

RIGHTLESSNESS IN AN AGE OF RIGHTS

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RIGHTLESSNESS IN AN AGE OF RIGHTS

AYTEN GÜNDOĞDU

RIGHTLESSNESS IN AN AGE OF RIGHTS

Hannah Arendt and
the Contemporary Struggles
of Migrants

OXFORD
UNIVERSITY PRESS

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Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide.

Oxford New York
Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in
Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan Poland Portugal Singapore
South Korea Switzerland Thailand Turkey Ukraine Vietnam

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Published in the United States of America by
Oxford University Press
198 Madison Avenue, New York, NY 10016

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Cataloging-In-Publication data is on file with the Library of Congress

9780199370412 (hbk.)
9780199370429 (pbk.)

9 8 7 6 5 4 3 2 1

Printed in the United States of America on acid-free paper

To my parents,

Selvinaz and Hasan Hüseyin Gündoğdu

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Acknowledgments

THE RESEARCH for this book has lasted for more than 10 years. Over that time I have accumulated a long list of debts to friends, family members, colleagues, students, and institutions. Without their support and encouragement, this book could not have been written.

I started working on this project at the University of Minnesota, Twin Cities, as a graduate student. I was exceptionally fortunate to work with outstanding advisers and fellow graduate students in an environment that fostered critical thinking at the crossroads of political theory and international relations. I am deeply grateful to Mary Dietz and Bud Duvall, my dissertation co-advisers, for encouraging me to find my own voice, providing immensely helpful feedback, and motivating me at every stage of this project. Bud has helped me develop a critical understanding of the challenging problems of rightlessness in global politics. And without Mary, it is very likely that I would not have even considered becoming a student of political theory. Mary and Bud continue to inspire my work and life as exemplary scholars, teachers, and human beings. I am indebted to the other members of my dissertation committee, Bruce Braun, Bill Scheuerman, and Kathryn Sikkink, for supporting this project enthusiastically. I had the privilege to enjoy the personal and intellectual camaraderie of a remarkable group of fellow graduate students; I owe special thanks to Ashley Biser, Giunia Gatta, Ted Gimbel, Wanjiru Kamau, Robyn Linde, and Matt Weidenfeld.

Following graduation, I was fortunate to find a congenial academic home. Without the generous time afforded to me for research and financial support provided by Barnard College, the book could not have been completed on time. I am especially grateful to my colleagues in the Department of Political Science for their support and guidance. Séverine Autesserre deserves special mention; she read my book proposal carefully and provided extremely valuable advice at every stage of the publication process. Fred Neuhouser has been a very supportive mentor, helping me navigate the challenges of junior faculty life; I also owe him thanks for presenting an earlier version of the final chapter of this book at an international conference that I could not attend due to visa problems. I have had the good fortune to get to know an exceptional group of political theorists at Barnard and Columbia: Jean Cohen, Türküler Işıksel, David Johnston, Melissa Schwartzberg, Michelle Smith, and Nadia Urbinati. I would also like to give my thanks to the members of my junior faculty writing group, Abosede George, Maja Horn, Betsy Esch, and Molly Tambor, for providing much-needed interdisciplinary feedback on the early drafts of some chapters. Teaching has been one of the most rewarding experiences at Barnard, and I am indebted to the students enrolled in my courses on human rights and immigration for the stimulating classroom discussions that have helped me think about these issues in new ways. I was also very fortunate to have outstanding undergraduate students as research assistants; Raphaëlle Debenedetti, Skye Gao, Rachel Langlais, and Bo Yun Park contributed to this project by helping with bibliographic research and translations. I owe thanks to Nell Dillon-Ermers and Anne Wolff-Lawson for their administrative support, and I am especially grateful for Nell's friendship over the years.

In 2011–2012 I was awarded a post-doctoral fellowship by the Mahindra Humanities Center at Harvard University, and this fellowship introduced me to a vibrant intellectual community. I was fortunate to have the opportunity to present my research to this community; I would like to thank especially Homi Bhabha for his thoughtful comments. I am also grateful to Berit Hildebrant, who has supported this book with her friendship and good humor.

One of the most remarkable surprises in the last few years of my academic life has been the opportunity to meet Étienne Balibar, whose work has served as a source of inspiration for my thinking about rights, citizenship, and Arendt. It has been a pleasure to audit his seminars at Columbia, and I cannot thank him enough for inviting me to present my work in one of these seminars and for supporting this book wholeheartedly.

Writing a book would have been an impossible task without readers who are willing to take the time to provide critical feedback at different stages. I am indebted to Ayşe Dicle Ergin, James Ingram, Deme Kasimis, Justine Lacroix, Ella Myers, Serena Parekh, Andy Schaap, and Anna Yeatman for their helpful comments.

