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## Hannah Arendt and Human Rights

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LOYOLA UNIVERSITY OF CHICAGO

HANNAH ARENDT AND HUMAN RIGHTS

A THESIS SUBMITTED TO  
THE FACULTY OF THE GRADUATE SCHOOL  
IN CANDIDACY FOR THE DEGREE OF  
MASTER OF ARTS

DEPARTMENT OF POLITICAL SCIENCE

BY

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In memory of my grandfather,  
Raymond Eliot:  
my own, personal coach

1905-1980

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## INTRODUCTION

According to Hannah Arendt, the liberal conception of human rights is troublesome. Specifically, the idea of human rights that was posited in the United Nations' Declaration of Human Rights was inadequate when it came to preventing the continuing spread of statelessness -- one of the events that spurred its creation. In a 1949 article, Arendt sharply criticized this conception and any other conceptions of human rights that are rooted in the natural right tradition.

Underlying her criticisms of such rights is a tension in her thought between the practical need that she sees for universal human rights and her dissatisfaction with the philosophical construction of universal rights. For Arendt, rights are born of political activity within the political community. Any rights, then, that claim to be "universal", that are pressed upon the political community from the outside, can be justifiably considered irrelevant by the political community. Thus, she asks, can there be such a thing as a right that belongs to individuals solely because they are biologically human (a universal right) and, at the same time, leave individuals free to discover their own political character (a contingent right)? The tension is most clearly displayed by

juxtaposing Eichmann in Jerusalem, in which Arendt attempts to defend the concept of crimes against humanity, and the end of the second section of The Origins of Totalitarianism (based on her 1949 article), in which she defends a Burkean conception of human rights. This thesis questions whether the tension apparent in Arendt's work is truly an inconsistency in Arendt's thinking or if it can be resolved within the framework of her broader, more comprehensive, work. In other words, does Hannah Arendt defend a notion of human rights? If so, what is that notion and how is it defended?

Arendt refers to traditional notions of human rights when she labels human rights as the "step-child" of nineteenth century political thought. Unlike nineteenth century rights theorists, she argues, twentieth century rights theorists need no longer rely on mere conceptions of the abstract human being: we have empirically observed it. For Arendt, one of the most important developments of this century was the appearance of superfluosity, first showing itself in the form of statelessness. Where eighteenth and nineteenth century philosophers conceived of the abstract human being as alone among other lone human beings in the state of nature, Arendt claims instead that the true abstract human being is, like the stateless, locked out of the human world altogether. If to retain one's humanity is to belong to the humanly fabricated world and to have one's actions and speech made relevant by the context of that world, then to be stateless is to be in the

position of having one's actions and speech lose their meaning and, thus, to lose one's humanity. This is precisely the position into which Arendt believes stateless peoples and persons were placed.

Arendt argues that the rise of statelessness demonstrates the impotence of earlier human rights doctrines. These conceptions of human rights were not defensible philosophically and had never been practically implemented. Thus, there were neither philosophical constructs nor practical precedents to prevent the emergence of statelessness. In fact, such human rights were not even claimed by those who were stateless. Rather, the stateless relied on their past claims to national rights, harkening back to a time where their rights had political significance and reviving their cultures, languages and, through them, their political history.

Based on the evidence presented by this century, Arendt believes that a new conception of human rights is warranted and, in fact, required. The new conception can not be found by reexamining natural rights, however, which has been the response of most other thinkers. Rather, a politically compelling notion of human rights can be found only by questioning what types of laws implemented by what types of institutions would have been capable of preventing statelessness. Thus, by locating a deterrent for statelessness, Arendt hopes to find a new notion of human rights that holds clout.

But beyond the narrow goal of uncovering her views on human

rights theory as it stood during the 1940s, the thesis questions whether Hannah Arendt's analysis of human rights has anything to contribute to current debates concerning human rights. Although this is not the primary goal of the thesis, it is worthwhile posing this question in order to place her thinking in the context of human rights discourse in general. This second question also brings us closer to Arendt's criticism of traditional ideas of human rights.

Since Arendt wrote the 1949 article, a large number of studies have been written on the notion of human rights. Most of this work has not challenged the natural right foundation of human rights. It has, instead, focused on the relation between right and duty, on the one hand, and on the content of human rights, on the other. Even within the boundaries to which the literature limits itself, Arendt's basic criticisms of human rights have not been responded to. The following briefly outlines these basic criticisms in reference to the more recent literature on human rights.

Arendt has several specific criticisms of human rights which fall into three broad categories. First, since rights are only necessary in the political community, the idea of natural rights is inherently flawed. Of late, scholars have generally and indirectly agreed with Arendt on this point and prefer the term "moral right" to natural rights. This, they argue, reflects the social roots of rights -- human or otherwise --

and, at the same time, emphasizes their universal nature.<sup>1</sup> As Martin and Nickel admit, "the word 'moral' seems to be doing much of the same work in this context as the word 'natural' used to do."<sup>2</sup> The important advantage of the term moral rights is that moral norms, upon which rights are based, can be conventional -- natural rights can not be.

Problems arise only when moral rights are intended to be applied world-wide, especially when relevant world-wide moral norms do not exist. However, as Martin and Nickel point out, it is not important that the moral norms are actually cross-culturally agreed upon. Rather, the moral norms can be "critical," meaning that they represent what the moral norms in each culture ought to be.<sup>3</sup> It is altogether unclear how such rights are not, for all practical purposes, as politically irrelevant to political communities which do not discover them themselves as are natural rights. In other words, Arendt might have responded, to the society that creates them, moral rights are conventional; but to the society that they are pressed upon, they are natural. Whatever human rights end up being, says Arendt, they must be both politically compelling and universal -- they must have the capacity to force just laws into being while not robbing the political community of the opportunity to

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1. Joel Feinberg, Social Philosophy (Englewood Cliffs, NJ: Foundations of Philosophy Series, 1973), 84-85.

2. Rex Martin and James W. Nickel, "Recent Work on the Concept of Rights," American Philosophical Quarterly 17 (Jul 1980): 165.

3. Martin and Nickel, 175.

discover them themselves.

Arendt's second class of criticisms has to do with to whom the rights belong and towards whom or what the rights are addressed. Arendt asks: What is protected by human rights and who or what is responsible for providing that protection? To the first half of the question it is evident that the U.N. Declaration contends that the individual is protected. Virtually all human rights theorists agree.<sup>4</sup> The responses to the second half of the question are less unanimous. Some, like Cranston and Raphael, hold that human rights are claimed against other individuals; others, like Feinberg, hold that they are claimed against the government; still others respond that the answer depends on the situation.

To Arendt, the responses of natural rights theorists to both halves of the question are wrong. She does not think that merely the well-being of many, many individuals is protected by human rights. Rather, the whole of civilization is protected. Thus, Arendt's plea for an examination of human rights is infused with an urgency more profound than the pleas of natural rights theorists. Further, the agent that has the capacity to promote human rights is not the individual or the state -- but both in every situation. Human rights can only be protected when they are publicly and consciously grafted into state and

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4. See, for example: Cranston, M., "Human Rights, Real and Supposed," and D.D. Raphael, "Human Rights, Old and New," chaps. in ed. D.D. Raphael, Political Theory and the Rights of Man (Bloomington, IN: Indiana University Press, 1967); and Miller, D., Social Justice (Glasgow: Oxford, 1976).

international institutions. Human rights are not protected through personal "duty", but through the efforts of individuals and communities to assure the survival of civilization.

Arendt's final class of criticisms of traditionally-contrived notions of human rights has to do with how they are defended. Although most human rights theorists can identify a real live human rights violation "when they see it," their ideas concerning human rights are only partially based on empirical evidence. Where they all bemoan the Nazi concentration camps, only Arendt dissects the actual political events that led to their creation. It is upon this wholly empirical foundation that Arendt builds her ideas concerning human rights. Thus, as we will see in the first chapter of this thesis, Arendt holds that no notion of "natural" human rights can be defended because such notions are based upon a picture of the abstract human being that has never appeared on earth in such a way that it could actually be observed and examined. Furthermore, Arendt asks, if natural conceptions of human rights are correct, why are the human rights of persons and peoples continuously violated -- even in countries whose constitutions are based upon them -- and, most important, how could statelessness continue to occur? Certainly, Arendt believes, natural rights notions of human rights have held no political clout when they have been most necessary. This in itself points to the flaws that result from their non-empirical foundation.

Arendt contends that instead of being based on human

experience, traditionally-contrived notions of human rights "had never been philosophically established but merely formulated, [and] had never been politically secured but merely proclaimed."<sup>5</sup> It is difficult, based on the foregoing discussion, to postulate that her opinion would have changed today.

This thesis attempts to draw out Arendt's specific concerns with conceptions of human rights that are based on the natural right tradition. The first chapter will discuss more fully Arendt's criticisms of human rights and will show how human rights were powerless to prevent the rise of statelessness and of correcting its effects. Arendt's critique has two dimensions: human rights were not substantive enough either philosophically or practically to deal with statelessness. Thus, included in the discussion are Arendt's philosophical as well as practical critique of human rights.

The second chapter focuses on what form Arendt believes a legitimate concept of human rights should take. Her diagnosis of how statelessness became possible is outlined by reviewing her thoughts regarding world alienation. If world alienation is associated with the rise of statelessness then any meaningful concept of human rights must have the capacity to reverse it. Therefore, the chapter ends by describing her three categories of rights, fitting them into their appropriate roles in relation

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5. Hannah Arendt, The Origins of Totalitarianism, 3 ed. (New York: Harcourt, Brace, and Jovanovich, 1973), 447.

to solving the problems presented by world alienation.

Since one of Arendt's most convincing criticisms of traditional concepts of human rights is that they can not be put into practice, it is imperative for Arendt to show that her notion of human rights, in fact, can be put into practice. The third chapter will examine her struggle with this issue by looking, first, at her analysis of the Adolf Eichmann trial and, second, at her critique of the nation-state system. Based upon the issues raised, the chapter will conclude by discussing what types of international and intranational structures are required to assure that human rights are protected.

The last chapter will attempt to do two things. First, Arendt's thoughts on human rights will be summarized; the discussion will try to determine if her various thoughts comprise an actual theory of human rights in its own right or whether they are backdrops or appendages to other, more central components of her work. The second objective of the last chapter will be to ask if Arendt's views of human rights, regardless of what she intended, can inform current debates. What, if anything, can human rights theorists who frame their arguments within the natural right tradition learn from Arendt? It is hoped that this exercise will lead to a fuller understanding of the efficacy of human rights as an international standard of political conduct today.

## CHAPTER 1

### THE "STEPCHILD" OF POLITICAL THOUGHT

To Hannah Arendt, traditionally conceived concepts of human rights (e.g., human rights derived from the natural right tradition) were ill-defined. She quipped that the constitutions of human right organizations "showed an uncanny similarity in language and composition to that of societies for the prevention of cruelty to animals."<sup>1</sup> According to Arendt, there was something inherently nonsensical and out-of-place about traditional concepts of human rights when they were applied to the events of this century. Arendt claims that, following World War I, "the very phrase 'human rights' became for all concerned -- victims, prosecutors, and onlookers alike -- the evidence of hopeless idealism or fumbling feeble-minded hypocrisy."<sup>2</sup> She suggests that natural right theorists could not and did not devise a construct of human rights that dealt adequately with twentieth century political problems.

However, Arendt held that a notion of human rights, properly conceived, is necessary. She appears to appeal to this other concept of human rights as she tries to disentangle the

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1. Arendt, The Origins of Totalitarianism, 292.

2. *Ibid.*, 291.

meaning of the phrase "crimes against humanity" in her report on the Eichmann trial. Arendt sought to retrieve human rights from the position that they had fallen into -- one of political irrelevance -- by reconstructing them based on the experiences of the twentieth century. This experience could not have been anticipated by eighteenth and nineteenth century philosophers whose thought stood at the foundation for traditional concepts of human rights.

For Arendt, one of the unprecedented and most significant developments of the twentieth century was the appearance of statelessness -- persons who not only were deprived of their political home but who also had no hope of finding a new one had never existed before. Where certain rights were once thought to be inalienable, the status and conditions of the stateless indicated that no rights were so sacred or indigenous to the human animal as to be "given at birth". The plight of stateless individuals and communities warranted a new look at human rights, the rights upon which all other rights were supposed to have been based: if they exist, what they are, where they come from and what obligations they place on the body politic.

Arendt begins by examining the events preceding World War II closely and concludes that certain political developments of the twentieth century paved the way for the rise of statelessness. Two forces in particular shaped the complexion of statelessness: 1) the reorganization of Europe that followed World War I which itself was rooted to a significant degree in

the race-thinking of the nineteenth century, and 2) the inability of the natural right tradition to prevent the reorganization of Europe from turning against itself.

### The Rise of Statelessness

Before discussing how statelessness arose, it is first necessary to discuss what Arendt claims that stateless is and how it differs from other, earlier forms of exile. There are two differences between the traditional refugee and the new refugee: what turned a person into a refugee and the relationship between the refugee and protective law. Traditionally, a person became a refugee when his or her actions or beliefs were such that he or she required international asylum.<sup>3</sup> Never completely breaking the ties with his or her homeland, the refugee found civil protection in a new country which protected his or her right to think and to act freely. The new country expected that the refugee either a) truly belonged to his or her original political community or b) would become a member of the new political community. Forced migration to another political entity is not new.<sup>4</sup> What is new is not the crime but the innocence of the refugee and "not the loss of a home but the impossibility of finding a new one."<sup>5</sup>

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3. Ibid., 280.

4. Arendt, "'The Rights of Man' What Are They?" The Modern Review 3 (1949): 26.

5. Ibid., 26.

According to Arendt, it is the essence of the act of deeming persons as stateless that the refugees' acts are irrelevant to the decision to make them stateless. The European stateless became refugees not because of who they were (i.e.: what they believed or what they did) but because of what they were (i.e.: Armenians, Jews, etc.).<sup>6</sup> Thus, they gained refugee status because of what might be termed the conscious blindness of nation-states to their actions and speech.

