

The Aporia of Rights

Explorations in
citizenship
in the era
of human rights



Edited by Anna Yeatman and Peg Birmingham

B L O O M S B U R Y

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Introduction to the Aporia of Rights: Explorations in Citizenship in the Era of Human Rights

Anna Yeatman

The assumption that human rights and citizenship are two distinct orders of reality that frequently clash is commonplace today. In this approach citizenship is viewed in terms of a closed world of membership-based privilege, and human rights are viewed as the vehicle of asserting the claims of those who are excluded from this world, the refugee or stateless person being the central trope for this mode of thinking. This collection of essays challenges this mode of thinking. It suggests that citizenship and human rights are profoundly and necessarily co-implicated in the modern historical and conceptual discourse of subjective right. The human rights of the refugee cannot be asserted without simultaneously making a claim on the conception and practice of citizenship. This was of course the point that Hannah Arendt made in her idea of the right to have rights,” an idea frequently referred to in this collection. At the same time it becomes clear to anyone who attempts to make sense of this relationship of co-implication that it is complex, always contextually and thus historically specific, *and* aporetic.

The aporia and (what Hannah Arendt called) the perplexities of rights dwell within the complexity of the relationships between the conceptual and the historical, between the ethical and the practical, and between the emancipatory claim and the established institutional order. It is tempting to position the first of these terms as the privileged term and thereby to place it in a binary and hierarchical relationship to the second of these terms, which then represents a falling away from the purity of the first term. There is general agreement

among the contributors to this volume that it is not useful to construct a binary relationship of the key terms (conceptual-historical, ethical-practical, emancipatory-institutional and also man-citizen, as well as universal-particular). The suggestion is that their relationship may involve tension but that the tension in question arises out of a difference that cannot be resolved in favor of one term because the two terms are necessarily co-implicated.

In her chapter, Ayten Gündoğdu suggests that if we understand the tension between these terms in an aporetic way, we can allow it to become productive. She draws on Hannah Arendt's exploration of aporetic thinking through the figure of Socrates. Instead of constructing the relationship between the terms as a binary one, which shuts down thinking, judgment, and the space of political engagement, we can work the tension in ways that accept its reality and that enable more creative responses to it. This would mean, for example, that we can allow the tension between the "right to have rights" of stateless people and the right of the state to determine which foreigners it admits to remain in play, as a tension that is investigated in its specific historical and practical mode of being, and where the difficulties of judgment as to how this tension is practically addressed at any particular time can be fully engaged. The important thing is to keep the tension in play and to understand that the challenge of addressing it is political in nature. Gündoğdu suggests that Jacques Rancière does not understand Arendt. He interprets the quandary that develops for stateless people, that in principle they have the Rights of Man, but that in practice they have no rights because they are not accepted as citizens of any state, in logical terms. As Gündoğdu puts it, "human rights are either the rights of those who are cast as subjects without any rights (e.g. stateless or poor) or merely the rights of citizens who already have rights," thus "either a void or a tautology." However, as she suggests, to refuse the aporetic nature of political vocabulary in favor of logical reasoning is to make the turn away from politics toward metaphysics. Here she stays faithful to a core Arendtian posit—that truth and politics belong to different domains.

This takes us to a further area of agreement in this collection, namely that when we talk about rights, we are talking about the domain of the political, and that, *au fond*, this is the common ground that human rights and citizenship share. The political here has several aspects. The first of these concerns the

standing or status of human beings. Are they accepted as subjects of right, who, being so, are entitled to participate in the political and in how it opens a space for public life and political organization? In different ways, contributors propose that the question of rights bears on the question of the political standing of the human subject, and that historical rights-based struggles are oriented to opening up this question so that new claimants on this status may be permitted to disturb the established understanding of what it means to be a subject of right.