This project has traveled quite a bit over the years, and it has benefited from critical input in various academic settings. Earlier versions of some chapters were presented in the annual meetings of American Political Science Association, Association for Political Theory, International Studies Association, Northeastern Political Science Association, and Western Political Science Association. In addition to these conferences, I have had the opportunity to present different versions of this project in smaller academic settings: Political Theory Workshop at SUNY Albany (2014); research workshop on “The Public Authority in the Era of Globalization” at the University of Western Sydney (2013); Vassar Seminar on Politics (2013); workshop on “Global Justice and Ethics of Exclusion” at Northeastern University (2012); Conference on Philosophy and the Social Sciences organized by the Academy of Sciences of the Czech Republic and Charles University (2011); conference on “Old Europe, New Orders” at Indiana University, Bloomington (2009); and symposium on “Arendt after ’68” at Columbia University (2009). I would like to thank all the participants who engaged with my work and provided helpful feedback in these academic forums, and I would like to specifically mention those who invited me to present my work: Shaunnagh Dorsett, Shaun McVeigh, Rosalind Morris, Himadeep Muppidi, Serena Parekh, Bill Rasch, Bill Scheuerman, Torrey Shanks, and Anna Yeatman.

I am grateful to Angela Chnapko, my editor at Oxford University Press, for her initial interest in, and continuing support for, this book. Her professionalism, promptness, and attentiveness to an author’s concerns make her the ideal editor to work with. I would like to thank Peter Worger, Hemalackshmi Niranjan, and Manikandan Kuppan for their help during the production process. Jenna Leschuk deserves thanks for her assistance in proofreading. I have been fortunate to receive tremendously helpful readers’ reports—three from Oxford University Press and three from another press. I owe a debt of gratitude to these readers who helped me clarify my argument with their insightful suggestions and constructive criticisms.

The research for this book has been generously funded by several institutions. I am deeply grateful for the grants and fellowships I received from

the University of Minnesota, Twin Cities, at the early stages of this project: The Interdisciplinary Center for the Study of Global Change supported my research with a MacArthur Predissertation Grant (2005) and a MacArthur Research Stipend (2006), and the College of Liberal Arts granted me a Thomas F. Wallace Fellowship (2004–2005), a Doctoral Dissertation Fellowship (2006–2007), and a Graduate Research Partnership Award (with Bud Duvall, 2007). I also received a Sawyer Dissertation Fellowship (2007–2008), funded by the Andrew W. Mellon Foundation. My post-doctoral fellowship at the Mahindra Humanities Center at Harvard University (2011–2012) allowed me to take a yearlong research leave and prepare the manuscript for submission. Barnard College has supported my research with a Special Assistant Professor Leave Grant (2011–2012) and a Presidential Research Award (2013–2014).

I have been blessed with the wonderful friendship of Çiğdem Çıdam for 12 years now, and this book would not have been in its current shape without her input and encouragement at every stage. She has read numerous drafts of every single chapter (along with everything else I wrote) and dedicated countless hours to discussing this work with me. I will always be grateful for Çiğdem's invaluable feedback and enthusiastic support; it is a privilege to have her as my critical reader, intellectual companion, and devoted friend.

I would not have even dared to become an academic without the unwavering support of my family. I dedicate this book to my parents: Selvinaz and Hasan Hüseyin Gündoğdu. Neither had the opportunity to pursue higher education; it was their strong belief in the virtues of education and the independence of women that enabled me to enjoy long years of academic study. Without their unconditional love and trust, I would not be who I am. I am grateful to my loving sister, Aysun, and my marvelous niece, Defne, for not letting distance get in the way of our close relationship and for helping me put things in perspective.

I do not even know how I can begin to express my thanks to Pantelis Anastasakis. For more than 11 years now, we have shared many joys and sorrows. I am deeply indebted to him for his love, understanding, humor, and patience. Without his continuous encouragement, I would not have had the stamina to finish this book. Pantelis has helped me establish and maintain a place in the world that I am able to call "home." I can count on him (as well as our cats, Panos and Charlie) to make every day delightful.

RIGHTLESSNESS IN AN AGE OF RIGHTS

Introduction: Human Rights across Borders

IN AUGUST 2006, Nalini Ghuman, a British citizen and a music professor at Mills College, was barred from entering the United States at the San Francisco International Airport. Returning from a research trip to Britain, Ghuman was escorted by armed immigration officers to an interrogation room, where she was held incommunicado for hours. Since her visa was valid through May 2008, Ghuman could not understand why she could not enter the country. After conducting a body search and examining all her belongings, immigration officers questioned her for several hours, tore up her visa, and told her that she was ruled “inadmissible,” without explaining why. She did not have much of an option: She could either fly back to London that night or be transferred to a detention center in Santa Clara, California. Not even knowing why her visa was revoked, Ghuman could not help but feel like a character in a Kafka story: “I don’t know why it’s happened, what I’m accused of . . . There’s no opportunity to defend myself. One is just completely powerless . . . They told me I was nobody, I was nowhere and I had no rights.”¹

Ghuman’s case was extensively publicized: The American Musicological Society mobilized a protest campaign; Leon Botstein, the President of Bard College where Ghuman was expected to participate in a music festival, wrote to then-Secretary of State Condoleezza Rice; there were several news stories and blog entries about her situation. Despite this publicity, it took Ghuman approximately a year and a half to resolve her visa problem; she could not return to her academic institution until January 2008.²

As Nina Bernstein of *The New York Times* puts it, Ghuman found herself in a “bureaucratic netherworld.”³

Ghuman’s case, while it is one of the few that received significant attention, is by no means exceptional; this Kafkaesque world has become home to millions of migrants in an age that is increasingly defined by extremely restrictive border policies. Deportation without any possibility of appeal and arbitrary detention have now become routine practices for states in managing the movement of people across borders. Ghuman’s case is all the more striking because it demonstrates the possibility that even foreigners in relatively privileged positions can be denied fundamental rights. Immigration officers held Ghuman incommunicado, threatened her with detention, and in a move showing the obstacles set by racial and ethnic stratifications to migrants’ exercise of rights, incorrectly recorded her ethnicity as “Hispanic” on their report. Ghuman’s case is representative of the pervasive problems encountered by millions of migrants who become vulnerable to various forms of violence, discrimination, and abuse as they cross borders.