Unlike traditional refugees, the stateless are abstracted from political society -- from the world through which their unique selves can be revealed. By being in this condition, their speech and their actions have no relevance. They may be free to speak and to move about; but neither their speech nor their movement has any consequence to anyone but themselves:

. . . their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow.

. . . The fundamental deprivation of human rights takes place first and above all in depriving a person of a place in the world which makes his opinions significant and his actions effective.<sup>7</sup>

This point is exemplified by the treatment of the Jews who were expelled from Germany not because they were enemies of the German state but because of what they categorically and irreversibly were: Jews. Jews were treated as enemies "without first having given them the chance to have opinions and choose

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6. Ibid., 27.

7. Ibid., 29.

sides."<sup>8</sup> In other words, Jews were criminalized without giving them the chance to become criminals. The unilateral expectation that any action or speech generated by the Jews would and could have no significant influence on their fate deprived them of their place in the human world. Thus, "Jews never were recognized as full-fledged enemies of Nazism because their opposition did not rest upon conviction or action. They [instead] had been deprived of the faculty for both."<sup>9</sup> In this way, the loss of the world corresponds to the loss of one's human appearance, for to lose the world which makes our actions and speech meaningful is "to transform men into something they are not."<sup>10</sup>

It is worth pausing here to note that the insignificance of the thoughts and actions of the stateless individual became poignantly real to Arendt when she was imprisoned in 1939. Especially telling is her account of why she did not, although she seriously considered doing so, take her own life while held in an internment camp. She reports that whenever she asked herself whether she should commit suicide, the answer that came to her was "somewhat of a joke." Later, she articulated the "joke":

The general opinion [among the internees] held that one had to be abnormally asocial and unconcerned about general events if one was still able to interpret the whole

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8. Ibid., 29.

9. Ibid., 29.

10. Arendt, The Human Condition (Chicago: University of Chicago Press, 1958), 183.

accident [of being imprisoned] as personal and individual bad luck and, accordingly, ended one's life personally and individually. But the same people, as soon as they returned to their individuals lives, being faced with seemingly individual problems, changed once more to the insane optimism [manifest in a violent courage for life] which is next door to despair.<sup>11</sup>

Suicide, which presupposed that the internment was personally deserved, and the "violent courage for life," which presupposed that one's acts could make a difference, both required a social context in order to be made significant or real. However, the internees had been abstracted from the world, from all social context. Despair was the only remaining option for the sane person. In this way, the stateless drifted in unreality. The joke was that Arendt did not have the power to return the rejection that the world handed to her even through such an extreme act as suicide. Worldless, powerless, she could find no vindication.

"Conscious blindness" had its political roots in the Minority Treaties that were negotiated at the close of the First World War. Designed to assure the stability of the European nation-state system, the treaties gave national sovereignty to the ethnic majority and established "official" relationships between the ethnic majority and the larger ethnic minorities in each nation-state. The Minority Treaties provided explicit protection to large minorities; however, they provided no protection to smaller minorities. Small minorities possessed

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11. As quoted in Elisabeth Young-Bruehl, Hannah Arendt: For Love of the World (New Haven: Yale University Press, 1982), 154.

only the indirect protection of the League of Nations.

Since only nation-states were represented in the League of Nations, Arendt contends that the newly formed international body held little hope of resolving inter-ethnic problems. The mere formulation of the Minority Treaties itself implied a certain intolerance of minorities not protected by national law: these other minorities must "be either assimilated or liquidated."<sup>12</sup> In addition, to the extent that they presumed that this level of intolerance was acceptable, the Minority Treaties and the League of Nations ignored the inter-state nature of the minorities.<sup>13</sup>

The Congress of Organized National Groups in European States was formed by the minority groups that were not protected by the Minority Treaties as a means of articulating common concerns of minorities to the League of Nations. However, the Congress became a forum for pursuing ethnic, not common, interests and was held together by the tenuous and fated cooperation of the Germans and the Jews -- the two largest minority groups in Europe.<sup>14</sup>

The desire for political stability permitted conscious blindness to become institutionalized in the form of the League of Nations and the Minority Treaties. The League was "neither willing nor able to overthrow the laws by which nation-states

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12. Arendt, The Origins of Totalitarianism, 273.

13. Ibid., 273, 278.

14. Ibid., 274.

existed."<sup>15</sup> Having no reliable avenue for representation, untreatied minority groups became politically irrelevant to the stability of the European nation-state system. Untreatied minorities no longer needed to be negotiated with, they only needed to be stabilized.

The risk of expulsion was great for such peoples. The nation-states which participated in mass denationalizations "presupposed a state structure which, if it was not yet fully totalitarian, at least would not tolerate any opposition and would rather lose its citizens than harbor people with different views."<sup>16</sup> Although extreme intolerance was shown by only a subset of European nation-states,

. . . there was hardly a country left on the Continent that did not pass between the two wars some new legislation which . . . was always phrased to allow for getting rid of a great number of its inhabitants at any opportune moment.<sup>17</sup>

The first of these laws, significantly, came from France.<sup>18</sup>

But it was not only the untreatied minorities who had reason to fear being expelled. The treatment of treatied minorities as well, such as the Jews and Armenians, proved that Minority Treaties could be used to "single out certain groups for eventual expulsion."<sup>19</sup>

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15. Ibid., 273.

16. Ibid., 278.

17. Ibid., 278-279.

18. Ibid., 279.

19. Ibid., 282.

Once expelled from one political entity, the impossibility of finding a new home was exacerbated by the sheer numbers of the stateless. The right to asylum was always conceived as a right for the exceptional few. Even if the stateless were exiled for political activities on their part, other countries could not have handled the volume of those who would have requested asylum.

Civilized countries had offered the right to asylum to refugees who, for political reasons, had been persecuted by their governments . . . The trouble arose when it appeared that the new categories of persecuted were far too numerous to be handled by an unofficial practice designed for exceptional cases.<sup>20</sup>

And where at one time peoples could relocate to a new continent (i.e.: the Puritans in North America), such an option was no longer available.

The calamity [of the stateless] did not arise out of lack of civilization, backwardness or mere tyranny, but, on the contrary, could not be repaired because there was no longer any "uncivilized" spot on earth, because, whether we like it or not, we have really started to live in One World. Only in a completely organized humanity could a loss of home and political status become identical with being expelled from humanity altogether.<sup>21</sup>

In the past, not even a tyrant could deprive the individual of human status:<sup>22</sup> if all other options failed, the individual could take his or her family or community elsewhere and begin a new political world. Today, no such luxury exists. "It [is] not a

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20. Arendt, "'The Rights of Man' What Are They?", 27.

21. Ibid., 30.

22. Ibid., 30.

problem of space but of political organization."<sup>23</sup> The imperialistic exploits of the nineteenth century redefined the frontiers in the uncivilized world, which had formerly been perceived as places of political refuge, to be the periphery of civilization where refuge from civilization is no longer possible.

Non-sovereign nationalities had no options by which to escape the predicament presented by the reorganized European nation-state system. They could neither petition for adequate representation nor create a new political entity in a foreign geographic location. In this respect, the minorities either were on the verge of becoming or had already become worldless; they were purged from the concrete human organization that gave their speech and actions meaning. According to Arendt, these refugees, the stateless, were the first historical manifestation of the nineteenth century enigma "the abstract human being," persons without a world.

#### Philosophical Weaknesses of Human Rights

The political developments of the twentieth century only tell half of the story of how the stateless actually came into being. According to Arendt, there was no adequate philosophical or practical counter-force to the creation of statelessness after the First World War. On the one hand, this convinces her that statelessness really was unprecedented. On the other hand,

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23. Ibid., 26.

and more important, this convinces her of the philosophical and practical impotence of the Rights of Man doctrine.

Arendt uses the terms the "Rights of Man" and "natural rights" interchangeably. Her language indicates that she groups together any ideas of rights that are founded on the natural right tradition: she contends that any laws justified by appeals to nature are nullified by politics. Rights, then, that are based on natural right can not demand any obligations from society.<sup>24</sup> It might be fair to say that, to Arendt, the term "natural rights" is an oxymoron: rights, by the fact that they carry an obligation to the political community, can only be rooted in the communal experience. An individual in the state of nature has no need for rights since he or she is, by definition, solely self-concerned. Alone, individuals are not involved in a social grouping through which rights would become necessary. Thus, natural rights can not exist.

In addition to the terms "Rights of Man" and "natural rights", she uses the terms "human rights" and "national rights" (or "citizen rights"). Similar to natural rights, human rights designates the essence of rights that are derived from the individuals's biological humanness. They can not be conveyed directly in positive law, however, where law becomes "an instrument of the nation."<sup>25</sup> National rights -- the rights of the citizen -- are the practical, positivistic formulations of

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24. Arendt, The Origins of Totalitarianism, 297-298.

25. *Ibid.*, 230.

human rights.

Human rights differ from natural rights in that human rights never were philosophically explored and defended during the eighteenth and nineteenth centuries.<sup>26</sup> Because of this, Arendt refers to human rights as the "stepchild" of nineteenth century political thought.<sup>27</sup> Instead of being the central tenet of revolutionary thought, they were instead only claimed by those who had no other rights through which to participate in the political community.<sup>28</sup>

Conceptions of human rights based on natural right offered no philosophical counter-force to the rise of statelessness. All conceptions of rights -- human, natural or national -- based upon natural right are fundamentally limited in three ways. First, natural right itself is apolitical, according to Arendt. Natural right exists and is active where individuals are abstracted from community; rights, however, exist and are relevant only in a human community.<sup>29</sup> Thus, natural rights have only limited bearing, if any, on our political world. If politics exists only where individuals co-exist, then law which applied to individuals where they do not co-exist can not be used to guide the activities of politics.

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26. Arendt, "'The Rights of Man' What Are They?", 24.

27. Ibid., 24.

28. Arendt, The Origins of Totalitarianism, 293.

29. Arendt, "'The Rights of Man' What Are They?", 34.

For example, Arendt claims that the notion of equality has no relation to natural law, but rather is related to the political world. If, in nature, human beings are unequal, in society, they need not be. "Equality is not given us but is the result of human organization insofar as it is guided by the principle of justice,"<sup>30</sup> which is discoverable only through the experience of community. Laws concerning equality are out of place in the natural world where individuals are essentially private and self-concerned. In the same way, natural laws are out of place in political, public society.

Second, natural rights theorists could not have imagined the true relationship between the individual and the state. During the eighteenth and nineteenth centuries, natural rights theorists could only invent an idea of the human being abstracted from society -- they could make no empirical observations:

. . . the paradox involved in the declaration of inalienable human rights was that it reckoned with an "abstract" human being who seemed to exist nowhere, for even savages lived in some kind of social order.<sup>31</sup>

Tyranny, the cause of their concerns, no matter how ruthless, never could strip an individual of inalienable rights and thereby strip him or her of his or her humanity.<sup>32</sup> This conception, however, presupposed that human beings could simply

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30. Ibid., 33.

31. Arendt, The Origins of Totalitarianism, 291.

32. Arendt, "'The Rights of Man' What Are They?", 30.

transport their political world elsewhere when negotiations failed. The only important human right that was derived from natural rights -- the right of asylum -- was thus defended. Individuals had bargaining power. But, Arendt claims, such individuals are not abstract human beings at all. Abstract human beings, instead, are simply ignored, not bargained with.

And the first glaring fact was that [the stateless]. . . were no longer . . . a liability and an image of shame for prosecutors . . . Innocence, in the sense of complete lack of responsibility was the mark of their rightlessness as it was the seal of their loss of political status.<sup>33</sup>

Abstract human beings have no political bargaining power whatsoever. Natural rights theorists could have imagined neither what abstract human beings looked like (because they did not exist at the time) nor which rights would be necessary in order for them to maintain or retrieve their concreteness.

In the twentieth century, however, human beings abstracted from society have been empirically observed. "Mankind . . . which was only a concept or an ideal for eighteenth century man, has grown into a hard, inescapable reality."<sup>34</sup> What Arendt sees as the relationship between the individual and the state varies radically from natural rights theorists. The abstract human being remains an atom, but is not alone among other atoms exclusively. The family of nations and the One World have become synonymous. Thus, the abstract human being stands outside the whole of the fabricated world, cast out. With no

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33. Arendt, The Origins of Totalitarianism, 294-295.

34. Arendt, "'The Rights of Man' What Are They?", 35.

place remaining within which another human world can be created, the abstract human being can not become concrete again.

Regardless of treatments, independent of liberties or oppression, justice or injustice, [the stateless] have lost all those parts of the world and all those aspects of human existence which are the result of our common labor, the outcome of the human artifice.<sup>35</sup>

And since to be human a person must belong to some world, there no longer can be an abstract human being, for once a person is abstract, he or she is no longer human. To be cast out of one state is to be cast out of humanity.

Nobody had been aware that mankind, for so long a time considered under the image of a family of nations, had reached the stage where whoever was thrown out of one of these tightly organized closed communities found himself thrown out of the family of nations altogether.<sup>36</sup>

And thus, thrown out of humanity. For "the loss of home and political status [has] become identical with expulsion from humanity altogether."<sup>37</sup> The stateless can not be seen or heard by anyone -- not even by other nation-states. The twentieth century has taught us that there is no such thing as inalienable rights.

Finally, natural rights theorists attempted to replace history with nature as the moral referent. In doing this, they became subject to Burke's criticism: that is, nature offers no moral reference point at all but merely a biological one. Nature leaves humankind morally adrift because it cuts it off

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35. Arendt, The Origins of Totalitarianism, 300.

