, Agamben does not believe that the paradox of Human Rights can be resolved by simply redoubling our efforts to have human rights recognised in international institutions and practice.

Agamben's analysis is a synthesis of Arendt, Michel Foucault and Carl Schmitt. Agamben takes the position that the right to have rights is integrated into the law by way of the sovereign decision. Drawing on Schmitt's *Political Romanticism*, Agamben argues that the Sovereign's decision on the exception that Schmitt saw as enabling the 'normal' functioning of the law is the same decision that marks the boundary between political life and *bare life*. Bare life, is Agamben's term for the natural, biological life which is integrated into the political system by way of its exclusion – i.e. bare life is the life that is treated as apolitical by the political power. In this way, juridical power and bio-power, which Foucault famously separated, are reconnected. The life that is

considered political (human beings as citizens) is governed according to juridical power – the law. Bare life is governed according to Foucault's conception of bio-power: as undifferentiated life. Agamben makes the argument that this relationship, based on the Sovereign exception, has been with us since the appearance of the Greek polis. The increasing dominance of bio-political practices since the Enlightenment chronicled by Foucault as well as the growing importance of social concerns criticised by Arendt (which both point to similar phenomena) are both symptoms of a growing indistinction between political life and bare life. This indistinction reached its apex with the appearance of the concentration camp in which human beings were reduced to bare life in its pure form. The concentration camp, for Agamben, constitutes the paradigm of the Western conception of sovereignty which will continue to hang over our heads unless we are capable of reconceiving the fundamental sovereign relation that has plagued Western political forms since the Ancient Greeks.

According to Agamben then, the paradoxes of human rights are not simply a consequence of modern human rights discourse but are rather embedded deeper still within the Western tradition of sovereignty, a tradition that goes back to the Greek polis. This makes for a far more pessimistic outlook than even Arendt's melancholic reflections seemed to warrant. Not only is it impossible to guarantee the right to have rights for those that are not citizens of nation-states but even citizens are increasingly being treated as though there are rightless

Though Agamben is right to see the paradoxes of human rights as related to the question of sovereignty he either ignores or dismisses two of Arendt's distinctions that put the problem in a different light. Whereas Agamben considers sovereignty to be constitutive of Western politics, Arendt argues that sovereignty and politics are nearly antithetical. Second, and relatedly, Arendt distinguishes between power and violence. Neither of these distinctions show up in Agamben's analysis. In itself, this is not surprising. Arendt argued that the confusion between these is at least as old as Plato's understanding of politics as subject to the expertise of philosophers. From Plato to the French Revolution and beyond, political philosophers have attempted to 'make' a good polis in the way one might make a piece of furniture. "You cannot make a table without killing trees, you cannot make an omelet without breaking eggs, you cannot make a republic without killing people."³⁹ The activity of fabrication, Arendt argued, is inherently violent. It is fundamental to the human condition – it is the process that has allowed us to build the artificial world that we inhabit. However, attempting to order our political relations according to this model necessarily treats human beings as means to be violently formed according to whatever schema the fabricator has in his/her head.

Arendt believed that the modern approach to sovereignty is philosophically tied up with the identification of freedom with the faculty of the will. She traced

³⁹ H. Arendt, 'What is Authority' in *Between Past and Future: Eight Exercises in Political Thought*, (New York: Penguin Books, 1993), p. 139.

this relationship back to St-Augustine (significantly, it was absent in Greek thought) and to the stoics. But the philosophical perplexities inherent in this understanding of freedom are clear enough in Kant's moral theory. In order to save freedom from the determinism that he saw in a universe governed by physical laws, Kant posited a transcendental standpoint such that actions which seemed to be determined by empirical causes could nonetheless be understood as being initiated by a free individual. Moreover, this freedom, located in the will, turns out to be obedience to yet another law, the moral law, rather than the natural physical laws that operate in the empirical world.

Arendt rejects this transcendental conception of freedom in favour of a political conception derived from the Ancient Greeks. For Arendt, freedom can only be realised in action. However, when freedom is understood as a form of sovereignty, politics becomes impossible.

Politically, this identification of freedom with sovereignty is perhaps the most pernicious and dangerous consequence of the philosophical equation of freedom and free will. For it leads either to denial of human freedom – namely, if it is realized that whatever men may be, they are never sovereign – or to the insight that the freedom of one man, or a group, or a body politic can be purchased only at the price of freedom i.e., the sovereignty of all others... 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. *Under human conditions, which are determined by the fact that not man but men live on the earth, freedom and sovereignty are so little identical that they cannot even exist simultaneously.* Where men wish to be sovereign, as individuals or as organized groups, they must submit to the oppression of the will, be this the individual will with which I force myself, or the 'general will' of an organized group.

If men wish to be free, it is precisely sovereignty they must renounce.”⁴⁰

Sovereignty is linked to human rights by the fact that both constitute a denial of human plurality. In a sense, the defining conflict between sovereignty and human rights is simply a conflict between competing sovereignties – that of the individual and that of the collective group. Arendt believed that it was possible to overcome this relationship by spreading out political power. Her example is the United States, where, in her view, the separation of powers and the federal system mitigated against sovereignty being held in one spot. She was concerned about the centralisation of power in the federal executive, a trend that has continued in the 40 years since she wrote on this, but, at least historically, the United States was seen to be able to resist the pitfalls of sovereignty.

This question of sovereignty is very closely related to Arendt’s concept of power. She didn’t see the separation of powers as limiting the political power of the United States, but rather as amplifying it. Power for her is always collective and always, at least to some degree, cooperative. When violent means are used, this is a symptom of the breakdown of political power. In the words of Lisa Disch, she rejects the idea of power as ‘leverage,’⁴¹ a force exerted by one individual or group over another most explicitly held by the political realists (“men’s control over the minds and actions of other men”).⁴² Rather Arendt sees power as the effect of human beings acting in concert, it is

⁴⁰ H. Arendt, “What is Freedom,” in *Between Past and Future*, (New York: Penguin Books, 1993), p. 164-165. Italics mine.

⁴¹ L. Disch. *Hannah Arendt and the Limits of Philosophy* (Ithaca, NY: Cornell University Press, 1994), p. 20.

⁴² H. Morgenthau, *Politics among nations; the struggle for power and peace [by] Hans J. Morgenthau* (Knopf: New York, 1967), p. 32

not a matter of physical strength or weaponry (though those things can destroy power) but of cooperation. As such, power can be magnified by being separated. The codification of this principle is one of the reasons for her admiration of the United States Constitution. Most importantly, though, power is replaced by force and violence when it is consolidated, whether in the individual or the collectivity. The paradoxes of human rights turn precisely on the conflict between the competing sovereignties of individuals and collectives, both of which seek to claim their rights through non-political means.

Much of Arendt's political theory is oriented towards disentangling politics from sovereignty and power from violence. *On Revolution* is precisely such an attempt. According to Arendt, the American Revolution succeeded in establishing a Republic (more or less) non-violently and without invoking sovereignty. The revolutionaries 'discovered' that power and violence are not synonymous and that by separating it, it would be augmented rather than divided. Her point is that sovereignty and politics, violence and power need not be thought of together. Her attempt to 'recover' an understanding of politics that maintained these distinctions is in part motivated by the paradoxes raised by the Doctrine of the Rights of Man.

The problem with Agamben's identification of politics with sovereignty and power with violence is that it compounds the paradox of human rights, making it both inevitable and unresolvable. If sovereignty is the decision that enables the distinction between violence and law and constitutes the political space *and* the rightless are those that are cast outside the pale of the law, it follows

automatically that the only possible political relation to them is one of violence. Moreover, if rightlessness is a necessary by-product of this distinction, then it becomes obvious that Western conceptions of politics require that there be rightless people with whom we can only relate in terms of violence.

However, Arendt provides us with the tools to think about this is a different way. For her, the 'right to have rights' is more than a legal category. It means to have a place in a shared, human world and rightlessness is the condition of someone who has been deprived of this relationship. Powerlessness has many manifestations for her of which the legal is only one. However, if we insist on equating sovereignty with the will and power with violence, then Agamben's dystopia may well be the inevitable result. I will show in subsequent chapters that this understanding of sovereignty still persists in contemporary liberal human rights theory and, for that reason, it is unable to escape the perplexities of human rights that Arendt raised.

1.7 Rights, Politics and Plurality

For Arendt, the difference between human rights and the 'right to have rights' turns precisely on the question of plurality.

Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.

The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the 'nature' of man.... The decisive factor is that these rights and the human dignity they bestow should remain valid and real even if only a single human being existed on earth; *they are independent of human plurality and should remain valid even if a human being is expelled from the human community.*⁴³

That human rights are conceived as 'independent of human plurality' means that they are understood as being valid prior to political organisation. The belief that sovereignty should rest on a state's ability to protect the rights of its citizens implies that these rights are prior to the state's authority, that the latter rests on the former. The liberal construction of the sovereignty/rights opposition implies that we must treat human rights as the absolute value in our political life.

The reason that political structures are so important to Arendt's view of the basis of the 'right to have rights' is that, for her, rights, freedom and equality are not natural, but artificial. They are a product of human beings working together to actively create the conditions in which we can regard one another as equals and we can guarantee each other rights. One may argue (with Benhabib and Isaac) that Arendt must assume a basic equality between human beings in order that they may recognise each other as individuals capable of creating the conditions of 'artificial' equality. In a sense this is true; she certainly believed that, under the proper circumstances, human beings were capable of this. But for Arendt, it isn't the case that they are naturally so. Human beings are capable of seeing each other as equals when they stand in

⁴³ OT p. 297 Italics mine

relation to a common world. Whether this is possible is a matter of historical circumstance. The worst excesses of imperialism came as a result of the inability of the Europeans to see many of the colonised as human beings. According to Arendt this was a result of them not seeing their societies as having built a common artificial world.

Also, the imperial era had the effect of making every point on the planet accessible, of bringing people together from all parts of the planet. In short, imperialism – the disastrous effects of which continue to be felt today – helped create the conditions under which it is possible to imagine a common world covering the entire globe. In short, it created the political conditions in which human rights can become a possibility.

(H)umanity, which for the eighteenth century, in Kantian terminology, was no more than a regulative idea, has today become an inescapable fact. This new situation, in which 'humanity' has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible.⁴⁴

1.8 The World as Crucial to the Right to Have Rights

Most attempts to come to terms with the right to have rights get caught up in the language of rights and the concept of humanity and, in so doing, miss the part of Arendt's formulation that connects the right to have rights most

⁴⁴ OT p. 298

directly to the rest of her thought. For Arendt, “the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.”⁴⁵ This one phrase turns all legal, moral or metaphysical conceptions of rights inside out. Human rights need to be understood in relation to a human world, a product of human artifice and the site which makes human action possible.

The right to have rights is a worldly condition for political action. It represents the connection between people and their shared human world. As a feature of the world, rights are reified action – things created out of the action of the past. Their value lies in their maintaining the link between individuals and the common world. The right to have rights is not a ground for human rights. Arendt’s conception of politics is based on appearance, there is no room for a ground. Even if we could determine what it was, it would be of no political consequence.

The importance of Arendt’s thought is that it points to the importance of the existence of a worldly self upon which rights may be inscribed. Thus the distinction is not between *zoe* (bare life) and *bios* as life that is fully empowered. It is between life that has a visible connection to a shared human world and one that does not. It is between those who have an artificial self and those that are deprived of this. Without a connection to the world, legal

⁴⁵ OT p. 296

rights have nothing to 'stick to'. They remain the rights of those who have no rights.

Furthermore, it may be possible for human beings to live with a visible connection to the human world and yet not have recognized rights. Human beings living in a tyranny for example. It seems that, under Arendt's understanding, human beings living in an arbitrary dictatorship may well lack rights but they might be difficult to eliminate by way of a genocide without first making an effort to sever their connection to the common world. Therefore, the right to have rights does not refer to having human rights but rather living in a condition where one may be able to claim rights – i.e. having an artificial, public self upon which to 'inscribe' human rights. This artificial self cannot be established through moral reasoning or the necessary features of free communication. Its grounding is not ontological but political in the widest sense compatible with Arendt's thought – i.e. having a relationship to a shared human world.

The consequence of this is that having the right to have rights has is not strictly speaking a matter of having rights. It is at most a necessary condition and as such is compatible with not enjoying rights at all. Thus the problem of the right to have rights cannot be solved by correcting the discourse of human rights but rather by specific political action designed to (re)establish ties to a common, shared artificial world.

Subsequent chapters will explore the consequences of this understanding of human rights. First, I will look at different contemporary conceptions of human rights in order to show that they are unable to resolve the perplexities of human rights precisely because they are unable to account for the worldly basis for rights. Second, I will look at the place of the 'world' in Arendt's thought in order to show how having a relationship to it constitutes the basis for an artificial self that can credibly enjoy a 'right to have rights'. This requires an understanding of responsibility in Arendt's thought since it is responsibility that establishes many of our ties to our shared world. Our artificial self is most apparent in our shared responsibility for a common world.

1.9 Conclusion

The fundamental paradox in Arendt's reflections on human rights is not primarily a matter of theory but rather a phenomenal problem of living in **one** world. It is as though once we had realized Kant's dream of a federation of sovereign republics that covered the entire planet, it turned out that man could no longer be recognized as a fully moral creature – an end in himself. The reality turned out to be beyond Kant's worst nightmare, not only were we not in a kingdom of ends, we weren't even in a kingdom of means. Human beings, qua human beings, turned out to be entirely superfluous.

No doubt Kant would not have recognized the League of Nations as the federation of republics that he had envisioned. However, Weimar was a republic in fact and the USSR at least in name, and the actions of both the Nazi and Stalinist regimes were not self-interested in the manner that Kant feared in the Perpetual Peace. The world consolidated by imperialism in the 19th century was surely not based on the regulative idea that nature, through human unsociability, was pushing us towards a peaceful international federation. However, the distortion of Kant's idea of humanity might well be compared with Eichmann's distortion of the categorical imperative into "act in such a way that the Fuhrer, if he knew of your action, would approve it."⁴⁶ The connection between the two lies in the selflessness of the actions that these distorted principles inspired. Eichmann's were the individualized version of the totalitarian impulse to remake the world in accordance with nature's law. In totalitarian ideology, Kant's 'pious hope' that nature was pushing us towards a kingdom of ends gave way to the deadly certainty that history was playing out a more basic class or race struggle.

Arendt's response to this was a reaffirmation of the importance of the human world. Not surprisingly, Arendt turned to Kant's critique of judgement to understand his political theory precisely because it was the only one of his critiques that was concerned with giving meaning to worldly affairs even if only as a spectator rather than an actor. The worldlessness of Kant's practical reason was too close to the worldlessness of totalitarianism for comfort.

⁴⁶ H. Arendt, *Eichmann in Jerusalem*. (New York: Penguin Books, 1994), p. 136

For this reason we need to understand the paradox of human rights as struggling with the problem that the doctrine of the Rights of Man produced, and continues to produce people who were radically cut off from the world. The challenge of political theory is to think about how this connection might be rebuilt or reinitiated. Insisting that human beings simply have rights and that they ought to be observed or protected misses the problem. Effective rights are the effects of coexistence in a shared world. Agamben's exclusive concern with the paradox in its legal form doesn't take into consideration Arendt's aim of re-establishing a connection between individuals and a stable human world of which legal recognition is only a part. To be sure, there is no way, within current legal structures, to guarantee that no one will ever find herself outside of the legal order. There may however be institutional ways to shore up the relationship between individuals and the world in such a way as to make it less likely that people will find themselves in this situation.

Agamben may well be right that so long as we continue to see life as the only source of politics and law we will not be able to escape the problems that have plagued human rights politics since its inception. However, Arendt provides one way to think about this through her conception of politics as primarily concerned with the world that houses our collective lives. By reaffirming the importance of our shared artificial world and of maintain our relation to it and by seeing rights as an effect of a proper relation of individuals to their world, we may be able to find remedies for the consequences of the

periodic destruction of shared worlds by wars, famines and, perhaps increasingly, environmental disasters.

Chapter 2: Natural Rights vs. Human Rights

Many contemporary human rights thinkers will not agree with my claim that contemporary human rights theory and practice do not take the political conditions of rights seriously enough. A good many of them, inspired by the work of John Rawls, explicitly view their approach as constituting a political understanding of rights and justice. They reject the Arendtian critique of human rights because they believe that the paradoxes that she identifies in the doctrine of the Rights of Man have nothing to do with human rights practice as it exists today. They see her critique, if it had any value at all, as applying to a philosophical tradition of human rights that was part of the Enlightenment conception of reason that inspired the French Revolution and the Declaration of the Rights of Man. They argue that contemporary human rights theory and practice can and should be disconnected from that philosophical tradition. In this chapter, I will argue that liberal attempts to distance themselves from what they see as the metaphysical grounding of human rights do not address the perplexities of human rights. The problem that Arendt was concerned with had nothing to do with philosophical justification (Arendt was never particularly interested in philosophical justifications of political arguments) but instead pointed to the political consequences of a doctrine of right that never seriously challenged the idea of sovereignty and instead merely shifted it from the state or the nation to the individual.

Many contemporary human rights thinkers, drawing on John Rawls, advocate separating the question of what rights we have from the question of why we have them. Authors such as Charles Beitz, Joshua Cohen and Michael Ignatieff advocate 'practical' conceptions of human rights which would "treat the justification of human rights as a distinct problem from that of their content."¹ Practical conceptions of rights are contrasted with 'orthodox' conceptions which "treat the justification of international human rights as internal to the conception of a human right."² The first derives the content of a human rights doctrine from a consideration of the way they function in international politics using philosophical argumentation to help to see how they can best fill that role. The second starts with a philosophical idea of what rights a human being has and then applies that idea to the international political world in which they operate. Advocates of the first 'practical' approach argue that persons holding different conceptions of the good life could agree about the content of a human rights doctrine but disagree about the justification and that we should not allow disagreement about the latter interfere with potential agreement about the former.

Without denying this last claim, I will argue in this paper that advocates of 'practical' approaches fail to justify the separation of these conceptions because they fail to acknowledge that the content of a human rights doctrine is related to its justification by the question of definition. Since the paradoxes we

¹ C. Beitz, 'Human Rights and the Law of Peoples', in D.K. Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy*, (Cambridge: Cambridge University Press, 2004), p. 202.

² Ibid. p. 197

are concerned with have to do with the role human rights play in international politics, we must understand what human rights are by the political role that they do indeed play. In short, one cannot have a conception of human rights without explaining what a human right is and one cannot explain what a human right is without explaining why we have them. Advocates of practical conceptions are certainly right that persons may indeed disagree about the justification and agree about the content but the range of disagreements about content may be limited by the role.

The primary reason that moral philosophers seek to separate justification from content is that they see this as subscribing to a metaphysical argument. They are concerned with separating the idea of human rights from the natural rights tradition which is itself embedded in the philosophical and political history of Western Europe. They are, quite rightly, worried that if human rights are too closely tied to that tradition, it may difficult for persons not raised in that tradition (or indeed, hostile to that tradition) to see them as anything but a new form of cultural imperialism. Thus, unwilling to give up on human rights altogether, they seek, in the interest of toleration and pluralism, to find a conception that could be supported by persons who do not share the philosophical history and traditions of Western European states.

John Rawls initiated this line of argumentation 20 years ago in his justification of liberal justice as ‘political, not metaphysical.’³ But because, at the time, his theory of Justice as Fairness dealt only with liberal states, this was a philosophical problem rather than a practical one. It became a practical problem when he attempted to extend the theory to non-liberal states in his ‘Law of Peoples.’⁴ The problem of human rights, for those inspired by Rawls, is to make them acceptable to persons who do not belong to the political and philosophical tradition of liberal rights. The most significant consequence of this approach, at least for Beitz, is to reject any limitation on what might count as human rights that derives from a philosophical conception of what human rights really are (such as understanding them as purely as Lockean negative rights, as Maurice Cranston argued).⁵

I argue in this chapter that a practical conception of human rights, based on Rawls’ approach – is not really a political approach. Any political conception of human rights must address not only the content of a human rights doctrine (in the sense of what rights human being ought to have) but also the question of what a right is, at least in the sense of their political function. Beitz’s rejection of any a priori limit on what may count as a right is not a necessary consequence of abandoning a metaphysical justification for rights. For example, if the concept of a right requires that there be someone or some institution capable of providing a remedy in cases of violations then

³ See J. Rawls, ‘Justice as Fairness: Political, Not Metaphysical’, *Philosophy and Public Affairs*, (14 (3), 1985), pp. 223-251.

⁴ See J. Rawls, *The Law of Peoples*, (Harvard University Press, Cambridge, Mass, 1999)

⁵ See M. Cranston, *What are Human Rights?*, (Bodley Head, London, 1973)

this would impose certain limitations on what could be understood as a right. The right to breathe clean air may be an example of a right that might be excluded in such a conception. This requirement – that every right have a corresponding remedy – is not obviously metaphysical.

2.1 Human Rights – Political, Not Metaphysical

Many contemporary liberal human rights thinkers, inspired by John Rawls' ideas of *Justice as Fairness* and the *Law of Peoples*, understand their conception of justice as political and their understanding of human rights as a part of this conception. When Rawls claimed that he espoused a political conception of justice, he specifically opposed it to a metaphysical claim. The purpose was to avoid the charge that he was advancing an account of Justice in the Platonic sense. His project was to show that it is possible to arrive at a political system that allows persons holding different conceptions of the good life to work together in a system of social cooperation. Rather than base his normative theory on a universalist understanding of human rationality, Rawls tried to base his conception of justice on an overlapping consensus between these, individually held, reasonable conceptions of the good life. Rawls's understanding of politics is determined by its relationship to 'metaphysics.' Rawls denied that there should be a direct link between one's fundamental personal beliefs and the political system of which one is a part. If you are a Catholic living in a society made up of many religions, you have no right to expect that the state should be a Catholic state. You would be willing to

accept the separation of church and state in order to ensure that political power would not be wielded against you by a rival group.

In reconsidering his idea of 'Justice as Fairness' subsequent to the publication of a *Theory of Justice*, Rawls claimed that 'Justice as Fairness' operated in the context of the 'fact of reasonable pluralism'. Rather than base his normative theory on a universalist understanding of human rationality, as in a *Theory of Justice*, Rawls bases his conception of justice on an "overlapping consensus"⁶ between multiple, individually held, reasonable conceptions of the good life. He assumes that individuals have some idea of the good life they wish to pursue. It is then possible to imagine a political system as a system of social cooperation that allows each individual to pursue his/her conception of the good life according to a shared conception of political justice. This is the basis for his original position in which parties choose the principles that govern their society behind a veil of ignorance that prevents them from knowing anything about their particular conception of the good or their economic well-being. This mechanism yields his well-known two principles of Justice. The principle of equal liberty and the difference principle: a redistributive principle that ensures that all economic inequalities must be to the benefit the least advantaged members of society.⁷

⁶ J. Rawls, *Political Liberalism*. (Cambridge, Mass: Harvard University Press, 1993), p. 133-134

⁷ Ibid. p. 5.

In the *Law of Peoples*, Rawls takes states rather than individuals to be the parties in an international original position. He starts with an agreement between liberal states. Behind a veil of ignorance, they choose a set of principles to govern relations between them. According to Rawls, they would arrive at eight principles which cover most of the standard beliefs about what sovereign states owe each other in the international system. They include the principles of non-intervention, prohibition against aggressive war, and honouring human rights. These principles correspond roughly to the principle of equal liberty in the domestic sphere. They guarantee the physical integrity and independence of states. Rawls does not include an international equivalent of the difference principle resisting the path taken by thinkers such as Charles Beitz and Thomas Pogge.

The next stage in his theory is the extension of the law of peoples to 'decent' non-liberal states. Rawls describes such societies as follows:

(A) decent people must honor the laws of peace; its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory. Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society. And, finally, there must be a sincere and not unreasonable belief on the part of judges and officials that the law is indeed guided by a common good idea of justice.⁸

Included in the 'system of law that must follow a common good idea of justice' is the respect for human rights. Rawls has in mind here a hierarchical

⁸ J. Rawls, *The Law of Peoples*, p. 67.

society based on a widely held conception of the good (such as a state religion), which nevertheless respects minority rights and provides some form of political access to all its citizens. These states must also be non-aggressive internationally.