This book closely engages with the work of twentieth-century political theorist Hannah Arendt to understand these problems and the struggles they give rise to. Writing after World War II, Arendt looked into the challenges posed by the emergence of statelessness on a massive scale since the end of World War I. She used the term “stateless” to refer to not only those who formally lost their nationality but also those who could no longer benefit from their citizenship rights: refugees, asylum seekers, economic immigrants, even naturalized citizens who faced the threat of denaturalization in times of emergency.⁴ What brought together these people, who otherwise held different kinds of juridical status, was that they were all ejected from “the old trinity of state-people-territory,” and Arendt argued that this exclusion left them in a condition of rightlessness.⁵ The stateless were rightless in the sense that they were deprived of legal personhood as well as the right to action and speech.⁶ Expulsion from their political communities entailed an expulsion from humanity, as they lost not only their citizenship rights but also their human rights.

Particularly important for the purposes of this book is the intriguing move this diagnosis leads to in Arendt’s analysis. Refusing to see the problem of rightlessness as an anomaly, Arendt embarks on a critique that aims at the ordering principles of the international system, including nationality, sovereignty, and most surprisingly, human rights. At the heart of this critique is the paradox revealed by the precarious condition of the

stateless: Precisely when one appears as nothing but human, stripped of all social and political attributes, it proves very difficult to claim and exercise the rights that one is entitled to by virtue of being born human. Arendt's analysis of statelessness takes this paradox as a symptom of "the perplexities of the Rights of Man" and offers one of the most powerful criticisms of human rights. Questioning the idea that these are natural rights inherent in human dignity, her critique highlights how the effective guarantees of human rights rely on membership in an organized political community. Those who are deprived of such a community can hardly be recognized as human beings entitled to equal rights. They might be offered food and shelter as victims deserving compassion. Or worse, their alienness might be taken as a sign of barbarity that must be banished from the human community altogether.⁷ The stateless find themselves in a condition of rightlessness, Arendt argues, as they are dispossessed of legal personhood, denied a political community that could render their actions and speech relevant, and driven away from the company of other human beings.

Arendt's attempt to read this paradox—*rightlessness of those who appear in their bare humanity*—as a sign manifesting the perplexities of human rights has become all the more pertinent given that the problem of rightlessness continues to haunt our present in many different ways. Unprecedented levels of migration have created what Alison Brysk and Gershon Shafir describe as the "citizenship gap," leaving millions of people without the protective mantle of citizenship rights.⁸ According to estimates, there are currently approximately 232 million international migrants.⁹ Intensified border controls around the world have criminalized various forms of international movement and impaired migrants' entitlement to rights. Ghuman's case, cited at the beginning, highlights that the paradox at the heart of Arendt's discussion of statelessness is far from being fully resolved in a globalizing age reconfiguring the relationship between sovereignty, citizenship, and rights.

Especially important in this regard are the challenging problems that asylum seekers, refugees, and undocumented immigrants face in claiming and exercising rights. Although these groups hold different juridical statuses that entail different sets of rights, what brings them together is their perilous condition in the current international order.¹⁰ As I discuss in the next section, there have been important developments with regard to human rights since the time Arendt completed her analysis of statelessness. Despite these developments, "[t]he condition of undocumented aliens, as well as of refugees and asylum seekers, . . . remains in that murky

domain between legality and illegality,” as Seyla Benhabib notes.¹¹ These groups can be characterized as “stateless” in Arendt’s revised sense of the term, as they find themselves outside the framework of state-people-territory with a precarious legal, political, and human standing. To avoid a possible confusion that might result from the prevalent juridical understanding of statelessness, however, I refer to them as “migrants” throughout the book if no categorization is warranted. The term “migrant” seems to be distant from the dispossession implied in Arendt’s notion of “statelessness,” perhaps because it conveys a misleading sense of easy, unimpeded mobility across borders. To resist this idea of free flow, it is worth remembering the long-forgotten associations of migration with expulsion, banishment, and excommunication, which urge us to attend to the *de facto* statelessness of many migrants.¹²

Contemporary manifestations of rightlessness demand an Arendtian critical inquiry that grapples with the perplexities of human rights. It is important to note that Arendt is not the only thinker to point to these perplexities. They have been quite well known for some time: As a universalistic framework premised on the idea that each human being is born with inalienable rights, human rights are taken to be moral entitlements that are derived from inherent human attributes such as reason, autonomy, and dignity. Understood in these terms, they are expected to transcend the contingencies of particular political contexts. Yet human rights must be politically enacted, recognized, and affirmed in particular institutions, orders, and communities if they are to find relatively stable guarantees.¹³ Human rights discourse gives rise to perplexities precisely because it strives to articulate relations between terms that have conventionally been taken to be opposites (e.g., universal and particular, nature and history, human and citizen). To the extent that these terms are constitutive of this discourse in the sense that we could not have human rights without them, perplexities of these rights cannot be resolved or wished away.