36. Ibid., 294.

37. Ibid., 297.

from its world. Civilized human beings become no more and no less than uncivilized savages.<sup>38</sup> "It is precisely individual life which now comes to occupy the positions once held by the 'life' of the body politic,"<sup>39</sup> so that "to stay alive under all circumstances [has] become a holy duty."<sup>40</sup>

The common element in Burke's and Arendt's thinking is their concern with the world's durability. Echoing Burke's idea of political inheritance, Arendt claims that the things of the world and the web of human relationships gives the human world "the stability and solidity without which it could not be relied upon to house the unstable and mortal creature which is man."<sup>41</sup> But more than just stabilizing the natural creature, the world offers "mortals a dwelling place more permanent and stable than themselves;"<sup>42</sup> it is "a home for men during their life on earth."<sup>43</sup> Furthermore, when Arendt writes of the laws that govern the world, as opposed to those which govern nature, she shadows Burke by emphasizing equality as a means to communicate between generations. "If men were not equal, they could neither understand each other and those who come before them nor plan for the future and foresee the needs of those who will come

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38. Arendt, "'The Rights of Man' What Are They?", 32.

39. Arendt, The Human Condition, 314.

40. Ibid., 316.

41. Ibid., 136.

42. Ibid., 152.

43. Ibid., 173.

after them."<sup>44</sup>

But it is not so much that Arendt agrees completely with Burke's position against the Rights of Man as that she sympathizes with his position. She asks herself the same questions that Burke asks himself: Are we on the brink of doing something unforgivable and irredeemable? Are we on the brink of destroying our civilization? Like Burke, Arendt links rights to the political community, to shared obligation.

We now know even better than Burke all rights materialize only within a given political community, that they depend on our fellow-men . . .<sup>45</sup>

As Dossa puts it, "The right to life itself is in jeopardy when that right is unsupported by a framework of politics."<sup>46</sup> Arendt seeks to remove human rights from the realm of "charity", where she claims the Rights of Man have haphazardly sent them, into the realm of obligation.<sup>47</sup> Agreeing with Burke, Arendt holds that rights can only be found in the shared obligation that is the inheritance of the civilized world. The loss of this world brings with it the loss of even human rights, and this loss is the tell-tale sign of statelessness.

Only [the stateless people's] past with its "entailed inheritance" seems to attest to the fact that they belong

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44. Ibid., 175.

45. Ibid., 34.

46. Shiraz Dossa, "Human Status and Politics: Hannah Arendt on the Holocaust," Canadian Journal of Political Science 13 (1980): 319.

47. Young-Bruehl, 257.

to the civilized world.<sup>48</sup>

Far from halting the alienation of the stateless from the civilized world, naturalistic human rights encouraged it. These rights stressed the importance of being part of nature as opposed to being part of the civilized world.

#### Practical Weaknesses of Human Rights

But Arendt's critique of natural right and natural rights is not simply philosophical. It is practical as well. Even the victims of statelessness, she claims, did not rely on human rights as a defense against statelessness.<sup>49</sup> In addition to being forced to bear an ambiguous legal status, they themselves rejected any appeal to the Rights of Man.

. . . the victims shared the disdain and indifference of the powers that be for any attempt of the marginal societies to enforce human rights in any elementary or general sense.<sup>50</sup>

The victims had two interrelated criticisms of the Rights of Man.

First, the victims observed that a culture need not have a history or be part of another group's history in order to qualify for natural rights:

. . . natural rights are granted even to savages. . . "inalienable" rights would confirm only the "right of the naked savage," and therefore reduce civilized nations to

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48. Arendt, "'The Rights of Man' What Are They?" 32.

49. Arendt, The Origins of Totalitarianism, 292.

50. Ibid., 293.

the status of savagery.<sup>51</sup>

No more did they feel that they deserved to be categorized with the savages than did they feel that relying on such rights would bring them any closer to qualifying for citizen rights. The mark of savages is that they are "peoples without a history."<sup>52</sup>

Nations entered the scene of history and were emancipated when peoples had acquired a consciousness of themselves as cultural and historical entities, and of their territory as a permanent home, where history had left its visible traces . . . . Wherever nation-states came into being, migrations came to an end . . . .<sup>53</sup>

Thus, the liberation of minority nations began with "philological revivals" to prove the possession of a history and thereby achieve national recognition and territorial sovereignty.<sup>54</sup> Purging themselves of a history in order to qualify for rights as savages was not only insulting, but, based on their observations of national emancipation in Europe and the application of Minority treaties, impractical. Absent national emancipation, minorities preferred either to assimilate to some extent to the nationalities governing the state in which they resided or to create an "inter-state web of solidarity."<sup>55</sup>

Second, the stateless saw clearly that the Rights of Man had historically been linked to nationality, not statehood. Not only did these groups observe that the Rights of Man became

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51. Arendt, "'The Rights of Man' What Are They?", 32.

52. Arendt, The Origins of Totalitarianism, 271.

53. Ibid., 229.

54. Ibid., 271.

55. Ibid., 292.

linked to national sovereignty during the French Revolution, but they also observed the same type of emancipation being sought by the various national liberation movements in Eastern Europe.<sup>56</sup>

Untreated minorities knew that they lived within the contradiction between national sovereignty and universal rights; and they knew that appeals to the Rights of Man would be meaningless, for in practice, the Rights of Man were none other than the rights of the citizen.

No matter how [human rights] have once been defined (life, liberty, and the pursuit of happiness, according to the American formula, or as equality before the law, liberty, protection of property, and national sovereignty, according to the French); . . . the real situation of those whom the twentieth century has driven outside the pale of the law shows that these are rights of citizens . . .<sup>57</sup>

The distinction between human rights and citizens rights is clarified when the connection between the Rights of Man and national sovereignty is examined.

The same essential rights were at once declared 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 [universal] 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. The practical outcome of this contradiction was that from then on human rights were protected and enforced only as national rights . . .<sup>58</sup>

Once universal human rights were translated into particularistic positive law, they lost their universal quality. Non-citizens,

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56. Ibid., 271.

57. Ibid., 295.

58. Ibid., 230.

the unenfranchised, could not bring their cases to bear on any positive law because the positive law did not recognize them. Since a state can not be both sovereign and subject at the same time, the sovereign state could not recognize any law above itself. Human rights "proved to be unenforceable -- even in whose countries those constitutions were based on them -- whenever people appeared who were no longer citizens of any sovereign state."<sup>59</sup>

Even if it were possible for a single state to institutionalize universal laws, the minorities of Europe had no reason, after the negotiations following World War I, to believe that any of the European nation-states would. "Never before had the Rights of Man . . . been a practical political issue,"<sup>60</sup> and the untreatied minorities knew from their own experience that human rights were only called upon by "those who had nothing better to fall back upon."<sup>61</sup>

Being thus suspect of appeals to nature, untreatied minorities instead appealed only to their lost nationality as a means to retrieve their political significance.

. . . afraid that they might finish by being considered as beasts, they insisted on their nationality, the last sign of their former citizenship, as their only remaining and recognized tie with humanity.<sup>62</sup>

Knowing that human rights would not in any way assure them a

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59. Ibid., 293.

60. Ibid., 293.

61. Ibid., 293.

62. Arendt, "'The Rights of Man' What Are They?" 31.

right to take part in history, they appealed to their own minority nationality as their most potent argument for including them in the historical processes, in the governing, of Europe. Even the Eastern European nationalities -- the "people without history" -- found such a tactic useful.<sup>63</sup>

According to Arendt, both philosophically and practically, human rights were meaningless in the face of statelessness. Only by tying their fate to formerly held citizen's rights could the stateless hope to regain their concrete human appearance. In the end, this hope proved false, but it was at least a historically realistic hope in comparison to the "fumbling feeble-minded" idealism that human rights fostered.

#### The World and Human Diversity

To Arendt, the rise of statelessness represents a new type of apolitical thinking, based obscurely on natural right but wholly new. It is apolitical in that it seeks to destroy those things upon which politics depends -- those things which, like human action, are mysteriously and unpredictably "given" to humankind. The destruction of the given is motivated by a mistrust of all things that are not created in the human world.

The more at home men feel within the human artifice -- the more they will resent everything they have not produced, everything which is merely and mysteriously given to them.<sup>64</sup>

The central element of such mistrust is the conflict between

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63. Arendt, The Origins of Totalitarianism, 271.

64. Arendt, "'The Rights of Man' What Are They?" 32.

equality and difference. Whereas in the world we make ourselves equal, in nature we each are unique. The world harbors "a deep resentment against the disturbing miracle contained in the fact that each of us is made as he is -- single, unique, unchangeable."<sup>65</sup> For Arendt, the term "equal" has been incorrectly defined by modernity in one sense to mean "predictable" or "the same". Humankind shuns all sources of unpredictable differentiation in order, it thinks, to assure its very survival.

The reason why highly developed political communities . . . so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust and discrimination because they indicate all too clearly those spheres where men cannot act and change at will, i.e., the limitations of the human artifice.<sup>66</sup>

But world survival is not possible through such a means:

. . . wherever civilization succeeds in eliminating or reducing to a minimum the dark background of difference, it will end in petrification and be punished, so to speak, for having forgotten that man is only the master, but not the creator of the world.<sup>67</sup>

Thus, only by accommodating naturally given differences is it possible for the world to flourish.

A significant artifact of Arendt's thinking on this point is that she equates ethnic differentiation with the given. Not only are individuals "naturally" unique and therefore part of

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65. Arendt, The Origins of Totalitarianism, 301.

66. Ibid., 301.

67. Ibid., 302.

the given, but so are peoples. It is central to her argument that "alien" peoples threaten the human artifice to such an extent that "[humankind] has a distinct tendency to destroy [them],"<sup>68</sup> because they are part of the given. Crick clarifies Arendt's thoughts by stating that persons were actually thought to be "anti-citizens, corruptive of the society, if they were, in one instance, of the wrong social class and, in the other instance, of the wrong race."<sup>69</sup>

Peoples who threaten the human artifice are seen by it as no less and no more than superfluous to it. They themselves belong to a kind of nature, symbolizing the limits to humankind's capacity to create and fix the human world. Worse than other elements of nature, alien peoples threaten to uproot the political world itself. Removed from "the normal restraints of politics" European leaders applied the lessons of imperialism to Europe.<sup>70</sup> For those involved with negotiating the reorganization of Europe, accepting or including such peoples would require a radical redirection of politics, which, although it might in truth be for the good, because its outcome could not be predicted with precision, needed to be avoided at all costs. To the extent that the reorganization was preoccupied with

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68. Ibid., 301.

69. Bernard Crick, "On Rereading The Origins of Totalitarianism," chap. in Hannah Arendt: The Recovery of the Public World, ed. Melvin A. Hill (New York: St. Martin's Press), 35.

70. Ibid., 36.

political stability, any redirection of politics that produced or permitted instability was viewed as being out of the question.

Statelessness becomes a possibility wherever individuals and peoples are thus superfluous to the functioning of the world. Once peoples are defined as things belonging to nature, they become divorced from the human world, incapable of participating in its history.

If a Negro in a white community is considered a Negro and nothing else . . . he has become some specimen of an animal species, called man. Much the same thing happens to those who have lost all distinctive political qualities and have become human beings and nothing else.<sup>71</sup>

Returning to a "peculiar state of nature,"<sup>72</sup> the stateless are stripped of the very qualities that signify their belonging to the human artifice.

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.<sup>73</sup>

What is lost is the ability of the stateless to be seen and heard, to be recognized as part of the company of humankind, as a co-author of history; instead, the stateless are thrown back into nature.

To Arendt, human rights which are defended because of their inalienable, natural origin can not protect the world from its desire to "over-manage" itself. The priority of stability

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71. Arendt, The Origins of Totalitarianism, 301-302.

72. Ibid., 300.

73. Ibid., 300.

brings with it intolerance for anything given. Claiming human rights as a defense against the destructiveness of the world necessitates no response from the world. Instead, the world can only respond to rights that are based on mutual obligation, on contractual, negotiated settlements, and on fellowship: on the unprecedented mutual understanding that can only result from the process of seeing, being seen by, hearing and being heard by each other. Traditionally contrived notions of human rights have no such qualities or origin. They are not even part of the undeniable given; human rights so conceived are not mysteriously and unpredictably bestowed upon the world. Arendt suggests that traditional notions of human rights have followed the same path as have the Rights of Man. They "had never been philosophically established but merely formulated, [and] had never been politically secured but merely proclaimed."<sup>74</sup>

Peoples who are without a home are better off, according to Arendt, when they stress their own history of fellowship within their own community. This, at least, provides them a political home and, thus, makes them part of humanity. Appeals to inalienable human rights, however, carry with them no obligation. According to Arendt, they simply permit the world to categorize those who claim them as being alien (i.e., of nature) and, therefore, superfluous to the human artifice.

If traditional concepts of human rights are incapable of redirecting humankind away from its preoccupation with stability

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74. Ibid., 447.

and towards a new preoccupation with world survival, then one is left asking whether any conception of human rights can perform this task and whether we should do away with the notion of human rights entirely. It is to these questions that the discussion will now turn.

## CHAPTER 2

### A NEW FOUNDATION FOR HUMAN RIGHTS

Arendt is clear that the reorganization of Europe following World War I was a failure because there were no philosophical constructs or practical applications of human rights that would prevent individuals and peoples from being expelled from the political world. But the events leading to World War II were not isolated and never to be repeated. Arendt sees continuing examples of statelessness (for example, the Palestinians) and is concerned that statelessness will always be with us. Far from being a marginal international phenomenon, Arendt contends that statelessness is the beginning of the end for civilization.<sup>1</sup>

As suggested earlier, the creation of statelessness is an indication that the human world is beginning to create a new sphere of nature against which to define itself. Although the threat of the Nazis is over for all intents and purposes, other similar threats may present themselves:

The frightening coincidence of the modern population explosion with the discovery of technical devices that, through automation, will make large sections of the population "superfluous" even in terms of labor, and that, through nuclear energy, make it possible to deal with this twofold threat by the use of instruments beside which Hitler's gassing installations look like an evil child's

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1. Arendt, The Origins of Totalitarianism, 302.

fumbling toys, should be enough to make us tremble.<sup>2</sup>

Beyond the issue of statelessness proper, Arendt foresees the creation of other superfluous groups and classes:

Political, social and economic events everywhere are in a silent conspiracy with totalitarian instruments devised for making men superfluous. . . Totalitarian solutions may well survive the fall of totalitarian regimes in the form of strong temptations which will come up whenever it seems impossible to alleviate political, social, or economic misery in a manner worthy of man.<sup>3</sup>

The furor of anti-communist activity and propaganda in the 1950's also convinced Arendt that peoples needed a new type of protection -- even in the United States.<sup>4</sup>

Not only does totalitarianism create superfluosity but it also permits the annihilation of the superfluous. Arendt hopes to purge totalitarian solutions from our repertoire of responses to human turmoil. She claims that adopting totalitarian solutions reduces humankind to the level of animals.