Rawls assumes that, if such 'decent' hierarchical societies were to be included with liberal states in the original position, they too would endorse the principles of the Law of Peoples. Rawls wants to include them because of the liberal value of toleration arguing that "if all states were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society."⁹ He is concerned that, if they could not co-exist with 'decent' non-liberal states, liberal societies would be asserting that theirs is the only just way to organise societies and this contradicts their own deeply held value of toleration. Since political liberalism is largely dependent on the value of toleration, it seems contradictory for them to resist tolerating alternative conceptions of the proper ordering of society. Moreover, since Rawls is treating states as moral agents, it would be *unreasonable* for liberal societies not to tolerate these alternative conceptions. Thus, the concept of 'reasonableness' undergoes a change from the domestic to the international sphere. In the domestic sphere, 'reasonable' individuals were those who could cooperate with other individuals with different conceptions of the good life in a system governed by the principles of political liberalism. In the international sphere, 'reasonable' is characterised by being able to co-exist according to the principles of the law of peoples. The

⁹ Ibid. p. 59.

individual's comprehensive conception of the good has the same status as a people's conception of legitimate organisation of state power.

The role of human rights in Rawls' conception is to help set the boundaries of decency and therefore of sovereignty. States are decent if they respect human rights and, for this reason, they gain the right of non-interference into their affairs. States that do not respect human rights are labeled 'outlaw states' and are subject to whatever interference is both feasible and prudent to protect the rights of its citizens. For Rawls, human rights are included with other conditions in order to set the standards of decency. Beitz and Cohen ultimately roll these conditions into their understanding of human rights such that their role is to set the boundaries of decency - understood as the conditions that states must follow in order to enjoy the right of non-interference in their affairs.

Thus contemporary liberalism seems to have escaped the paradox that Arendt pointed out. Since the human rights that limit intervention internationally are not the same as the idea of justice as fairness that justifies political coercion internally, it can be said that individual rights and state power are not being derived from the same source. It should therefore be possible to escape the perplexities that Arendt described.

2.2 Human Rights as a Common Concern

In a series of articles, Beitz has developed his own conception of human rights which he understands as based on Rawls' practical conception of rights in *The Law of Peoples*. He argues for a conception of human rights split off from their roots in theories of natural rights. His argument is based on a Rawlsian understanding of the relationship between politics and metaphysics. He argues that human rights, thus conceived, can indeed function as the language of global justice. They are the best candidate for this role for two primary reasons. First, at this time, human rights discourse is the only candidate to fulfill that role. There are a number of treaties and declarations in effect that have already secured the explicit endorsement of a strong majority of the world's governments. Second, Beitz believes that human rights as they are outlined in various international declarations and treaties, can function as a 'common concern' for individuals holding different, conflicting, reasonable conceptions of the good life, and as such can attain some degree of legitimacy among many or all of the various cultures that make up the world.

Beitz's idea of a 'common concern' is modeled on Rawls's conception of an 'overlapping consensus' but with important differences. Whereas an overlapping consensus suggests an already existing, though latent, agreement between agents holding different fundamental beliefs, a 'common concern' suggests only an agreement that a question (in this case human rights) is of compelling interest to these agents. This is important because it

requires much less actual philosophical agreement while simultaneously allowing for a wider conception of human rights. Less philosophical agreement is necessary because justifications need not converge between different groups – they may agree on a conception of human rights for different reasons. A more expansive understanding of human rights is possible because the content need not map directly onto the justification – human rights as a common concern may be understood as a jumping-off point for a discussion of human rights the scope of which is potentially unlimited. It need not be restricted by a pre-existing zone of commonality between groups.

The upshot of this is that Beitz endorses a wide conception of human rights. He resists the idea that human rights can and should be reduced to an authentic core which should then be defended more vigorously than other, less fundamental, rights. He endorses a view that has been called 'justificatory minimalism' by Joshua Cohen. The idea is to use a modest set of philosophical assumptions to generate a conception of human rights that nevertheless advocates for the implementation of a broad list of rights. Beitz resists the 'substantive minimalism' of Michael Ignatieff, arguing that modest philosophical assumptions do not imply a narrow list of human rights. The difference turns the *role* we expect rights to play. Ignatieff sees them as emergency measures, designed to motivate Western powers to action in particularly dire circumstances. Beitz would like them to serve in broader but less dramatic ways, much as they already do in setting the terms for

international aid. He sees them as important components of a global theory of justice.¹⁰

Beitz's distinction between 'practical' and 'orthodox' conceptions of human rights serves to clarify his point that human rights need not rely on natural rights. "The distinguishing feature of (the orthodox) conception is the idea that human rights have an existence in the moral order that is independent of their expression in international doctrine."¹¹ That is to say it attempts to use philosophy to generate a list of 'genuine' human rights and a justification for them. As a result, these conceptions tend to present a much more restricted list of rights. Practical conceptions look at the role human rights actually play in the international sphere and use that as a basis for a conception of rights. Beitz claims that the orthodox view carries with it a hidden dogmatism because it relies on a specific historical tradition in political thought to criticise the actual political practices of states and human rights organisations. He argues that human rights play a far more expansive role than the one proponents of the orthodox view would allow.

If natural rights are about guaranteeing individual liberty against infringement by the state, human rights are about this and more: to put it extravagantly, though I think not wrongly, international human rights, taken as a package, are about establishing social conditions conducive to the living of dignified human lives.¹²

¹⁰ C. Beitz, "Human Rights as a Common Concern", *American Political Science Review* (95:2, June 2001), p. 281

¹¹ C. Beitz, "Human Rights and the Law of Peoples," p. 5

¹² *Ibid.* p. 41

Beitz has three objections to the orthodox conception of human rights. Human rights, according to natural rights theory, are supposed to be pre-institutional, timeless and inherent in the human person. This conception is derived from 17th English contractarianism. Rights are pre-institutional in that they originate in a state of nature, where the individual is conceived of as prior to political and social organisation. For early natural rights theorists like Locke, the purpose of a social contract is to ensure that everyone's rights can be enjoyed without conflict. They were conceived of as inherent in the human person because they were seen as properties of the person in himself or herself, prior to any form of society. They belong to human beings either naturally or as a result of God's creation. Since rights inhered in human nature, which is usually understood as unchangeable by definition, they were also seen as timeless. Beitz claims that none of these elements of classical rights theory apply to contemporary human rights practice. Moreover, to the extent that they might indeed rely on an explicitly metaphysical understanding of human nature, they are necessarily incompatible with reasonable pluralism if they are imposed on people who do not share the idea that all human beings were born free and equal and with inalienable rights.

These three components of 'dogmatic' human rights doctrines relate differently to the political role played by human rights. It is true that, for Kant, Right is timeless, pre-institutional and inherent in the human person (though, as is often pointed out, there are hazards in directly translating Kantian Right into individual rights – for Kant, it is the justification for Right that is individualized (because human beings are ends in themselves) not the content

(since Kant admits no right of rebellion against a monarch who violates the law)). However, if we are to believe Edward Andrew (1988), Locke was more interested in individualizing *the Right* in order to distinguish Rights from Christian charity, than he was in providing a metaphysical justification for the Rights he attributes to human beings in the state of nature. Indeed, many interpreters of Locke (such as Leo Strauss or C.B. MacPherson) argue that all of his professed belief in natural law was little more than a smokescreen to ensure that his justification of individual acquisitiveness was not taken to be simply a more palatable version of Hobbist atheism¹³.

The content of Locke's religious conviction or lack thereof is an old controversy that we need not revisit here in any detail. Regardless of whether we think Locke took the idea of natural law seriously, it is clear that, for him, the pre-institutional character of rights was simply a feature of the role that rights were intended to play in his thought. He was making the argument that in order to be legitimate, all political societies had to respect the rights and the property of its citizens as well as refrain from anything that might interfere with the accumulation of wealth. This last part included both the idea of toleration (because free commerce cares little about the beliefs of those with whom one trades) and the idea that the state should discourage charity because people need the incentive to work. The same can be said of the inherence of rights in the human person. Regardless of whether we believe, as Locke claimed to, that human beings were, by virtue of their divine origins, born with inalienable

¹³ See C.B. Macpherson, *The political theory of possessive individualism : Hobbes to Locke*, (Oxford Univ. Press, London, 1962), Strauss, Leo. *Natural right and history* (University of Chicago Press, Chicago, 1959)

human rights, the point of the argument is that rights are things that human beings hold against their governments and not by virtue of them. Inherence in the human person is simply another way of stating that there is a difference between human rights and the rights that are granted by states in positive law. It reflects the idea, fully operative in contemporary human rights discourse, that human rights are something more than the positive laws of states.¹⁴ Even if we remain agnostic on the question of the metaphysical origins of human rights, to the extent that we believe human rights to be claims that individuals can make against their own states, we act as if they were inherent in the human person.

All of this implies that the distinction between orthodox and practical approaches to human rights is difficult to hold. Even if we regard human rights as reflective of a larger sense of justice, this does not mean that the orthodox view does not remain part and parcel of both human rights theory and practice. Even Rawls, whom Beitz presents as a theorist of the practical approach to human rights, establishes priorities between 'liberties'. The rights espoused by minimalists as the only 'real' human rights receive highest priority (the lexical priority of the 1st principle of justice over the 2nd principle) in his domestic theory and the prioritisation of 'urgent rights' in his law of peoples. In international practice as well, it is only egregious violations, violations that are inevitably of the rights held by the minimalists to be fundamental, that trigger interventions. While other considerations may trigger *interference*, these are

¹⁴ J. Cohen, "Is there a Human Right to Democracy?" in Synowich, Christine, ed. *The Egalitarian Conscience: Essays in Honour of G.A. Cohen* (Oxford University Press, Oxford: 2006), p. 230

not always considerations of rights (such as economic adjustments required by the World Bank and the IMF).

This points to a residual 'orthodoxy' in all 'practical' approaches to human rights. In my view, this stems from the fact that a distinction must be made between the principles of a global theory of justice and human rights themselves. Historically, it has been the case that this distinction has not always been made and some ideas that are perhaps not best expressed in the language of rights end up entrenched in Human Rights resolutions. This is not to say that these principles are not really human rights but rather that they are not best pursued through rights discourse. The reason for pointing this out is not to somehow restrict access to rights discourse only to minimalist conceptions but to recognise is that expressing a claim in the language of human rights has practical as well as theoretical import. We cannot ignore the fact that rights language carries with it the baggage of natural right theory even if we limit our understanding of human rights to the political role that we expect them to play internationally. It relies on a conception of legitimate political authority that has its roots in Locke, Rousseau, Kant and others of the liberal tradition.

Beitz and Cohen and others who try to extract philosophical consistency from international human rights documents and practice are engaged in a difficult project. The primary obstacle is the fact that the Universal Declaration as well as the other similar documents seemed to be designed to create

confusion around their content. The expression of rights as aspirations in the Declarations was clearly designed to make it harder for them to have any significant effect on the political structure of the non-liberal democratic states and, for the Eastern bloc states, reflect the idea (as expressed in Marx's *The Jewish Question*) that rights are only features of non-ideal societies. None of this diminishes the importance of the documents or the accomplishments of international human rights in the 60 years since the Universal Declaration. However, it raises questions about the applicability of any kind of philosophical rigour to the interpretation of the document.

At one level, making a virtue out of the declarations necessary ambiguity is an interesting project. The rights outlined in the various treaties that make up the human rights regime have been publicly agreed to by the majority of the states on the planet and, insofar as these states can be said to represent the cultures of the world, the commitments found therein have been supported by a large percentage of the cultures in the world. Moreover, human rights, as they have been laid out in the various Declarations have become integrated international human rights practice, have become incentives for international aid and loans as well as barriers to normal trading relationships. Thomas Risse and Katherine Sikkink have shown how human rights can alter the internal makeup of a state (their identity) in order to make them into rights-respecting members of international society.¹⁵

¹⁵ T. Risse, and K. Sikkink, "The socialization of international human rights norms into domestic practices: introduction." in T. Risse, S. C Kopp and K. Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change*, (Cambridge: Cambridge University Press, 1999) p 1-38.

But none of this answers the question of what is at stake in recognizing current international norms as human *rights*. Beitz at times seems to argue as though this doesn't matter at all. It is of no importance whether human rights are rights in the same sense as civil rights, so long as they improve the lives of individuals around the world in accordance with the aspirations of the Declarations. In this account, the justification of human rights is radically separated from their content as though these two questions belonged to separate language games. At other times, the separation is not quite complete.

2.3 Sovereignty as Right to do Wrong

A productive way to understand the way in which state sovereignty and human rights are connected as a political matter is to think of both as different versions of the right to do wrong. Human rights represent an individual right to do wrong – the right to lead one's life according to one's own conception of the good life or even to fail to live up to one's own conception of the good life as the case may be. State sovereignty, on the other hand, represents a state level right to do wrong. The rule of non-interference suggests that state actions towards their own people are its own business. The state has the right to mistreat its own people without external interference. This is the 'barbarism

of pristine sovereignty'¹⁶ that enrages human rights activists. If we accept this description then we can see that human rights mark the boundary between an internationally recognised *individual* right to do wrong and an internationally recognized *collective* right to do wrong. Decent regimes are wrong, from a liberal point of view, because they don't follow the precepts of liberal justice: full equality, equal participation, not favouring any single conception of the good life etc. However, their deviations from liberal justice are acceptable because they still recognize basic human rights. To put it another way, under practical conceptions of rights human rights simply mark the barrier between individual and collective sovereignty. As such, despite having jettisoned the natural law justification of human rights, contemporary human rights cannot escape the problems that Arendt raised in the *Origins of Totalitarianism*.

Edward Andrew, in *Shylock's Rights*, makes the argument that 'the right to do wrong is the moral core of liberalism'. He makes the case that liberal rights theory emerged as a counterpoint to the Thomistic idea of Christian charity. It effectively 'personalised and relativised'¹⁷ the Right as it was outlined in Thomistic natural law. Christian charity was anathema to early rights theorists for two reasons. On the one hand, it placed limits on property rights by demanding that the needs of the poor be attended to by the wealthy and by preventing the lending of money with interest. On the other hand, by enjoining Christians to convert non-Christians, it made it difficult for commerce to flourish between people of different religions. In short, Rights were conceived

¹⁶ J. Donnelly, op. cit. p. 15-16.

¹⁷ E. Andrew, *Shylock's Rights*, (Toronto: University of Toronto Press, 1988), p.7

against Christian charity as the “means to express a tolerant market morality.”¹⁸ The liberalism of Locke sought to carve out a space of individual autonomy – a right to do wrong that permitted the individual to dispose of his property as he/she sought fit (whether by selling his labour or lending with interest) and to worship as he/she sought fit.

This idea of sovereignty as a recognized right to do wrong permeates both practical and orthodox conceptions of human rights (to use Beitz’s distinction). It does so because it is a feature of liberal toleration. The point of establishing a distinction between liberal regimes and decent regimes is to try to establish a list of human rights that would be acceptable to certain non-liberal states. The sovereign right to do wrong, on this approach, can be understood as the gap between liberal Justice and Human Rights. This gap exists regardless of the way we might justify human rights. For human rights minimalists, it is the gap between international human rights (or basic rights, however conceived) and domestic civil rights. For practical human rights theorists, it is the gap between human rights and full liberal justice. This gap is mandated by a commitment to liberal justice.

Now it is clear that, within liberal states, the limit of the right to do wrong is protected by constitutional rights. The state may pass the laws it wants, provided they do not violate the constitutional rights of its citizens. The domestic collective right to do wrong is limited by the constitutionally protected

¹⁸ Ibid. p. 21

individual right to do wrong. The proper relationship between the two is set out according to the principles of liberal justice. Liberal justice is a matter of establishing the proper balance between an individual and a state right to do wrong. International human rights operate the same way except that the principle of toleration applies differently. Domestically we tolerate different conceptions of the good life. Internationally, we tolerate deviations from liberal principles.

The upshot of this is that the 'decent' regime's right to do wrong necessarily comes at the expense of the individual right to do wrong of the citizens within its borders. This brings back the zero sum game between sovereignty and human rights that is at the heart of Arendt's critique of human rights. Regardless of the justification provided for human rights, they remain connected to sovereignty by way of the relationship between competing 'rights to do wrong'. That is to say that even though human rights may not share the philosophical justification with natural rights, they share a political function. It is this political function that produces the perplexities Arendt pointed out.

2.4 Conclusion

I have argued in this chapter that contemporary liberal attempts to separate human rights from natural rights do not succeed in insulating them from the perplexities that Arendt raised. Even if we set aside the question of

metaphysical justification and define rights by the role we expect them to play, it is not clear that we have moved very far from Lockean origins. To be sure, the role of rights for Locke was to emancipate the use of property from the constraints of Christian charity, but it did so by safeguarding a zone of discretion where individuals could claim to do as they pleased and not have to answer to a morality external to their own. In Beitz's account, this amounts to the conditions conducive to living a dignified life. But the important point is that to lead a dignified life, one's rights must be recognized.

Furthermore, in shedding the metaphysical justification, they do not shed the understanding of human rights as *rights* – as the relativisation of right. Human Rights fulfill whatever aspirations we may have in international politics by conferring *claims* instead of say, seeking to reduce suffering. The role they play is, at least in part, concerned with protecting an individual right to do wrong from the state's right to do wrong. In short, it attempts to set up a balance between individual and state sovereignty.

However, the balance that they strike does nothing to counteract the problems Arendt raised. As long as individual rights feed into state sovereignty by providing the legitimacy for it, then human rights become collapsed into state sovereignty. They are effective only to the extent that they are entrenched in the positive law of a state that recognizes one's membership. In the next chapter, I will show why liberalism cannot accommodate a right to membership to meet this challenge. To address this

problem, in subsequent chapters, I will return to Arendt's thought, moving beyond rights discourse in order to understand what rightlessness really means – the loss of a place in a shared human world.

Chapter 3: Is There a Basic Right to Political Membership?

I have argued thus far that Hannah Arendt identified a problem with the liberal conception of human rights that continues to plague human rights discourse into its contemporary understandings. According to Arendt, human right theory does not account for the worldly, political conditions that make the enjoyment of rights possible. In the second chapter, I argued that the contemporary shift to a political conception of justice does not address the problem that Arendt raised. The issue is not primarily with the justification of rights themselves but their function as legitimizers of political authority. In this chapter, I consider a possible liberal approach to the problem of rightlessness – the idea of a human right to political membership.

The most common and straightforward understanding of Arendt's idea of a 'right to have rights' takes the form of the idea of a right to political membership. This seems straightforward because Arendt identified the loss of human rights as being concurrent with the loss of a political community. Those who were cast out of the society of nations found themselves without any institution to guarantee their rights. It seems natural to go from her negative claim – the absence of membership in a national state led to the loss of human rights, to the positive claim – the right to have rights is the right to membership in a political community. Many thinkers have interpreted Arendt's reflections on rights according to some form of this logic. Frank Michelman claims that though ungroundable, Arendt's formulation points to a right to

inclusion within a political system¹. Peg Birmingham takes it a step further, arguing that Arendt's idea of a right to have rights amounts to an endorsement of a right to a very thick conception of membership and that this right is grounded in the human condition of natality². Seyla Benhabib puts the problem precisely in terms of the relationship between the positive right and the negative interdiction: "Is there a human right to membership? I want to argue that there is and that this right is the obverse of the interdiction against denaturalization."³

The problem of membership is not unknown to liberal thinkers. Many liberals have wrestled with the question of nationality and immigration which necessarily entail, to some degree, the question of the terms of inclusion in a liberal state. Moreover, the Universal Declaration recognises the right to a nationality and the right to self-determination, though there is some question as to what this may mean. Most liberal thought along these lines has turned on the questions of what kind of obligations we might have towards our co-nationals and how those obligations may or may not differ from those we may have to non-nationals. The right to membership moves beyond these questions by putting pressure on the distinction between national and non-nationals. The urgency of this question lies in the existence of a large number of people in the world who can be said to belong to no state. This ranges from

¹ F. Michalman, 'Parsing 'A Right to Have Rights.' *Constellations: An International Journal of Critical and Democratic Theory* 3:2 (October 1996). p. 205

² P. Birmingham, *Hannah Arendt and Human Rights*. (Indianapolis: Indiana University Press, 2006).

³ S. Benhabib, *The Rights of Others. Aliens, Citizens and Residents*, (Cambridge University Press, 2004).p. 128

the officially stateless Palestinians and Tibetans to all those living in refugee camps because they cannot return to their 'national' state of origin for fear of persecution.

Given the potential misery of living under the condition of statelessness, it is certainly reasonable to argue that the right to membership ought to be included as one of the 'basic rights' that may be the condition for enjoying any other rights whatsoever. Henry Shue's argument that subsistence rights ought to be considered as *basic* did not deal directly with questions of membership but the logic of his approach applies just as easily to political membership. Arendt's reflections present a good case that no rights can be enjoyed unless one's membership within a community is secure. Shue argues that *basic* rights are those rights that cannot be denied without preventing the enjoyment of all other rights⁴. Membership fits this condition at least as convincingly as subsistence rights. To the extent that Justice implies compensation for the 'lottery of birth' which grants some people comfortable lives and some lives of want based on the state into which one is born, there is a temptation to argue that it must address membership. Surely there is nothing more arbitrary than the political society into which one is born.

I will argue that if there are any basic rights, then we must understand the right to political membership as one of them. However, recognizing the importance of political membership has the effect of denying the logic at the

⁴ H. Shue, *Basic Rights*, (Princeton, N.J.: Princeton University Press, 1980), p. 19

heart of the claim to basic rights. The distinction between member and non-member is not something that can be determined a priori. Though it cannot help but be arbitrary from a *moral* point of view, membership cannot be considered a matter of Justice or Rights. Rights do rely on membership but membership relies on a much more complex set of political relations than can be guaranteed by rights. The arbitrariness of membership is an inherent in our political existence. It is something that liberal-democratic theory must contend with without attempting to overcome. In short, the difficulties surrounding membership point to an irreducible boundedness in the enjoyment of rights. This prevents us from understanding human rights as the bedrock upon which our other rights are based. In order to show this, I will start by examining the logic of basic rights in order to show that political membership must be considered to be among them. Next I will consider the boundary paradox in democratic theory in order to highlight the similarities to the paradoxes of human rights raised by Arendt. I will show that rights cannot provide the basis for their own political foundations and must refer to political structures outside of themselves to establish the criteria of membership necessary for their own existence. Since membership is a requirement for having rights of any kind (even subsistence rights), it cannot be conferred by way of rights discourse. The only alternative is to recognize the central importance of membership *within* democratic deliberation.

3.1 The Logic of Basic Rights

Henry Shue's idea of *Basic Rights* was originally conceived as a counterpoint to the position, commonly associated with Maurice Cranston, that human rights could only be negative rights. Cranston argued that the expansion of rights in the Universal Declaration to include 'social rights' was philosophically incoherent⁵ (Cranston 1983). Shue makes the argument that certain social rights, specifically the right to the necessities of life, are necessary for the enjoyment of the negative rights that Cranston espoused. According to Shue, it is these 'basic rights' that should be accorded first priority in any morally just foreign policy.

Basic rights... are everyone's minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept. Why should anything be so important? The reason is that rights are basic in the sense used here only if the enjoyment of them is essential to the enjoyment of all other rights. This is what is distinctive about a basic right. When a right is genuinely basic, any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself.⁶

So if we believe that rights are important, Shue argues, then we must accept that certain basic rights, in this case, the right to personal security and to sustenance, must first be guaranteed because without these rights, none of the others could be reliably enjoyed. The right to free speech is of little value

⁵ M. Cranston, *What are Human Rights?*, (Bodley Head, London, 1973).

⁶ H. Shue, *op cit.* p. 19

to an individual if that person is unable to procure enough food and water to stay alive. Shue therefore cautions against a purely formal conception of rights that doesn't take into account the social and economic conditions of their enjoyment.

A similar logic can be seen at play in Arendt's description of a Right to have Rights. Rights are important, but there are some things that are required for rights to be enjoyed. As Frank Michalman puts it, "The fundamental Arendtian right is the right of political inclusion...Why is the right to inclusion fundamental – 'much more fundamental,' indeed, than 'freedom and justice?' Because from it flows the very possibility of having (further) rights."⁷ Once one is stripped of membership within a political group, rights as they have traditionally been conceived are revealed as relying upon this status of belonging to a political community. When this belonging has been called into question, all other rights cease to be reliable. One may have freedom of movement, freedom of thought or freedom of expression, but these rights no longer have the proper context in which they can be exercised. As a result, they are susceptible to being taken away at any time for any reason. In short, the 'ground has been cut beneath them,' they have ceased to be rights at all.