What renders Arendt’s critical inquiry of human rights distinctive and powerful is her attempt to understand these perplexities in political and historical terms. Hers is not an abstract, formalistic statement demonstrating the logical impossibility of human rights; instead, she offers a historically and politically informed analysis oriented by the challenging task of understanding the crisis of statelessness. Arendt’s account points to the need for a critical inquiry that carefully examines the perplexities in existing human rights institutions, laws, norms, and practices

to understand the contemporary problems and struggles of asylum seekers, refugees, and undocumented immigrants. The current international human rights framework turned away from the equivocal language of “man and citizen” in the 1789 Declaration, which was the focus of Arendt’s critique, and introduced instead “human person” as an all-inclusive category. However, the formal guarantees of human rights at the national and international level continue to create divisions and stratifications within humanity, leaving various categories of migrants with quite insecure entitlements to a much narrower set of rights.

Does this mean that human rights are doomed to fail given their perplexities? The Arendtian framework that I propose in this book refuses to see these perplexities as dead ends leading nowhere other than rightlessness; instead, it takes them as challenging political and ethical dilemmas that can be navigated differently, including in ways that bring to view new understandings of the relationships between rights, citizenship, and humanity. The existing institutional framework of human rights represents one particular way of articulating the relationship between universal and particular, nature and history, human and citizen, and although it is the hegemonic one, it is by no means uncontested. The divisions that this framework introduces into the “human” of human rights—between citizens and non-citizens, asylum seekers and refugees, legal residents and undocumented immigrants, to give a few examples—are by no means settled, and they are now being challenged in various struggles that reinvent the meaning of human rights. These struggles represent in many ways contentious demands for “a right to have rights,” to use the phrase that Arendt proposed in her efforts to rethink human rights in terms of a right *to* citizenship and humanity.¹⁴ The critical analysis offered in this book draws attention to political struggles that introduce new understandings of human rights in response to challenging problems of rightlessness.

As I closely engage with Arendt’s political theory for the purposes of understanding contemporary problems and struggles of migrants, my goal is not to dig out theoretical insights that can then be simply applied to our current problems. There are two reasons for refusing to engage in such an exercise: First, as I discuss below, there have been significant legal, political, and normative changes since the time Arendt offered her analysis of statelessness, and these developments must be taken into account in any critical inquiry drawing on her work. Especially important in this regard is the international institutionalization of human rights

norms. How do we rethink Arendt's arguments about the rightlessness of the stateless, for example, given the international guarantees of legal personhood? Second, the task of understanding the contemporary struggles of migrants demands not only rethinking them with Arendt *but also reading Arendt against the grain*. We can draw crucial insights from Arendt's oeuvre only if we reinterpret and revise some of her key concepts and arguments in light of these struggles. This interpretive work involves creating encounters between Arendt's political theory and the contemporary situation, encounters that unsettle the oft-criticized distinctions that she draws between political and social issues, give unanticipated meanings to her well-known account of labor, work, and action, and take her proposition of a right to have rights in new directions. In fact, we can begin to read Arendt differently by closely engaging with the contemporary conditions of rightlessness and the struggles to which they give rise. What is at stake then is not a one-way process of applying theory to contemporary practice, but instead a critical task of reading back and forth, or an interpretive exercise that is constantly moving between Arendt's works on the one hand and "our newest experiences and our most recent fears" on the other.¹⁵

Global Transformations: A Postnational Constellation?

Arendt started writing *The Origins of Totalitarianism* in 1945 and finished it in 1949. The book paints quite a dismal portrayal of human rights advocacy at the time, arguing that the attempts to protect and institutionalize them "were sponsored by marginal figures—by a few international jurists without political experience or professional philanthropists supported by the uncertain sentiments of professional idealists."¹⁶ She contends that "the concept of human rights was treated as a sort of stepchild by nineteenth-century political thought" and was not taken up by any major political party.¹⁷ Alluding to the international efforts to draft a universal declaration, she suggests that these "best-intentioned humanitarian attempts" still remain within the confines of a state-centric international law and fail to provide guarantees for a right to have rights.¹⁸ In an essay published in 1949, before the publication of *The Origins of Totalitarianism*, she refers to the declaration adopted by the United Nations (UN) and bemoans its "lack of reality."¹⁹ In that same essay, she seems to catch a glimpse of hope in the emergence of humanity as a political reality, especially when she suggests that this new development "makes

the new concept of ‘crimes against humanity,’ expressed by Justice Jackson at the Nuremberg Trials, the first and most important notion of international law.”²⁰