The previous chapter detailed Arendt's criticism of notions of human rights that are derived from the natural right tradition. Although she claims that such notions are politically irrelevant, she also claims that the twentieth century has taught us lessons that require us to develop a relevant notion of human rights. Indeed, developing such an idea is one of her own aims. This chapter will begin by

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2. Hannah Arendt, Eichmann In Jerusalem: A Report on the Banality of Evil, rev. and enl. (New York: Penguin, 1964), 273.

3. Arendt, The Origins of Totalitarianism, 459.

4. Young-Bruehl, 275.

examining Arendt's philosophical underpinnings to her human rights theory. It will end by defining Arendt's three categories of rights, of which human rights is one.

The Dominance of the Life Process and World Alienation

Arendt claims that the nightmarish invention of superfluousness was related to the substitution of laboring for action in the public realm -- both manifestations of world alienation. Where humankind had once seen itself as the maker "of those fixed permanent standards and measurements which, prior to the modern age, have always served him as guides for doing and as criteria for his judgment,"<sup>5</sup> humankind began to raise the process-aspect of fabricating over the creation-aspect of fabrication. Although both are fundamentally linked, the absence of the creator signals a disregard for the things of the world in which previous generations invested themselves: the value of consumption was raised over the value of durability. It is not so much that humankind lost the capacity to create but that it lost the desire to see itself as the fabricator of its "permanent" world. As such, it lost the capacity to lay the foundation for political activity. This loss demonstrated not only a distorted understanding of politics but a distorted understanding of fabrication as well.

Action was soon and still is almost exclusively understood in terms of making and fabricating, only that making, because of its worldliness and inherent indifference to life, was now regarded as but another form of laboring, a

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5. Arendt, The Human Condition, 307.

more complicated but not a more mysterious function of the life process.<sup>6</sup>

Both action and fabrication lost their original meanings.

Because the survival of the human world requires that durability is a priority, alienation from the world -- as a durable entity -- accompanies the emphasis on the life process. "Permanence is entrusted to a flowing process, as distinguished from a stable structure."<sup>7</sup> The effect of humankind's emphasis on process, as opposed to action or fabrication, demonstrates that humankind no longer saw itself and its world as distinct from nature, but rather as fused with it.

. . . man began to consider himself part and parcel of the two superhuman, all-encompassing processes of nature and history, both of which seemed doomed to an infinite progress without ever reaching any inherent telos or approaching any pre-ordained idea.<sup>8</sup>

Instead, humankind is distinct from the world it made -- alienated from it. The loss of the world "has left behind it a society of men, who without a common world which would at once relate and separate them, live either in desperate lonely separation or are pressed together in a mass."<sup>9</sup> Even history itself, which had once been the catalogue of humankind's creation of the world -- a recollection of humankind's stand against the unpredictable and arbitrary forces of nature -- now

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6. Arendt, The Human Condition, 322.

7. Arendt, "History and Immortality," Partisan Review 24 (1957): 21.

8. Arendt, The Human Condition, 307.

9. Arendt, "History and Immortality," 35.

became the result of "inevitable" forces that were driven by the nature of humankind. Indeed, "Milton was considered to have written his Paradise Lost for the same reasons and out of similar urges that compel the silkworm to produce silk."<sup>10</sup>

World alienation's most profound manifestation is consumerism. Where once the world consisted "not of things that were consumed but of things that were used"<sup>11</sup>, consumerism has turned the world into a trading station for solely consumable and, therefore, temporary goods. In order to continue the life process, "things must be almost as quickly devoured and discarded as they have appeared in the world."<sup>12</sup> Thus, where the world at one time represented humankind's effort to extend himself into future generations, i.e., the closest approximation to permanency that humankind can achieve, consumerism demonstrates humankind's effort to devour the world and everything in it. For unless the animal laborans keeps consuming, it will not survive. Ultimately, consumerism results in an anti-human society:

. . . without being at home in the midst of things whose durability makes them fit for use and for erecting a world whose very permanence stands in direct contrast to [mortal] life, this life would never be human.<sup>13</sup>

The anti-humanness of human society ends politics, for politics can only survive where necessity does not exist.

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10. Arendt, The Human Condition, p. 321.

11. Ibid., 134.

12. Ibid., 134.

13. Ibid., 135.

But alienation from the world is only one symptom of the rise of consumerism. Arendt holds that humankind has turned toward consumption to such a degree that it consumes far beyond its need and is aimed at things which humankind has always valued for reasons other than need (i.e., politics):

. . . consumption is no longer restricted to the necessities but, on the contrary, mainly concentrates on the superfluities of life, . . . [and] harbors the grave danger that eventually no object of the world will be safe from consumption and annihilation through consumption.<sup>14</sup>

Thus, the public sphere was at one time cleared away as a space in which human beings could be free from the necessity of consumption. Today, however, the animal laborans rules the public realm. In doing so, it makes everything -- not just what were once use-objects -- in the world essentially temporary, unstable and vulnerable to consumption. Ultimately, destruction extends to humankind itself, for through totalitarian regimes, consumerism "destroy(s) every trace of what we commonly call human dignity."<sup>15</sup> Things that were once valued solely for the fact that they were not related to the necessities of life become superfluous: these things which were valued by politics, such as ethnic diversity, also become superfluous and therefore consumable.

The most clear example of Arendt's view that the rise of superfluosity and worldlessness are a corollaries of consumerism begins with the expropriation of the peasantry

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14. Ibid., 133.

15. Arendt, The Origins of Totalitarianism, 458.

during the late middle ages -- a process that would be repeated with the creation of statelessness in postwar Germany. The expropriation of the peasantry, she argues, is the single most important factor leading to the dissolution of feudalism.<sup>16</sup>

Expropriation, the deprivation for certain groups [the peasantry] of their place in the world and their naked exposure to the exigencies of life, created both the original accumulation of wealth and the possibility of transforming this wealth into capital through labor. . . . The new laboring class . . . stood not only directly under the compelling urgency of life's necessity but was at the same time alienated from all cares and worries which did not immediately follow from the life process itself.<sup>17</sup>

The necessary preoccupation with the life process, in turn, robbed the laborers of their capacity to participate in both the public and the private spheres. In fact, the loss of the private share in the world led to the destruction of the public sphere as well.<sup>18</sup> The boundaries between the public and the private did not merely shift. They were erased, hence destroying both spheres simultaneously.

The "economic miracle" that Germany displayed during the postwar period was nothing more than a highly technological version of expropriation, claims Arendt. Germany's experience showed that not only could the public and private realms be destroyed, but human life itself could be destroyed once the process of expropriation was unleashed from its technological barriers.

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16. Arendt, The Human Condition, 251-2.

17. *Ibid.*, 255.

18. *Ibid.*, 257.

The German example shows very clearly that under modern conditions the expropriation of the people, the destruction of objects, and the devastation of cities will turn out to be a radical stimulant for a process, not of mere recovery, but of quicker and more efficient accumulation of wealth.

Such a rapidly accelerating process for the accumulation of wealth requires the transformation of all things that might be lasting and that might contribute to the durable construction of the human world into consumables.

. . . a booming prosperity which, as postwar Germany illustrates, feeds not on the abundance of material goods or on anything stable and given but on the process of production and consumption itself.<sup>19</sup>

Thus, consumerism dominated postwar Germany because it was able to feed the accumulation of wealth. Any attempt to stop the process of consumerism would end in stagnating the economy, which came to depend on the sheer transience of goods.

Under modern conditions, not destruction but conservation spells ruin because the very durability of conserved objects is the greatest impediment to the turnover process, whose constant gain in speed is the only constancy left wherever it has taken hold.<sup>20</sup>

The fragility of the relationship between production and durability was overturned. The only "constancy" remaining was the process of consumption itself; the only stability was instability. The relationship between the dominance of consumerism and the rise of statelessness now begins to surface.

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19. Ibid., 253.

20. Ibid., 253.

The Effect of Worldlessness on the Human Status

The destruction of the opposite realms of the human world (the public and the private) and the concomitant turning away from durability is similarly related to the rise of the nation-state. It is here that we get to the heart of what will become the foundation of Arendt's defense of human rights. Where at one time the stability of one's physical place in the world guaranteed a private place to which the family could retreat, the dominance of animal laborans assured that the privateness of the family would disappear. The privacy of the family could not be replaced directly. The "old" family was related by biology, and it was replaced by the "new" family which was also related by biology -- race:

. . . just as the family unit had been identified with a privately owned piece of the world, its property, society was identified with a tangible, albeit collectively owned, piece of property, the territory of the nation-state.<sup>21</sup>

Through the nation-state structure, the nation that claimed a territory of its own was able to fix for itself some sense of privacy and permanence, however imperilled.

In this way, the nation-state represents an attempt to replace what was lost through the process of expropriation -- the loss of the common public world as the basis for human action and the loss of the private share of the world are mitigated with the gain of a common, single ancestry. The function of the nation-state, then, is to re-relate citizens to

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21. Ibid., 256.

each other "as family" and to create a new commonality.

The organic theories of nationalism, especially in its Central European version, all rest on an identification of the nation and the relationships between its members with the family and family relationships.<sup>22</sup>

The familial connection within the nation-state was the center, then, of arguments against intra-state racial integration of any type. "Homogeneity of population and its rootedness in the soil of a given territory became the requisites for the nation-state everywhere."<sup>23</sup>

Taken to its extreme, such as was the case in Germany, the ethnic character of the nation-state provided a volatile resolution to world alienation. The very fact that the resolution was restricted to nationals and that it ignored the extant ethnic heterogeneity exasperated the lack of commonality among the inhabitants of the territory. The driving force of the conflict between the nationals and the minorities (soon to become the stateless), hence, was the nation-state itself. In addition, the nation-state did not actually resolve world alienation for the nationals. The emphasis on biology robbed the nationals of their unique political history. Like the stateless, the nationals had nothing more than their "abstract [biological] humanness" to support their claim to immortality. The only difference between the nationals and the stateless was the extent to which they had the technological means to exclude

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22. Ibid., 256.

23. Ibid., 256.

the other from what was left of their common world.

The danger of such a social system is furthered, according to Arendt, once the system is internationalized through the processes of colonization and imperialism. The danger becomes tangible when all of the territory on the face of the earth is politically accounted for.

Just as the family and its property were replaced by class membership and national territory, so mankind now begins to replace nationally bound societies, and the earth replaces limited state territory.<sup>24</sup>

As seen earlier, the colonization of the entire earth means that to be excluded from one political entity means being excluded from them all. When citizenship is seen as being biologically derived, to lose one's citizenship is the same thing as being excluded from the human race itself.

The result of the victory of animal laborans is that peoples become superfluous because they "begin to belong to the human race in much the same way as animals belong to a specific animal species."<sup>25</sup> For Arendt, human beings ought to be characterized by their capacity to "communicate [themselves] and not merely something -- thirst, hunger, affection or hostility or fear."<sup>26</sup> Making human beings superfluous recasts them as non-human. The animal laborans is not interested in speaking and acting, but rather in consuming. Thus, the society overtaken by

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24. Ibid., 257.

25. Arendt, The Origins of Totalitarianism, 302.

26. Arendt, The Human Condition, 176.

the animal laborans expresses only its thirst and hunger in what once was the public realm and it makes it an unfit place for human action.

Earlier, it was mentioned that stateless peoples during the reorganization of Europe that followed World War I were likely to begin their public claims for national rights by reawakening their ethnic language and culture. For Arendt, this is a significant piece of evidence on two levels. First, it demonstrates stateless peoples' need to tie themselves to world-making by displaying their past role in world-making. Second, philological revivals in particular demonstrated these peoples' political, as opposed to biological, humanness. The very existence of language testifies to the fact that the individuals within the stateless groups were accustomed to revealing themselves politically, through speech. It is the commonality of the experience of self-revelation, Arendt would argue, that the stateless peoples desired to communicate to the majority nationalities. By doing so, they hoped to demonstrate that they were politically, as well as biologically, human.

If speech and action become meaningless, it becomes clear how, once peoples are redefined as expendable, no rights can be proclaimed that have the power to re-insert them into the human world. Naturalistic human rights attributed to superfluous peoples, for example as were claimed for the stateless, sound like the rights invoked by "anti-cruelty to animals societies,"<sup>27</sup>

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27. Arendt, The Origins of Totalitarianism, 292.

because the stateless are superfluous -- they have become defined as animals instead of as humans. Thus, any rights they claim can only refer to their biological sameness with peoples and persons who possess the rights of citizens. Political qualities of stateless individuals can not be seen once humankind is dominated by the animal laborans. Human rights, traditionally conceived, do not have the power to create a platform for speech and action. Any successful attempt to re-insert the stateless must carry with it the capacity to clear away such a platform.

### Three Categories of Rights

Arendt repeatedly reminds us that "men, not man, inhabit the earth." As such, it is plain that "good" politics must be based upon the concepts of plurality and diversity. "Rights exist only because of the plurality of men, because we inhabit the earth together with other men . . ." <sup>28</sup> Thus, if human rights can be argued to be politically relevant, they must have the capacity to safeguard humankind from its own capacity to extinguish diversity, to turn parts of itself back into nature, from "[throwing persons] back . . . on their own differentiation," <sup>29</sup> and from casting human beings as mere animals.