The second aspect of the political here concerns the polity or political association, and how its nature is to be understood if its rationale resides essentially in the provision of personal security for, and political representation of, the human beings it comprises as subjects of right. All the contributors call into question a cosmopolitan and moral discourse of rights that seems to float free of anchoring them within the polity or state. To this degree, this collection can be viewed as “statist.” However, all the contributors insist on the third aspect of the political as an open horizon where new emancipatory rights claims can gather, be asserted, and be heard in relation to established institutional practices. If rights are a political phenomenon, they are also a public one, and they depend on the state to make them a real and practical phenomenon. This will work only as long as the state is not corrupted, meaning that its public nature is neither suborned nor destroyed by a community of private identity of one kind or another (class, national identity, ethnicity, cabal, kinship group, and so on).

Arendt (as discussed here by Gündoğdu, and also Celermajer) was concerned especially with the historically specific mode of corruption of the state by the nation understood as just such a privative identity. This occurred with the development of the populist nationalist movements of the late nineteenth and early twentieth centuries. These movements identified the political concept of “the people” with an ethnocratic understanding of the people’s (“national”) identity, and it is this understanding that governed the redrawing of state boundaries in the various treaties made after World War I. Joseph Roth’s novel *The Radetzky March* offers an extraordinary account of how this form of romantic nationalism white-anted the Austro-Hungarian Empire. Until this point, Arendt suggests, in line with the idea of the state that was developed in

early modern civil philosophy, the state understood itself to be responsible for all who lived within its jurisdiction:

Whether in the form of a new republic or of a reformed constitutional monarchy, the state inherited as its supreme function the protection of all its inhabitants in its territory no matter what their nationality, and was supposed to act as a supreme legal institution. The tragedy of the nation-state was that the people's rising national consciousness interfered with these functions. In the name of the will of the people the state was forced to recognize only "nationals" as citizens, to grant full civil and political rights only to those who belong to the national community by right of origin and fact of birth. This meant that the state was partly transformed from an instrument of the law into an instrument of the nation. (Arendt 2005, 296)

On this analysis, the post-1948 discourse of human rights, with its paramount principle of nondiscrimination, calls the state back to its civic purpose as it is realized in responsibility for all those who come within its jurisdiction. Of course there can be no guarantee that the empirical state will operate in terms of this purpose. Here there is a difference between the contributors to the collection, between those who see the corruption of the state as inevitable and those who would emphasize the task of critique as one of making human rights practically and politically meaningful again, as Gündoğdu puts it. There is on this second view a continuing struggle to call the empirical state to political and legal account in relation to the civic purpose of the state. Incidentally, this view does not mean that public policy regarding asylum seekers becomes any the less complex or fraught, but rather that it becomes open, and legally as well as politically accountable.

In this connection, Malpas's conceptual clarification of human rights is especially useful. He properly insists that the Universal Declaration of Human Rights arose out of "a concrete political process," that it was "a working concept adapted to the practical political context in which it was applied." Accordingly, it bears all the marks of the historical-contextual, practical, multivocal, and negotiatory realities that were in play at the time of its creation. This is true of all discourse. It is not that the universal claim of the discourse is negated by its contextual-practical particularities, for all concepts are universal, and this would be to claim that any conceptual phenomena are negated by

their specification to discursive-political-practical context. It would be to misunderstand the nature of conceptual phenomena—that they are already embedded “in our modes of social engagement with one another.” This means that conceptuality is not a closed logical domain for it “gathers together those multiple instances to which it applies,” and I take Malpas to be saying that these cannot be predicted in advance. Thus, if conceptuality is “a dialogue between commonality and diversity,” then the concept (human rights in this instance) will continue to change in how its specific meaning operates and registers: “[T]here is always more than one way of characterizing a concept—in the same way as there is always more than one way of translating a term.” If this is always the case in relation to any concept, Malpas suggests that this is not just a pragmatics to be accepted in the case of human rights but one to be valued. When he emphasizes that “the multivocal character of human rights discourse points to the character of such discourse as always emerging within a larger domain of political negotiation and contestation,” I think he is saying that, if we can understand and value this, then we can open up human rights to a more subtle and complex understanding than we do if we think of human rights in terms of the binary relationship of the universal and the particular.