This is not say that Shue and Arendt are making the same claim. Shue is making an argument about the nature of rights themselves. For him, *rights* are

⁷ F. Michalman, op cit. p. 205-206

a fundamental component to the dignified treatment of human beings.⁸ Arendt was concerned with the historical circumstance in which the rights of individuals were tied to a nation-state system that was breaking down under the onslaught of totalitarianism. It is the difference between the negative assertion: that when certain claims are denied that all rights cease to be effective, and the positive assertion: that these claims must therefore make up the basis for a more fundamental set of rights.

Basic rights establish a building block approach to political justification. There are fundamental human rights, to which every human being is entitled, at the base. If a state is able to protect those rights, other deviations from liberal justice may be tolerated. These are justifiable both on the grounds of practical applicability, liberal states can't go around remaking other states in their image without causing more damage than they might repair, and because it is consistent with the liberal value of toleration. Just as liberal states tolerate different conceptions of the good life in their domestic conception of Justice, they need to be able to tolerate some plurality in the way communities organize their political systems. The role of human rights in this approach is to set the limits to liberal toleration in the international system. When basic human rights are violated a good case can be made for international intervention to protect the people at risk.

The practical consequence of the idea of basic rights is that a more

⁸ H. Shue, op. cit. p. 14

restricted list of fundamental rights that must be defended internationally while a more expansive set of rights apply within liberal states. This approach can be seen in other liberal human rights thinkers such as John Rawls and Michael Ignatieff. Rawls considers human rights as a special class of 'urgent rights' that define the limits of toleration within international politics. Those states that violate human rights forfeit the right of non-interference in their affairs by 'decent' states that respect human rights.⁹ Other liberal thinkers such as Charles Beitz and Joshua Cohen have developed more detailed approaches based on Rawls's thinking. Ignatieff defends a 'minimalist' conception of rights on practical grounds, arguing that a more restricted list is easier to defend and has a better chance of achieving agreement from people coming from different cultures and political traditions.¹⁰ Both these thinkers establish a prioritisation of rights with basic human rights at the base and other rights resting on the support provided by them. There may be dispute over which rights should be prioritised and why, but the structure is the same.

For the most part, none of these thinkers can be said to explicitly include membership among the basic rights to which they believe everyone is entitled. However, it seems that most believe that once basic human rights are guaranteed, the recognition of political membership will already be guaranteed. Their approach is to establish a certain set of rights using philosophical argumentation and then argue that these are the rights that should be defended internationally. The political conditions under which they

⁹ See J. Rawls, *The Law of Peoples*, (Harvard University Press, Cambridge, Mass, 1999)

¹⁰ See M. Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press, Princeton, NJ, 2001)

might be attained are not explicitly considered. The suggestion is that if the current international system is not capable of supporting these basic rights, then efforts should be directed at reforming it until it does.

3.2 Liberal Conceptions of a Right to Membership

In an article entitled “Is Democracy a human right?” Cohen argues that though the full set of rights accorded by a liberal democratic state should not be all understood as human rights. However, in denying that democracy is itself a human right, he argues that political membership is. Human rights, for Cohen, are “entitlements that serve to ensure the bases of membership.”¹¹ In his view, they exist to ensure that human beings are treated as members by the communities to which they belong. The set of rights required to ensure the bases of membership is greater than the minimalist version that Shue advances – personal security and basic subsistence – but they are less extensive than full rights to democracy which he sees as being roughly equivalent to justice as fairness in Rawls’ account.

Like, Rawls and Ignatieff, Cohen understands human rights as a “proper subset”¹² of the full political rights protected in just democratic states. The idea behind human rights as a subset of the full set of rights required by

¹¹ J. Cohen 'Is there a Human Right to Democracy?' in C. Synowich ed. *The Egalitarian Conscience*, (Oxford: Oxford University Press, 2006) p. 226.

¹² *Ibid.* p. 226.

democracy is that there is a distinction between the rights accorded by a fully just state and those rights that must be respected in order for a state to be regarded as legitimate. To use Rawls' language, human rights set the standards for 'decency', and, like Rawls and Charles Beitz¹³, respecting these rights is what gives the state its claim to non-interference in its internal affairs. In short, human rights set the limits of a state's 'right to do wrong'¹⁴ – its right to deviate from principles of democracy or liberal justice in the name of local cultural concerns. "(T)he point is that a political society can, within limits, be unjust but beyond reproach."¹⁵

Cohen envisages such a 'decent' state to be one that generally treats its citizens well but may not be willing to grant full equality to all its citizens. For instance, it might want to establish a state religion and reserve certain official posts or even full voting rights to members of that religion. Cohen argues that such a state, though clearly unjust from a liberal point of view, might still be regarded as respecting human rights as long as it took the interests of minorities into consideration, respected their right to worship and allowed for public dissent. He sees there being three elements to conception of human rights as a subset of liberal justice. First, there is the idea of *self-determination*. A state must ensure that the interests of its people be taken into account in the governing of the state. This requires that there be some consultation, that political decisions be made publicly and that there be a right

¹³ See J. Rawls, *The Law of Peoples*, p. 80.

¹⁴ H. Shue, "Limiting Sovereignty", J. Welsh ed. *Humanitarian Intervention and International Relations*, (Oxford: Oxford University Press, 2004) p. 12

¹⁵ J. Cohen, *op cit.* p. 235

to dissent publicly. Second, there is an idea of *political obligation*. Liberal thought has long recognized that one might at times be obligated to follow an unjust law. This has implications for human rights because “(s)urely it is impermissible for outsiders to forcibly intervene to change arrangements with which members themselves are obliged to comply.”¹⁶ Lastly, there is an idea of *toleration*, which allows for differences between the standards of justice to which liberal states hold themselves and those to which they hold other societies in order to accommodate different political traditions.

Human rights therefore represent a lesser political standard that is not fully just, but is sufficiently concerned for all citizens that it would not be justified for liberal states to seek to alter its political makeup. Significantly, Cohen recognizes that the list of things that are required in order to guarantee membership is rather extensive. He emphasizes that his position is certainly not minimalist.¹⁷ Each of the elements discussed above mitigates against minimalism. Cohen does not specifically speak of a human right to membership, but it is directly implied in his argument. In denying a human right to democracy on the grounds that human rights do not require the full enjoyment of liberal democracy, Cohen is arguing that the lesser requirements that guarantee the bases of membership are indeed guaranteed by a theory of human rights. In saying that there is not a human right to democracy because human rights represent a ‘proper subset’ of the rights guaranteed by democracy and that that ‘proper subset’ are those rights associated with a

¹⁶ Ibid. p. 234

¹⁷ Ibid p. 232-235

particular view of political membership, Cohen is arguing for a human right to political membership. Cohen does not want to say that it isn't possible to live a dignified life if one doesn't live in a liberal democratic state. But he does argue that it isn't possible to live a dignified life in a state where one's political membership is not recognized.

Human Rights claims... identify goods that are socially important because they are requirements of membership. Failing to give due consideration to the good of members by ensuring that access to these goods is tantamount to treating them as outsiders, persons whose good can simply be dismissed in making laws and policies: no-counts, with no part to play in the political society.¹⁸

Cohen is wrestling with the issues of membership that Arendt raised in the terms Shue established in *Basic Rights*. He tries to ground human rights on a basic human need to belong to a political community. To be treated as a no-count is *more* than a violation of Justice. It is a violation of a principle of humanity that every state may be held to. The terms of basic membership – the content of a human rights doctrine – may be up for debate within the forum of global public reason, but the idea that every state ought to treat its citizens as members is a matter of basic human rights. Though Shue's concern is not for membership, he is similarly concerned that the denial of basic rights is an affront to human decency. It is because people's fundamental needs are not seen as rights, in Shue's account, that they are no-counts. "It is only because rights may lead to demands and not something weaker that having rights is tied as closely as it is to human dignity."¹⁹ Indeed it is as a language through

¹⁸ Ibid p. 238-239

¹⁹ H. Shue, *Basic Rights*, p. 14.

which the least well-off be able to exert a demand upon the affluent that *Basic Rights* generates its moral force.

3.3 The Problems with a Right to Membership

The trouble this type of approach is that it derives the existence of a human right to political membership from the observation that the enjoyment of human rights depends on the recognition of membership claims within a state. In Ignatieff's words, "we know from historical experience that when human beings have defensible rights – when their agency as individuals is protected and enhanced – they are less likely to be abused and oppressed."²⁰ The trouble is that equating human rights and membership is that it immediately raises without resolving the paradox that Arendt described: an individual who is stripped of his/her political membership finds him/herself in a position of a 'no-count', i.e. one who has no rights.

The first indication that the idea of right to membership is too simple a solution to the problem is that this relationship only works in one direction. While it can certainly be said that in order to have rights one must be a member of a polity, it is clearly not true that in order to have political membership one must have rights. There have existed many states and other political organisations that recognise membership without recognising rights.

²⁰ M. Ignatieff, *Human Rights as Politics and Idolatry*, (Princeton: Princeton University Press, 2001) p. 4

Thus, though the logic of basic rights implies that if there are any basic rights, membership must be one of them, any attempt to conceive of such a right simply reinforces the paradoxes associated with human rights. It ends up showing that political membership is more important to the enjoyment of rights than human rights can ever be to ensuring political membership. Membership is the basis for rights, but rights do not exhaust the conditions that establish political membership. As Arendt said, "Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity."²¹ We can lose all our rights without losing our polity, but not the reverse.

A further difficulty arises when we attempt to determine who is responsible for protecting basic rights in an international system with multiple sovereign states. In some of his work subsequent to *Basic Rights*, Henry Shue distinguished between primary duties and secondary duties to protect human rights. The national state of origin would bear the primary responsibility to protect the rights of its citizens. It is only when a state fails to do so (or indeed, is the one violating the rights of its citizens) that the responsibility falls to an institution outside the state, whether that be another state or an international organisation such as NATO or the UN. Shue calls this secondary responsibility a default duty²². A duty to assist when the primary agent is unable or unwilling to do so. He attempts to establish the groundwork for

²¹ OT p. 297

²² H. Shue, "Limiting Sovereignty", J. Welsh ed. *Humanitarian Intervention and International Relations*, (Oxford: Oxford University Press, 2004) p. 16

a limited and carefully specified duty to contribute to the protection of a basic right, like the right not to be killed, for non-compatriots would constitute one important piece of a sense that, besides national societies, there is also an international society with some minimal general duties attached to the most basic rights.²³

What is interesting here is that seeing the protection of human rights as a default duty corresponds precisely to Arendt's paradox in that they exist as a supplement to the rights of citizens. It accords civil rights practical priority over human rights. The rights that are most fundamental are exactly the rights that are most fragile. Shue is not unaware of the problem. It is because of it that he begins by trying to defend the minimal position that a state's right to sovereign non-interference is limited by the individual right not to be killed.²⁴ In part, this is a concession to the world in which we live. The nation-state continues to be a fundamental part of the international system and it makes sense that we design our humanitarian institutions with that in mind. There are also good moral reasons. Responsibility for everyone everywhere is too much for anyone to bear and requires, at the very least, some coordination. Moreover, state boundaries do correspond to certain shared histories, cultures etc. that may make the national state reasonably well-adapted to serving as a locus of political responsibility, at least in the first instance. Shue is simply arguing that if there is to be an international society, there needs to be some recognition of a duty to prevent the slaughter of innocent human beings. But the logic of Shue's argument restates the paradox almost precisely as Arendt constructs it: universal human rights (or basic rights) which are theoretically primary (they are the condition of the enjoyment of further rights) set the

²³ *Ibid.* p. 27

²⁴ *Ibid.* p. 18

normative ground for an international system that organises rights on a particularist basis and themselves retreat to (at most) a supplementary role – a default protection which, historically, has been practically near-impossible to enact.

3.4 The Boundary Problem

The difficulties that liberal theory has in establishing the basis for a right to political membership point to a relationship between the paradox of human rights and what has been called the 'boundary problem'²⁵ in democratic theory. As Frederick Whelan and others have pointed out,²⁶ the boundaries of a democracy cannot be established democratically. That is to say, in order to be able to make a democratic decision on who may be a member of the demos, one has to know who has a right to vote. This produces an infinite regress. The ideal of democracy is that the people participate, in some form, in the important political decisions of the community. Given the consequences of being either in or out, it is important that this fundamental decision be made in a manner consistent with democratic principles. However, this is precisely what cannot be done. "Democracy is advanced by its advocates as the sole legitimate method for making political decisions... Boundaries comprise a problem, however, that is insoluble within the framework of democratic

²⁵ Robert Goodin refers to it as the problem of 'constituting the demos.' See R. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives,' *Philosophy and Public Affairs*, (35:1, 2007), p. 40

²⁶ F. Whelan, "Democratic Theory and the Boundary Problem", in *Liberal Democracy*, eds. J. Pennock and J. Chapman, (New York UP, 1983)

theory.”²⁷ Democratic theorists tend to believe that political communities should be constituted in a manner consistent with democratic principles but it turns out that there must be a pre-existing political community before any democratic decision can be made.

The boundary problem is a simpler and more basic than the one raised by Arendt. In Robert Goodin's words, “Constituting the demos is the first step in constructing a democracy. That is true temporally. Until we have an electorate we cannot have an election. That is not just a temporal observation; it is a logical truth.”²⁸ If we believe that it is necessary that the political entity be constituted in accordance with a democratic decision, this problem is unavoidable. The problem of constituting the demos is a problem for democratic thinkers because of the central importance they attach to full participation. The connection to the paradox of human rights comes from the fact that both try to derive the principle that governs inclusion in the system from the same principle that defines the terms to be included. In this case, one can't decide the set of democratic decision makers by means of a democratic decision. Similarly, one can't decide the set of rights holders on the basis of individual rights.

Since liberal human rights theory is not primarily concerned with constituting a political space, there is no *necessary* circularity inherent in it. It

²⁷ Ibid. p. 16

²⁸ R. Goodin, *op. cit.*, p. 43

can, and often does, take the political entities as given and then simply attempts to establish the terms of cooperation between them. The boundary problem appears in human rights theory when we recognise that membership is required in order that rights might be exercised and then try to imagine how we might guarantee a right to membership. Membership is a form of exclusion. Members need to be distinguished from non-members. "A boundary has two sides, and the inclusion of some means the exclusion of others, all of whom are, by this fact, affected by its existence."²⁹ Politics has exclusionary elements to it that can't be argued away by reference to universal rights. The establishment of political boundaries is not something that can be dealt with in terms of human rights. It is impossible to universalise a general right to exclude others.

Once we recognise that there is a need for something like a basic human right to membership, we effectively import the boundary problem in democratic theory into the core of our conception of human rights. Whelan argues that the boundary problem is particularly acute in democratic theory because we think that the most important decisions should be made according to our most fundamental principles, i.e. they should be made democratically. But that is precisely what cannot happen. He suggests instead that we need to recognise that there may be arbitrary elements involved in the constitution of a political space and that "acknowledgment of this may have the beneficial effect of moderating the sometimes excessive claims that are made in its name."³⁰

²⁹ F. Whelan op. cit.p.22

³⁰ F. Whelan, op.cit. p.42

Like the idea of democracy for political theory, human rights have come to occupy a central position in liberal moral philosophy. I would argue that the problems of a right to membership suggest a similar, unavoidable arbitrariness at the heart of human rights theory and that, following Whelan on democratic theory, we may need to moderate our expectations regarding what human rights can accomplish.

3.5 Political Membership Without Human Rights

While Cohen is correct to point to a connection between membership and rights, his account also falls victim to the temptation of generating a positive claim out of a negative one. While it may be right to say that to be deprived of political membership put one in a situation of rightlessness, it is possible to be deprived of rights without being deprived of political membership. In some sense, this is obvious. Rights are modern phenomena. They have a history, appearing in Western Europe in the 17th century likely as a response to the emerging capitalist system as well as the catastrophic religious wars of that period. It goes without saying that political communities existed prior to that time. These communities, however constituted, had norms governing membership – ways of counting and not-counting to use Cohen’s phrase – that had nothing to do with rights. Membership is the basis for rights, but rights do not exhaust the conditions that establish political membership. As

Arendt said, “Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.”³¹ We can lose all our rights without losing our polity, but not the reverse.

To illustrate this, it is helpful to return to a distinction made in the first chapter between a violation and a denial of rights. A violation of rights is an political act that contravenes any of the rights listed in the various declarations while a denial is an attempt to deprive an individual or, usually, a group of individuals of the political basis for making a claim. The crackdown against student and opposition activists in Iran are examples of rights violations. The political leadership does not imprison and intimidate rivals because it does not recognize that the opposition is part of the political community, but because it wishes to remain in control of the state apparatus. In this case rights can be violated – up to and including the right to life – without political membership ever being questioned at all. In the case of a state attempting to assassinate an opposition leader in exile, one can even say that the recognition of political membership is the basis for the violation of rights. A denial of rights, by contrast, is the attempt to eliminate a claim to rights and the claim to membership that is tied up in that claim, by eliminating potential carriers of those rights – through either genocide or ethnic cleansing. In this case, it is true that the non-recognition of rights and the non-recognition of political membership go hand-in-hand.

³¹ OT p. 297

This is why refugees are central to Arendt's concerns about human rights. Many of the possible remedies for rightlessness –such as asylum, work well for individual cases but break down when they have to deal with entire population groups. The only solution we have managed to come up with to deal with large groups of people who have been driven out of their political community is refugee camps. These camps attend to the basic needs of these people (or try to) without conferring political membership. In Shue's language, they provide basic needs without providing them as basic *rights*. The difference turns on the absence of any form of political membership. The problem of refugee camps is that their existence is predicated on the denial of the political claims of the refugees. Refugee camps are located in already existing states. The host states are unlikely to allow them to continue if there is a chance that the mere presence of these camps is likely to crystallise into a durable political claim. It isn't so much that refugee camps don't provide the bases for membership that are themselves the bases for rights. It is rather that they can't do so without jeopardizing the conditions of their own existence. Refugee camps are predicated on not allowing a world to form in-between the refugees (to use Arendt's language) – that is, in keeping them in a state of political suspended animation.

3.6 Conclusion

The argument of this chapter has been that though membership is integral to any enjoyment of human rights, it cannot be a right itself. As Arendt's reflections on human rights showed, membership is the condition of having rights at all. Cohen's argument, that human rights are concerned with providing the bases for political membership, on the grounds that a right to guarantee membership can be required of states without violating a principle of international toleration is the closest that liberal theory can come to addressing the 'right to have rights' – the idea that membership is required in order for rights to be enjoyed at all. Cohen argues that to deny human rights claims is tantamount to denying membership, but he has it the wrong way. It is the denial of membership that is tantamount to the denial of human rights. One can deny all kinds of human rights claims without denying membership.

The question of political membership illustrates the difficulties that the building block approach to human rights inevitably encounters. Liberal thinkers tend to think of rights as the starting point for legitimate politics. There are fundamental rights (security, sustenance or membership) upon which other rights are built (voting rights, education, etc). Political society exists primarily to safeguard these rights. This is the core of the Basic Rights approach that Shue advances, as well as those, such as Beitz and Cohen, who follow the Rawlsian tradition. Human rights are those rights that everyone ought to have regardless of the community to which they belong. Their

community may guarantee further rights, but human rights represent the minimum set that liberal states can demand of other states. As a result, these basic human rights set the standards that govern a state's claim to noninterference - they set the boundaries within which states can operate legitimately, i.e. without threat of intervention.

The disagreements between liberal thinkers turn on where to draw the line that tells us where the minimum lies. Ignatieff draws the line at the standard set of 'negative rights', as does Rawls with his 'urgent rights'.³² Shue argues that the line should be drawn at personal security and sustenance. For Cohen, the basic set of rights refer to those necessary to guarantee membership. In making this point, he draws attention to the importance of membership to the enjoyment of other rights. At the same time, by emphasising the more extensive (non-minimalist) conception of rights required to guarantee membership, Cohen points to the fundamental problem inherent in the basic rights approach – that rights require membership but that membership requires more than can be provided by rights.

Political membership poses problems for the basic rights approach because, according to its own logic, it is clear that if there are any basic rights, the right to political membership must be among them. However, it is just as immediately clear that political membership cannot fit within the building block model. Political membership simply requires too much to be *basic*. Moreover,

³² J. Rawls, op cit. p.79

it can and often is expressed in ways other than rights. As I argued earlier, it was possible to be a member of a political community prior to the historical emergence of modern rights theory. It is more accurate to say that political membership is enacted and recognised in numerous and various different ways in different communities.

When liberal human rights theorists base political authority on human rights, they effectively import the boundary problem into human rights theory. A universalist conception of rights runs into difficulties justifying a particularist approach to political power and responsibility. Given the modern (liberal-democratic) tendency towards an individualist justification for political theory it is not surprising that this problem should repeatedly make appearances in the history of political thought from Rousseau to Rawls. The upshot of this paradox is that, in practice, it is always resolved in one direction or the other. In international politics, which is primarily concerned security, it is resolved in favour of the state through the idea of sovereignty. As citizens, we have the rights conferred upon us by the state to which we belong. In moral theory, which is primarily concerned with justification, it is resolved in favour of universal rights. We have the rights we have regardless of whether our nominal state of birth happens to recognise them.

If we accept the notion that rights are based on political membership but that membership cannot be a right itself, we need to look into what is involved in producing this relationship between human beings and their political

communities. For this it is helpful to revisit Arendt's later, more developed conception of politics. She understood all too well the complications involved in the relationship between human beings and their shared political world and its importance for the enjoyment of rights. She described rightlessness as being cut off from our shared world. It is therefore worth investigating what this idea of the 'world' meant to Arendt, in the hopes that it might shed some light on the conditions surrounding the enjoyment of human rights while avoiding the pitfalls of the building block approach of those who seek to finally identify our *fundamental* human rights upon which everything else should be based.

As Arendt argued, it is refugees that serve to highlight the problem with both the idea of basic rights and with understanding membership as one of them. The refugee can have all of his/her basic needs met, all of the things required in order for the enjoyment of rights, without actually having any rights. This would seem to support the argument that membership is a basic right (perhaps even the only one). However it actually serves to highlight the extent to which rights are embedded within political structures and thereby makes it difficult to see how membership could be understood as a right.

To sum up the argument of the dissertation thus far. The paradoxes surrounding human rights cannot be avoided by stripping them of their metaphysical content as contemporary liberals attempt. Human rights are indeed connected to political membership in that it is a condition of their

enjoyment. As Arendt argued, political membership is the basis of the right to have rights. But, though human rights are intimately connected to political membership, it does not make sense to imagine that the right to have rights can be expressed as a right to political membership. It turns out that membership cannot be guaranteed by the rights that it authorizes. It is not simply a matter of legal recognition. It is embedded in a relationship between human beings and their shared world. What this means is still not fully clear. We need a more detailed account of Hannah Arendt's understanding of the world. This will be the subject of the next chapter.

Chapter 4: Arendt's Concept of 'World'

Thus far, I have argued that human rights pose problems for both liberal theory and the practice of international morality that is ostensibly based upon it. Hannah Arendt identified these problems as related to a paradoxical form of political organization – one in which the law was based on a sovereign conception of political power and where rights were based on an abstract conception of the Rights of Man rather than anchored in a relationship to a shared human world. In the second chapter, I addressed the inadequacy of liberal theory to deal with the first aspect of this paradox – arguing that human rights need to be related to political organization and cannot be separated from their political function of legitimating state power. Chapter 3 argued that liberal theory is unable to meet the challenge of the right to have rights because it is unable to coherently account for a ‘human right to membership’ - something which it must address, at a minimum, if it is to answer the challenge of a right to have rights. If liberalism can’t account for the terms of membership that are the condition of the enjoyment of rights, then it may be worthwhile to turn back to Arendt who raised this problem and identified the problem of rightlessness with the loss of a place in the world.

Arendt’s concept of the world will be the subject of this chapter. I will start by laying it out as Arendt does in the *Human Condition*. I will then work back to the *Origins of Totalitarianism* with the idea that the world can eventually be connected to the problem of human rights as she discussed in that book.

There are at least two elements of Arendt's thought that intersect at the question of the 'world'. The first, emphasised by Margaret Canovan, is a response to the more 'traditionally' political question of what to do about the threat of totalitarianism. For Canovan, Arendt's 'world' is the source of stability in human existence and is therefore our best defense against the threat of totalitarianism which Arendt views as sweeping away all durable human institutions in a kind of constant, frenzied motion. The second element is the more phenomenological side of Arendt's thought in which she views the world primarily as the horizon for meaning in human existence and human action as speech that illuminates our everyday existence. Dana Villa emphasises this aspect of Arendt in his interpretation of her thought.¹ He argues persuasively along these lines that Arendt's thought cannot be understood except in light of Heidegger's distinction between authentic and inauthentic modes of being.