In order to be what the world is always meant to be, a home for men during their life on earth, the human artifice must

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28. Arendt, "'The Rights of Man' What Are They?" 34.

29. Arendt, The Origins of Totalitarianism, 302.

be a place fit for action and speech, for activities not only entirely useless for the necessities of life but of an entirely different nature from the manifold activities of fabrication by which the world itself and all things in it are produced.<sup>30</sup>

It is no less than this world -- a home from which no human being can possibly be excluded -- that Arendt hopes to regain and protect through a new look at human rights.

Arendt distinguishes between three types of rights: civil, political and human. Instead of relying on the natural right tradition, Arendt finds that the political necessity for these rights can be discovered in humankind's own political experience.

Civil rights, according to Arendt, are "all of a negative character."<sup>31</sup> Building upon her distinction between liberty, to be released from oppression, and freedom, to act politically, Arendt further identifies liberty with rights that permit citizens to have control over their environment, a negative component of political influence. Freedom, on the other hand, is identified with rights which give citizens the power to act, a positive component of political influence.<sup>32</sup> Thus, the category of civil rights includes those rights which both liberate the individual from and control the advent of tyranny, such as the rights to vote and to be represented. These rights "claim not a share in government but a safeguard against

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30. Arendt, The Human Condition, 173-4.

31. Arendt, On Revolution (New York Penguin, 1965), 143.

32. *Ibid.*, 299.

government."<sup>33</sup> Fundamentally, they limit the potential of government by assuring that it is law-abiding.

Civil rights are essentially individualistic in character and have their roots in the notion of private happiness, which locates true happiness "in the privacy of a home upon whose life the public has not claim."<sup>34</sup> The presupposition of this happiness is that no joy can honorably be found in public activity. Governmental figures and participants are "not supposed to be happy but to labour under a burden."<sup>35</sup> Anyone preferring a public life is suspect of possessing greed for power and such rulership would necessarily result in despotism.<sup>36</sup> Thus, Arendt contends that civil rights are anti-political in that they draw the individual away from the public realm.

As opposed to civil rights, political rights rest on the discovery of public happiness, on the presupposition that only in public is true happiness attainable. Even before the American Revolution began, for example, the experience of self-government convinced the would-be revolutionaries that "they could not be altogether 'happy' if their happiness was located and enjoyed only in private life."<sup>37</sup> Political rights permit the individual to be an agent of politics, to be a participant; they

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33. Ibid., 143.

34. Ibid., 129.

35. Ibid., 128.

36. Ibid., 128.

37. Ibid., 127.

allow the citizen who so desired to "(lay) claim to a share in public power."<sup>38</sup>

Specifically, this category of rights includes the rights to speak and assemble, the two rights which correlate most closely with the self-disclosure that is the necessity of the vita activa.<sup>39</sup> By being heard and seen in public, the individual is "inserted into the human world, and this insertion is like a second birth."<sup>40</sup> Only by becoming part of the human world is it possible for a person to be seen as both truly unique from all others and truly equal to all others. The co-experience of distinction and equality is the "actualization of the human condition of plurality."<sup>41</sup> Plurality, then, is the experience that is provided by political rights and that results in public happiness.

Arendt contends that once they had discovered political rights, the revolutionaries of America and France were too entranced by this new form of happiness to be satisfied with merely civil, protective rights.

The men of the revolution . . . [preferred] under almost any circumstances -- should the alternatives unhappily be put to them in such terms -- public freedom to civil liberties or public happiness to private welfare."<sup>42</sup>

They preferred to discard protection altogether than to deprive

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38. Ibid., 127.

39. Arendt, The Human Condition, 198-199.

40. Ibid., 176.

41. Ibid., 178.

42. Arendt, On Revolution, 134.

themselves of the opportunity for public self-disclosure -- a deprivation that would result in them living the rest of their lives in the unreality of isolation, what they once thought of as "private happiness".

Unlike civil rights, which are essentially individualistic, political rights belong to the individual but protect more than just the individual. A benevolent tyrant can grant civil rights, for example, but Arendt contends that he or she can not grant political rights.

Tyranny, as the revolutionaries came to understand it, was a form of government in which the ruler, even though he ruled according to the laws of the realm, had monopolized for himself the right of action, banished the citizens from the public realm into the privacy of their households, and demanded of them that they mind their own, private business. Tyranny, in other words, deprived of public happiness, though not necessarily private well-being . . .<sup>43</sup>

Political rights protect the public world from the invasion of this particular form of tyranny.

Arendt's last category of rights is her most novel contribution to rights theory. Where her defense of civil and political rights requires her to harken back to Roman and Greek political experiences, her defense of human rights stems solely from her own observations of the unprecedented political events of the twentieth century. Thus, while she uses the term "human rights", she drops from that term any meaning insinuated by its historical relation to natural right. As far as Arendt is

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43. Ibid., 130.

concerned, the necessity for any rights described as "human" did not surface until this century; thus she defines the term in a wholly new way, without reference at all to its historical usage.

Since the most important political event of this century was the invention of superfluousness, the content of human rights, according to Arendt, can be discovered only by discovering what things were stripped from persons and peoples in Europe following World War I that allowed them to become superfluous and, eventually, allowed them to be liquidated.<sup>44</sup> Arendt contends that two rights were taken from them and that, again, neither of the rights had ever been considered rights before.

First, the stateless were stripped of their homes, their places in the world which made their words and actions relevant to others.<sup>45</sup> Second, the stateless were stripped of the right to have rights, not only in their home nation but in all nations.<sup>46</sup> Under no regime and in no nation-state were they given legal status: they belonged nowhere. Arendt goes so far as to suggest that slaves' and criminals' human rights are not violated because they have both places in the world, although perhaps no freedom of movement, and legal status, although no political power. However, the stateless were deprived of both:

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44. Arendt, "'The Rights of Man' What Are They?" 24.

45. Arendt, The Origins of Totalitarianism, 293-294.

46. *Ibid.*, 294.

. . . in the welter of rights of the most heterogenous nature and origin, we are only too likely to overlook and neglect the one right without which no others can materialize -- the right to belong to a political community.<sup>47</sup>

Thus, human rights, if they exist at all, must assure that individuals, in fact, belong to the human world and that they are recognized as belonging by all states.

The fact that superfluous persons and peoples belong nowhere -- that they are homeless -- is proof, to Arendt, that they are driven from the world by the effects of world alienation. The destruction and self-destruction inherent in rise of the animal laborans is ultimately played out through totalitarian thinking. Therefore, human rights must resolve the world alienation born by superfluous, or potentially superfluous, peoples and the groups that make them so.

Where societies are structured around necessity, such a resolution can not occur. Since politics requires freedom from necessity, human rights must protect a realm in which activities will not be driven by biological processes. Kateb summarizes her thought when he states that "groups of people must be at home in the world if the frame of memorable deeds, the frame of political action, is to be secured and strengthened."<sup>48</sup> They must lend permanence to the world. Thus, human rights must force peoples and individuals to view each other as politically,

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47. Arendt, "'The Rights of Man' What Are They?" 37.

48. George Kateb, Hannah Arendt: Politics, Conscience, Evil (Totowa, NJ: Rowman and Allanheld, 1984), 158.

not just biologically, human.

Arendt's category of human rights differs fundamentally from civil and political rights in that it is intended, not to protect the individual or any particular public space. Instead, it protects the human world itself by clearing away a public space above, not just between, and within states.

[The stateless'] ever-increasing numbers threaten our political life, our human artifice, in much the same, perhaps even more terrifying, way as wild nature once threatened the existence of man-made cities. Deadly danger to civilization is no longer likely to come from without. . . the emergence of totalitarian governments is a phenomenon within, not outside, our civilization.<sup>49</sup>

Thus, any protection human rights provide the individual or particular governments is incidental to its primary function of protecting civilization as a whole. While the ultimate aim is to restore human dignity, Arendt holds that no such restoration is possible without the fundamental restoration of the "permanent" human world.

As mentioned earlier, Arendt classifies ethnic differentiation among the types of individual uniqueness that originate in nature. Fundamental, then, to safeguarding persons and peoples from being excluded or liquidated because of their ethnic diversity are human rights.

For man has only one right that transcends his various rights as a citizen: the right never to be excluded from the rights granted by his community (an exclusion which occurs not when he is put in jail, but when he is put in a concentration camp) and never to be deprived of his

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49. Arendt, "'The Rights of Man' What Are They?" 34.

citizenship.<sup>50</sup>

This right, according to Arendt, has the capacity to halt the rule of animal laborans and require that the public realm either be a place for politics or remain vacant. The right to not be excluded, however, is not precisely the same as the right to belong. Where belonging implies participation and a certain degree of "welcomeness", the right not to be excluded implies merely the right not to be tossed away, leaving no trace with which historians could detect one's existence. Thus, her practical foundation for human rights is very specific -- the rise of superfluosity. And her concern here is only with saving the fabricated world -- not with free expression or expanded privacy.

In summary, Arendt contends that human rights are necessary to safe-guard the human-made world and, with it, the fact of human diversity and the human condition of plurality upon which politics is based. Because one of Arendt's most harsh criticisms of natural rights is that their inapplicability borders on the utopian, it is crucial that she show how her notion of human rights can be implemented. Thus, the next chapter will describe what crimes offend human rights and what types of political or legal institutions can offer an effective deterrent to these crimes. We begin by looking at her account of the Adolf Eichmann trial. In this account, Arendt clarifies what is meant by the term "crimes against humanity" and

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50. Ibid., 36.

struggles with how human rights can become politically compelling in the international arena.

## CHAPTER 3

### INSTITUTIONALIZING HUMAN RIGHTS

As noted earlier, because of the nature of her criticisms of traditional concepts of human rights, it is especially important for Arendt to demonstrate the feasibility of implementing her own vision of human rights -- to prove that they are politically compelling. However, after diagnosing the problems of human rights and prescribing a new vision of them, Arendt never directly described her vision of the political and legal institutions required to implement them in a comprehensive manner. Indeed, most political theorists lay vulnerable to sharp criticism in the area of implementation.

Perhaps, Arendt's failure was due primarily to her being disappointed by the precedents set by the World War II war crimes trials. It appears clear from her writings on the Eichmann trial that she believed that the chance for crucial legal and political reforms in the international arena was simply passed over. The methods employed in bringing Eichmann to "justice" were wholly inadequate, although perhaps justifiable. Because of the unprecedentedness of Germany's actions and because of the consensus condemning Hitler, for the first time in history, a stage was cleared in the international

arena for equally unprecedented action which could confirm and implement a viable human rights theory. But no one took the opportunity to act. The fact that she, for all intents and purposes, never again directly addressed the issue of human rights after the publication of Eichmann in Jerusalem lends some credence to this hypothesis. In addition, Eichmann's behavior during the trial shocked Arendt in the extreme. Her preoccupation with crimes against humanity changed its focus from political structure to the relation between thought, action and responsibility. Thus, she turned to a study of obligation that eventually evolved into her final, but incomplete, work The Life of the Mind.<sup>1</sup>

Be that as it may, Arendt leaves us a couple of trails to follow which can be thought of as routes to the definition for her concept of human rights. First, she comprehensively criticizes both the legal system that was invented to respond to the atrocities committed by Germany prior to and during the Second World War, and the political structures that made Germany vulnerable to performing such deeds and that held the rest of Europe captive to it. Second, many of her remarks that accompany these criticisms indicate the direction in which her prescription for implementation might go. Unfortunately, she frequently contradicts herself or is so vague that her position -- beyond its very general components -- can not be deciphered with any precision. For these reasons, Arendt's criticisms of

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1. Young-Bruehl, 375f.

the legal and political structures will be dealt with as fully as possible, along with her less comprehensive criticisms of prescriptions which were put forth by other theorists. The last two sections of the chapter will summarize the seeds of what might have been Arendt's plan for implementation.

### The Appearance of Crimes Against Humanity

In Eichmann in Jerusalem, Arendt discusses, first, what was unprecedented about the rise and extermination of the stateless and, second, what has been done politically and legally in order to prevent these events from occurring once again. Her motive for looking to legal processes which have the capacity to halt crimes against humanity rests on the presupposition "that the unprecedented, once it has appeared, may become a precedent in the future."<sup>2</sup>

Clearly and somewhat superficially, one thing that was new about the rise of statelessness was that it required a new category of criminal code: crimes against humanity. To place this new category in historical perspective, Arendt classifies each of the crimes of the Nazis. The first crime was the legalization of discrimination within Germany. This crime was institutionalized in the Nuremberg Laws which created a second class of citizenship to which Jews irreversibly and automatically belonged. The Nuremberg Laws "violated national, constitutional rights and liberties, but [they] were of no

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2. Arendt, Eichmann in Jerusalem, 273.

concern to the comity of nations."<sup>3</sup> While it might be said that this set of crimes denied Jews political rights and severely limited their civil rights, it can not be said to have offended their human rights which were not violated until the Jews were actually deprived of their citizenship.

The second crime that the Nazis committed was an international one -- officially termed "enforced emigration".

Expulsion . . . [concerned] the international community, for the simple reason that those who were expelled appeared at the frontiers of other countries, which were forced either to accept the uninvited guests or to smuggle them into another country . . .<sup>4</sup>

Forcing persons into another country's territory is an act of aggression between two nations. Any legal recourse that nations, peoples or persons have is limited to agreements and treaties that are negotiated between, not above, nations. Thus, although the rootlessness in which this crime resulted appeared to be an offense against human rights, the crime had no direct relation to the rights of persons or peoples but merely to the rights of nations. Only international law was violated. Even though persons were deprived of their homes by the Nazis, this deprivation alone was not an offense against human rights, according to Arendt. It is not the deprivation of a home itself that the stateless experienced but the impossibility of finding a new one. The fact that the states into which the stateless were imported did not welcome them was a crime against humanity.

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3. Ibid., 268.

4. Ibid., 268.

However, this crime was not committed by the Nazis.