As these remarks highlight, Arendt wrote her analysis of statelessness on the cusp of major human rights developments at the international level. She witnessed the first phase of these developments, and these were mainly centered on the UN. In 1948, the organization adopted the Universal Declaration of Human Rights (UDHR). At the time, the declaration was mainly aspirational, as it aimed to raise awareness of human rights without providing any institutional mechanisms of enforcement—hence, Arendt’s disapproving comment on its “lack of reality.” However, it later served as the basis of two binding international covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—adopted by the UN in 1966 and put into effect in 1976.²¹ These conventions, which constitute the pillars of the international human rights framework, are monitored by institutional mechanisms that have much stronger promotional and investigatory capacities compared to those few philanthropic societies of Arendt’s time. But as many have noted, formal enforcement remains weak at the international level, with the exception of the regional framework in Europe where the European Court of Human Rights operates as a supranational enforcement mechanism.²² The consequences of this enforcement problem have been somewhat mitigated as a result of developments in the mid-1970s. With the advent of *détente* in Cold War politics, human rights concerns started to occupy a prominent place in the agendas of non-governmental organizations. The transnational advocacy networks created by these organizations have been especially crucial in providing informal mechanisms of enforcement and putting pressure on governments to change those policies that are in violation of human rights.²³ In addition, in the mid-1970s, states also started to incorporate human rights into their foreign policy, which meant that they could use various forms of sanctions against those states that refuse to comply with human rights norms—a situation that is remarkably different from that of the “stepchild” that no major political party wanted to be affiliated with, if we remember Arendt’s account.²⁴ Since the 1990s, with the end of the Cold War, the institutionalization of human rights has occurred at a much more rapid pace, and their normative power has significantly increased. As many scholars have noted, human rights

have now become “matters of international concern,” providing grounds for various forms of international action, including military humanitarian intervention, in the case of systematic violations.²⁵

This brief historical overview underscores that there has been a sea change in our understanding of human rights since the time Arendt completed her analysis of statelessness; to use Louis Henkin’s phrase, ours is “the age of rights.”²⁶ As a result of the developments sketched above, human rights have arguably become “the major article of faith of a secular culture that fears it believes in nothing else,” as Michael Ignatieff contends, and perhaps even “the lingua franca of global moral thought.”²⁷ The perplexities arising from the fact that states continue to be the principal guarantors and violators of human rights are far from being resolved,²⁸ but what is noteworthy is the transformation that the concept of sovereignty has undergone as a result of these international developments. Sovereignty traditionally denoted the exclusive authority of a state over its citizens within its jurisdiction. As Louis Henkin notes, historically international law made only one exception to territorial sovereignty as it recognized that the treatment of a state’s nationals in another state is its “proper concern.” Within this framework, if the person subject to mistreatment was stateless, there was no remedy.²⁹ The institutional and normative framework of human rights has introduced a new notion of legitimate statehood based on the protection of individual rights; accordingly, how human beings are treated anywhere in the world has become a legitimate concern of the international community.³⁰

Given these developments, it is quite tempting to think that the problems examined in Arendt’s analysis of statelessness have been resolved by the institutionalization and global expansion of human rights norms since the end of World War II. One of the major transformations has been the codification of the right to asylum. Arendt describes this right as “the only right that had ever figured as a symbol of the Rights of Man in the sphere of international relationships.”³¹ She notes that a drastic consequence of the massive scales of statelessness in the twentieth century was the abolition of the right to asylum. States were able to abandon this right partly due to its lack of codification in either domestic constitutions or international law. Arendt saw in the historical destiny of the right to asylum the fate of the Rights of Man, which lacked legal protections and always had “a somewhat shadowy existence as an appeal in individual exceptional cases for which normal legal institutions did not suffice.”³²

International developments since the end of World War II have resulted in codifications of the right to asylum along with other human rights and have arguably removed them from this “shadowy existence.” Article 14 of the UDHR recognizes a right to seek asylum, and the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol enumerate several other rights for asylum seekers and refugees. The problem of mass denationalizations and denaturalizations that was at the center of Arendt’s analysis of statelessness has been addressed by the Article 15 of the UDHR, which sets down a right to nationality and forbids states to arbitrarily deprive their citizens of nationality and deny them the right to change nationality. In addition, the International Covenant on Civil and Political Rights (ICCPR) requires states to grant all the individuals residing within their territory and subject to their jurisdiction a set of rights “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³³ Several commentators have come to interpret this formulation in terms of a principle of non-discrimination to suggest that distinctions between citizens and non-citizens are not justifiable within a human rights framework except in cases related to political rights and freedom of movement.³⁴ Most importantly, Article 26 of the ICCPR aims to address the problems arising from the legal dispossession of personhood, which were central to Arendt’s analysis of rightlessness: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Codification of the rights to asylum, nationality, and legal personhood by no means exhausts the scope of post-World War II developments.³⁵ Yet, given Arendt’s account of statelessness, they can be seen as the most significant ones.

Looking at these developments, several scholars have suggested that the institutional and normative ascendancy of human rights framework reconfigures the relationship between citizenship, rights, and sovereignty, as it shifts the basis of entitlement to rights from nationality to universal personhood.³⁶ Citizenship has been known as “an instrument of closure, a prerequisite for the enjoyment of certain rights” since the French Revolution.³⁷ The global proliferation of human rights norms, these scholars argue, provides migrants with a universalistic vocabulary that can be invoked to contest the privileges attached to citizenship. As a result, migrants can make claims to many of the rights that were formerly associated with citizenship, including civil, social, economic, and cultural rights. Even those who are undocumented can stand before the courts as equal persons

and demand rights such as access to public education—a development that is taken as a proof of the blurring distinctions between citizens and aliens.³⁸ This blurring is lamented by some as “the devaluation of citizenship” and welcomed by others as the harbinger of a “postnational membership.”³⁹ These conclusions might sound somewhat inflated, but even scholars who take issue with them highlight that citizenship has been “denationalized” with the rise of a human rights framework, and its several components—citizenship understood as political membership, collective identity, basis of entitlement to rights—have been partially disaggregated.⁴⁰