The contributors to this collection are offering different kinds of critiques of this binary understanding of the relationship of the universal to the particular. Glover speaks of the “false purity” of these categories when they are made to oppose each other. Barbour offers a fascinating and revisionist understanding of what Karl Marx is up to in that early and infamous essay of his “On the Jewish Question.” Against the common view that Marx here “repudiates the concept of right,” Barbour convincingly argues that Marx’s argument has to be understood in its historical context, as a critique of Bruno Bauer’s conception of republican universalism. Bauer offers an idea of republicanism in terms of an abstract universality. For Bauer this means that people have to reject religion (a particularistic identity) in order to become citizens of the republican state. In fact, they have to leave behind all “forms of particularistic identification, and orient themselves toward the universal interest of the republican community.” It was this conception of rights that Marx attacked. Specifically, Marx proposed that, in conceiving of the realm of political rights in this abstract manner, all the concrete and specific struggles

concerning rights are left within what becomes a depoliticized and private domain of civil society. These struggles remain without political recognition within the formal institutional domain of the republican community, and, as Marx emphasized, this means that they are left in a world where the power of private property is permitted to hold sway. Barbour interprets Marx, not as claiming that “rights and law are masks of domination, instruments of power, or epiphenomena of deeper, more profound economic or material conditions,” but that the issue is how “we articulate the two spheres of realms that republicanism, or the constitution of a specifically political secular state, holds apart.” To use Marx’s own language, the heavenly sphere has to become immanent within the earthly one and vice versa; the idealism of the state has to inform the materialism of civil society and vice versa. Or in Barbour’s words, “[G]enuine ‘human emancipation’ must involve integrating the rights that one obtains as a republican citizen or a ‘moral person’ into the world where one exists as an ‘actual individual.’” He concludes, “[P]ut directly, it must involve a democratization of social relations.”

There is, however, an inevitable gap that opens up between claims to right that have been already received and institutionalized and new claims that center on what it means to democratize social relations. This is not just because of a historical lag between an earlier regime of rights and new emancipatory claims; it is also because of the success of private interests that oppose them in taking over (or corrupting) the state. It is for this reason that a number of the authors here—notably Gündoğdu, Barbour, Langlois, Glover, and Birmingham—emphasize rights as performatives. They do not exist except as they are claimed, and the emancipatory force of these claims is to be given political-ethical precedence over the institutionalized forms of right. Rights claims can never be brought to an end, for this would be to suggest that the political dynamics of democratization could be brought to an end. Anthony Langlois draws on the work of Karen Zivi in this connection. She criticizes the approach of some human rights thinkers (Ignatieff and Sen) who, she suggests, “treat rights claims as illocutionary utterances,” an approach that leads to “a focus on identifying *what* the conditions are which must be satisfied for rights to be claimed and *how* to bring those conditions about—*with the ultimate aim of bringing debate to an end.*” However the nature of a political claim

resides in its performance, a point emphasized in Hannah Arendt's account of action, and just how the performance plays, how it will be repeated, and how it will be received, are all matters of political contingency, as they should be. Furthermore, even if a rights claim enjoys considerable success at the level of its institutionalization for now this guarantees nothing for the future. At the level of meaning, whether and how a rights claim is understood, remembered, and recounted is profoundly political.