The final crime that the Nazis perpetrated was the extermination of "the Jews and the people of several other nations." Extermination was not limited to German Jews but was aimed at "[making] the entire Jewish people disappear from the face of the earth."<sup>5</sup> Whereas expulsion is a crime against other nations, genocide "is an attack upon human diversity as such, that is, upon a characteristic of the 'human status' without which the very words 'mankind' or 'humanity' would be void of meaning."<sup>6</sup>

This last crime offends human rights on two counts. In order to exterminate the Jews, the Nazis had to strip them of their citizenship and turn them into a stateless people. This, ironically, was how Israel justified kidnapping and trying Eichmann.

It was Eichmann's de facto statelessness, and nothing else, that enabled the Jerusalem court to sit in judgement on him. Eichmann, though no legal expert, should have been able to appreciate that, for he knew from his own career that one could do as one pleased with stateless people; the Jews had had to lose their nationality before they could be exterminated.<sup>7</sup>

As mentioned above, because other states did not welcome the Jews into their borders, the Jews became stateless. Once done, the Nazis would not be held responsible for their fate.

The creation of the person-category called stateless,

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5. Ibid., 268.

6. Ibid., 268-269.

7. Ibid., 240.

however, did not itself necessarily result in the limitation or extermination of human diversity. The crime against humanity is really two crimes.<sup>8</sup> By excluding a people from the public sphere and deeming them stateless, the Nazis terminated the human condition of plurality -- the first offense against human rights. The termination of plurality, as mentioned above, was necessary before "one could do as one pleased with [the Jews]."

Once the Jews held the non-status of stateless, the very fact of human diversity could be erased. The act of genocide -- the second offense against human rights -- sought to terminate the human diversity upon which the human condition of plurality is grounded:

...[genocide] is an attack upon human diversity as such, that is, upon a characteristic of the "human status" without which the very words "mankind" or "humanity" would be devoid of meaning.<sup>9</sup>

In other words, Arendt suggests that, since plurality is dependent on diversity, the elimination of plurality (political equality) must precede the elimination of diversity (natural differentiation). The first is a crime against humanity because persons or peoples are deprived of their political homes which make their actions and speech meaningful. The stateless were transformed into non-humans and cast out into "a peculiar state of nature." The second is a crime against humanity because its aim is to fundamentally change what it means to be human -- that

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8. Dossa, 317.

9. Arendt, Eichmann in Jerusalem, 266-267.

is, diverse in nature and plural in the polis. While the elimination of plurality divests peoples or persons of their human identity, the second divests humanity itself of its human identity. Note that no where does Arendt suggest that the individual qua individual has been violated.<sup>10</sup>

### International Legal Deterrents

Once crimes against humanity became possible it also became conceivable that they would become precedents for a multitude of other attempts to erase the fact of human diversity. Arendt holds that "once a specific crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been."<sup>11</sup> Such a crime can be deterred by way of an equally unprecedented legal process or political action.

If genocide is an actual possibility of the future, then no people on earth . . . can feel reasonably sure of its continued existence without the protection of international law.<sup>12</sup>

Arendt criticizes the legal proceedings against Eichmann because they did not set this precedent.

Although the Jerusalem court that sat in judgement over Eichmann was capable of trying crimes against the Jewish people, it was wholly incapable of trying crimes in which "the international order, and mankind in its entirety, might have

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10. Dossa, 318.

11. Arendt, Eichmann in Jerusalem, 273.

12. Ibid., 273.

been grievously hurt and endangered."<sup>13</sup> In addition to the fact that it was not capable of creating the type of unprecedented legal process that the crime against humanity required as a deterrent, the Israeli court, like the Nuremberg and the Successor courts, was stricken with "extreme reluctance ... to break fresh ground and act without precedents."<sup>14</sup> The Israeli court, however, was especially reluctant to break precedent because the Jews generally were unable to recognize the unprecedented nature of the crime against them. Instead, they saw it as merely the most recent and grievous crime committed by the Nazis against the Jews.<sup>15</sup> Thus, they saw no qualitative break between the legalization of discrimination and genocide, although Arendt clearly does, as discussed above. Admitting that Israel had few options under the circumstances, Arendt is concerned that the opportunity was lost to set an international legal precedent that would be enacted above, not just between, nations.

It is unclear from Eichmann in Jerusalem, though, whether Arendt sees any court system -- international or otherwise -- as having the capacity to set this legal precedent:

. . . in consequence of this yet unfinished nature of international law, it has become the task of ordinary trial judges to render justice without the help of . . . positive, posited laws. For the judge, this may be a predicament, and he is only too likely to protest that the "single act" demanded of him is not his to perform but is

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13. Ibid., 276.

14. Ibid., 262.

15. Ibid., 267.

the business of the legislator.

. . . It must be admitted furthermore that [the failures of the Jerusalem court] were neither in kind or in degree greater than the failures of the Nuremberg Trials or the Successor trials in other European countries.<sup>16</sup>

Thus, while much of the volume is dedicated to criticizing the Jerusalem court and its methods of bringing Eichmann to justice, Arendt indicates that the Jerusalem court, as well as the Nuremberg court, was doomed to failure because the nature of courts is to interpret the pre-existing law for individual cases -- not to create law, unprecedented or otherwise.

A call for positive law to deter the perpetration of crimes against humanity is not made in Eichmann, except indirectly as in the passage quoted above. The implications of Arendt's dissatisfaction with a legal -- as opposed to a political -- remedy to crimes against humanity are far-reaching. For a fuller treatment of them, we must return to Arendt's critique of the nation-state system.

#### The Personification of the State

As mentioned in the first chapter, Arendt's criticism of traditional human rights can not be articulated without mention of her criticism of the nation-state. Through this latter criticism, she evolves a response to the inadequacies of the nation-state system as the steward of human rights.

The most fundamental loss that the rise of nationalism has presented is the loss of universality. Whereas, in the Ancient

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16. Ibid., 274.

days of Rome, Arendt believes, civilization was structured around universal political values, the rise of the nation represents the development of particular, contingent authority.

One of the main phenomena of the modern world is that civilization has renounced its old claim to universality and presents itself in the form of a particular, national civilization.<sup>17</sup>

The loss of universal authority needs to be dealt with directly, claims Arendt, for if any idea of human rights is to carry a universal quality, a universal authority must exist. However, after further examination, it becomes clear that Arendt does not think that a new universal authority needs to be framed -- perhaps such an authority can not be framed at all. Rather, she suggests that all contingent forms of authority be subject merely to the rule of impartial law. If substantive universal values have been lost, perhaps law can at least refrain from promoting one set of values over another.

Arendt recognizes the difficulty in laws that prefer one set of ideals over another. In doing so, she recognizes the uniqueness of each nation and its right to retain its way of life. Instead of requiring all nations to sacrifice their uniqueness to the state, Arendt regards the importance of nations' uniqueness as worth preserving because, from it, springs a people's history.

A people becomes a nation when "it takes conscience of itself according to its history"; as such it is attached to the soil which is the product of past labor and where

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17. Arendt, "The Nation," Review of Politics 8 (1946): 138. (A review of J.T. Delos, La Nation. Montreal: Editions de l'Arbre.)

history has left its traces. It represents the "milieu" into which man is born, a closed society to which one belongs by right of birth.<sup>18</sup>

Arendt contends that the nation is the place of belonging, the center of meaning for new lives. Because it is a closed society, it is to some extent a private place into which individuals retreat in order to form their own identities. However, it is public, in that it holds its own history, which is its story about its foundation and continued survival in the world. Thus, the nation is essentially a geographically stable, closed entity.

Arendt juxtaposes the idea of the nation with the idea of the state, an organization with completely different functions and purposes.

The state on the other hand is an open society, ruling over a territory where its power protects and makes the law. As a legal institution, the state knows only citizens no matter of what nationality; its legal order is open to all who live on its territory.<sup>19</sup>

The state is truly and only public. While it affords persons and peoples a private sphere, it and all of its components are completely exposed. Where the nation is exclusive, the state is inclusive with porous boundaries through which all types of persons, peoples and territories may pass.

Thus, an important difference between the nation and the state is the permanence of its place in the world and its structure.

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18. Ibid., 139.

19. Ibid., 139.

As a power-institution, the state may claim more territory.  
. . [however, the nation] has put an end to migrations.<sup>20</sup>

Where the nation's boundaries are necessarily permanent -- set by the nation's historical tie to a particular parcel of land -- the state's boundaries are temporary, always subject to the strength of its drive for additional territory.

The distinction between nation and state having been made clear, Arendt holds that the troubles of modern Europe center around the confusion of this distinction in practice.

Nationalism signifies essentially the conquest of the state through the nation.<sup>21</sup>

Nationalism occurs when the state is owned or dominated by one nation. When this occurs, the state takes on the character of the nation while retaining parts of the character of the state. What it loses is its impartiality. For example, in the nation-state system, the Rights of Man are construed as the rights of nationals, thus being exclusive, not inclusive, rights.

The result of XIX century identification of nation and state is twofold: while the state as a legal institution has declared and must protect the rights of men, its identification with the nation implied the identification of the national and the citizen and thereby resulted in the confusion of the Rights of Men with the rights of nationals or with national rights.<sup>22</sup>

What the nation gains is military strength. Armed with the power-advancing goals of the state, the nation-state takes on the identity of the nation. Thus, nation-states become

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20. Ibid., 139.

21. Ibid., 139.

22. Ibid., 139.

aggressors for increased territory.

Furthermore, insofar as the state is an "enterprise of power," aggressive and inclining to expansion, the nation through its identification with the state acquires all these qualities and claims expansions now as a national right . . .<sup>23</sup>

Such expansionism, however, loses the impartial, porous complexion that it bore in the hands of the state.

Thus, the nation, not accustomed to being subject to any higher authority -- since universal authority was lost with universal civilization -- became sovereign. Not permitting itself to be subject to any universal authority, not admitting any limit to its power, and not requiring a public sphere in which "power can be checked by power" -- because the nation-state is essentially a private construction -- the nation-state was freed to pursue totalitarian goals.

The conquest of the state through the nation started with the declaration of the sovereignty of the nation. This was the first step transforming the state into an instrument of the nation which finally has ended in . . . totalitarian forms of nationalism . . . It is the nation which has usurped the traditional place of God and religion.<sup>24</sup>

The zeal and absolutism which characterized the nation-states' quest for power could not be checked by any domestic pressure, for the nation-states did not represent a plurality but a single people. Thus, there were no spaces within the nation-states which were cleared away for the exercising of political power. Since only power can balance power, the power of the nation-

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23. Ibid., 139.

24. Ibid., 139.

state, with no interior balance, was left unchecked.

In addition, the inability of international sources of power to limit the aggression inherent in the nation-state was due to the lense through which the nation-state was viewed -- it was not perceived as a plural entity:

. . . the sovereignty of the nation was shaped after the model of the sovereignty of the individual . . . The state conquered by the nation became the supreme individual before which all other individuals had to bow. This is the personification of the state, achieved through its conquest by the nation and shaped after the model of the autonomous individual, which first brought into existence that "individualization of the moral universal within a collective," . . .<sup>25</sup>

The nation-state's rights and duties were based upon nothing other than individual rights and duties. Other states spoke of Germany's rights just like they spoke of the rights of a single person. Within the nation-state structure, as with the individual, only private interests were articulated -- not public ones. The loss of commonality between a multiplicity of private interests, which had at one time been the nadir of the public realm, had been replaced by one, singular, national, private, "familial" interest. In its most extreme form, the completely privatized public sphere chooses its own aspect. Like the nation, only now with no limits, the nation-state was one creature, not a conglomeration of many persons and peoples and it was treated as such by other international powers. With this new capacity, it was freed from every restraint to which a state is subject.

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25. Ibid., 140.

This is the way in which nationalism becomes fascism: the "Nation-State" transforms or rather personifies itself into the totalitarian state.<sup>26</sup>

As one person, the nation-state takes on a character that is defined by itself or by one person or by one set of ideas, no matter how disputable. No plurality or standard of even logic restrains it.

But Arendt elucidates these extremes of the nation-state not simply to repeatedly condemn the totalitarian forms of government so far evidenced. Rather, she points to the fact that totalitarianism is nested within the nation-state's political structure itself. No matter how benign any particular nation-state may seem to be, the structure of the nation-state itself masks what might be thought of as "latent" totalitarian movements.

There is little doubt that civilization will be lost if after destroying the first forms of totalitarianism we do not succeed in solving the basic problems of our political structures.<sup>27</sup>

Thus, in order to end the possibility of totalitarianism, Arendt holds that our current political structures must be radically altered.

#### International Political Deterrents

In the first chapter, Arendt's defense of Burke's criticism of the Rights of Man was described. However, it is a mistake to

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26. Ibid., 140.

27. Ibid., 140.

think that Arendt presumes that Burke's response to the events of the eighteenth century is sufficient for the events of the twentieth century. The fundamental limitation of Burke's critique is that it preserves the nation-state system in Europe, which Arendt claims has been shown to be inherently flawed.

Like Burke, Arendt is concerned that civilization is at a turning-point. Burke feared that the end of English civilization would occur if English politics was invaded by French notions of the "universal" Rights of Man. Arendt fears that the end of all of civilization will occur if the nation-state can not admit a political authority higher than itself.<sup>28</sup> Burke's response is insufficient for Arendt because the twentieth century has taught us things that Burke could not have possibly known.

First, Burke's response to the French Revolution is insufficient to combat totalitarianism because it does not take account of the new, global nature of politics. This critique of Burke rests on the fact that he presupposes that there is a multitude of political communities from which rights can spring. While this presupposition was not unwarranted when he wrote, according to Arendt, it is obsolete now. Arendt agrees with Burke that rights can only be established within a political community -- they can not be pressed upon it from outside, as was attempted in the French Revolution.<sup>29</sup> However, she also

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28. Arendt, The Origins of Totalitarianism, 230.