These contemporary reconfigurations of sovereignty, citizenship, and rights, however, have by no means resolved the pervasive problems encountered by different categories of migrants. As several international reports testify, the citizen/alien distinction has proved to be quite resilient, and migrants are still more likely to be subject to numerous forms of violence and abuse, including, among other things, arbitrary detention, illegal confinement, and inhuman and degrading treatment. In addition, various types of official and unofficial discrimination, as manifested in police profiling and racial segregation, can make it much more difficult for migrants to make use of the protections offered by human rights. These problems are further complicated by the fact that most migrants cannot access protective legal mechanisms to effectively challenge or remedy the multifarious forms of discrimination and abuse they face. In fact, they are often very hesitant to assert their rights in fear of retribution.⁴¹

These problems have been highlighted by several scholars, who warn against overstating the protections of the human rights framework and point to the discrepancy between formal guarantees of rights and the actually existing conditions of migrants—a gap that can be further widened depending on the legal status, race, ethnicity, gender, class, or age of the migrant in question.⁴² This gap is recognized even by scholars who emphasize the possibilities of a postnational world order in the globalization of universal human rights. Yasemin Soysal, for example, points out that rights provided to migrants by the universal human rights framework can be “contested and undermined by various sets of political and economic factors,” including various forms of discrimination targeting migrants. These problems, she argues, arise due to “an ‘implementation deficit,’ a discrepancy between formal rights and their praxis.”⁴³

Implementation deficit can explain the problems encountered by migrants, but only to some extent. Pervasive problems faced by asylum

seekers, refugees, and undocumented immigrants cannot be simply understood in terms of the failure to enforce existing human rights norms due to some external factors; in fact, these problems bring to light the limits of these norms. These groups, to quote Benhabib again, “exist at the limits of all rights regimes and reveal the blind spot in the system of rights, where the rule of law flows into its opposite: the state of the exception and the ever-present danger of violence.”⁴⁴ Precisely because of the global expansion of human rights, it has become all the more difficult to understand how certain subjects can be denied even the most taken-for-granted rights. The problem strikes us as a “blind spot in the system of rights,” and as a blind spot, it denotes an area that escapes our understanding.

Arendt’s work becomes particularly pertinent for the purposes of confronting this contemporary predicament and understanding *the perplexing persistence of rightlessness in an age of rights*. Although our political landscape has significantly changed, the reason why this paradox remains beyond comprehension might not be completely unlike the one Arendt pointed to when she wrote her analysis. At that time, it was the deceptive solidity of the nation-state system that rendered the plight of the stateless an anomaly: “It was precisely the seeming stability of the surrounding world that made each group forced out of its protective boundaries look like *an unfortunate exception to an otherwise sane and normal rule*.”⁴⁵ The prevailing assumption then was that everyone had political membership in a territorially defined nation-state, and the plight of those who lacked this membership was cast as an unwelcome yet anomalous condition. As outliers, the stateless persons did not need to raise any questions about the ordering principles of the international system itself. Treating their cases as exceptional phenomena was “tempting because it left the system itself untouched.”⁴⁶ Today it is the unprecedented ascendancy of the human rights framework that risks turning the problems faced by asylum seekers, refugees, and undocumented immigrants into “unfortunate exceptions” to universal norms that are gradually detaching rights from citizenship status.

Arendt’s analysis of statelessness urges a careful examination of these norms and poses the following question: To what extent do the ordering principles of the current international system, including existing human rights norms, contribute to the precarious condition of various categories of migrants? Taking its starting point from Arendt’s argument that the predicament of the stateless should be treated not as an unfortunate exception but instead as a *symptom* manifesting the perplexities of the Rights of

Man, this book aims at understanding the contemporary problems faced by asylum seekers, refugees, and undocumented immigrants through a critical examination of the underlying assumptions, internal tensions, and paradoxical effects of human rights norms and practices.

Outlines of an Arendtian Critique of Human Rights

Human rights have been subjected to numerous criticisms since their early origins in the Rights of Man. One of the most memorable criticisms comes from Jeremy Bentham, who dismissed natural, imprescriptible rights as “nonsense upon stilts”—rhetorical confusions and illusions, lacking any specific meaning inscribed in existing laws. Another renowned criticism was offered by Edmund Burke, who denounced this abstract doctrine of equality and defended instead a notion of rights as an entailed inheritance handed down by our ancestors and meant to be passed into posterity. And there is, of course, Karl Marx’s scandalous revelation that the abstract man, invoked as the subject of the Rights of Man, is the egoistic member of the bourgeois society prioritizing the right to property above anything else.⁴⁷

As human rights discourse has achieved an unprecedented political and normative ascendancy in the last two decades, these criticisms have intensified even further. If this transformation has been welcomed by some as the harbinger of an increasingly postnational or cosmopolitan era, several others have recognized in it an insidious development, giving rise to new forms of subjection, violence, and domination. Some critics see the discourse of human rights, especially as it is utilized in the new practice of international humanitarian intervention, as a distinct type of neo-imperialism.⁴⁸ Some others highlight more subtle forms of political power at work in this discourse and suggest that human rights subject us to the very state power from which they promise to protect us.⁴⁹ What is more troubling, they contend, is that this hegemonic discourse has such a strong hold on our political imagination that it has become almost impossible to invent alternative forms of politics that can bring to light different understandings of equality, freedom, justice, and emancipation.⁵⁰

Since human rights can be, and have been, criticized from several different perspectives and for different purposes, it is crucial to outline the distinctive contours of Arendt’s critique. To understand why the stateless find themselves in a condition of rightlessness, Arendt looks into the

perplexities pervading the underlying assumptions of human rights. Unlike several classical and contemporary criticisms, her critique does not take us to a complete denunciation of these rights as hypocritical pretenses, ineffective illusions, or ruses of power. In fact, Arendt ends her critique with a proposal to rethink human rights as a right to have rights—a proposal that affirms the right of everyone to citizenship and humanity.