Broadly speaking, like Canovan, I understand Arendt's work subsequent to the *Origins of Totalitarianism* as rooted in the problems posed by that book. "Not only is *The Human Condition* itself much more closely related to *The Origins of Totalitarianism* than it appears to be, but virtually the entire agenda of Arendt's political thought was set by her reflections on the political catastrophes of the mid-century."² Moreover, it is equally important to understand how this fits with Arendt's phenomenological influences. Drawing on both Canovan and Villa, I will show how Arendt's concept of 'world' is

¹ See M. Canovan, *Hannah Arendt: A Reinterpretation of her Political Thought*, (Cambridge University Press, 1992), D. Villa, *Arendt and Heidegger: The Fate of the Political*. (Princeton: Princeton University Press, 1995)

² M. Canovan, *op. cit.*, p. 7.

crucial to understanding how the more performative aspects of Arendt's thought, those laid out in the *Human Condition* and some of the essays in *Between Past and Future*, respond to the very practical and historical problems raised not just by totalitarianism itself, but by all of the elements that eventually "crystallised" into the phenomenon of totalitarianism.³ Given that Arendt was clearly responding to very practical political concerns in her examination of totalitarianism, it is important to keep in mind the question of the practical import of freedom as performance, of action as beginning and of human plurality. The importance of these agonistic elements of her thought becomes clearer when politics is understood as a form of care for our shared world. Though Arendt did not fully elaborate her concept of the 'world' until the *Human Condition*, I will argue that it already had an important role in the *Origins of Totalitarianism*. Moreover, it was directly related to the paradoxes surrounding human rights which she elaborated in that book. In her words, "the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective."⁴

It is not yet fully clear what it was that was lost when the rightless lost their place in the world, but it is clear that it is of primary importance. In Arendt's understanding, the relationship between human beings and their shared world is the basis of politics. "Strictly speaking, politics is not so much about human beings as it is about the world that comes into being between them and

³ H. Arendt, 'Reply to Eric Voegelin' in *Essays in Understanding* (New York, NY: Schocken Books 1994), p. 405.

⁴ OT p. 296

endures beyond them.”⁵ Rights are effects of this relationship. She rejects the liberal priority of the individual, not in favour of a cultural community as with communitarianism, but in favour of the common world inhabited by a plurality of human beings. For Arendt, “the artificial public space shared by citizens of a republic does not have to be based on or coincide with any natural community of race, ethnicity or religion.”⁶ The fact that she believes that the political community is based on this relationship to an artificial world is what distinguishes her critique of liberalism from that of the communitarians. In Dana Villa’s words, “(w)hat needs strengthening, in her view, is not our sense of membership or a common moral vocabulary, but rather our commitment to the world.”⁷

For her, plurality consists in the relationships of many differently positioned human beings to a shared world which they have built, but which has an existence independent of them. Politics, and therefore rights, refer to something outside of and between individuals. In this chapter, I will attempt to explain Arendt’s understanding of the world. I will show its importance to understanding the right to have rights as well as its place in Arendt’s thought more generally. I will attempt to understand what it is that tethers human beings to their world such that they might be able to engage in political action with other human beings, and to enjoy political rights.

⁵ H. Arendt, 'Introduction into Politics' in *The Promise of Politics* (New York, NY: Schocken Books, 2005), p. 175.

⁶ M. Canovan, op. cit. p. 244.

⁷ D. Villa, op. cit. p. 52

One point that unites many interpreters of the idea of a right to have rights is the idea that this implies a right to political participation. James Ingram brings several of Arendt's interpreters together to make the claim that the right to have rights amounts to a human "right to politics."⁸ To put it more precisely,

On this view, the politics of human rights is a creative, democratic politics of contestation, challenging particular exclusions and inequalities in the name of the open-ended principle of equal freedom, which acquires its particular contours only through this contestation.⁹

The idea of right to politics has an immediate plausibility because it aligns with Arendt's more familiar critique of liberalism as worldless and anti-political. Arendt was critical of liberalism on a number of levels. In the *Human Condition*, she argued that the modern age has been marked by the rise of world-alienation – human beings, having lost the reassurance of belief in a religious authority were thrown back upon themselves. Liberalism contributed to this both by putting the protection and maintenance of life at the centre of political concerns and by defining freedom as a kind of 'freedom from politics'¹⁰ that is to say, by subsuming the demands of the public realm to the private lives of individuals. Ingram is right to highlight the performative, contested and, most especially, public conception of freedom and politics that Arendt opposes to liberalism. Understanding the right to have rights as a right to politics situates the problem of rightlessness squarely within the familiar Arendtian critique of liberalism.

⁸ J. Ingram, 'Three Images of the Politics of Human Rights' in *American Political Science Review* (102: 4, Nov. 2008), p. 410

⁹ *ibid.* p. 413.

¹⁰ H. Arendt, *On Revolution*, (New York: Penguin Books, 1990) p. 280

However, I will be arguing in this chapter that the idea of a human rights to *politics* is, for Arendt, a contradiction in terms. It is certainly the case that a global politics consistent with Arendt's thought would look something like what Ingram describes. However, the right to have rights does not refer to global politics. It refers to something much more basic than that. It refers to a fundamental connection to a shared common world which makes political action possible. For Arendt, having a connection to the world is the condition for having a political life at all. To revisit the terminology of Giorgio Agamben, it is that connection, (rather than the sovereign decision as it is for Agamben) that marks the threshold between *zoe* (political life) and *bios* (natural life).

An examination of Arendt's concept of 'world' reveals that it is at most as a *possible* condition for political action that we must understand rights. Rights are the product of human artifice and their use occurs within that context, whether or not this it is in the performance of free political activity. What matters is not what they are used for, but that they are used. The connection to the human world is complex but it is a *condition* of political action rather than its product. The right to have rights is therefore not a right to political action. It is more like the 'right' to the conditions under which one might perform political action. But the important point is that this cannot be understood as a matter of rights – they are simply too closely tied to sovereignty to function as a foundation for Arendtian politics. Under certain conditions, rights may be part of a stable relationship between human beings

and the world such that political action can emerge. *However, they are neither a necessary nor a sufficient condition for political action in Arendt's sense.*

They are not sufficient because having rights does not mean that one will necessarily act politically. They are not necessary because political action can occur and has occurred under conditions in which rights were not secure or even recognised.

This chapter argues that the primary connection to the world, that is the basis for the right to have rights, is instrumental and productive rather than linguistic or participatory. On its face, this is a surprising and counter-intuitive claim, Arendt famously argued that politics was itself performative and had to be protected from both the biological compulsion of the life process (*labour*) and the instrumental reason inherent in man's activity as a working being, *homo faber*. Nevertheless, I will argue that, for Arendt, politics requires a physical space to appear and it is that space that is the necessary condition for the practical enjoyment of rights in Arendt's thought. This will be shown by following Dana Villa in examining the importance of Heidegger's influence on Arendt's conception of the world. I will then go back to the ***Origins of Totalitarianism*** to show that this instrumental conception of the world was operating in that book and that it is directly connected to her thoughts on the paradoxes of human rights. Furthermore, it is this basic, instrumental conception of the world that is the basis for the narrative of world-alienation that Arendt describes more fully in the *Human Condition*. Finally, I will look at how critiques of Arendt's understanding of human rights by Jacques Ranciere

as well as Agamben both miss the mark, precisely because they don't properly recognise the importance of the world to the problem of rightlessness.

However, this interpretation of Arendt's thoughts on rights is not unproblematic. Arguing that the right to have rights is based on a connection to an artificial, human built world requires confronting one of the most troubling aspects of Arendt's thought – her contention that those who had not built an artificial world for themselves were somehow not quite human. Arendt takes the distinction between civilization and barbarism quite seriously and the line between the civilized and the barbarians is precisely the one between those who have built a world for themselves and those who have not. This is both troublesome and problematic for an author who so eloquently defended the principle of common humanity. The last section of this chapter will be a discussion of this problem and how the idea of our common humanity might be expressed without invoking human rights.

4.1 The World

Human beings, build, inhabit and act within a shared *world*. This concept is central to Arendt's thinking and influences every element of it. In this section, I lay out how it fits together with the various aspects of Arendt's thought. I will begin with a straightforward, uncritical explanation of this concept as it appears in the *Human Condition* in order to set up the

relationship between political action and the world that is the condition for human plurality. Drawing on Dana Villa's work, I will show the importance of the productive relationship between human beings and the world that they build for themselves. I will then retrace this relationship to see how it operates in the *Origins of Totalitarianism*. This will allow me to show, in subsequent sections, the importance of the world to the problems surrounding human rights that Arendt advances in the *Origins*.

For Arendt, the world is the artificial home built by and lived in by human beings. The *World* is distinguished from the *Earth*. The latter is our natural home while the former is our artificial home.¹¹ As such, the distinction between Earth and World parallels the more familiar distinction between Nature and Culture. To the extent that we are natural beings, we exist on the Earth. To the extent that we are artificial beings who construct a home for ourselves, we inhabit a World. As our artificial home, the world depends on the work of human beings to build and maintain it.

The world sets the terms for the core distinctions that characterise Arendt's thought. Notably, Arendt's famous separation between public and private – which has generated so much attention among feminist interpretations and criticisms of her thought¹² – exists *within* the world. The private realm is the household – that part of the world in which we take care of the necessities of

¹¹ HC, p. 52

¹² For example, see H. Pitkin, 'Justice: On Relating Public to Private' in *Political Theory*, (9/3 1981), p. 338

life. This is separate from the public realm, the part of the world where we go to discuss and argue about our collective fate.

(T)he term “public” signifies the world itself, in so far as it is common to all of us and distinguished for our privately owned place in it. This world, however is not identical with the earth or with nature, as the limited space for the movement of men and the general condition of organic life. It is related, rather, to the human artifact, the fabrication of human hands, as well as to affairs which go on among those who inhabit the man-made world together. To live together in the world means essentially that a world of things is between those who have it in common, as a table is located between those who sit around it; the world, like every in-between, relates and separates men at the same time.¹³

The private realm, where we take care of the biological part of our lives, appears as an artificial, worldly space. Therefore, human beings, for Arendt, create an artificial world for themselves and then assign a space within it to deal with the part of them that remains ‘natural’ – the biological. The private realm is therefore the place where human beings provide the sustenance for life, and where they reproduce. But it is more than that. Arendt understands the private realm historically as literally a *place* in the world, i.e. one’s property. “Originally, property meant no more or less than to have one’s location in a particular part of the world.”¹⁴ One’s property was the place which one could own and occupy as a shelter against the hazards of human existence and the publicity of our communal life. As private, this is a hidden and obscure part of the world, as opposed to the brightness of the public realm. The public realm is where we appear to each other through our actions. It is there that we can

¹³ HC, p. 52.

¹⁴ HC, p. 61

confer meaning upon our collective existence. In short, the world provides the framework for all aspects of our active life – the ‘vita activa’.

The *vita activa*, human life in so far as it is actively engaged in doing something, is always rooted in a world of men and of man-made things which it never leaves or altogether transcends. Things and men form the environment for each of man’s activities, which would be pointless without such location; yet this environment, the world into which we are born, would not exist without the human activity which produced it, as in the case of fabricated things; which takes care of it, as in the case of cultivated land; or which established it through organization, as in the case of the body politic.¹⁵

The world therefore also provides the framework and the location for Arendt’s tripartite division of human activity: Labour, Work and Action. *Labour*, or our ‘metabolism with nature.’¹⁶ is a consequence of our existence as living beings. It represents the production and consumption of that which is physically necessary to sustain the human world. However, in Arendt’s account, labour produces nothing durable and can be saved from its inherent futility only by work. *Work*, the development of human mastery of the natural world, is necessary to build a common artificial world. The creation of artificial things out of nature – reification – is an exercise in productive activity – the calculation of means to achieve a given end. The activity of work, though necessary, suffers from an inherent meaninglessness. Instrumental rationality can tell you how to achieve a given end, but it can’t tell which ends are worth being pursued, nor can it prevent such an end, once achieved, from being

¹⁵ HC, p. 22

¹⁶ HC, p. 96

degraded into a means to yet another end.¹⁷ The meaningless that is inherent in the human condition of work can only be overcome through *Action*.

As much as the world is a product of human artifice, it is simultaneously the condition for strictly 'human' existence. To be human, for Arendt, is to be born and to live together with others in an artificial world of our own creation. We do not choose the world into which we are born. It precedes us and it will continue to exist after we are gone. In a sense, it presents the only possibility for secular immortality. Human beings cannot live forever, but they can construct and maintain a world that could theoretically continue to exist forever.

This means that, like Heidegger before her, Arendt sees human beings as 'thrown' into and dwelling within the world. The horizon for our action as human beings is set by the world into which we are born. It is the condition for our common, plural existence. For Arendt, *unlike* Heidegger, this is a question that human beings have to contend with plurally rather than individually. But both conceive of human action as fundamentally ungrounded. Since the world is the place in which human beings dwell, human beings are themselves constituted by the world in which they live. Just as for Heidegger, Dasein exists as being-in-the-world, for Arendt, human beings can only really be human within a world and the specific way in which they are human is constituted by their relationship to the world.

¹⁷ HC, p. 229

When a plurality of human beings come together and form a public realm in a world where they are recognized as equals, the potential for freedom appears. Freedom, for Arendt, is the ability to start anew – to bring a new chain of events into being by persuading one’s peers of the proper goals of their shared community. Like Kant, Arendt’s idea of free human action must be insulated from elements that might determine it, such as the necessities of life or individual self-interest. Unlike Kant, these elements of necessity are not located in the phenomenal as opposed to the noumenal realm but rather in the private realm. For Arendt, heteronomy (as Kant would call it) is not an effect of the laws of nature that compel us as physical beings, but rather of the sheer compulsion produced by our needs as biological beings. These biological forces contaminate the public realm when they are allowed to appear in it because human action in the service of our physical needs is not self-generating. It is a response to a biological imperative. “Action, to be free, must be free from motive on one side, from its intended goal as a predictable effect on the other.”¹⁸ For Arendt, action, in its pure form, is a kind of free performance where the individual publicly attempt to persuade his/her peers of the proper direction for the community for which they are all responsible.

¹⁸ 'What is Freedom,' p. 151

4.2 Heidegger, Plurality and the World of Work

In *Arendt and Heidegger*, Dana Villa examines in detail the Heideggerian influences on Arendt's thought. Three insights emerge from his considerations that can help us to understand the importance of the concept of 'world' is so that we may then understand what it means to be cut off from it. The first is the importance of the Heideggerian influence on Arendt's 'world', most notably, that, in the first instance, interaction with the world is equipmental and productive. The second is that the world in its equipmental aspect sets the conditions for the possibility of human action, which, for Arendt, is what confers meaning on human existence. Relatedly, the world is a necessary condition for the plurality of human existence that allows for opinion to emerge in Arendt's thought. It is only in relation to a common object – the world – that we are constituted as plural beings and that we develop separate perspectives and opinions about the world, owing to our different locations within it. Villa's intent is to show how Heidegger's thought was reappropriated and made 'political' by Arendt, specifically in the *Human Condition*. My concern is to show how Heidegger's concept of 'world' was already exerting an influence in the *Origins of Totalitarianism* in order to show its importance to understanding rightlessness and the right to have rights.

Arendt specifically referred to Heidegger's conception of the world in order to understand how to conceive of the way in which human beings relate to one another that avoids the philosophical pitfalls of language, communication or

reason. In a lecture given prior to the publication of the *Human Condition*, and therefore prior to her full elaboration of her concept of 'world', Arendt argued that to base political philosophy on language or communication (which she associates with the philosophy of Karl Jaspers) leaves one unable to account for the plurality of political experience.

(I)t seems rather obvious that 'communication'... has its roots not the public political sphere, but in the personal encounter of the I and Thou. This relationship of pure dialogue is closer to the original experience of thinking – the dialogue of one with oneself in solitude – than to any other. By the same token, it contains less specifically political experience than almost any relationship in our average everyday lives.

“It may be... that Heidegger’s concept of 'world,'... constitutes a step out of this difficulty. At any rate, because Heidegger defines human existence as being-in-the-world, he insists on giving philosophic significance to structures of everyday life that are completely incomprehensible if man is not primarily understood as being together with others.”¹⁹

Arendt's reliance on Heidegger rather than Jaspers in this passage helps us to contextualise her use of the concept of world that is central to the *Human Condition* and, as I will show in the next section, is also important in the *Origins of Totalitarianism*. Politics, for Arendt, is not constituted by communication because this too easily allows philosophy to reduce politics to a relationship between the human being and him/her self. Human plurality and the world are mutually constitutive. “(M)en, no matter what they do, are always conditioned beings. Whatever enters the human world of its own accord or is drawn into it by human effort becomes part of the human

¹⁹ H. Arendt, 'Concern With Politics in Recent European Philosophical Thought,' in J. Kohn, ed. *Essays in Understanding*, (New York, Schocken Books, 1994), p. 443.

condition.”²⁰ Arendt worries about basing political life on a form of understanding that is too easily reduced to one perspective. It is for this reason that she eschews communication as the basis for political association and it is this point that distinguishes her approach most clearly from Habermas’s approach of generating agreement through rational discourse. As Canovan argues, for Arendt, “(f)ree people do not share common convictions or a common will.”²¹ I will take up Arendt’s rejection of the will as a source of political obligation in more detail in the next chapter.

Arendt argues that plurality can only be accounted for if the relationship between people is mediated by a shared world. What is communicated between people is their different perspectives on the world which has inserted itself between them.

The reality of the public realm relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised. For though the common world is the common meeting ground of all, those who are present have different locations in it, and the location of one can no more coincide with the location of another than the location of two objects.²²

These varying perspectives can never be reduced to a singular one in the way that she attributes to those approaches that base politics on communication. Since Arendt levelled the same charge (of disparaging

²⁰ HC, p. 9

²¹ M. Canovan, “A Case of Distorted Communication: A Note on Habermas and Arendt,” *Political Theory*, (11:1, 1983), p 111

²² HC, p 57.

human plurality) against Heidegger²³, it is clear that Heidegger's thought had to be altered significantly to fit with Arendt's thought. Villa argues that we need to understand Arendt as externalising and spatialising Heidegger's distinction between authentic and inauthentic modes of being. Whereas overcoming our absorption in everyday concerns is an individual struggle for Heidegger, for Arendt, it is a collective, public and therefore plural effort. For her, the world is both the context in which authentic political discussion takes place it is also that which is illuminated in authentic political speech. "In Arendt's view, it is the nature of opinion to express perspective. Every opinion is relative to one's position in the world, and as such it formulates in speech what *dokei moi*, what appears to me."²⁴

But while the world is important in order to understand what it is that human beings speak about in their political action – it is the source of opinions – the Heideggerian influences allow us to see that our initial interaction with our shared world is not through speaking about it but is productive – in our building it and using it as equipment. In *Being and Time*, Heidegger understands the primary relationship between human beings and their surroundings as one of 'circumspective concern'²⁵ – that is, as a series of in-order-to relationships which allow Dasein to accomplish its various projects. These relationships constitute the objects as the things that they are. To repeat a well-known example, the hammer is only a hammer because it is part

²³ H. Arendt, 'What is Existential Philosophy?' in J. Kohn, ed. *Essays in Understanding*, (New York, Schocken Books, 1994), p. 176-182.

²⁴ D. Villa, op. cit., p. 94.

²⁵ M. Heidegger, *Being and Time*, trans. John Mcquarrie and Edward Robinson. (London: SCM Press, 1962), pp 98-106

of a larger set of objects and relations (nails, boards etc.) that together allow for the hammer to function as a hammer. Objects only appear as abstract things (as 'present-at-hand') when there is a breakdown in the equipmental relations such that items cease to function as they should. It is only when the hammer breaks that we become aware of it as a hammer. This short description of the everyday world in Heidegger's thought is important because it is this concept of the world that Arendt appropriates in her thought. As Villa claims, "the 'work world' described by Heidegger, with its pervasive instrumentality and teleology (the for the sake of), clearly sets the pattern for Arendt's description of the 'world' created and manipulated by homo faber."²⁶

That instrumentality should be so important to Arendt's understanding of world and, as we shall see, to the enjoyment of rights, is somewhat surprising because we usually associate rights with politics and, for Arendt, politics relates to action, speech and opinion. In fact, she is well-known for disconnecting politics from instrumentality, arguing that the confusion of politics with the pursuit of ends is one of the oldest and most dangerous philosophical prejudices.²⁷ Nevertheless, the human connection to the world which provides the basis for rights is to be found as much in the world produced by human 'work' as it is by the one illuminated by human speech or 'action'. It is less surprising when we consider that, for Arendt, action needs a space to appear, objects to discuss and a structure to endure through time. The world confers permanence and durability on our collective action, it is our

²⁶ D. Villa, *op. cit.* p. 122.

²⁷ HC. p. 220.

separate and many locations within the world that allows for the existence of differing opinions and it is the relationship between that permanent and durable world that allows human beings to be seen as equals. For Heidegger, the world represents that into which Dasein is thrown and it is the everydayness of the world to which authentic Dasein must respond through resoluteness. Villa argues that, for Arendt, a similar relationship of everydayness and transcendence is at play.

This brings us to the possibility of transcending the world as *Zeug*, as equipment or use objects. For Heidegger, an “immanent” transcendence of this “dimmed down” world hinges upon the breaking away from concerned absorption and the recovery of a higher mode of sight and activity, one undertaken for its own sake. In Arendt, the possibility of transcendence is concretized through the entry into the public realm that, as “space of appearances,” provides the site for authentically disclosive action and speech.²⁸

The artificial world built by human work can only be saved from its inherent meaninglessness by human action. The world is the condition of transcendence in at least two senses for Arendt. It is both the context in which transcendence takes place and *that which is to be transcended* through action. Moreover, since transcendence is always momentary and temporary for Arendt, its worldly conditions are the only part of this relationship that can remain durable.

²⁸ *ibid.* p. 138.

4.3 The World in the *Origins of Totalitarianism*

Despite the fact that the concept of the 'world' is not outlined in detail in the *Origins of Totalitarianism*, it remains central to the arguments of that book. It appears frequently as the basis for stable political life - a basis that is swept away by totalitarianism as well as proto-totalitarian systems of rule, most notably imperialism. As Margaret Canovan argues, much of Arendt's later thought can be understood as an attempt to see how the world can best be protected from the world-destroying tendencies of totalitarianism.²⁹ My argument in this chapter is that, despite that fact that the 'world' is not explained in detail in the *Origins of Totalitarianism*, understanding it in light of Heidegger's version of the same concept allows us to see it operating in important ways in that book. Moreover, it allows us to understand its importance to the problem of rightlessness and therefore provides insight into the question of a right to have rights.

As we have seen, Arendt's concept of 'world' was not fully articulated until after the *Origins of Totalitarianism*. However, in the section on imperialism in that book, she already understood rightlessness as losing a connection to human artifice, but had not yet distinguished between work, the building of the world, and labour, the maintenance of life within it. "Regardless of the treatment, independent of liberties or oppression, justice or injustice, they (the rightless) have lost all those parts of the world and all those aspects of human

²⁹M. Canovan, *Hannah Arendt: A Reinterpretation of her Political Thought*. p. 201.

existence which are the result of our common *labor*, the outcome of human artifice.”³⁰ This distinction, fundamental to her understanding of the world, arose after the ***Origins of Totalitarianism*** as she tried to understand how the Marxist tradition contributed to the emergence of totalitarianism.³¹

Arendt provides several examples in the ***Origins of Totalitarianism*** that help us to understand exactly what it means for human beings to be cut off from the world. Together, these examples show that the enjoyment of rights cannot, for Arendt, be understood as a natural feature of being human. Together, they make it clear that what is required for the enjoyment and recognition of rights is a connection to a shared human world. First is the concept of superfluity – those elements of our collective life which have become disconnected from their useful functioning within society and *therefore* became both separated from and ultimately destructive of worldly relationships. Second is the relationship between the Europeans and the native populations they encountered in the imperialist adventures. On one side, there is the aloofness of the imperial bureaucrat, who, though not motivated by selfish ends, still treated subject populations as though they did not belong to the same world. On the other side of this relationship, the native African population whom the imperialist adventurers were unable or unwilling (Arendt is not clear here) to see as human, in part because, she claims, they had not built a human world for themselves. Third is her description of institutionalised slavery, which she characterises as a crime against humanity

³⁰ OT p. 300

³¹ M. Canovan, op. cit. p. 74.

but *not* as a situation of rightlessness. Put together, all these examples reinforce the claim that the right to have rights – the threshold between political life and biological life – between those who can claim to have the right to have rights and those who can't – is a relationship to a shared world which is primarily instrumental or productive.