29. Arendt, On Revolution, 149.

acknowledges that Burke's reference to a "given political community" implies variability of community and that now, in the twentieth century, there is only one political community, One World.<sup>30</sup> Thus, the "common world" from which the stateless are alienated is the singular, global world of humankind.

The result of the globalization of politics is that a type of universality is forced upon rights that are established within this global political community. In other words, if rights spring from the political community and if there is only one such community, then, logically, rights take on a universal, though perhaps not absolute, quality.

This brings us to Arendt's second critique -- that the events of this century make universal rights a necessity for the preservation of humanity. What Arendt contributes is not an appeal to the rights of Englishmen, nor an appeal to a higher order, but something in between these two extremes.

But we also know that apart from all so-called [e.g., traditionally contrived notions of] human rights, which change according to historical and other circumstances, there does exist one right that does not "spring from within the nation" and which needs more than national guarantees: it is the right of every human being to membership in a political community.<sup>31</sup>

Once the political community has become universalized -- once the political reference point is above the nation-state -- rights can be conceived both that are universal in quality and that spring from a given political community.

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30. Arendt, The Origins of Totalitarianism, 297.

31. Arendt, "'The Rights of Man' What Are They?" 34.

Thus, what initially appears as a contradiction in her political thought -- that rights spring only from the activity of plurality and that the Nazis should be condemned for committing crimes against humanity (a crime that relies on a notion of human rights that seems completely apolitical) -- is resolved by universalizing the political community from which rights spring. According to Arendt, rights no longer "spring from within the nation" but from the One World, the history of which is written, for the first time, by all of humanity. History -- "organized remembrance"<sup>32</sup> -- is no longer English, French, Jewish or German, but rather Human.

The international implications of the universalization of politics are far-reaching. First, while the universal political community may exist, it has not yet been internationally acknowledged or institutionalized. This is demonstrated by the fact that all attempts to achieve the acceptance of universal human rights have ignored the fact that such rights require a universal political community from which to spring.

Contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, a sphere above the nations does not exist.<sup>33</sup>

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32. Arendt, The Human Condition, 197-198.

33. Arendt, The Origins of Totalitarianism, 298, emphasis added.

Arendt claims that institutionalization is justified and, in fact, required, because it is possible, for the first time in history, to offend humanity itself, not just parts of it: the precedent of committing crimes against humanity has been set.

Thus,

. . . the emergence of mankind as one political entity, makes the new concept "crimes against humanity" . . . the first and most important notion of international law. . . with this notion international law transcends its present sphere, which has to do only with those laws and agreements that, in peace and war, regulate the intercourse of sovereign nations, and enters the sphere of a law that is above the nations.<sup>34</sup>

Arendt calls upon the international political community to recognize super-national law and make human rights universal.

Super-national laws require super-national institutions. Therefore, unlike Burke, Arendt appears to see no point in conserving the institutions of the past: the international institutions have already been shown to be completely inadequate -- in fact, they have been uprooted by these new crimes and they can not be reclaimed. But while it is clear that Arendt hopes to achieve an acknowledgement of this one international community, it is also clear that she does not seek to replace the nation-state system with a world government, an idea that elicits suspicion from her:

. . . a world government is indeed within the realm of possibility, but one may suspect that in reality it might differ considerably from the version promoted by idealistic-minded organizations.<sup>35</sup>

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34. Arendt, "'The Rights of Man' What Are They?" 36.

35. Arendt, The Origins of Totalitarianism, 298.

Any single sovereign government is just as likely to make the mistakes that have been made over and over by single sovereign nation-states.

For it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity [governed by a single world government] will conclude quite democratically -- namely by majority decision -- that for humanity as a whole it would be better to liquidate certain parts thereof.<sup>36</sup>

Here is demonstrated again Arendt's profound dissatisfaction with absolute sovereignty. Fearing a repeat of the nation-state-territory trinity that permitted nationalities in Europe to hold the reigns of power over minorities, Arendt is extremely uncomfortable with power that is unchecked by other spheres of power.

The presently popular notion of a World Government is based . . . on the [Hobbesian] concept of individuals submitting to a central authority which "overawes them," except that nations are now taking the place of individuals. The World Government [would] overcome and eliminate authentic politics, that is, different peoples getting along with each other in the full force of their power.<sup>37</sup>

Just as the American formula of federalism is praised because, as mentioned earlier, the American revolutionaries recognized that "tyranny and sovereignty are the same" and therefore devised a form of government that permitted power to be checked by power,<sup>38</sup> so Arendt suggests that any international law-giving authority must be both universally acknowledged and checked by

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36. Ibid., 299.

37. Ibid., 142.

38. Arendt, On Revolution, 152-154.

other spheres of power.

Rather than terminating national sovereignty, Arendt wants to re-awaken the limits to national sovereignty that had been set, for utilitarian purposes, in the past.

Theoretically, in the sphere of international law, it had always been true that sovereignty was no where more absolute than in matters of "emigration, naturalization, nationality, and expulsion"; the point, however, is that practical consideration and the silent acknowledgement of common interests restrained national sovereignty until the rise of totalitarian regimes.<sup>39</sup>

If national sovereignty is limited again, appeals to human rights can be politically and philosophically "heard" between and within nation-states. However, national sovereignty can only be limited by another sphere of political power.

Thus, Arendt moves beyond Burke's criticism of the Rights of Man, armed with the experience of the twentieth century. Whereas Burke was preoccupied with preserving English civilization, Arendt is concerned with opening a new space in which a new, higher layer of political discourse can occur so that, not just English civilization but, the whole of human civilization can be preserved. Only in such a political context can human rights take on the universal quality that they require for enforcement and can crimes against humanity be successfully deterred.

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39. Arendt, The Origins of Totalitarianism, 278, emphasis added.

Intranational Political Deterrents

It is a mistake to think that Arendt offers only one solution to the problem of how to implement human rights. Her approach contains a second component: changing the political structure of the nation-state. Arendt would like to see the distinction that she makes between nation and state put into practice. When such a distinction is made, the behavior of nations would be checked by other spheres of power within the state; indeed, the state would no longer be a nation-state. Thus, the sovereignty of the nations would be limited, not by outside forces, but by the state itself. These limitations, she thinks, would be more effective because they would spring from the political community itself.

As mentioned above, Arendt praises the American federal formula for creating a sphere in which power could check power - -although it does not go far enough.<sup>40</sup> The power-checking mechanism inherent in federalism is directed in a different dimension than is that in the separation of powers between the three branches of government. Where the separation of powers was intended to prevent the rise of a powerful monarch (tyranny from above), federalism, which creates many spheres of power, prevents the rise of factions (tyranny from below). Arendt contends that, in Europe, the lack of additional spheres of power permitted the state to become the nation-state. Disagreeing with the interpretations of the founders that these

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40. Arendt, On Revolution, 249.

preventive measures resulted in robbing all parties of political power, Arendt argues, on the other hand, that federalism actually increased power by creating an environment in which power would never be left unchecked. Thus, federalism is solicitous of power.

Clearly the true objective of the American Constitution was not to limit power but to create more power, actually to establish and duly constitute an entirely new power center . . . .<sup>41</sup>

The new power center is the power balance between the states and the federal government, dislocated from the center of administrative activities.

Arendt goes on to argue for a system that could be adopted by European nation-states. The council system, a very localized federation such as the one that arose during the Hungarian Revolution of 1956, would make significant headway in fighting nationalism. Without the assistance of "professional revolutionaries," the councils were innocent of pre-revolutionary plans for the post-revolutionary society. They were founded on mutual trust. In addition, "their sole demand was for freedom" not economic liberation.<sup>42</sup> As another commentator points out, Arendt admired that, unlike other attempts at a council system, the Hungarian councils were purely

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41. Ibid., 154.

42. Gabriel Masooane Tlaba, Politics and Freedom: Human Action and Will in the Thought of Hannah Arendt (New York: University Press of America, 1987), 59.

political and not burdened with administrative preoccupations.<sup>43</sup>

The party system, on the other hand, does not encourage individual participation. Rather, it provides only representation.

The conflict between the two systems, the parties and the councils, came to the fore in all twentieth-century revolutions. The issue at stake was representation versus action and participation. The councils were organs of action, the revolutionary parties were organs of representation . . .<sup>44</sup>

Where the parties sought to build a structure in which action would be limited to the founding of the new state, councils sought to build a system in which action could be institutionalized, bringing a balance of action and order.<sup>45</sup>

But, she claims very little political thought has been devoted to this type of federalism. According to Arendt, this system of "elementary republics" is generally ignored by historians -- even those sympathetic to revolution remain ignorant of its unprecedented nature:

. . . [historians] failed to understand to what extent the council system confronted them with an entirely new form of government, with a new space for freedom which was constituted and organized during the course of the revolution itself.<sup>46</sup>

Presuming that the council system was nothing more than a temporary structure that held the state together until the

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43. Margaret Canovan, The Political Thought of Hannah Arendt (London: J.M. Dent and Sons, 1974), 99.

44. Arendt, On Revolution, 273.

45. Ibid., 271.

46. Ibid., 249.

revolution ended, historians and revolutionaries expected stability and quiet to follow the revolution. Arendt expects political, although not structural, fluidity -- not, it seems, stability.

Arendt goes on to contend that the federal system is the only alternative to the nation-state that has the capacity to control ethnic hegemony because it is the only system in which powerful factions or parties can not, for all intents and purposes, rule the state.<sup>47</sup> Instead of increasing the power of "the many", the council system, properly conceived, increased the power of "every one".<sup>48</sup> By dividing the many into small groups, each individual's actions count, because they are seen and heard by fellow citizens. Thus, Arendt insists that the council system's political organ is the individual.

Arendt applies this claim to her critique of the nation-state system elsewhere, emphasizing again the power-balancing capacity of federalism:

. . . the larger need of our civilization with its "growing unity" on one side, and its growing national conscientiousness of peoples on the other, would be met with the idea of federation. Within federated structures, nationality would become a personal status rather than a territorial one.<sup>49</sup>

With nationality thus kept under tight limits, by returning it to the private sphere and by recreating the public sphere, the

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47. Ibid., 166.

48. Ibid., 254.

49. Arendt, "The Nation," 141.

state can then take on the responsibility of protector of rights and the individual, not the group, becomes the medium for politics.

Thus, the proper form of the "country" is the state, impartial and fluid. And the state, stripped of the nation, is the only organ through which rights can honestly be defended and safe-guarded.

The state. . . is the supreme protector of a law which guarantees man his rights as man, his rights as citizen and his rights as a national . . . and this function is not at all affected through the number of nationalities which are protected within the framework of its legal institutions.<sup>50</sup>

The limit, then, to national sovereignty is not only potentially found by creating a sphere for action above nations. In addition, it can be found by creating a sphere for action within nations through the council system.

Thus, Arendt presents two options with which to implement her notion of human rights. It seems clear that the intranational implementation strategy is preferred by her -- she has fewer hesitations about it. While an international solution is considered, no one, specific, international solution can be adopted without strong reservations on her part.

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50. Ibid., 141.

## CHAPTER 4

### CONCLUSION

Earth poetizes, field to field  
with trees interlinear, and lets  
us weave our own paths around  
the plowed land, into the world.  
. . .  
People go about, no one is lost.

Arendt, 1952

Arendt wrote these verses during one of her early trips to Paris after the close of the Second World War. The lines indicate that much of her personal distress over the events of the war was beginning to dissipate.<sup>1</sup> This first celebratory poem envisions a new world in which "no one is lost," a telling reminder of the centrality that the themes of rootlessness and world alienation play in her political thinking. The "joke" which had played over and over in her own mind since her imprisonment in 1939 was finally mute -- although it would certainly speak again.

Arendt's criticism of traditional human rights emphasizes their inability to bring individuals and peoples "into the world." Instead of connecting them to the world, such rights

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1. Young-Bruehl, 264.

disperse individuals further into nature, into pure, unreal abstraction. Thus, they cannot hope to dissolve the alienation that permits individuals and peoples to be thought of and treated as superfluous, as not belonging.

Arendt's thoughts concerning human rights attempt to answer this critical weakness. By examining what forces drove human beings out of their world, she strives to determine what forces will bring them back. Only by becoming a part of the world once again can individuals and peoples hope to find political freedom and access their true active "natures".

Like traditional human rights theorists, Arendt links her notion of human rights to her understanding of what it means to be human: diverse in nature and plural in the polis. However, as Arendt points out, the necessity for human rights does not come merely from this logical connection but from the peril in which humankind finds itself during the twentieth century. Human rights are necessary because we have lost touch with the human condition. And this last claim is based on hard, empirical fact: we now have observed the abstract human being in physical form. Therefore, human rights must be matched to what this abstract human being looks like -- not to what we think it might look like.

Traditional human rights theorists can not be said to have done this. Rather, they take the solution of nineteenth century's problems and apply it to today's problems without pausing to question whether the two sets of problems are the

same. Like the Israeli court, traditional human rights theorists argue that genocide represents just one more in a long series of examples, albeit a radical one, of crimes that states have committed against the individual. Totalitarianism is merely a new form of tyranny. Genocide is the murder of many, many individuals.

Arendt disagrees. Totalitarianism and tyranny are not the same thing; genocide and murder are not the same thing. What the twentieth century has witnessed is the transformation of the public realm into an instrument not of a particularly evil individual but of an anti-world ideology. Traditional theories of human rights may have the capacity to dissolve tyranny, but they completely lack the capacity to fight totalitarianism. Since the disease is new, a new therapy must be created and prescribed.

The root of Arendt's diagnosis is not that human rights were denied the Jews or anyone else. Rather, civilization as a whole, she believes, could self-destruct because human beings have lost touch with their own defining characteristic: human beings do not know what it means to be political because they do not know what it means to be plural. Under such circumstances, Arendt asks, can we call ourselves human at all? If not, what is to become of us?