Chapter 1 aims to make sense of this double gesture in Arendt's analysis of human rights (i.e., a radical critique taking issue with their underlying assumptions and a call for their radical rethinking). I suggest that we can begin to make sense of this puzzling move only if we carefully examine *how* Arendt's critique proceeds. Especially important in this regard are her aporetic approach to "the perplexities of the Rights of Man," her attentiveness to the equivocal effects of modern rights declarations, and her effort to understand rightlessness of the stateless as a problem contingent on certain political and social conditions. Taking into consideration the distinctive orientations of Arendt's critique is crucial to understanding her conclusions about human rights and responding to some of the deeply embedded skepticisms about her approach, including those most recently raised by Jacques Rancière.⁵¹

To flesh out the aporetic dimensions of Arendt's critique of human rights in *The Origins of Totalitarianism*, I turn to her discussion of Socrates in her later writings and suggest that the Socratic example is crucial for clarifying her distinctive approach to the perplexities of the Rights of Man: First, as different from several other critics who see these perplexities as logical inconsistencies, hypocritical gestures, or deceptive ploys, Arendt takes them as genuine political and ethical dilemmas that characterize human rights as a discourse that establishes relations between man and citizen, nature and history, universal and particular. She highlights the need to grapple with these perplexities to understand both the challenging problems of rightlessness and the possibilities of rethinking human rights in response to these problems. Second, Arendt's critique is not an attempt to debunk widely shared assumptions about human rights. In a rather Socratic fashion, she carefully examines these assumptions in response to statelessness to see not only what has become untenable but also what has achieved a new meaning or relevance. What is perhaps most surprising is that Arendt finds a crucial insight even in the naturalistic position that she unwaveringly criticizes, as can be seen in her insistence that human rights cannot be reduced to the rights attached to citizenship

status. Finally, Arendt follows the Socratic example when she concludes her inquiry aporetically and refuses to resolve the perplexities of human rights by grounding them in a new normative foundation or by putting forward a new institutional model. Her analysis suggests that the task of critical inquiry is not to offer such a resolution but instead to carefully examine how these perplexities become manifest in human rights norms, institutions, and policies as well as how political actors navigate and renegotiate them in response to challenging problems of rightlessness.

In addition to this aporetic dimension, it is equally important to take into account Arendt's distinctive approach to historical phenomena. Arendt was preoccupied with challenging historiographical questions as she wrote *The Origins of Totalitarianism*, and her reflections on these questions highlight her efforts to understand historical events by attending to their equivocal and contingent dimensions. Accordingly, she takes modern rights declarations as equivocal phenomena with multiple possibilities. Understood in these terms, the identification of "man" and "citizen" in the 1789 Declaration, for example, is not doomed to create problems of statelessness and rightlessness. In fact, that identification can give rise to democratic possibilities, as it can turn into a political site for demanding equal rights for all, regardless of race, ethnicity, or nationality. But certain political and social conditions can significantly undermine these possibilities, as is highlighted in particular in Arendt's analysis of nationalism and imperialism. Rightlessness of the stateless then is a contingent phenomenon arising from the crystallization of a set of elements, including the perplexities of human rights, the decline of the nation-state, the rise of racial categories, and the boomerang effects of overseas imperialism. Precisely because Arendt does not draw a necessary connection between the perplexities of modern rights declarations and the plight of statelessness, she can interweave a radical critique of human rights with their radical rethinking. This move differentiates her from several other critics of human rights; to make this point, I compare Arendt's arguments about human rights to those proposed by one of her most prominent contemporary readers, Giorgio Agamben.

To understand the multiple, contingent, and equivocal effects of human rights, chapter 2 clarifies the notion of "politics" that is at work in the critical inquiry developed in this book. It does that by rethinking Arendt's notorious concept of "the social." Many of Arendt's critics have argued that she subscribes to a problematical political/social distinction, which casts issues such as poverty, unemployment, or housing as "social" problems that

should be addressed administratively; as such, these issues can never be the subject of our political deliberations and negotiations in the public space.⁵² If this distinction were to be as categorical as Arendt's critics suggest, it would significantly undermine, and perhaps even invalidate, my attempt to use the resources of Arendt's political theory to rethink human rights by inquiring into the contemporary problems and rights struggles of migrants. For at the heart of these struggles is not simply a right to action and speech—crucial for an Arendtian politics—but also a demand for social and economic rights, including a right to work and a right to family.