Despite the fact that Arendt had not yet explicitly made the distinction between labour and work, some of the core elements of this distinction can be seen in Arendt's treatment of the question of nature and the human-built world. Most notably, the distinction is apparent in her idea of 'superfluity'. Arendt applies the term 'superfluous' to a number of different things throughout the ***Origins of Totalitarianism***. Superfluity, for Arendt, represents a human production of uselessness. In a sense, like rightlessness, it represents the reappearance of nature within civilization and as such, prefigures the social as the public appearance of those natural parts of human existence that ought to remain in private. More importantly however, superfluity represents the distinction between the human and the biological and, furthermore, specifically relates this distinction to usefulness. As we saw, worldliness for Arendt is intimately tied up in productive connections to the world. Imperialism was particularly troublesome because, fuelled by superfluous men and superfluous wealth, it was a movement radically separated from the world of means and ends. As such, its excesses went beyond oppression and exploitation and attained a greater level of cruelty and indifference to consequences than a simple relationship of oppression would likely produce.

The South African Gold Rush is described by Arendt as being the result of the “superfluity of men and capital” produced by capitalism.³² Gold is itself a superfluous form of wealth which “in its uselessness in industrial production it bears an ironical resemblance to the superfluous money that financed the digging of gold and to the superfluous men who did the digging.”³³ She describes the South African Boers as 'superfluous' human beings who had renounced their connection to the world and, lacking the power to transform their environment “could discover no value higher than themselves” - a formulation that suggests the description in the *Human Condition* of the 'social' tendency to organise political life around the maintenance of the life process. Arendt characterised their willful refusal to settle into a space and build a world as a “regression” that prevented them from establishing a common world.³⁴

Another instance of worldlessness is the African population that was encountered by the European colonizers in the imperial age. According to Arendt, they had not built an artificial human world for themselves and, for this reason, were not recognised as fully human by the Europeans who encountered them.

What made them different from other human beings was not at all the color of their skin but the fact that they behaved like a part of nature, that they treated nature as their undisputed master,

³² OT, p. 189.

³³ OT, p. 188.

³⁴ OT, p. 193.

that they had not created a human world, a human reality, and that therefore nature had remained in all its majesty, the only overwhelming reality – compared to which they appeared to be phantoms, unreal and ghostlike. They were, as it were ‘natural’ human beings who lacked the specifically human character, the specifically human reality, so that when European men massacred them they somehow were not aware that they had committed murder.³⁵

This example is particularly striking for the question of rightlessness because not only had the African natives not built a world for themselves (according to Arendt) but the absence of that world was what made it possible not to see them as fully human. It becomes clear from this example that, for Arendt, usefulness or productivity must be visible and apparent in order for human beings to be seen as human. Heidegger's phenomenological influences are apparent here. Utility in her sense refers to a visible connection to the world, rather than some underlying social function.

The flip side of the worldlessness of the subject populations is the aloofness of the imperial bureaucrat. That the native populations were mistreated by the superfluous dregs of Europe was not particularly surprising. What was more alarming was the brutality inflicted by the imperial bureaucrats, who were characterized by Arendt as the made up of those elements of European society with the greatest integrity and sense of responsibility.

³⁵ OT, p. 192.

The imperial bureaucrat was cut off from the world in two senses. He was cut off from the political life of his home country – viewing the political resistance and legal restrictions to his administration as interference with his expertise. He was also cut off from the world of his ‘subjects’; scarcely inhabiting the same world as those who were affected by his decisions. His complete disinterest in the people he managed meant that he did not even seek to exploit them.

Integrity and aloofness were symbols for an absolute division of interests to the point where they are not even permitted to conflict. In comparison, exploitation, oppression, or corruption look like safeguards of human dignity, because exploiter and exploited, oppressor and oppressed, corruptor and corrupted still live in the same world, still share the same goals, fight each other for the possession of the same things; and it is this *tertium comparationis* which aloofness destroys.³⁶

Looking at these examples, it is clear that being disconnected from the world, in the *Origins of Totalitarianism* means being cut off from the common human world either by being useless (superfluity), by not inhabiting a world that one has built oneself (the African peoples encountered by Europeans) or by not sharing similar interests with those with whom one lives (aloofness). What all these examples have in common is that they have to do with the productive aspect of human existence. Drawing on Heidegger's influence, we can see that superfluity is dangerous because it means being cut off from the separation from the sedimentation of human purposiveness that constitutes the world. For Arendt, 'living in the same world' meant sharing a common network of interests and goals – even if these were shared in a negative or

³⁶ OT, p. 212.

exploitative manner. The importance of this insight is that the condition of not having the 'right to have rights' is, in the first instance, the absence of an instrumental rather than a purely discursive relationship to the world.

4.4 The World as Threshold Between *zoe* and *bios*

The importance of understanding the world as the threshold between biological life and political life to the question of human rights becomes clearer if one looks at a couple of the ways in which Arendt's thought on this question has been appropriated and criticised. Giorgio Agamben, in *Homo Sacer*³⁷, picks up Arendt's idea of rightlessness and identifies it with a problematic ancient Roman legal category which he argues is central to the Western political tradition. For Agamben, drawing on Carl Schmitt, the distinction between *zoe* and *bios* is established by way of the sovereign decision. For Agamben, the problem of rightlessness and sovereignty are inherently intertwined. Jacques Rancière, in an article entitled, "Who is the Subject of the Rights of Man?"³⁸ criticises both Agamben and Arendt on their construction of this problem. In this section, I will argue that both Agamben and Rancière mischaracterise Arendt's construction of the problem of rightlessness. The difficulties with both these treatments of Arendt's thought is that neither

³⁷ G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. (Stanford: Stanford University Press, 1998)

³⁸ J. Rancière, "Who is the Subject of the Rights of Man?" *South Atlantic Quarterly* 103 (2-3). 297-310.

accounts for the importance of the world as the basis for the distinction between political and non-political life.

Agamben revisits Arendt's description of the death camps and relates them to the increasing management of the life process in the past 150 years of Western History. He argues that this situation is the culmination of a logic embedded in the western conception of sovereignty which he traces back, through the Roman tradition to early Greek thought. His argument is that the Western political tradition is based on an original inclusive exclusion of 'bare life' into the political community. To summarise his argument briefly, the western tradition constitutes political life (the life of the citizen – bios) by excluding the biological life of human beings (zoe) from the polis. Sovereignty represents the political boundary between these two forms of life. Historically, the boundary has been represented by the figure of homo sacer – a Roman legal category that designates one who may be killed but not sacrificed – i.e. whose death does not constitute a crime.³⁹ Drawing on Arendt and Michel Foucault, Agamben argues that in the modern era, the distinction between bios and zoe have become increasingly blurred. This can be seen in the increased management of the life process described by Arendt and in the development of bio-power described by Foucault. The upshot of Agamben's argument is that the camp has become the paradigm of the western political tradition, that, as the state has increasingly managed populations according

³⁹ G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. (Stanford: Stanford University Press, 1998), p. 71

bio-political logic, our political life has blurred with the biological, that, increasingly, we are all being treated as homo sacer.

The difficulties posed by the distinction between man and citizen are at the heart of the human rights tradition and the paradoxes that led Arendt to talk about the right to have rights. Agamben argues that the problems of international human rights derive from the inability to deal with the implications of the political relationship that produce the problems associated with homo sacer. “A humanitarianism separated from politics cannot fail to reproduce the isolation of the sacred life at the basis of sovereignty, and the camp – which is to say, the pure space of exception – is the biopolitical paradigm that it cannot master.”⁴⁰

Despite Agamben's explicit references to Arendt, it is the Schmittian sovereign decision that marks the line between *zoe* and *bios* in his thought. “It can even be said that the production of a biopolitical body is the original activity of sovereign power. In this sense, biopolitics is at least as old as the sovereign exception.”⁴¹ As we saw in chapter 1, Arendt's characterisation of sovereignty as anti-political means that Agamben diverges from her on this question. Drawing on both Villa's reading of the Heideggerian influences on Arendt's conception of the world and Arendt's treatment of worldlessness and superfluity in the *Origins of Totalitarianism* I have endeavoured to show that it

⁴⁰ G. Agamben, op. cit. p. 134.

⁴¹ Ibid. p. 6

is the world in its equipmental sense that marks the primary distinction between *zoe* and *bios* for Arendt. In the *Human Condition*, this is clear in her use of the latin terms to describe human beings in their different activities. As a worker – builder of the world – the human being is ***homo faber***. In labour, human beings are simply beings that maintain and reproduce the life of the species, ‘man’ is ***animal laborans***. The point is that, for Arendt, the threshold between *zoe* and *bios* is not the sovereign decision as Agamben argues, nor even is it the unreliable, contingent and heroic appearance of political *action*. Rather, that threshold is the physical, objective home that human beings construct for themselves. As Dana Villa argues,

For Arendt, the worldliness of human existence first becomes manifest in the activity of work – man as animal laborans being a specifically worldless creature...
If labor... is predisclosive, the same cannot be said of work. According to Arendt, it is precisely the activity of work that gives us a world, an artificial, durable 'home' that removes us somewhat from the immediacy of the natural and destructive cycle of production and consumption. This world, the world of homo faber, is a more or less stable structure whose being consists in its reified quality and whose meaning is circumscribed in terms of instrumentality.⁴²

For Arendt, the threshold between *zoe* and *bios* is established by a connection to a shared world of objects. Agamben's construction of the problem of rightlessness is helpful because it highlights the close connection between rights and sovereignty. The problem with conceiving of rights in the liberal fashion is that they either tilt towards sovereignty – by positing individual will and sovereignty against one another (the collective versus the

⁴² D. Villa, op. cit. p. 137

individual right to do wrong) or they separate the human being from political life altogether, by considering him/her only as a life separated from politics (bare life). Maintaining a proper relationship to a shared, artificial world offers the possibility of escaping that paradox. Moreover, the connection between rights and sovereignty is the reason why it does not make sense to speak of an Arendtian 'right to politics'. The practical importance of action and speech (Arendtian politics) to rights is not to establish the distinction between *zoe* and *bios* but rather to prevent political power from falling under the dictates of the sovereign will. It is because of the importance of the world that Arendt can simultaneously repudiate sovereignty and emphasise the importance of limited political communities – that she can reject both sovereignty and cosmopolitanism.

The importance of the world to the question of rightlessness is further illustrated in Jacques Rancière's critique of Arendt's concept in his article "Who is the subject of the Rights of Man". Rancière takes the worldly relegation of the biological aspects of human life to the private sphere to be the source of the problem of rightlessness. He then claims that Arendt's characterisation of the 'Rights of Man' as the "rights of those who have no rights" is a "deceptive trick"⁴³ because she fails to see how the language of human rights may be used by those who have been denied rights in being relegated to the private sphere. He offers up the language of human rights as a means of producing a 'dissensus' - a rupture in 'common sense' that could be used by disadvantaged groups that had been denied rights. He gives the

⁴³ J. Rancière, *op. cit.* p. 302

example of Olympe de Gouge during the French Revolution who articulated her claim to political participation in terms of the Rights of Man (“if women are entitled to go to the scaffold, they are entitled to go to the assembly”) despite the fact that these claims could not be heard within then prevailing understandings of human rights.⁴⁴

Ranciere's reading of Arendt's account of rightlessness as relegation to the private realm⁴⁵ turns precisely on his missing the importance of the world to the 'right to have rights'. As we saw earlier, the division between public and private, for Arendt, takes place *within* the artificial world. The private is already a part of the world. Relegating certain classes of people (women, slaves) is certainly oppressive, but the point of Arendt's critique is that rightlessness is not the same as oppression. “Their (the rightless) plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.”⁴⁶ The very act of making that claim constitutes political action is Arendt's sense. The rightless, who belong to neither the public nor the private realm (because separated from the world), are unable to make this claim at all. Arendt's discussion of slavery highlights this point quite well. Though oppressed, slaves were not worldless in Arendt's account. This is not to minimise the crime of slavery. Saying that slavery is not the same as rightlessness is not meant to justify or mitigate the institution of slavery but to make a distinction – a distinction which makes clear that the right to have rights is not really a matter of rights at all.

⁴⁴ *ibid.* p. 303

⁴⁵ *ibid.* p. 298

⁴⁶ OT p. 295-296

“Slavery's *crime against humanity* did not begin one people defeated and enslaved its enemies... but when slavery became an institution in which some men were 'born' free and others slaves, when it was forgotten that it was man who had deprived his fellow-men of freedom, and when the sanction for the crime was attributed to nature. Yet in light of recent events it is possible to say that even 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 – more than the abstract nakedness of being human and nothing but human.”⁴⁷

Ranciere never acknowledges the problem as Arendt sees it and thus never gets at what she means when she says that the rightless are beyond 'the pale of humanity.' This is a difficult and troubling argument. In the last section, I will look at the difficulties that emerge when we begin to consider human beings that are not 'fully human' because they do not seem to have a connection to a world that they have built for themselves. This leads to some of the more problematic of Arendt's arguments. But it may be that the problem itself is unavoidable. It may be that what makes politics so important is that it is the place where the question of membership can be dealt with publicly. It suggests that dealing with this question is our most fundamental political responsibility and that arguing it away by stating that everyone has basic human rights constitutes an avoidance of the very real question of what particular rights each of us actually has.

⁴⁷ OT p. 297, italics mine.

4.5 Conclusion

Understanding Arendt's concept of 'world' as it relates to human rights is important for a number of reasons. First, it highlights the instrumental aspects of her understanding of politics and the world and thereby mitigates against the tendency to see Arendt as dismissing the world of work as only an aspect of a larger critique of the domination of instrumental reason in the modern political thought since Machiavelli. Rather obviously, it highlights the importance of the world to her story of emergence of *world*-alienation. Her emphasis on politics as performance has led many to see her as having little good to say about representative liberal-democracy. While there is much to this critique, the importance of the world both to protecting against the worst forms of human organisation and also to understanding how institutional protection for human beings comes about, suggest a more profound engagement with politics as it is practiced rather than a philosophical critique of modern political thought. Given Arendt's clear desire to engage with actually existing politics, this seems to be a productive way to approach her thought.

Second, it allows us to see the enjoyment of rights as dependent on a reality outside of and between human beings. It is a characteristic of liberal rights theory to put human beings at the centre of politics. The importance of understanding rights in the way suggested by Arendt's thought is that we can see that it is the relationship between human beings and the world they inhabit

that is of primary importance. Arendt, drawing to some degree on Burke, shows the importance of communal life and our shared institutions to the existence of rights. While she rejects the anti-egalitarian elements of Burke's thought, she recognises the importance of a stable set of institutions and traditions to the enjoyment of rights. She also recognised that human rights, separated from a durable, shared world, were, in Ranciere's words, the 'rights of those who had no rights'.

The important thing to understand from the perspective of international morality is that rights need to be seen as demonstrating an instrumental connection to the world. Rights are institutional creations that can endure, can be used without being consumed and are used as equipment in order to advance ends. To be sure, they can also be used to advance political goals. But in this they are no different from the agora or a parliament building. Clearly, rights can be used in purely instrumental fashion as when I enforce a property claim in a commercial transaction (right to property). They can also be used in political action as when I run for office or protest against an unjust war. The point is that a right is an institutional object that exists as a part of an equipmental relationship (what Heidegger would call a 'functionality contexture'). It is either used or it is not. One may make the political claim that everyone ought to live in a society where one's rights are respected. Though Arendt would doubtless have endorsed such a principle, it does not constitute the grounding of a 'right to have rights'. Since they are but one possible way of demonstrating a connection human beings to the world, rights cannot be understood as necessary or sufficient conditions for political action.

To view them as more than that, to view them as a foundation for politics, is to immediately encounter the paradoxes and problems associated with sovereignty.

It is the argument of this thesis that we must take the human rights skepticism Arendt laid out in the *Origins of Totalitarianism* as consistent with Arendt's thought more generally and that she identified some fundamental problems with basing politics on rights. The question at this point is what is left of human rights politics if we take this skepticism seriously. It remains to be seen how it might be possible to express the idea of humanity in international politics without invoking human rights. Ingram, Birmingham and those who identify the right to have rights with some form of an internationally recognised right to politics are certainly right that Arendt took the ideal of humanity seriously. When Arendt describes the Dreyfus Affair in the *Origins of Totalitarianism*, Clemenceau is the hero because he claimed that the rights of all Frenchmen were under threat by the anti-dreyfusards. But he is the hero because his actions were inspired by the principle of humanity and embedded within the context of the French nation-state (his “struggle for justice as the foundation of the state”⁴⁸) not because he correctly articulated a theory of human rights.

If rights are entrenched in a political system through laws, if they are human artefacts – things – then the connection between the individual and the

⁴⁸ OT p. 118

collectivity, to the extent that it relates to rights, consists in their use as equipment. One only has rights to the extent that one uses them. As such they must be understood as institutional tools, not as features of the self. It is not, as most contemporary human rights thinkers would have it, that human beings have universal rights which are then either respected or not by the political community in which they live. It is rather the reverse. Citizens exercise rights and it is only to the extent that one may make the claim that everyone ought to have these rights that one can be said to be advancing human rights. The important point is that this assertion – that everyone ought to have the rights of Americans or Brits or whichever constitution one takes as example – is not a philosophical point but rather a political claim – a particular version of the idea of humanity – that we are all part of the same world and that we therefore bear a common responsibility for it and, through it, for each other. This is how Arendt understood the Declaration of Independence.

What they (the American Revolutionaries) were saying and proclaiming was in fact that those rights which up until now had been enjoyed only by Englishmen should be enjoyed in the future by all men – in other words, all men should live under constitutional, 'limited' government.⁴⁹

One can look at the Declaration of Independence and see in it the ideal of a society of equals (with some historically specific shortcomings) and that of limited government – an example that might be applied in a different form in other contexts as well. But, this is not the way international relations scholars and many contemporary human rights thinkers see them operating. As we

⁴⁹ H. Arendt, *On Revolution*, (New York: Penguin Books, 1990) p. 148-149

saw in chapter 2, they see them as a set of standards which delimit a state's claim to non-interference in its internal affairs.

There is clearly a potential tension at play when we try to connect the idea of humanity with the concept of the world. The world in Arendt's sense is inseparable from ideas of civilization and its mirror image – barbarism. The worst elements of this connection are visible in Arendt's apparent excusing of those who treated the African populations as non-human. That Arendt did not believe that these populations had built up a human world for themselves is made even more clear in her condemnation of the mistreatment of Indian and Chinese subjects by imperialist governments.

The difference (between the domination of Africans and the domination of Chinese and Indian subjects) was only that there could be no excuse and no humanly comprehensible reason for treating Indians and Chinese as though they were not human beings. In a certain sense, it is only here that the real crime began, because here everyone ought to have known what he was doing.⁵⁰

It is hard to know how much work the phrase 'in a certain sense' is doing here to mitigate Arendt's justification of European imperialists' crimes against African peoples, but one can't miss the dark side of Arendt's 'idea of humanity' in that construction. If a relationship to a human world that one builds and maintains is the necessary condition for being considered human – that is, if having relationship to a shared world is the barrier between bios and zoe – then how do we think about those people who do not seem to have that

⁵⁰ OT, p. 206.

relationship? Arendt explicitly regards the problem of rightlessness as a situation of barbarism, though in this case it is a barbarism produced by civilization. “The danger is that a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages.”⁵¹

The point of the argument thus far is that it is beyond the capacity of human rights discourse to guarantee that everyone will be regarded as 'fully' human – that this is an inescapably political problem. Recognising it as such does not guarantee that no one will ever again be cast out of the 'pale of humanity'. But understanding it as a political problem in the way Arendt describes offer some original ways of thinking about the problem. First, viewing the transition from zoe to bios as emerging out of an instrumental relationship with the world suggests that Agamben's purely legal construction of the problem is incomplete. Arendt offers us the hope that the relationship between political life and 'mere life' is not necessarily destructive as Agamben suggests. Since the emergence of political life comes out of a connection to an artificial world, Arendt suggests that it can emerge on its own if it is given the chance. “(E)very political structure, new or old, left to itself develops stabilizing forces which stand in the way constant transformation and expansion.”⁵² This means that if, as Agamben suggests, current humanitarian efforts are only capable of dealing with life in its bare form, then perhaps that problem lies in the humanitarian approach and is not inseparable from the

⁵¹ OT, p. 302

⁵² OT, p. 137-138

Western political tradition. Arendt's thought suggests that the goal ought to be to rebuilding political and legal institutions for refugees. That this is difficult and problematic is a result of the way in which rights and legitimacy are constructed in contemporary international politics. However, it does pose rightlessness as a practical problem and not a consequence of an 'original sin' of western politics. If relationships between people and their world can be rebuilt, then rights can be restored or established. Despite my claim that this form of politics is not best expressed as 'human rights', it is clear that much of this is already being performed by both governmental and non-governmental organizations under the rubric of human rights.

In this chapter I investigated Arendt's concept of the shared human world in order to show that it is, in the first instance, connected to an instrumental relationship to the physical world of things that human beings build for themselves. This is important because Arendt understands rights as a part of this artificial world and because it shows that the problem of human rights is not a matter of coming up with the proper list of human rights which ought to be protected but rather of establishing the conditions which allow human beings to have an active relationship to the world they inhabit. It suggests that human rights language may not always be the best way to create the conditions for human beings to have the 'right to have rights'.

In the next chapter, I will look at the political consequences of viewing rights in the way that I argue Arendt's 'right to have rights' implied. More

specifically, I will look at the consequences of basing rights on a relationship to an entity – the world – which has a moral content that is more than the sum of the individual claims of its inhabitants. I will look at the concept of collective responsibility in Arendt's thought to begin to get at the relationship between citizens and the political world that they share.

Chapter 5: Collective Responsibility

I argued last chapter that, for Arendt, the relationship between human beings and their shared world is, in an important way, based on a *productive* connection to human artifice. This was a counter-intuitive claim because Arendt herself identifies politics with non-instrumental, performative action. Just as Kant identified the moral with non-instrumental action (action derived from a categorical rather than a hypothetical imperative), Arendt identified authentic political action with non-purposive activity “Action, to be free, must be free from motive on one side, from its intended goal as a predictable effect on the other.”¹ However, even though the right to have rights is, to a greater extent than is usually acknowledged, a matter of having a connection to a shared world of our own *making*, this isn't the whole story. The world is made up of both an objective component built by human beings in their work and a subjective component that is generated by being talked about – the world is both the object of human discourse and the product of that discourse.

I have also argued that the paradoxes of human rights emerge because of their connection to sovereignty. This provides another connection to Arendt's thought since, for her, human rights and sovereignty can both be understood as a manifestation of the will in politics. She regarded both individual and collective sovereignty as incompatible with human freedom because they both sought to eliminate the indeterminacy that she saw as inseparable from

¹ H. Arendt, 'What is Freedom,' in *Between Past and Future: Eight Exercises in Political Thought* (New York, Penguin Books, 1993), p. 151

freedom. In short, sovereignty, based on a politics of the will, is incompatible with the plurality inherent in Arendt's conception of the world. If we are to understand the problem of rightlessness in Arendt's, we must therefore understand how she conceived of a proper relationship between human beings and the world – that is to say, a relationship that is consistent with human plurality.

In this chapter I will discuss Arendt's conception of political responsibility as a relationship between human beings and their shared world that is consistent with the plurality necessary for politics to appear. Moreover, I will show how this responsibility is crucial to having a place in the world and therefore to having the right to have rights. Arendt herself makes the connection explicit.

(T)he twentieth century has created a category of men who were truly outcasts, belonging to no internationally recognizable community whatever, the refugees and the stateless people, who indeed cannot be held politically responsible for anything. Politically, regardless of their group or individual character, they are the absolutely innocent ones; and it is precisely this absolute innocence that condemns them to a position outside, as it were, of mankind as a whole... Actually, they are the only totally nonresponsible people; and while we usually think of responsibility, especially collective responsibility, as a burden and even as a kind of punishment, I think it can be shown that the price paid for collective non-responsibility is considerably higher.²

² 'Collective Responsibility', *Responsibility and Judgment*, ed. J. Kohn. (New York, NY: Schocken Books, 2003) p. 150

For Arendt, not being responsible is a sign of not being part of the world. It is therefore related to the problem of rightlessness. Against Peg Birmingham, who argues that an Arendtian conception of human rights is anchored in her idea of *common* responsibility for the entire world³, I argue that rights are related to Arendt's idea of *collective* responsibility, which is itself related to the specific limited political spaces to which we belong.