In addition to the fact that she contends that the traditional notions of human rights did not help the stateless peoples and persons, she does not see human rights violations as

the cause of statelessness. Such theories of human rights were merely a therapy prescribed by most liberal theorists that did no good. Like a placebo, they may have made individuals feel better, but the prescribing them was essentially wasted effort. In Arendt's analysis, the concept of human rights must be completely revamped before it can be an effective therapeutic tool.

First, Arendt contends that human rights are not a priori to the political community; instead, they are discovered within the political community. As suggested above, human rights must be "made". Second, human rights do not defend the individual, but the whole of civilization. They help resolve the individual's alienation from the world by safe-guarding the world. Third, assuring human rights is not Arendt's goal -- in her estimation, human rights are not the highest moral good. Rather, resolving world alienation is her goal and human rights help achieve it. Finally, human rights do not reflect the nature of what a single human being should look like in the political community, but rather they reflect the nature of the human condition of plurality: how the lone individual is not really human and how he or she must adjust and shed his or her biology in order to become part of a community.

While Arendt sees no "quick fix" to the world's problems, she does see potential for solving them. She argues that during the nineteenth century the sovereignty of the nation-state was limited. Those limitations prevented the nation-states from

performing certain crimes. For example, while forced migration was not new to the twentieth century, during the nineteenth century, nation-states were limited in how extensive a forced migration could be. The rules of inter-state treaties and the inter-dependence of the European nation-states presented utilitarian reasons for not committing these types of crimes against each other. Thus, while each nation-state thought of itself as sovereign, it really wasn't. Each nation-state recognized the limits of their own power.

Arendt argues that nation-states have lost the limits to their sovereignty that they once had and she looks for ways in which such limitations can be reinstated. She suggests two models: an international one and an intranational one. Both incorporate the ideals of federalism. Federalism is the only political structure that Arendt believes is capable of limiting sovereignty to such a degree that no component of the human race could be excluded from the human world; thus, it is the only structure which can guarantee that human rights will be observed.

It is clear that Arendt believes that federalism should be instituted within the nation-state -- it would have the effect of transforming it into a true state. However, she is vague about what type of federal structure should be developed above states. More than just requiring a between-state mechanism, which is what Europe had during the nineteenth century, Arendt argues that an above-state mechanism is necessary to limit

national sovereignty. A world government, though, has too many trappings of the nation-state structure for Arendt to be satisfied with it. Thus, Arendt leaves many questions unanswered when it comes to an international solution to the problems of unlimited national sovereignty. Although she argued that federated structures would be sufficient to limit sovereignty for those nations that adopted such internal structures, she sensed that an international effort would be required to avoid the emergence of crimes against humanity which could still be performed by nations that still had the potential to do so -- i.e., those that were not federations. Yet she was at a loss to construct such an international system except to say that it must have the power to act above, not just between, nations.

In some respects, then, Arendt's thoughts on human rights is clear. In other respects, she is quite vague. What can't be denied is that Arendt included human rights in the necessary solutions to the problems that plagued the twentieth century. However, many questions remain unanswered.

#### An Arendtian Theory of Human Rights?

As this thesis has discovered, Hannah Arendt had many ideas about human rights and their role in resolving the world alienation that characterizes contemporary society. But can it be said that she developed a theory of human rights or are we putting together pieces of her various theories that she herself

would not have linked? In other words, if Arendt's thoughts on human rights are truly tangential from the body of her theoretical work, they might be thought of as anecdotal and, therefore, would not be required reading for students of human rights.

Ignoring the influence that Arendt's thought on human rights have already had in the real world,<sup>2</sup> if a theory of human rights is a systematic and comprehensive response to a political crisis which explicitly centers on human rights violations, Arendt could not be said to have developed one. Certainly because of the negative nature of her discussion of human rights, it seems unlikely that she could ever be considered a "human rights theorist." However, sharp attention paid to what she doesn't say in reference to a positive notion of human rights suggests that another point of view may be valid.

Arendt is vehement about her criticisms of traditional human rights theories: she suggests that they have no political meaning at all. However, in Eichmann in Jerusalem, she defends the notion of crimes against humanity; and such crimes directly presuppose some sort of right of humanity. Yet the reader is left to draw his or her own inferences concerning her promotion of human rights. In other works, she uses such phrases as "if human rights exist, they would look like . . ." Again, she is uncharacteristically non-committal about her opinion on this

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2. Stephen J. Whitfield, Into the Dark: Hannah Arendt and Totalitarianism (Philadelphia: Temple University Press, 1980), 110-112.

subject. Finally, Arendt was uncomfortable about where her 1949 article concerning human rights fit in to the rest of her work, revising it, expanding it, and more telling, not knowing where to place it in The Origins of Totalitarianism.<sup>3</sup>

Perhaps the fact that Arendt spends so little time building a new human rights theory indicates that she felt a need to distance herself from the traditional language of rights altogether. Indeed, referring to human rights as "human rights" might have prevented her from developing fully her own thoughts on rights.

We are accustomed to thinking of human rights as Arendt seems to lead us to do when she criticizes traditional notions of them -- connecting them to our ideas about liberalism and individualism. Thus, some might argue that the real question may not be whether Arendt can be called a human rights theorist but whether she can be called a liberal theorist. This is an interesting train of thought because it leads us straight to the difficulty that may have led Arendt to her choice not to write an explicit and comprehensive theory of human rights. Can we talk about rights and at the same time divorce them from their tie to individualism? If we cannot disengage more general ideas of rights from eighteenth century individualism, neither can we disengage human rights from the more general notions of rights -- even if we wish to update them with the experiences of the twentieth century. In other words, we can reform traditional

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3. Young-Bruehl, 257, 285.

notions of human rights, but we cannot uproot them or change their very nature.

Arendt wants to refocus our approach to rights altogether. Like Burke, she wants to guide us away from universal, individualistic rights. Speaking in the language of traditional rights theorists would distract from this effort. Relative to traditional rights theorists, Arendt discounts the individual altogether. She emphasizes, instead, the world -- what individuals and peoples have created that both "separates and joins them." Individualism ignores the world, treating the individual as the only relevant political entity. Arendt stresses the "thingness" of the world in order to convince her reader that the world really exists and is valuable. In fact, the world is the foundation for politics. Individuals create something other than themselves when they come together in a community. This thing that they create is independent from the individual in the same way that other people are independent from the individual. Arendt wants to heighten our awareness of this "other" and she does so by way of the language she uses. Where traditional rights theorists are accustomed to discussing autonomy, individual conscience and moral freedom, Arendt ignores these terms. Instead, she is only concerned with the individual once he or she is in a group.

Arendt's emphasis on context -- the world that joins and separates individuals -- is impossible to articulate in the language of traditional rights theories. Traditional rights

theories use rights to protect the individual from the possibility of tyrannical political power. Hence, they protect the individual from his or her own political context. In doing so, they alienate individuals from each other and from the world in which they live. Traditional rights theories can not possibly retain the category of obligation, transforming it instead into "hazardous charity", because they have done away with the foundation for obligation -- the priority of community. Arendt revives the idea of obligation by recognizing that the individual (really, the human race itself) can never be safe without a secure political community. Hence, it is the political community that Arendt wants to protect because, one might say, only through it can the individual be protected. The first step in this protection is getting her reader to value the world as a priority and to see it for what it is -- the foundation of political community.

The language of traditional rights theories can not contain Arendt's thoughts on political community. For this reason, she could not use it. Instead, she invented her own language. In the same way that human rights underpin the terms individual conscience, moral freedom and autonomy for traditional human rights theorists, beneath all of Arendt's discussions on rootlessness, world alienation and superfluousness runs her own current of human rights. The backdrop of much of Arendt's thinking is a mostly silent, though sometimes expressed, commitment to her own version of human rights. It is a backdrop

that, when revealed momentarily, creates discord for the reader. One might be compelled to ask, "Can rights be both a priori and derived from the community?"

Indeed, this thesis began with this question. The very obscurity of Arendt's thinking on rights led to it. However, the source of the obscurity was not Arendt's thoughts themselves but the traditional linkage between human rights and individualism. Once that link is severed, the radical nature of Arendt's views on human rights becomes apparent. Therefore, the view that Arendt's thoughts on human rights are tangential to her political thought is promoted by the blindness to the possibility that human rights can be grounded in something other than the individual. Thus, Arendt must be included in the human rights literature. Not doing so dismisses the original nature of her thought.

#### The Efficacy of Arendt's Theory

If one is to take Arendt's thoughts on human rights seriously, one is compelled to ask whether Arendt does a better job than the traditional human rights theorists in bringing this "step-child" human rights home to its proper place in political thought. As with Arendt's criticism of traditional theories of human rights, this question must be answered on both philosophical and practical planes.

First, does Arendt do a better job at defending the idea of human rights in philosophical terms? For most human rights

theorists, human rights are the focal point of their theories of individualism, being frequently considered the contemporary equivalent of the Rights of Man.<sup>4</sup> Arendt, however, does not make them the focal point of her theory. To do so would lead her to the very same difficulties faced by traditional theorists: i.e., if human rights are owned by and protect only the individual, the community is not compelled to observe them. In more concrete terms, a community need not be seen as contradicting itself when it decides to observe one person's human rights and not another person's. One of those persons can be defined as not human or not human enough to be protected by such rights. This contradiction, says Arendt, is justified by the very structure of the nation-state.

The contradiction, though, can only be justified in an environment which does not regard the world, the law or the mechanisms of the state as being separate from the nation. Thus, Arendt emphasizes that not the individual but the community must be the locus of politics. She does not speak of expressing one's interests against the community but of being a member and being a distinct component of the community -- distinct in that the individual retains his or her unique identity and a component in that he or she cannot ever be considered as a completely separate political entity from the

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4. J. Roland Pennock, "Rights, Natural Rights, and Human Rights -- A General View," chap. in Human Rights: NOMOS XXIII, eds. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1967), 3ff.

community.

By such an emphasis, Arendt moves the concept of human rights to a new location in political thought. Whereas in individualism, human rights are the focal point of liberalism and ought to be pursued as ends in themselves, in Arendt's thought, human rights are a tool that helps assure the rebirth of politics. Human rights are no longer the end of politics but are instead only the means through which politics can be approached. In this way, Arendt underlines that the end of politics is not the individual's satisfaction but the extension of the individual to matters that go beyond his or her immediate concerns. Only through such an extension can the individual hope to touch worldly everlastingness. Any theory that makes the individual its end, on the other hand, is inherently anti-political because it is anti-world. It encourages the growth of world alienation.

The effect of this relocation of human rights within the political framework is that human rights are removed from the realm of charity and placed into the realm of obligation. Indeed, with the survival of the political community itself at stake, human rights become politically compelling -- independent of the issues raised by the "individual" case at hand. It can be presumed that, where world alienation has dissipated, the priority of the survival of the world would take precedence over all interests that required the exclusion of any people or individual from the community. Thus, by giving their

application political urgency, Arendt provides a better defense for human rights than is provided by traditional theorists. Arendt offers a way to connect the universal value of human rights with the contingent political reality.

However, it remains to be examined whether Arendt's thought on human rights can improve the practical situation of those whose rights are denied. As stated above, where world alienation does not exist, the tendency to exclude individuals and peoples should be counteracted by human rights. Can this new understanding of human rights, though, assist the realization of the end of world alienation as Arendt seems to want it to do? A full response to this question is beyond the scope of this thesis.

Briefly, though, any response would have to center on the universality of Arendt's human rights claims and their unprecedented character (i.e., that they involve only the right to belong and no other individual rights). At first glance, it seems unlikely that Arendt's claims for universal rights could improve the plight of those whose rights are denied any more than traditional notions of human rights. If human rights are not politically rooted, as they are not by definition, then it is not possible for a universal claim to possess any political force that could strengthen the case against human rights violators. Persons and peoples with political power need only argue the inapplicability of such universal claims to their political realities.

On the other hand, based on the presumption that all societies are implicitly pluralistic (because of the necessary diversity of the individuals and peoples who inhabit each of them), one could argue that, while Arendt's notion of human rights does not bring immediate salvation, it enlarges the circle of persons who must support human rights. Added to the contingent of human rights defenders would be those constituencies concerned with preserving or creating the political community. These groups would be forced to recognize, first, the ties between being human and belonging to a community and, second, the necessity for the community to be an inclusive rather than an exclusive entity. Thus, the focus turns from protecting the individual who exists in a vacuum to protecting the individual's political context.

One demonstration of the increase in constituency can be seen in Stephen Whitfield's description of the application of Arendt's notion of human rights by Justice Warren in several expatriation cases. The Chief Justice wrote:

Citizenship is man's basic right. . . It is nothing less than the right to have rights. . . Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf.<sup>5</sup>

While the Justice does not claim that the community is protected by Arendt's notion of human rights, he recognizes the link between being human and belonging to a political community. The

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5. As quoted by Whitfield, 111.

destructiveness of depriving a person of his or her political context became the basis for many of his subsequent opinions.

The application of Arendt's notion of human rights seems to make it impossible for a person to believe in both democracy and nationalism at the same time. Arendt's ideas concerning human rights make these two ideals contradictory. The pluralism demanded by Arendt's human rights requires the inclusion of all persons into the political community. Thus, Arendt breaks the link between the nation and sovereignty; she prevents the transformation of human rights into citizens' rights. In this more narrow way, Arendt's notion of human rights might have been more helpful to the stateless peoples and persons than were the traditional notions of human rights. Stateless persons, instead of reviving their culture or begging for inclusion, would have had the option to fight for reforms of the nation-state system itself.

In sum, Arendt moves the concept of human rights from being an end in itself and the focal point of individualism to being a tool that helps assure the rebirth of politics. This adjustment satisfies her because, under her scheme, the goal of politics could not be subject to the private needs of the individual. At the same time, her theory requires the prevention and destruction of totalitarianism -- the phenomenon that all rights theorists agree presents the most potent threat to human rights.

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## VITA

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The thesis is, therefore, accepted in partial fulfillment of the requirements for the degree of Mater of Arts.

Jan 6, 1991  
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