I suggest that if we are going to rethink the politics of human rights along Arendtian lines, what is required is nothing less than reading Arendt *against* Arendt. This reading takes its starting point from the perplexities arising from her multiple, conflicting uses of the term “social.” In the spirit of the aporetic inquiry proposed in chapter 1, I suggest that grappling with these perplexities is key to finding out what is untenable and what is worthy of affirmation in Arendt's account. A clear-cut political/social distinction cannot be upheld as a boundary-setting marker separating two domains and assigning each a distinct set of subjects and issues, given that most human rights problems cross that boundary. In fact, even Arendt's own remarks in different contexts blur the lines that are often associated with her analysis. But those remarks also underscore her crucial idea that no issue is inherently political. For an issue such as poverty to become *politicized*, there is a need to engage in practices of translation. Only with these practices can a once-private matter relegated to the realm of necessity become a public concern that relates to the ongoing constitution of freedom and equality in a political community. This revised reading of Arendtian politics endorses a different understanding of “social,” one that alerts us to the conditions that might hinder such politicization.⁵³ Arendt's critical account in *The Human Condition* highlights, for example, the powerful tendency to yield to the dictates of an administrative rationality in efforts to tackle problems of social justice. This amended understanding of Arendt's political/social distinction suggests that we need to carefully examine the administrative, normative, and rhetorical frameworks that inform various types of human rights advocacy to see whether they enable or hinder the possibilities of politicizing challenging problems of rightlessness.

To develop this last point, I offer a new reading of one of Arendt's most controversial works, *On Revolution*. This reading centers on her critique of the Jacobin approach to “the social question” (i.e., poverty), which is often taken as an example of her opposition to the democratic politics

enabled by the Rights of Man. Using the revised understanding of the political/social distinction, I argue that Arendt criticizes the Jacobins not because they politicized poverty but because they failed to do so. Arendt's critique suggests that the Jacobins took a profoundly anti-political approach to the Rights of Man, as they dispensed with the political practices of translation and resorted instead to violence in their attempts to resolve the problem of poverty. Turning the poor into an undifferentiated mass of suffering victims, they undermined any possibility of organizing a politics centered on solidarity and equality.

This reinterpretation guides my discussion of the anti-political orientations that can thwart the politicization of human rights in an Arendtian sense. I focus on three examples to draw attention to some of the worrisome trends that have emerged with the convergence of human rights and humanitarianism since the 1990s: the rise of a compassionate humanitarianism centered on suffering bodies, as can be seen in the various efforts to address refugee crises around the world; the tendency to treat challenging human rights questions as matters of humanitarian administration, as illustrated by the increasing turn to experts in making decisions related to asylum and residency; and the emergence of a military humanitarianism that reduces human rights to the rights of victims who have nothing else to fall back on. None of these tendencies is inevitable or irresistible, and they are being debated and criticized even by humanitarian actors and organizations; however, they point to some of the risks and problems requiring caution as we grapple with challenging human rights questions.

As different from several other critical approaches, an Arendtian framework does not conclude that human rights are necessarily anti-political, or even anti-democratic; nor does it lose sight of the political possibilities that these rights can engender. To explore how and when human rights can become political, chapter 2 turns to Arendt's account of the early labor movement in *The Human Condition*, which blurs the conceptual distinctions that she draws at other times. In this case, workers refused to be passive victims and inaugurated a new type of politics as they appeared in public space, translated their problems into common concerns, and reconfigured the political community in question by proposing new understandings of equality and freedom. What is perhaps most striking, and overlooked, in Arendt's account, is the crucial role that rights play in enabling the public appearance of workers as political actors. She ties their mobilization to their political emancipation, highlighting that modern

rights introduce a political dynamic with indeterminable effects. This discussion of the labor movement suggests that an Arendtian politics of human rights centers on the political agency of those subjects whose rights are at stake and who venture to vindicate these rights and declare new ones.

As this overview highlights, the first two chapters of the book are intended to clarify the Arendtian critique of human rights by closely engaging with the various criticisms directed against it. The next three chapters turn to specific situations related to the contemporary problems and struggles of asylum seekers, refugees, and undocumented immigrants, but these situations are not to be understood as “case studies” applying Arendtian “theory”: The first two chapters do not offer such a general theory applicable to a universe of cases, and such a rule-bound exercise would be incompatible with “thinking” in an Arendtian sense, which always involves attending to the unique and unprecedented challenges posed by events. I approach these problems and struggles instead as “incidents of living experience,” which, as Arendt highlights, should always remain for thinking “the only guideposts by which to take its bearings.”⁵⁴ Though such incidents are mentioned in the first two chapters occasionally, they still orient the questions asked and the interpretations proposed. They become much more prominent in the rest of the book, as I continue to revise and rethink Arendt’s key concepts and arguments in their light.

Rightlessness: Precarious Legal, Political, and Human Standing

In her analysis of statelessness, Arendt repeatedly uses the term “rightless.” The stateless found themselves in a fundamental condition of rightlessness, she argues, as subjects deprived of an equal standing before the law. Without any recognition of their legal personhood, the stateless were often subjected to lawlessness, arbitrary violence, and police rule. Rightlessness is not only a legal problem; Arendt highlights that the exclusion of the stateless from a political community in which their action and speech can be taken into account amounts to an expulsion from humanity.

The term “rightlessness” strikes us as anachronistic in an age of rights in which every human being, regardless of citizenship status, is assumed to be an equal person before the law. But as highlighted by the example of Ghuman, our world continues to be haunted by the spectral presence of Kafkaesque characters denied access to rights. Chapters 3 and 4 examine