To understand what this means requires a closer look at Arendt's concept of responsibility and how it relates to the question of human rights. I will argue that a better understanding of political responsibility further demonstrates the importance of the world to the enjoyment of rights and the incompatibility of liberal human rights discourse with Arendt's understanding of politics. *Political* or *collective* responsibility (Arendt uses the terms interchangeably) is derived from political actors' relationship to the world.⁴ It is an acknowledgement of the demands that our collective life makes upon us – whether we like it or not. “(W)e are always held responsible for the sins of our fathers as we reap the rewards of their merits.”⁵ When a person acts politically, he or she acts within the context of his/her responsibility for his/her shared world. As Patchen Markell has argued, though Arendt emphasizes action as initiating a new beginning, it does not come from nowhere. Rather, Arendt's concept of action is best understood as responding to events arising within the world.⁶

³ P. Birmingham, *Hannah Arendt and Human Rights*. (Indianapolis: Indiana University Press, 2006)

⁴ 'Collective Responsibility' p. 151

⁵ Ibid. p. 150

⁶ P. Markell, "The Rule of the People: Arendt, Archê, and Democracy." *The American Political Science Review* 100, no. 1 (February 2006): 1-14

Following that thought, I would argue that responsibility, for Arendt, is not the passive reception of the burdens of collective life but rather an active assumption of those burdens.

Arendt does not attribute political obligation to a consequence of individual choice or consent, be it actual or tacit. By contrast, liberalism places consent at the centre of the political relationship between the citizen and the state. The state derives its power and legitimacy from the consent of the individuals that make up the state. For Arendt, the relationship is more complicated, stemming from the relationship between people and their shared world.

The immediate consequence of understanding rights as relying on a connection to a shared world is that the world acquires a moral content that is distinct from the claims of the human beings who belong to it. As such, it establishes the basis for political as opposed to individual claims. The liberal tradition, on the other hand, views human rights as the basis of international morality. Arendt's approach challenges this in two ways. First, it distinguishes between individual morality and political concerns. "In the centre of moral considerations of human conduct stands the self; in the centre of political considerations of conduct stands the world."⁷ Second, as I have argued, to the extent that Arendt is concerned with rights, she sees them as related to the latter rather than the former. Thus, for Arendt, it isn't that rights aren't important, but she doesn't see them as foundational. They are, as I argued

⁷ Ibid. p. 153

last chapter, a possible effect of a relationship between human beings and their shared world. However, while Arendt's conception of the world points to a political claim that stands outside individuals, it is also not a form of subjection to the sovereign or collective will, as Seyla Benhabib claims.⁸ Arendt espouses a limited conception of politics while attempting to stay clear of the anti-political (i.e. plurality-denying) structure of command and obedience that she identifies with sovereignty. Arendt's thought is an attempt to allow an individual to exist as a part of a world that is shared with others. If a shared world is important to Arendt's thoughts on rights, we must understand it in its worldliness (as I did last chapter) and in its sharedness. Collective responsibility points to the manner in which a world is shared between a plurality of persons.

In order to do this, I will outline the difference between personal and collective responsibility in Arendt's thought. I will then discuss the idea of common responsibility as Birmingham advances it as an Arendtian ground for human rights. I will argue that rights cannot be anchored in common responsibility but are rather a product of the relationship between human beings and their world which is best characterised by Arendt's idea of *collective* responsibility. I will contrast Arendt's idea of political obligation with the idea of liberal consent in order to illustrate the difference between an Arendtian approach to obligation. The difficulty with the liberal conception of obligation is that it is rooted in a relationship of command and obedience that

⁸ S. Benhabib, *The Rights of Others. Aliens, Citizens and Residents*, (Cambridge University Press, 2004), p. 131.

is associated with the human will. Arendt's concept of obligation is far more complicated. In fact, it is *because* we are responsible beings that we can make meaningful promises. Our relationship to the world is the basis of the practice of promising which is so important to Arendt's conception of action.

5.1 Responsibility in Arendt's Thought

Like the world, the concept of responsibility has been an important part of Arendt's thought since the *Origins of Totalitarianism*. Already in that book, she regards it as a sign of a visible relationship with the world. Its persistence throughout her work is further testimony to the importance of the world in the *Origins of Totalitarianism* that I argued last chapter. In that book, responsibility appears in two forms: first, it appears in opposition to her concept of superfluity discussed last chapter – those who could demonstrate a responsibility for actions occurring in the world, even negative ones, were more difficult to treat as superfluous, that is, to be treated as rightless. Second, it appears as the negative response to the growing realisation that humanity had become “an inescapable fact.”⁹ The technological unification of the planet was such that everyone had to accept the fact that we are all ultimately responsible for everything that happens on the world that we share. Arendt argued that the emergence of racial doctrines at the end of the 19th century was an attempt to retreat from this responsibility which many could not bear.

⁹ OT p. 298.

“Tribalism and racism are the very realistic, if very destructive, ways of escaping this predicament of common responsibility.”¹⁰

In the *Human Condition*, the idea of responsibility reappears in the idea of ‘irreversibility’ and the human capacity for promising and forgiveness. Human action occurs within the web of human relationships and, as such, the consequences of all our actions escape us. One is “unable to undo what one has done though one did not, and could not, have known what he was doing.”¹¹ And yet, by acting in the world, we are nevertheless responsible for them. Arendt argued that this responsibility might also be too much to bear and suggests the human capacity for forgiveness as a possible remedy. “Without being forgiven, released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever.”¹² Similarly, promising allows us to bind ourselves – create obligations – that allows us to plan, to some degree for the future. We need to be able to create responsibility in order to plan for the future and we need to be able to absolve people of responsibility (through forgiveness) so that we can break the hold of past actions and 'start again'.

Arendt returns once again to the problems of responsibility in a number of essays written after and inspired, at least to some degree, by the Eichmann

¹⁰ OT p. 236

¹¹ HC p. 237

¹² HC p. 237

trial. The question was raised in her reflections on Eichmann's defense that he was merely doing his job in carrying out the Final Solution. This led Arendt to reflect on the different kinds of responsibility and to make the distinction between personal and collective responsibility.

The idea of responsibility is also central to Peg Birmingham's universalist reading of Arendt's thoughts on rights. She anchors the right to have rights in the common responsibility that we all share for the Earth as a result of the emergence of one-world. It is because of this shared responsibility for the entire world and everything that happens in it that Birmingham believes that Arendt was arguing for a robust conception of human rights. I argue in this chapter that Arendt's later distinction between personal and collective responsibility leads to the conclusion that a universalist reading of her thoughts on rights is mistaken. By associating the problems of statelessness with collective responsibility rather than personal responsibility, Arendt reaffirms the importance of a relationship to a limited political space to the enjoyment of rights

5.2 Personal and Collective Responsibility

Responsibility takes two primary forms in Arendt's later thought – personal and collective.¹³ *Personal responsibility* concerns the obligations that I incur through my actions. *Collective responsibility* concerns obligations that I come to have as part of a group and therefore derives from things that I have not done. Both are important to Arendt's conception of politics because they are intimately related to human plurality. Personal responsibility is a consequence of individual plurality. Since I live in the world with others, I incur responsibility for the results of those actions on the world that I share with them. Ultimately it relates to questions of legal or moral blame or guilt. Because it related primarily to the self (my responsibility) Arendt considers it to have political implications (in the sense that individual actions can have effects on the group) but that it is not itself political. Collective responsibility is a consequence of the plurality of political groups. As such, it is political through and through. Since I live in the world as a part of a collectivity, I acquire a responsibility for the actions of that group, regardless of the part I may have played in those actions (i.e. even if I personally opposed them). Responsibility is, I will argue, along with worldliness, a condition of free political action – as such it is intimately related with the human faculties of promising and forgiveness. Without responsibility, an actor would not be able to remain connected to his/her actions. In that sense, responsibility is a condition for Arendt's conception of politics and agency.

¹³ This distinction is drawn primarily from two articles: "Personal Responsibility Under Dictatorship" and "Collective Responsibility," both published in H. Arendt, *Responsibility and Judgement*, ed. J. Kohn. . (New York, NY: Schocken Books, 2003)

5.3 Personal Responsibility

Arendt's reflections on *personal* responsibility seemed to be inspired by her coverage of the trial of Adolf Eichmann. Eichmann's self-understanding as a cog in the Nazi machinery appeared to Arendt as an unwillingness to accept responsibility for the consequences of his participation. Arendt famously argued that Eichmann must account for why he allowed himself to become such a cog.¹⁴

Arendt identifies personal responsibility with legal and moral, as opposed to political, accountability. Laws, both moral and legal, serve to hold us accountable for our actions. In so doing, they recognise us as free, responsible beings. For Arendt, morality concerns the two-in-one relationship that each of us has with ourselves. Because we are thinking beings, we have the capacity to engage in a dialogue with ourselves. Conscience, for Arendt is an effect of our internal duality. It is because I don't want to live with a murderer that I don't commit murder. Arendt believed that it is this experience of living with oneself that led Socrates to identify the moral code with being in harmony (consistent) with oneself. "If I do wrong I am condemned to live together with a wrongdoer in an unbearable intimacy; I can never get rid of him."¹⁵

¹⁴ 'Personal Responsibility under Dictatorship', p. 31

¹⁵ H. Arendt, 'Some Questions of Moral Philosophy', *Responsibility and Judgment*, ed. J. Kohn. (New York, NY: Schocken Books, 2003) p. 90

According to Arendt, Kant took this principle of non-contradiction and formalised it into the categorical imperative.¹⁶ However, this duality remains *internal*. Moral responsibility is individualising. Similarly, in the legal context, though a defendant in court may claim that he or she did what she did because of membership in a group – that he/she was merely a cog in a giant machine (as Eichmann did), “(i)t is the grandeur of court proceedings that even a cog can become a person again.”¹⁷ It is the function of the court to pass judgement and assign responsibility.

Both conscience and the law serve to assign personal responsibility for our individual conduct. However, as we saw, for Arendt politics concerns the world rather than the self. Personal responsibility becomes political only in extreme cases, such as Nazi Germany, when continuing to obey the laws might actually constitute support of a criminal regime. In those circumstances, conscientious withdrawal from political life becomes political, possibly even heroic. “At these moments, thinking ceases to be a marginal affair in political matters. When everybody is swept away unthinkingly by what everybody else does and believes in, those who think are drawn out of hiding because their refusal to join is conspicuous and thereby becomes a kind of action.”¹⁸

¹⁶ H. Arendt, *The Life of the Mind, Volume II: Willing* (New York: Harcourt Brace Jovanovich, 1977) p 63

¹⁷ 'Collective Responsibility' p. 148

¹⁸ 'Thinking and Moral Considerations', *Responsibility and Judgment*, ed. J. Kohn. (New York, NY: Schocken Books, 2003) p. 188

The issue political aspect of individual (personal) responsibility emerges because of what Arendt calls ‘action’s predicaments.’¹⁹ The predicaments of the other aspects of the *Human Condition*, the lack of durability inherent in *labour* and the meaningless inherent in *work*, are resolved by appealing to other aspects of the *vita activa* (*work* creates a durable world for the repetitive activity of *labour*, *action* confers meaning on the world built by human being’s instrumental *work*). The predicaments raised by *action* can only be addressed with other forms of *action*. Specifically, the *irreversibility* of human action can be dispelled by the faculty of forgiveness which releases the actor from responsibility for his/her actions. Since we cannot undo what we have done, forgiveness is required in order for us to start anew – so that, “unlike the sorcerer’s apprentice who lacked the magic formula to break the spell,”²⁰ we are not trapped in the endless consequences of each and every one of our actions. Similarly, the *unpredictability* of action can be dispelled (again, only partially) through the faculty of promising. By promising, human beings can create zones of relative stability in the flux of time.

Thus, despite the fact that Arendt generally tries to divide political from moral considerations, promising and forgiving represent, for her, a form of morality that is also political. This is true for three related reasons: because it is tied up with plurality (“no one can forgive himself and no one can feel bound by a promise by a promise made only to himself”²¹), because it is a form of action and because, ultimately it allows for a stable political realm to emerge

¹⁹ HC p. 236

²⁰ HC p. 237

²¹ HC p. 237

between us in the world that we have built for ourselves. Arendt goes so far as to say that the only strictly moral duties of the citizen is that they make and keep promises.²² Promising has different forms though. There is the general day-to-day promising that occurs between people. This helps to stabilise our identities through time and to establish the basis for our actions as responsible agent. This is not necessarily political action in the purist sense of performance in a public space; it is simply the day-to-day stabilisation that makes possible our collective existence, even in the instrumental sense described last chapter. “(B)inding oneself through promises, serves to set up in the ocean of uncertainty, which the future is by definition, islands of security without which not even continuity, let alone durability of any kind, would be possible in the relationships between men.”²³ There is also the idea of the foundational promise – the original agreement that establishes a political community and the authority that goes with it. Arendt has several examples of these, from the Mayflower compact to the United States Constitution. These foundational promises raise questions about the authority of those who make the promise, but the point is that for Arendt the social contract is a specific agreement, an “act of mutual promise (that) is by definition enacted in the presence of one another.”²⁴

²² H. Arendt, “Civil Disobedience”, in *Crises of the Republic*, (New York, Harcourt Brace Jovanovich, 1972), p 92.

²³ HC p. 237.

²⁴ OR p. 171.

5.4 Collective Responsibility

It is the world rather than the self that is at issue in Arendt's understanding of collective responsibility. It refers to an obligation we have to take care of the world that we inherit with other members of our political community. Unlike personal responsibility, it is not incurred through our action and it is not a feature of a good will or a clear conscience. Rather it is based on our relationship to an objective thing – a world – that we share with others. The distinction between personal and collective responsibility turns on the existence of a world which stands outside of us and in which all our collective affairs take place. We enter into this responsibility either through our birth into that community (what Arendt calls internal immigration²⁵ or by leaving another community – in effect, trading one collective responsibility for another.

Two conditions have to be present for collective responsibility: I must be held responsible for something I have not done, and the reason for my responsibility must be my membership in a group (a collective) which no *voluntary* act of mine can dissolve, that is, a membership which is utterly unlike a business partnership which I can dissolve at will.²⁶

Furthermore, as we saw last chapter human plurality for Arendt is constituted by our different perspectives on a shared world. She is therefore referring to the responsibilities imposed by our belonging to a shared world – a belonging is independent of an individual or collective will. It is independent of

²⁵ 'Civil Disobedience' p. 88

²⁶ 'Collective Responsibility' p. 149

the individual will in that we bear it regardless of any voluntary choice we might have made. We are responsible for our political world whether or not we have chosen to be a part of it. In fact, it is accurate to say that we are responsible, as opposed to guilty, *because* our membership is not a matter of choice, since it is the result of an inherited membership in a group. It is independent of anything like collective will because it is mediated by the shared, objective world that exists between us. The world is a shared responsibility because our different place in the world means that we each have a different perspective on it. These perspectives, for Arendt, can never be reduced to one 'collective' perspective, without sacrificing the freedom of the people who make up the community.

Political responsibility is related to the question plurality, and it highlights an important distinction between the plurality of human beings and the plurality of human groups. This is a consequence of Arendt's conception of politics as relating to a specific, delimited space in the world. "Freedom, wherever it existed as a tangible reality, has always been spatially limited... the borders of national territory or the walls of the city-state comprehended and protected a space in which men could move freely."²⁷

The importance of the existence of plural groups to our political life is revealed in Arendt's condemnation of the crime of genocide.

²⁷ OR p. 275

If a people of a nation, or even just some specific human group, which offers a unique view of the world arising from its particular position in the world – a position that, however it came about, cannot be readily duplicated – is annihilated, it is not merely that a people or a nation or a given number of individuals perishes, but rather that a portion of our common world is destroyed, an aspect of the world that has revealed itself to us until now but can never reveal itself again.²⁸

This means that it is not simply the plurality of individuals which stands in relation to the world but also a plurality of collective groupings. For Arendt, each of these groupings constitutes a perspective on the world. Furthermore, they represent an enduring political constitution that aspires to immortality. “Violence is applied here not only to things that have been produced... but also to a historical and political reality housed in this world of products, a reality that cannot be rebuilt.”²⁹ The plurality of political units implies that political obligation, for Arendt, shouldn't be understood in general terms. It is always the result of a specific relationship to a specific political entity.

It is important to note that Arendt is not referring here to the responsibilities of a collective in a communitarian sense. As many commentators, such as Ronald Beiner as well as Canovan have pointed out, Arendt had little time for nationalist claims.³⁰ Hers was a “non-communal conception of citizenship.”³¹ Arendt was famously critical of the subordination of the political to the cultural demands of the nation. One of the elements in the decline of the nation-state

²⁸ 'Introduction into Politics', in *The Promise of Politics*, edited by J. Kohn. (New York, NY: Schocken Books, 2005) p. 175

²⁹ Ibid p. 161.

³⁰ See M. Canovan, op cit. p. 243-249, and R. Beiner, 'Arendt and Nationalism,' in *The Cambridge Companion to Hannah Arendt*, ed. D. Villa, (Cambridge University Press, Cambridge, 2000), pp. 44-62.

³¹ M. Canovan, op. cit. p. 245

is what she called “the transformation of the state from an instrument of the law into an instrument of the nation.”³² She is critical of the pan-movements of Eastern Europe in particular who “had not the slightest idea of the meaning of patria and patriotism, not the vaguest notion of responsibility for a common, limited community.”³³ For Arendt, it is not that national communities exist and that, on the basis of self-determination, they have a claim to a political entity that corresponds to their community as communitarians such as Michael Walzer, have argued.

Michael Walzer’s conception of a political community, also inspired by Edmund Burke³⁴, seems closer and is therefore helpful in order to highlight what is distinctive about Arendt’s approach. For Walzer, “the idea of community integrity derives its moral and political force from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out amongst themselves.”³⁵ Walzer derives the political claims of communities from the rights of its individuals to belong to and express their inherited culture. For Arendt, as I have been arguing, the political relationship precedes and constitutes the rights of individuals. In this sense, her rejection of the idea that politics emerges as the expression of prior claims, either individual or collective, applies to both liberalism and communitarianism.

³² OT p. 275

³³ OT p. 232

³⁴ M. Walzer, ‘The Moral Standing of States’, in C. Beitz, M Cohen, T. Scanlon, and A Simmons, *International Ethics*, (Princeton: Princeton University Press, 1985), p. 219.

³⁵ *Ibid.* p. 219.

5.5 Common Responsibility

In her book, *Hannah Arendt and Human Rights*, Peg Birmingham describes a third form of responsibility – common responsibility- which she argues should be understood as the “guarantor of our right to have rights.”³⁶ Common responsibility stems from the fact that we now all belong to a world where any of our actions could conceivably affect others anywhere in the world. We, as members of humanity, all bear a responsibility for the world which houses us all. Arendt argued that racism, in its modern form, emerged as a reaction against the common responsibility that we all have for the whole world. Birmingham argues that Arendt’s thought ought to be understood as a call to take up that responsibility through a renewed human rights politics, specifically practices surrounding citizenship and the ‘right to active political participation.’³⁷

Common responsibility relates to collective responsibility because it concerns our existing in what has become ‘one world.’ Since the imperialist era, we have inherited a world where an action on one side of the world can have an effect anywhere else in the world.³⁸ This creates a ‘common present’ and a ‘negative’ responsibility to prevent the destruction of the space in between all of us.³⁹ It is connected to the problem of personal responsibility

³⁶ *Hannah Arendt and Human Rights* p. 131.

³⁷ P. Birmingham, op. cit. p. 142

³⁸ OT p. 297

³⁹ H. Arendt, ‘Karl Jaspers: Citizen of the World,’ in *Men in Dark Times*, (New York, Harcourt Brace Jovanovich), p. 83

in that the *irreversibility* and *umpredictability* inherent in human action now extend to the entire planet. It is related to personal responsibility in that it concerns the (potential) effects of our actions. It is related to collective responsibility in that it concerns our membership in an externally constituted group – a group constituted by the historical emergence of a global world.

Peg Birmingham's reading of Arendt's thoughts on rights is based on our acceptance of our common responsibility for the world. Since we now inhabit 'one world', our actions are capable of affecting everyone, everywhere. As such we all have acquired a common responsibility for the common world we all inhabit. Arendt feared that this might be too much for most to bear. The most frequent reaction was to retreat in horror at the idea of humanity, a reaction that revealed itself in modern nationalist movements.⁴⁰ But it is clear that Arendt believed that this was a responsibility that we had no choice but to assume. To attempt to ground human rights in Arendt's ideas of common responsibility, as Birmingham does, is a tempting interpretive position because it allows us to see the problem of humanity in terms that can be aligned with the individualizing character of rights discourse. Common responsibility is personal responsibility writ large. We are all born into this world. All our actions can potentially affect every single person in the world. Therefore we all assume responsibility for everything that goes on within that world. "The ideal of humanity purged of all sentimentality, demands that human beings assume political responsibility for all crimes and evils committed

⁴⁰ OT 235-236

by human beings.”⁴¹ Birmingham can then look to the situation of common responsibility for the entire human world as part of the grounding for a human rights discourse consistent with Arendt’s thought.

5.6 Collective vs. Common Responsibility

However, common responsibility differs from collective responsibility in that it does not take into account the *collective* plurality of the human condition. Human beings belong to limited political communities which themselves constitute the plurality of the human species. There is a temptation to associate rights with common responsibility, which would allow for something like universal human rights, instead of with collective responsibility which is always located within a specific limited community. My contention is that this is inconsistent with Arendt’s thought – that she identifies ‘the right to have rights’ with belonging to a specific limited community constituted by a shared, collective responsibility.

Arendt is clear that, though collective responsibility is not determined by my actions or my will, it can nevertheless be repudiated. One can leave a community and join another. “We can escape this political and strictly collective responsibility only by leaving the community, and since no man can live without belonging to some community, this would simply mean to

⁴¹ P. Birmingham, *op. cit.* p. 6, see also OT p. 235-236

exchange one community for another, and hence one kind of responsibility for another.”⁴² Political responsibility refers to a specific place in the world. This means that collective responsibility cannot be extended to the entire planet simply because we happen to share a common interest in its well-being and the capacity to affect almost all aspects of it. The spatial limits of Arendt’s conception of political responsibility are a consequence of her spatially limited conception of politics and freedom. “Freedom in a positive sense is possible only among equals, and equality itself is by no means a universally valid principle but, again, applicable only within limitations and even within spatial limits.”⁴³

Arendt’s conception of politics as conditioned by a relationship to a spatially limited world of our own construction is the reason that common responsibility cannot simply be a form of collective responsibility for the entire planet. Political responsibility, like promising, is not a consequence of our general obligation but rather of specific relationships to other people, mediated by a space that exists between them. To put it simply, there is that there is no one to whom we, as humankind, could be responsible. There is no one to whom we can make promises, no one to forgive. “Both faculties... depend on plurality, on the presence and acting of others, for no one can forgive himself and no one can feel bound to a promise made only to himself.”⁴⁴ Human beings in a specific place can generate politics by acting together. Politics can engage in politics by making promises (treaties). But

⁴² ‘Collective Responsibility’ p. 150

⁴³ OR p. 275

⁴⁴ HC p. 237

even here, responsibility for a limited space is preserved. "Treaties and international guarantees provide an extension of this territorially bound freedom for citizens outside their own country, but even under these modern conditions the elementary coincidence of freedom and limited space remains manifest." ⁴⁵

Humankind cannot be a political agent because it has no peers. Common responsibility ultimately turns human beings back upon themselves. It grounds politics in morality and therefore does not take our concern for the world seriously enough. Though after the Eichmann trial, Arendt was more open to the importance of truly moral thinking in allowing people to inoculate themselves against a moral breakdown on a large scale like the one that occurred in Nazi Germany, it remains ultimately concerned with the self and not with the world. The consequence of making *common* responsibility the basis for international political action is that without the plurality of human groupings, it is again possible to see global politics on the model of a relationship to the self. This is why common responsibility cannot serve as an anchor for human rights in the way Birmingham would like. It does not recognise the limited and spatial and multiple character of Arendt's understanding of the world. In short, it does not preserve the plurality which is central to Arendt's conception of politics.

⁴⁵ OR p. 275

Instead, Arendt specifically links collective responsibility to the enjoyment of rights. It is our concern for the shared, *limited* world that we inherit, that makes it possible for us to act politically. Thus, unlike liberalism which is concerned with generating political obligation in the abstract, Arendt's approach to politics, and therefore to rights, is concerned with specific obligations. This is why she connects rights to collective, rather than common, responsibility. In the next section, I will illustrate this by contrasting Arendt's conception of political responsibility as specific and limited with liberalism's understanding of political obligation as derived from an alignment of individual wills. For liberalism, a hypothetical consent generates obligation whereas for Arendt, it is only because human beings belong to a shared political world that they can make promises at all.

5.7 Promising, Consent and Obedience

For both Arendt and the liberal tradition, the theory and practice of promising is central to the idea of obligation. However, as we will see, the relationship between promising and obligation is quite different. For both liberalism and, ultimately for Birmingham as well, human rights turn on a relationship to the self rather than to the world. They attempt to derive political principles from an understanding of *personal responsibility*. When we compare these approaches with Arendt's thoughts on collective responsibility we can see that it is as politically responsible beings that we *make* promises. Political responsibility precedes promising and it is for that reason that, as a form of

connection to the world, it is necessary for the enjoyment of rights. And since political responsibility is always related to a specific limited community, it is clear that for Arendt, the right to have rights cannot refer to something outside of the political space that gives it content.

At first glance, the importance that Arendt places on promising, especially with respect to the founding and stability of political communities seems to suggest affinities with liberal social contract theory. However, the role of promising is different in each case. Even though modern liberals don't emphasise the original contract in the same way that Hobbes or Locke did, the idea that political obligation is based on a kind of agreement remains prevalent in contemporary liberal thought. Contemporary liberals, like Rawls and those that draw inspiration from his thought, inherit the problem of political obligation from Rousseau and Kant: how to align our obedience to the law with our free will. Though post-metaphysical liberalism may have dispensed with any reference to a free will, it is still guided by the idea that legitimate laws – laws that should be obeyed – are laws to which those subject to them have contributed or that any reasonable person would support. Contemporary liberalism remains voluntaristic in the sense that consent is tied to legitimacy which is itself tied to obedience. It is ultimately based on a hypothetical agreement between reasonable, rational persons. Governments that have the support of reasonable, rational persons are legitimate and, therefore, the laws of these governments should be obeyed. The importance of this idea of agreement carries over into liberal thought on human rights. For both approaches, promising is necessary for us to have any kind of free political

existence. However, the differences between them help to illustrate the importance of responsibility to Arendt as a way of conceiving of politics in a way that does not rely on the will or on conscience.

5.8 Liberal Approaches to Political Obligation

As we saw in chapters 2 and 3, liberal human rights thinkers, inspired by Rawls, establish a set of principles that constitute full liberal justice and a subset of basic human rights that justify rebellion internally or intervention externally. For minimalists like Michael Ignatieff or Maurice Cranston, this subset refers only to negative liberties, basic protections of personal security and freedom of conscience. There are various approaches that defend a more extensive set of rights, from Henry Shue's *Basic Rights* to Joshua Cohen's ideas concerning political membership. The point of all of these conceptions is that they link human rights with political legitimacy. In this next section, I will show that for liberalism, legitimacy is ultimately a matter of aligning individual wills with a set of principles in order to establish what kind of institutions should be obeyed. For liberals, even post-metaphysical liberals, legitimacy is a matter of coordinating the wills of free individuals in order that they may obey the laws without compromising their liberty.

In Rawls' political liberalism, the central issue of promising is taken up in his concept of the two moral powers that he ascribes to persons. Persons, for

Rawls, are both rational and reasonable.⁴⁶ They are rational in that they have ends or life-plans that they want to achieve. They are reasonable in that they are willing to coordinate with others in a fair social structure in order to achieve those ends. The importance of the idea of promising comes up in the concept of the reasonable.

The first basic aspect of the reasonable, then, is the willingness to propose fair terms of cooperation and to abide by them provided others do. The second basic aspect... is the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime.⁴⁷

Rawls' efforts to separate justice from its metaphysical or philosophical roots in Kant or Rousseau (his refusal to "derive the reasonable from the rational"⁴⁸) make his approach an interesting comparison for *Arendt's idea of responsibility that generates obligation without reference to the will*. It is likely that Rawls would not agree that political liberalism is based on a specific philosophical conception of the will. However, his 'Kantian constructivism' is based on the intuition that a theory of justice ought to derive its principles of justice from the choices, real or potential, of its members. The idea, common to liberal theory even in its post-metaphysical form, is that a legitimate government is one that is supported by all of its people or at least should be supported by all members. "It is only by affirming a constructivist conception –

⁴⁶ J. Rawls, *Political Liberalism*, (Cambridge, MA: Harvard University Press, 1993), p. 48-54

⁴⁷ Ibid. p. 54

⁴⁸ Ibid. p. 52

one that is political and not metaphysical – that citizens generally can expect to find principles that all can accept.”⁴⁹

5.9 Obligation, Consent and Obedience

This account of liberal obligation was outlined by Hanna Pitkin in a pair of articles “Obligation and Consent.”⁵⁰ She argued that liberalism from Locke to the present had to rely on some form of hypothetical consent to generate legitimacy. A legitimate government is, in her view, one to which we *ought to consent*. She then went on to make the claim that this idea obligation was built into the meaning of legitimacy itself.

That legitimate government authority is such that one ought to consent to it, is a precept built into English grammar, into the meanings of these terms... Someone might undertake to argue, for example, that a government is legitimate only to the extent that it fosters high culture, or to the extent that it promotes the evolution of a master race. That would be to reject majority consent as any sort of criterion for assessing a government. But the doctrine of hypothetical consent holds even for someone taking such an unorthodox position; even for him, a legitimate government would be one that deserves consent, to which everyone ought to consent.⁵¹

⁴⁹ Ibid. p. 97

⁵⁰ H. Pitkin, “Obligation and Consent I” in (*APSR* Vol. 59, no 4, 1965), H. Pitkin, “Obligation and Consent II” in (*APSR* Vol. 60, no 1, 1966)

⁵¹ H. Pitkin, “Obligation and Consent II” in *American Political Science Review* (Vol. 60, no 1, 1966), p. 44

For Pitkin herself, the character of a government that one ought to consent to is more extensive than in traditional liberal theory. However, her point is that legitimacy and consent are grammatically connected. According to Pitkin, to speak of an obligation to obey a government to which one ought not consent is nonsense. And, put in those terms, it is. To the extent that legitimate government is one which must be aligned with the wills of the members of the society it governs, consent is indeed built into the 'grammar' of legitimacy. Rawls himself explicitly refers to and accepts the 'essentials' of Pitkin's account of obligation in his *Theory of Justice*.⁵²

For Arendt, in contrast to liberalism, the point of the social contract is not to establish the obligation to obey the law in general. Instead it always points to real event – a foundation. The Mayflower Compact, the United States Constitution and her other examples of 'original promises' are actions that create a beginning that inspires future action within a community. "(I)t is an event rather than a theory or a tradition we are confronted with, an event of the greatest magnitude and the greatest import for the future, enacted on the spur of time and circumstances."⁵³ Arendt's view of the contract is a rupture in time. To the extent that it creates a political obligation, it is a specific obligation rather than political obligation in general. By promising, I make a commitment to *this* community, *this* group of people in *this* place. In so doing, I establish a public realm that takes on a meaning of its own and imposes

⁵²J. Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971), p. 113n

⁵³OR p. 173

obligations of its own – obligations that will then be passed on to future citizens.

Just as promises and agreements deal with the future and provide stability in the ocean of future uncertainty where the unpredictable may break in from all sides, so the constituting, founding, and world-building capacities of man concern always not so much ourselves and our own time on earth as our 'successor', and 'posterities'.⁵⁴

By contrast, in liberal contract theory, the metaphor of the promise must first establish political obligation in general. It establishes a liberal state which we ought to obey because it is in our interest. This is why liberal theory often incorporates some idea of hypothetical consent. The important point is to establish the reason why anyone should obey anything. By contrast, for Arendt, obedience is merely one aspect of our political and social lives. It does not exhaust our political relationships.

This We arises wherever men live together; its primal form is the family; and it can be constituted in many different ways, all of which rest ultimately on some form of consent, of which *obedience is only the most common mode*, just as *disobedience is the most common and least harmful mode of dissent*. Consent entails the recognition that no man can act alone, that men if they wish to achieve something in the world must act in concert.⁵⁵

This contrast is illustrated in Arendt's discussion in *Crises of the Republic* of civil disobedience as it appeared in the late 1960's. Arendt noted the public, plural character of the acts of civil disobedience and argued that they were "nothing but the latest form of voluntary association" described by Toqueville

⁵⁴ OR p. 175

⁵⁵ H. Arendt, *The Life of the Mind Volume II*, Willing, (New York: Harcourt Brace Jovanovich, 1978), p 200

over 100 years earlier.⁵⁶ Her criticism of the debates around how the state should respond was directed at the way that the legal system treated civil disobedients as *individuals* – as though they were just a contingent number of people who happened to disobey the law at the same time. They failed to take into account that these were citizens, acting in concert to persuade their fellow citizens of the injustice of the laws or actions of their common political community. “In contrast to the conscientious objector, the civil disobedient is a member of a group, and this group, whether we like it or not, is formed in accordance with the same spirit that has informed voluntary associations.”⁵⁷ In a sense, it was a quintessential example of her idea of acting in concert. Groups of citizens acted to attempt to persuade their peers and their political leaders to put an end to an action (the Vietnam war) that they rejected but were nevertheless responsible for, by virtue of being American citizens.

5.10 Obedience, Consent and the Will

Liberal consent, in Arendt's view, relies too heavily on an internal relationship between the individual and his/herself. She does not understand obligation to be necessarily linked to consent in the same way. In fact, one of her primary objections to liberal understandings of obligation turns on resisting the articulation of the relationship between the state and its citizens in terms of obedience based on consent.

⁵⁶ 'Civil Disobedience' p. 94

⁵⁷ 'Civil Disobedience,' p. 99

The citizen's moral obligation to obey the laws has traditionally been derived from the assumption that he either consented to them or actually was his own legislator; that under the rule of law men are not subject to an alien will but obey only themselves – with the result, of course, that every person is at the same time his own master and his own slave, and that what is seen as the original conflict between the citizen, concerned with the public good, and the self, pursuing his private happiness, is internalized. This is, in essence, the Rousseauan-Kantian solution to the problem of obligation, and its defect, from my point of view, is that it turns again on conscience – on the relation between me and myself.⁵⁸

The idea of legitimacy as related to obedience is problematic in two ways. Arendt rejects Kant's transcendental solution to the famous paradox of finding a place for human freedom in a world governed by natural laws for two reasons. In the first place, it is based on a relation between me and myself and is, in that sense, unworldly. We must obey the dictates of the moral law which each of us has because we are free beings, ends-in-ourselves. For Arendt, freedom is always in the world, dealing with humans as acting beings, whereas the will or conscience concern humans as thinking beings, capable of removing themselves, at least temporarily from the immediate concerns of this world. Secondly, it returns the question of political freedom to the domain of sovereignty, which, for her imports relationships of command and obedience into politics. Her emphasis on the importance of politics is in large part an attempt to protect from the attitudes of philosophers who are more interested in the life of the mind. "Action insofar as it is free is neither under the guidance of the intellect nor under the dictate of the will."⁵⁹

⁵⁸ 'Civil Disobedience' p. 84

⁵⁹ H. Arendt, 'What is Freedom' in *Between Past And Future: Eight Exercises in Political Thought*, (New York: Penguin Books, 1993) p. 152

For Arendt, the structure of command and obedience is built into the political appearance of the human faculty of the will. The difficulty with the liberal approach to politics is that its emphasis on obedience as the primary political problem means that the relationship between the citizen and the self is 'internalised.' We have already seen that Birmingham's reading of Arendt still tends in that direction by basing human rights on the common responsibility that we all have for humanity as a whole. However, Arendt also argues that the will has dangerous consequences when it is deployed politically. Arendt believed that the modern tendency to equate freedom with the will had the effect of pushing aside a conception of politics that is based on the plurality of human beings.

For Arendt, when we will, unlike when we think, our divided self cannot be kept in harmony. The will, as a faculty, Arendt argued, emerged from a specifically Christian problem of wanting to be good but failing. Early Christians, specifically Paul, noted the internal struggle within the will itself which wants to do good but also resists itself. Because of this internal struggle, the primary experience of the will has to do with powerlessness.⁶⁰ As the tradition in political thought began to be taken up by Christian thinkers who valued care of the soul over care of the world, freedom increasingly came to be seen as an internal matter rather than relating to our action within the world. Because it is internally divided, constantly frustrated by its inability to

⁶⁰ H. Arendt. *The Life of the Mind, Volume II: Willing*, (New York: Harcourt Brace Jovanovich, 1978), p. 70

do what it wills, it seeks obedience and control rather than persuasion when it is forced to act in the world. When, at the beginning of the modern era, thinkers again began to turn their attention to the political realm, they brought the Christian identification of freedom and the will with them. In a sense, they imported the anti-political tradition of Christianity into the secular public realm. For Arendt, the political manifestation of the will occurs in the idea of sovereignty. The writings of Jean-Jacques Rousseau, and the “absurdities”⁶¹ at which it arrived are, for Arendt, a prime example of the dangers that arise when the will is equated with political freedom. For Arendt this identification of politics with command and obedience is antithetical freedom under conditions of plurality.

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 non-political means. Under human conditions, which are determined by the fact that not man but men live on the earth, freedom and sovereignty are so little identical that they cannot even exist simultaneously.⁶²

Though contemporary liberal thought has distanced itself from a conception of freedom that is directly tied to a philosophical conception of the will, liberalism still follows this logic to some degree in that it continues to see political legitimacy as tied to justifications of obedience. The problem is then transferred to liberal human rights theory to the extent that the protection of human rights is understood as a condition of state sovereignty. I argued in the first chapter that the paradoxes of human rights occur in part because of their

⁶¹ 'What is Freedom?' p. 164

⁶² Ibid. p. 164

entanglement with sovereignty. The idea of collective responsibility allows Arendt to establish a connection between human beings and political authority that does not rely on the will or on conscience.

Arendt does not put much stake in the promise as a means of *creating* obligation or responsibility. She simply states that it is our primary moral obligation as citizens is to make and keep promises. “Every organisation of men, be it social or political, ultimately relies on man’s capacity for *making promises and keeping them*.”⁶³ As a means of producing the stability necessary for political life, the *making* of promises is as important as the *keeping* of them. It is this that distinguishes most clearly Arendt’s thoughts on promising from liberal versions of consent. One of the primary questions for the liberal tradition concerns how one can generate the obligation to obey the law. The making of a promise is a solution to the problem of how it is that we are obliged at all. For Arendt, promising is not the foundation of political obligation. This can be shown by looking at the problems that emerge when we look at Arendt’s use of promising to found a new political entity.

5.11 The Importance of the World to Promising

The importance of the world to promising can be seen by looking at the work of some of Arendt’s commentators on her theories of promising and

⁶³ 'Civil Disobedience' p. 92 italics mine.

foundations. When we take the world into consideration, it becomes clear that it is political responsibility for the world that sets the conditions for promising. This is why non-responsibility is so closely tied to rightlessness. Without responsibility for a shared world, we lack the conditions necessary to make durable promises which are among the conditions for having rights.

Both Alan Keenan and Bonnie Honig have pointed out the aporias that emerge in her understanding of promising and political foundations. They claim that Arendt does not succeed in solving the difficulties inherent in founding a new community. They argue that the founding promise, by itself, cannot found a community without reference to violence or to an absolute. Honig, citing an argument made by Jacques Derrida, argues that an absolute is needed because the signers of the declaration don't have the authority to sign until they have actually signed.⁶⁴ Honig argues that the invocation of the absolute, which Arendt seems to view as a failure of nerve on the part of the founders, is necessary to constitute the signers of the Declaration as *signers*.⁶⁵ Similarly, Keenan argues that promises require interpretation which means that a (sovereign) decision must be made at some point to establish what the promise means in a given circumstance. Keenan argues that promising exists for Arendt to establish and maintain a political space in a manner that does not require violence. He claims that Arendt puts too much stake in promising as a means to maintain the political realm and that, to become effective, there must always be a moment, necessarily violent (in the

⁶⁴ B. Honig, "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic," *APSR* (Winter 1991), p. 105.

⁶⁵ *Ibid.* p. 104.

form of a sovereign decision) in which the promise becomes actualised in political life.⁶⁶ In order to preserve freedom it must limit freedom and that limitation requires that it violate that law of freedom (that actions should be undetermined). “What the promise promises is the establishment and continuation of a realm of politics: both the space of appearance (of freedom) and the power generated by common action. For that to be the case, the promise in fact only promises itself.”⁶⁷

Both Keenan and Honig emphasise the logical presuppositions that underpin Arendt's idea of promising. Honig focuses on the necessity of the pre-existence of a linguistic practice of promising.⁶⁸ Keenan, for his part, starts from the claim that Arendtian promises must be free – that they can't be determined by pre-existing conditions – and then goes on to show what conditions are actually at play. What is missing from both these analyses is the importance of the world to Arendt's understanding of freedom. Keenan and Honig drive too sharp a wedge between the artificial world that houses human beings and the free action that can take place within that world. To be sure, the Arendtian promise founds a political community which is responsible for the world that is thereby in its care. But there are limitations on the form that this foundation can take which are not themselves purely related to that founding promise. These limitations derive from the relationship to that world. All action is related to the world in which it takes place in the same way that all

⁶⁶ A. Keenan, “Promises, Promises: The Abyss of Freedom and the Loss of the Political in the Work of Hannah Arendt,” *Political Theory*, (Vol 22, No. 2, 1994), p. 316.

⁶⁷ *Ibid* p. 308.

⁶⁸ B. Honig. *op. cit.* p. 103

opinion derives from our multiple positions in the world. As Patchen Markell argues,

Arendt's account of beginning... shows us that action, as a response to events, is... always a second step rather than a first: if we can never quite lose our capacity to act altogether... this is because there never ceases to be a fund of doings and happenings –beginnings – in the world to which we might respond.⁶⁹

Thus, thus happenings and circumstances in the world can provide the context and possibility for free, spontaneous action, without these actions being specifically dependent upon them. Arendt's point is that free action is undetermined, not that it is disconnected from the world. Political action is far more 'mundane' since it constantly refers to, and is therefore conditioned by our shared world. Moreover, it is conditioned by the fact that it shared and by the people with whom it is shared. In short, it is conditioned by the collective responsibility of those members of a community who have inherited the care of their public space either through birth into the community or through emigration.

For Arendt, the relationship between promising and obligation is not based on the promise creating the terms of political obligation in the way that liberalism bases political obligation on consent. Rather, it is because we are responsible beings that we have the capacity for action, one element of which is the ability to make and keep promises. We are responsible when we have a connection to a place in the world. Our promises, like our opinions and our

⁶⁹ P. Markell, op. cit. p. 12

actions refer to the world that constitutes our plurality. This is why we do not need to follow Keenan and Honig in looking for the conditions that make promising possible and the final arbiter who determines the correct interpretation of promises. Responsibility and obligation in the general sense precede promising. Promises are specific enactments of this responsibility and obligation which we simply have as separate beings who are connected to the same shared world. It is the shared world which is a condition of promising. It is the world that is, as it were, politically animated by the activity of promising.

For Arendt it is because of our worldliness, that we can make promises and that we can build a public realm. Our connection to the world makes us responsible for that world. It is as responsible beings that we make and keep promises. When we have been separated from that world, we are no longer in a position to *make* meaningful promises, which, as we have seen is, along with forgiveness, the primary moral duties of the citizen. A human being who is cut off from the world, who has no responsibility for it, cannot make meaningful promises, cannot exercise his/her duties as a citizen is cut off from political action. This person, as Arendt has argued throughout, is precisely the person who susceptible to finding himself or herself in a condition of rightlessness.

The human being who has lost his place in a community, his political status in the struggle of his time, and the legal personality which makes his actions and part of his destiny a consistent whole, is left with those qualities which usually can become articulate only in the sphere of private life and must

remain unqualified, mere existence in all matters of public concern.⁷⁰

5.12 Conclusion

To summarise Arendt's idea of responsibility. We are personally responsible for what we do ourselves – we are responsible for the consequences of our actions on the world we inhabit. All of our actions initiate a new chain of events the effects of which can never be foreseen. We are personally responsible for making and keeping our promises which are the basis for our living together. However, we are collectively responsible for the shared world that we have in our care while we are alive and that is the basis for our relationship to our peers to whom we can make promises. All of these forms of responsibility are elements of our political selves – our public selves. They all testify to our relationship to the world. When elements of this responsibility aren't present, it is a sign that we have become disconnected from the world – a situation of extreme vulnerability. The example of the stateless person who improves his position by committing a crime is testimony to the first relationship. By being arrested and convicted, one has had *one's responsibility for individual actions* attested to. One becomes a being of consequence – even a negative one.⁷¹ By not having a collective responsibility for one's community, one does not have a connection to other human beings by virtue of taking upon oneself the *consequences of collective action*. By making and keeping promises, one does two things, one

⁷⁰ OT p. 301

⁷¹ OT p. 286-287

repeats/re-enacts the founding promise that made the community possible, and one allows for collective action spread out in time. One creates a framework for the durability of the subjective world to go along with the durability of the objective world. At the same time, one inserts oneself into the basic purposive relationships that make up our objective world.

While the previous chapter addressed the importance of the world in its objective sense, this chapter looked at the importance of the world in its subjective sense as a public realm that we are responsible for preserving. Together they show that, for Arendt, rights are particular and contingent effects of certain forms of government, rather than the primary building blocks of political morality. In this sense, she is not a pure rights skeptic – she would never think of them as 'nonsense on stilts' – but rather, like Burke, she sees rights as emerging out of the complex relationship between human beings and their political institutions and history. Unlike Burke she remains committed to a conception of politics based on the equality of the individuals that make up the political community. This puts her within the liberal-democratic *political* tradition, if not its *philosophical* tradition. Her critique of western societies is based on the weakening of the link between individuals and their political communities. The idea is that all genuine political action constitutes a collective taking of responsibility among for a limited shared place in the world.

Conclusion: Rights and Responsibility

I suggested in the beginning that it is difficult to make liberal human rights theory and Arendt's approach to politics speak to each other. Since they are both derived from different traditions, they make different assumptions about human beings, political power and authority, even about the relationship between philosophy and politics. What they do share is a common concern for finding ways to protect human dignity. They both advance the idea that everyone ought to live in a world where equal rights are respected. Where they differ is that Arendt was skeptical of the idea of basing our political lives on human rights. Nevertheless, I have endeavoured to show throughout this dissertation that there are several axes along which their thought can be compared as it pertains to the political conditions of the enjoyment of human rights. It has been my contention that by looking at these questions we can accomplish two purposes. First, Arendt's thoughts do provide a powerful critique of liberal rights theory which has become dominant in contemporary international politics. Second, by focussing on these questions, which are of such immediate consequence and political relevance, we can see how Arendt's thought can be brought into these contemporary discussions instead of being dismissed as yet another nostalgic appeal to Greek political ideals.

In this last section, I will review the argument so far. Next, I will discuss the relationship between Arendt's thought and liberal theory on the crucial question of political boundaries. I argued in the dissertation that the

paradoxes of human rights were related to the boundary problem in democratic theory. I will therefore offer some thoughts on how Arendt can be used to think about political boundaries which are so central to the problem of rights. In the last section, I will try to show how some of the insights raised in this dissertation can be applied to the question of how responsibility is conceived in international politics. Specifically, I will look at the *Responsibility to Protect*, a document produced by the International Commission on Intervention and State Sovereignty in 2001. I will look at the conception of responsibility at work in that document in order to show how Arendt's conception of the relationship between rights and responsibility can contribute to debates within in international moral theory. Finally, I will conclude by suggesting how the results of this dissertation can inform further research both into Hannah Arendt's thought and in debates in international moral theory.

In the first chapter, I argued that the paradoxes of human rights emerge because of the relationship between human rights and sovereignty. Seeking to derive political authority from individual rights, the liberal rights tradition has created a circumstance where exclusion from a polity is tantamount to the loss of human rights. I have argued that Arendt's idea of a 'right to have rights' does not actually refer to a more basic right to membership or to participation or to politics. Arendt's right to have rights is not a legal construction. Rather it refers to a connection to a shared world. Liberal human rights theory did not sufficiently account for the political conditions of their own appearance.

However, since Arendt was writing about human rights in the first half of the 20th century, there is some question as to the applicability of her reflections to contemporary human rights theory. In the second chapter, I argued that contemporary liberal attempts to generate a political conception of human rights are unable to account for the problem that she raised. I argued that the approaches of liberal thinkers such as John Rawls, Charles Beitz, Joshua Cohen and Michael Ignatieff, which attempt to develop political conceptions of rights as opposed to metaphysical conceptions, do not address the difficulties Arendt raised. Though they try to develop practical conceptions of rights which deal with rights as they operate in international politics – as a set of norms designed to guide the moral relations between states – rather than based on an idea of what a right really is, they cannot avoid using rights to justify political authority and thereby recognising that a right functions to establish a relationship between individuals and the political entity to which they belong. This relationship is inherent in what a right really is and it precisely this relationship that creates the problems Arendt described.

In the third chapter, I addressed one possible liberal version of the right to have rights – the right to political membership. Starting from Henry Shue's conception of a basic right – that is, a right that must be effective in order for all other rights to obtain – I argued that, according that logic, the right to membership should be considered a basic right. However, once we consider what a basic right to membership would mean, it becomes clear that it cannot be guaranteed as a right. In short, if there are basic rights, then the right to membership must be one of them. However, in practice, a right to

membership ultimately undermines the logic of basic rights themselves. I argue that the problem of the right to membership is akin to the boundary problem in democratic theory – the fact that the constitution of the democratic polis cannot be determined through democratic means. When human rights serve as the basis for political authority, the boundary paradox is, in effect, imported into human rights theory. Arendt avoids this by making the relationship between human beings and the world the basis for a more complex understanding of political membership.

In the fourth chapter, I investigated the relationship between human beings and their shared world in Arendt's thought. I argued that it is this relationship that sets the conditions for the enjoyment of rights. Looking at Arendt's concept of world as it appeared in the *Human Condition*, I argued that, though not fully elaborated, this concept was at work in the *Origins of Totalitarianism*. The relationship to the world, which is central to Arendt's conception of politics, should be understood as a productive relationship to the artificial world created by human beings. Rightlessness, as separation from the world, is therefore not simply exclusion from political participation, but is exclusion from the productive work of a society. Her examples of rightlessness, specifically, the refugees and the stateless and her descriptions of human superfluity, show the importance of an instrumental and productive relationship to the world. On the surface, this is somewhat surprising given that Arendt was specifically concerned with excluding instrumental action from politics. However, it does make sense in that the artificial human world is, for Arendt, one of the basic conditions for the appearance of political life.

In the fifth chapter, I argued that, in addition to the productive relationship to the world, Arendt's understanding of rights also concerns the responsibility that we have collectively for the world that we share with members of our polity. I outlined the various ways in which Arendt discusses responsibility and argued that collective responsibility is the most important to her understanding of rights. This relationship is not based on aligning the wills of all members of a polity in order to generate a political obligation. Rather it is based on an obligation that we acquire either through birth or immigration into a political community.

Thus, it is through both our productive relationship to the world and through our responsibility for our shared world that we become recognisable as rights holders. Together, these present the basic conditions for rights to be enjoyed. These conditions are far more complex than can be addressed through human rights politics as it appears in liberal theory – setting the formal terms for political authority. It suggests that international humanitarian action might be addressed less through formal, legal methods – establishing lists of rights and evaluating states according to these checklists – and more through efforts to build relationships between individuals and their shared world. In the what follows, I will suggest some of the ways in which the insights derived from Arendt's thought might be applicable to contemporary debates about international human rights. Specifically, I will look at the moral claims of political entities, how we might think of the political boundaries of political

entities, the relationship between political and social understandings of rights, and whether we need human rights to authorise humanitarian military interventions.

The Character of the Political Boundary

What is interesting about Arendt's thoughts on human rights is not primarily her description of the paradox. The idea that there are difficulties deriving the political authority from individual rights has been noted as early as Burke, Rousseau. What Arendt provides is a concrete description of the conditions produced by the total exclusion from political life and an understanding of just what inclusion entails. The point is not, as some liberals view it, that political exclusion is bad and that we need to construct a theory of human rights that takes that into account. Nor is it primarily that the problem of exclusion is unresolvable within the context of liberal rights theory, though that may indeed turn out to be true. Rather, Arendt advances an understanding of politics that allows for a richer understanding of the relationship between human beings and the political world that both separates them and holds them together in such a way that rights can be held. By making rights the most important and perhaps the only political protection afforded to individuals, the liberal conception of rights has contributed to a situation where the loss of rights entails the loss of one's place in the world. The problem is the equivalence of rightlessness and worldlessness. The point of Arendt's thought is to find a

way to bolster every person's connection to a political world without making this exclusively a matter of rights.

Understanding our political relationship as something we inherit does entail some 'conservative' conclusions. The fact that we inherit a political world that we must take care of accords some presumptive weight to already existing political institutions as well to already existing political boundaries. But Arendt also emphasises the human capacity to begin anew – specifically to found a new political space. This means that our responsibility for the world as we inherit it is not absolute. Arendt's writings on revolution clearly indicate that she believed that when faced with a tyrannical regime, human beings can and should free themselves and create a new shared political community.

It is true that investing the world that houses our political activity with moral claims of its own as well as holding individuals responsible for obligations that they have not incurred through any action or will of their own runaway counter to most approaches to international politics. I have argued, though, that Arendt's thought suggests that these 'collective' political claims are important to the enjoyment of the individual rights that liberalism posits as primary. It shows that the only way out of the paradox of sovereignty and rights is to retreat, at least in part, from a total commitment to moral individualism. Arendt's conception of political responsibility 'solves' the boundary problem by referring to a relationship that is not constituted by the demos itself (except under conditions of the founding of a political space). Indeed, the demos is

constituted by its relationship to a shared political space that is the condition for its appearance as a demos. The boundary problem shows that there must always be a non-democratic element in the constitution of the political space. By situating our political lives in relation to a space that both precedes and outlives us, Arendt shows how our political claims, expressed by rights, are products of a specific relationship that we have to a particular place, and are, in a sense, independent of us.

By emphasising the world that lies between people rather than the purely legal question of how to determine who is to be counted, Arendt shifts the focus from *where to draw the political boundary to the question of how to understand that boundary*. Instead of asking, as liberals do, how do we ensure that no one is ever excluded from a community which might guarantee rights or how can we justify the arbitrary allocation of goods and rights that is determined by birth in this or that state, she asks what is the nature of the relationship between individuals and the world that enables them to have rights. The important point is not where the boundary lies or whether there should be boundaries at all, but rather, what is the character of the relationships that bind people to their *separate* political entities. I have argued that this relationship is complex but that it involves both a productive involvement with the artificial world and an inherited responsibility for that world.

By both recognising the importance of the relationship between the individual and his/her political world and interrogating the character of that relationship, Arendt provides the tools to think about the problem of constituting the demos as being intimately tied to constituting the political space. The political space is not simply where a group of individual rights-holders happen to be. It constitutes and is constituted by those people who belong to it.

The political boundary for Arendt has three characteristics: 1) It must relate to an artificial world created and/or maintained by its members, 2) It sets the terms of collective responsibility and 3) it must allow for the possible emergence of political action in Arendt's sense of free public debate. The temptation for many readers of Arendt is to skip directly to the last characteristic, because of her association of action with freedom. The idea of seeing the right to have rights as a right to politics as Birmingham, Ingram and others do, neglects the importance of the world that houses that action. It is that world which establishes a common context within which action can have meaning. As Markell argued, the world is the contexts in which events to which we can respond through action, occur. Equal rights, as artificial human creations, require this world as well and there has been little indication, in Arendt's time or since, that human rights discourse can help to build up the relationship between human beings and their world.

In the next section, I will look at the idea of a Responsibility to Protect, in order to show how Arendt's thoughts on the importance of a collective responsibility can be applied to a specific debate in international normative theory.

Collective Responsibility and the Responsibility to Protect

The idea of the *Responsibility to Protect*, conceived by the Canadian Government sponsored *International Commission on Intervention and State Sovereignty* in 2001, was proposed to address the relationship between the institution of sovereignty and the demands for intervention raised in incidents of genocide and ethnic cleansing. The Commission's report sought to change the language surrounding sovereignty from the idea of a *right to intervene* to a *responsibility to protect*.¹ The logic of the approach was to alter the understanding of state sovereignty itself. According to the logic of previous discussions of interventions, the state was considered to be the final arbiter for the citizens that belonged to it and therefore immune from legitimate intervention into its affairs by other states. This made it difficult to respond to extreme situations, such as genocide and ethnic cleansing, without breaking the central principle that governed international relations. Under the proposed formulation, in order to be sovereign, a state must assume a responsibility to protect its citizens and, in extreme cases, it should act to protect the citizens of

¹ International Commission on Intervention and State Sovereignty. 2001. *The Responsibility to Protect*. (Available at: <http://www.iciss.gc.ca/pdf/Commission-Report.pdf,2001>), par. 2:4

other states. In the words of ICISS co-chair Gareth Evans, “We sought to turn the whole weary debate about the right to intervene on its head and re-characterize it not as an argument about any *right* at all but rather about a *responsibility* – one to protect people at grave risk – with the relevant perspective being not that of the prospective interveners but, more appropriately, of those needing support.”²

I do not propose here to evaluate the ***Responsibility to Protect*** as a norm, but rather to examine the idea of collective responsibility that the document raises. I argue that, surprisingly, the responsibility to protect only looks at those responsibilities the state and state agents (politicians, office holders etc.) have in the exercise of political authority. It does not consider the responsibilities that citizens may have for the actions of the collectivity to which they belong. In a sense, it breaks from the liberal tradition of deriving sovereignty from the real or tacit consent of the individuals that make up the state. I will argue that if we are to say that the exercise of legitimate political power is ultimately a question of assuming responsibility, as both this dissertation and the Commission claim, then it is important to fully understand the two-way relationship of responsibility between the state and the citizen. The ***Responsibility to Protect*** points to the difficulties that emerge when the rights and responsibilities of states are derived from rights and responsibilities of individuals. I will propose Hannah Arendt's conception of collective responsibility – a conception which is not derived from the personal

² Evans, Gareth, “From Humanitarian Intervention to the Responsibility to Protect”, *Wisconsin International Law Journal*, (Vol. 24 No. 3, 2006), p. 708.

responsibilities of the individuals that make up the political entity – as a possible way to avoid some of these difficulties. The state may be indeed be responsible to protect the rights of its citizens, but the responsibility for the actions of the state falls not only on state decision-makers, but also on the citizens in whose name they act. Arendt's approach also separates out personal responsibility and collective responsibility, anchoring political action in the latter rather than the former. The *Responsibility to Protect*, on the other hand, by refusing to consider questions of collective responsibility at all, further reinforces a Leviathan-like conception of sovereignty in which the state acts as guardian of its subjects rather than the agent of its citizens.

Sovereignty and Collective Responsibility in the *Responsibility to Protect*.

The co-chair of *International Commission on Intervention and State Sovereignty*, Gareth Evans described their approach as trying to change the language around sovereignty and intervention away from the language of rights towards that of responsibility and from the interests of states to the needs of the people who require protection. The principles guiding intervention would then be based on the responsibility of states for the protection of their own citizens and, failing that, for the protection of citizens of other states. The considerations at work in the Commission's description of what it means to think of sovereignty as responsibility are outlined in paragraph 2.15

Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.³

The shift in language allowed for three changes to the way that sovereignty was previously discussed. Besides the shift from the language of rights, the use of responsibility was intended to shift the focus from the state actors asserting their rights to the people who require protection. Second, it expresses that relationship in terms of protection. The joining of international human rights norms with the discourse around human security means that the role of the state is not to provide a space for political action but is rather “protecting the safety and lives of citizens and promotion of their welfare.”

The *Responsibility to Protect* is also broken out into various different components in order to ensure that intervention is not simply a matter of military action in crises. These components are the Responsibility to React, the Responsibility of Prevent and the Responsibility to Rebuild.⁴ Thus, in addition to putting a stop to genocides, there is a responsibility to attempt to

³ ICISS, *The Responsibility to Protect*, par. 2.15

⁴ Ibid. par. 2.29

anticipate atrocities in order to prevent them without the need for military intervention and failing that, there is a responsibility to help to rebuild the state in the aftermath. Moreover, multilateralism is advocated (preferably through the UN) in order to prevent the principle being used as an excuse for offensive military action. The underlying idea is that part of being a part of the international community is recognising not just one's responsibilities to one's own population but to others as well.

However, though the shift from understanding sovereignty as related to a *right* to a *responsibility* seems significant, it is not immediately evident what changes in this linguistic revision. Though many examples of responsibilities are listed (governments to other governments, governments for their citizens, government for the citizens of other states), there is no clear theory of political responsibility outlined in the report. Nor is there any indication that one might be needed. There is an extensive description of the responsibilities that states have towards their people and even towards those of other states, but the document does provide a theoretical justification for adopting the language of responsibility nor any account of what might ground that responsibility.

It is not hard to imagine why. A thorough account of the theoretical grounding of political responsibility demands an account of the relationship – the mutual responsibilities – that obtain between citizens and the state institutions that have jurisdiction over them. Fleshing out that relationship would likely have exposed differences in political opinion that might have

made it difficult to gain wide agreement within the commission and beyond. In effect the Commission is engaged in a practical experiment in what Joshua Cohen has called 'justificatory minimalism.'⁵ Since there are likely to be disagreements about the philosophical justification for normative principles, it may be preferable to strive to attain agreement on the principles and not worry about potential disagreements about the philosophical justification. Indeed the Universal Declaration of Human rights has been described as just such an endeavor.⁶

However, by consciously re-conceiving the justification of state sovereignty, it is not so simple to avoid confronting a theory of responsibility. After all, states are collective entities and if states have responsibilities, then these are, in some sense, collective responsibilities. As a component of an international social system based on the mutual recognition of various collective entities, sovereignty already implies a theory of collective responsibility. This already raises flags for liberal thinkers. Liberals are wary of the idea of collective responsibility, seeing in it the seeds of the kind of collective scape-goating that animates precisely the types of ethnic conflicts that creates the demand for intervention in the first place.

⁵ J. Cohen, "Minimalism About Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* (12 (2), 2004), pp. 190–213

⁶ See C. Beitz, "Human Rights as a Common Concern", *American Political Science Review* (95:2, June 2001), pp.269 - 281

Though the name of the report highlights the change in language from a *right* to intervene to a *responsibility* to protect, I would argue that the shift in emphasis from the relationship between states to the perspective of people in need of *protection* is more important. It is this that governs the understanding of *responsibility* at work in the document. Under the new conception, the responsibility is owed by the state to individuals living in its territory. By contrast, in the right to intervene, the relevant relationship is between states. States have a right to non-intervention, which, under certain circumstances, can be overridden. Under those circumstances, other states or international organisations may acquire a right to intervene. The right to intervene then stands in a symmetrical relationship to the sovereign right to non-intervention. One starts where the other ends. This mutuality exists exclusively at the state level. Though states were seen as representing the people over whom they had authority, there was no mechanism for making judgements about whether, in fact, the state actually did represent its people.

Under the responsibility to protect, a third element is added: that of the *protection* of people. States are responsible for the well-being of their people. The justification for political authority is related to whether a state protects its citizens. "What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them."⁷ Sovereignty is therefore a function of a state's ability (as well as its willingness) to protect its citizens. More than

⁷ ICISS, op. cit. par. 2.1

anything, *state capacity* – a strong police force, a disciplined military etc – is required in order to be able to protect one's population. Since self-determination has itself been described as a human right, sovereignty has frequently been associated with the expression of the rights of the people. Indeed, the commission itself refers positively to the importance of sovereignty to decolonization.⁸ However, as we move towards human security in addition to human rights as a motivation for intervention, the issue of state capacity takes on a greater role than state violence. Non-intervention is a privilege that only applies to those capable of protecting their population.

The paradox is that measures designed to put human beings at the centre of the responsibility to protect has the consequence of denying the importance of individual political agency to state legitimacy. State capacity becomes the way we determine political authority. Connecting state sovereignty to individual rights raises more questions than it solves.

Secretary-General Annan's own initial solution to this problem was to say that in these situations national sovereignty had to be weighed and balanced against individual sovereignty. But this formulation, in truth, did little more than restate the basic dilemma: When exactly did individual sovereignty claims take primacy over state-sovereignty?⁹

We have here a basic restatement of the paradox of sovereignty and rights that Arendt pointed out in the *Origins of Totalitarianism* and discussed in chapter 1. The *Responsibility to Protect* avoided this question by dropping the

⁸ Ibid. par. 2.8

⁹ G. Evans, op. cit. p. 707

relationship between individual rights and collective political legitimacy. The problem is that it, in the place of the language of political agency, it adopts a language of protection. The state is no longer an expression of the political life of its members but simply a protector against physical insecurity. Sovereignty is equally compromised regardless of whether the danger to people comes from an unwillingness or an inability on the part of the state to protect them. State capacity becomes the primary measure by which sovereignty is judged. Despite the fact that this approach was explicitly adopted with the best interest of populations in mind, the shift amounts to the adoption of a Hobbesian view which sees the state as legitimate only and so long as it is capable of protecting the physical security of the people. “*The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished.*”¹⁰

The danger is that the responsibility to protect further separates the institutions that generate political power from the society in which they exist and the people in whose name they operate. It envisions a world in which political authorities exist, as it were, on a different plane than the people that they rule over. Under these circumstances, the trick is to create a situation where these political authorities are beneficial or, at least, as harmless as possible to the people under their control. As such, the *Responsibility to Protect* reads like a code of conduct for Greek Gods – a set of guidelines that

¹⁰ T Hobbes, *Leviathan*, (Cambridge: Cambridge University Press, 1991), p. 144. Italics mine.

attempts to ensure that people don't overly suffer from the whims of these powerful, unpredictable states or state actors. I suggest that Hannah Arendt's conception of collective presents a possible way out of this difficulty.

Examining the *Responsibility to Protect* in light of Arendt's thoughts, as well as those of others, it is clear that much turns on how political responsibility is conceived. Looking at liberal conceptions of political responsibility, we can see that they all have in common a desire to ground collective responsibility in individual claims. In Arendtian terms, they attempt to ground collective responsibility in the personal responsibility of individuals. Given the difficulties that this approach entails, notably, the expression of the norm of sovereignty in the language of rights, the ICISS attempted to conceive of collective responsibility independently of the political claims of individuals. The difficulty here is that since it is no longer an expression of the political claims of individuals, the state can only base its legitimacy on its ability to protect its citizens. In short, it reverts to the Hobbesian idea that political claims are only generated by the need of human beings for protection of self and property. In short, the ICISS denied states the ability to ground their claim to non-intervention in the political rights of its people, but in so doing, effectively denied that the political claims of individuals have any weight at all.

If Arendt is correct that rights are best understood as the result, rather than the grounding, of our political existence, then we must try to understand how political responsibility is generated independent of rights. Her conception of

collective responsibility accomplishes this in two ways. In the first place, it avoids the difficulties, so common to liberal human rights thinkers, of trying to ground collective claims in individual rights. Second, by tying responsibility directly to political agency, it avoids the temptation, so evident in this document (and in Hobbes), to view politics simply as a means of protecting the lives otherwise helpless individuals. For Arendt, collective responsibility is a crucial element in political action. Politics is a form of collective agency and collective agency only makes sense in relation to a conception of collective responsibility. By trying to escape the conundrums of individualist conceptions of political agency, the commission effectively denied political agency altogether.

Arendt herself does not pronounce on the question of military intervention, but her comments on the crime of genocide does suggest that even military intervention might be more than simply the protection of people but also the protection of a political entity. The crime of genocide is not simply the killing of people but also the destruction of the political existence that a group of people has built for itself. It may turn out that if we fully flesh out the concept of responsibility in the responsibility to protect, there may also be an obligation to protect more than just the physical safety of people at risk but the political institutions as well. In some ways, the condemnation of ethnic cleansing testifies to the intuition that it is not just the lives of people that may, at times, require protection.

Despite the criticisms put forth here, I do think that the ICISS is on the right track in their characterisation of the problems of international morality as having to do with responsibility. The spirit that animated it – the idea that the norms governing international intervention ought to be developed with the people who require protection in mind – is clearly a step in the right direction. The idea that sovereignty as unlimited and unquestionable mastery over the territory of a state is not a morally or even politically acceptable approach to international politics. The international sphere is an arena of colliding responsibilities: state responsibilities to citizens and to other states, citizen responsibilities to states and to citizens of other states. The trouble is with its characterisation of that responsibility solely in terms of protection. Most problematically, I have argued, the lack of a conception of collective responsibility paradoxically leads to a version of sovereignty that is even further disconnected from the political agency of people than the version it was designed to replace. Under the *Responsibility to Protect*, citizens are understood as charges of the states to which they belong, rather than as active participants in their political life. I believe that an Arendtian conception of collective responsibility in which the political responsibilities for the actions of the state are assumed by the citizens by virtue of their citizenship could possibly fill that gap.

To be fair, the problems of the international system may require that we see responsibility solely in terms of protection. In many countries, state institutions are so radically separated from the society they are supposed to govern, that their actions seem to be based on whim or even predatory. Even

apparently benevolent states undertake misguided adventures that end up causing unintended destruction and loss of life. Perhaps international morality is indeed best understood as a code of ethics for Olympian Gods. Perhaps that is the best we can do. However, one side-effect of shifting to this particular conception of responsibility is that states are less likely to be seen as representing the political decisions and conversation of its populace. So while the responsibility to protect puts the lives of individuals at the centre of the discussion, it does so at the expense of their political voices.

Arendt's thought suggests that this may be self-defeating. As we saw in the last chapters, holding right is connected to have both a productive relationship and a relationship of responsibility for the political world that we share and inherit with others. Conceiving of responsibility solely in terms of protection, as the ICISS report does, encourages us to see citizens as less responsible for the actions of their states than under the previous, problematic understanding of state sovereignty as constituted by individual sovereignty. Faced with the paradox of human rights we saw in the first chapter, the commission responded by deciding that political responsibility was the purview of states. This leaves individuals in a condition of 'non-responsibility' for the actions of their states – a situation that Arendt connected with rightlessness.

Conclusion

As I mentioned earlier, understanding rights as a product of a relationship to a shared world is unlikely to produce a clear answer to political problems. However, it can suggest a way of approaching problems that seeks to re-establish relationships between individuals and the political space in which they move. It suggests that doing this may make it more likely that human beings will not be seen as superfluous and therefore less likely to be targeted. Clearly this is only a beginning, more work is required to understand precisely how to build connections between individuals and their political worlds and to assess their efficacy in protecting human beings from genocide, ethnic cleansing as well as other, less dramatic forms of political marginalization. I see this project as a jumping off point for further research in two specific directions.

First, from the Arendtian perspective, it is important to further interrogate the relationship between rights, responsibility and political space. Arendt provides an account of an artificial political space constituted by a productive relationship to the world. It is this space that and the relationship to it that establishes the boundaries between political groups that is required in order to see politics as limited. It may also be the case that, with the arrival of non-spatial politics in the form of online communication, the idea of politics as action within an enduring and limited physical space is becoming further problematized. A fuller version of an Arendtian approach to international

politics and humanitarian politics will have to account for exactly how political space is produced in the world we now inhabit.

Second, from the perspective of international moral theory, a fuller account of collective responsibility would contribute to the questions and problems that the ICISS was trying to wrestle with. As we saw, the liberal tradition attempts to derive collective responsibility from the will or the choices of the individuals who make up the collectivity. I have argued that we need to view the political space that we inhabit and inherit as having moral claims of its own in order to avoid the paradoxes of human rights that produce problems of rightlessness. However, what those claims are and how they might be balanced against the claims of individuals still needs to be worked out in detail in order for this to be relevant and convincing for those who belong to the liberal normative tradition. I believe the result would be a more situationalist and consequentialist and a less constitutionalist approach to international moral questions. But whatever the result, it would be able to contribute to debates around the morality of international politics as well as a growing literature around the understanding of collective responsibility.

However, I believe that I have shown that there is a deep relationship between the world and rights in Arendt's thought and that this relationship points to problems within contemporary liberal thought around human rights. Despite the fact that much more work needs to be done from both perspectives, the direction that this would take would not have been visible if the problem of

human rights had not been investigated at the intersection between these two very different approaches.

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