Rights claims are made in the name of "the human" but at the same time they redraw the landscape of what it means to be human in order to include or accommodate a category of subject who has been either excluded from the status of the subject of right or who was never even imagined in terms of its historically existent expression. Three of the chapters in this collection are of particular interest in this connection. Robert Glover's chapter focuses on the aporetic relationship between human rights and citizenship as this is shaped by the contemporary dilemmatic space of "the migration-citizenship nexus." His discussion suggests that the politics of this space may provoke a new understanding of this nexus, such that the status of citizens-subject is not so refractory to the rights claims of migrants and asylum seekers. Arguably, what he calls "the migration-citizenship nexus" has been a site under construction for some time now in societies that have large guest worker populations, immigration programs, and now asylum seekers. Ludvig Beckman asks us to consider the implication of recent rulings of the European Court of Human Rights that call into question what has been the established historical understanding of the citizen-subject as one who can comply with established norms of legal-cognitive competence. Interpreting the human rights principle of nondiscrimination, the court has opened up the question of whether people with cognitive disability should be automatically disqualified from the right to vote. Beckman pursues this topic primarily with regard to people with severe cognitive disability, and suggests that perhaps there is an argument to be made that the political community as a democratic association has an interest in ensuring that the principle of nondiscrimination is of real, practical force, and that this is the justification for extending the right to vote to all people regardless of the nature and level of their disability. Given that many people with a severe cognitive disability may lack the mental capacity to

understand how the vote protects their individual interest, the issue here is not the vote, understood in terms of protection of individual interest, but rather the collective political interest in the right to vote. My own reading of this argument is that if the principle of nondiscrimination is permitted to reshape the franchise, then it will be left to individuals to self-select into the exercise of their right to vote, and thus there is no imposition in the extension of the franchise to people with severe cognitive disability. I would note here that this argument may have more purchase in systems where voting is voluntary, and be more problematic in a system, such as the Australian one, where it is compulsory for all (cognitively competent) adults over the age of 18 years. Finally, in her chapter, Danielle Celermajer is asking us to consider the issues for the established understanding of human rights as dependent for their institutionalization on sovereignty that arises in relation to the rights claim to self-determination on the part of indigenous peoples. While she suggests that there can be no reconciliation between this rights claim and the idea of sovereignty that is predicated on the formula one people, one nation, one state, her topic raises the question of whether the idea of sovereignty can be detached from the idea of the nation as expressive of one people.

This brings me to the question of the relationship of rights to their institutionalization. All the contributors accept in different ways, and perhaps to different degrees, that rights become real or actual in the Hegelian sense only as they are institutionalized. This has become a complex terrain in the current historical context where the discourse of human rights has become the language of legitimacy for the institutions of government and governance. Langlois suggests that we should understand human rights as *both* the authoritative instrument of government/governance *and* the performative utterances of disenfranchised rights seekers. As we have seen, contributors insistently emphasize a gap between the emancipatory claim and its institutionalization. Yet this begs the question of what kind of institutional order has to be in place for the emancipatory claim to find a political space for its utterance. Peg Birmingham's investigation of the difference between the French Declaration of the Rights of Man and the Citizen and the American Declaration of Independence is relevant to this question. She argues that in the former revolutionary declaration, the right of political opposition and

resistance is affirmed, whereas in the latter it is foreclosed by the assertion of the proper name of the new American state as inherently rights oriented. Yes, Birmingham agrees with Arendt in this case, that “human rights are concrete, inscribed in legal orders by public authorities and institutions,” and therefore what Birmingham calls “the state of right” is necessary, but it is not sufficient: “If democracy is another name for the revolutionary claim of human rights made by those who are oppressed and outside the law, then the 1793 Declaration of the Rights of Man and the Citizen, in its affirmation of ‘the right of opposition’ is a more adequate declaration than the American one.”

The 1793 Declaration of the Rights of Man and the Citizen can be understood as an historical instance of the iteration of the idea of sovereignty, understood as the autonomy of the political as it is given expression in the state. This is the argument we find in my (Yeatman’s) chapter. I work with those who have been retrieving the project of early modern civil philosophy that centers on the idea of sovereignty: Ian Hunter, Martin Loughlin, and Blandine Kriegel, in particular. I argue that sovereignty (or the idea of the state) is the form of power that is designed to contain and counter power based in either property (*dominium*) or military force (*imperium*). Sovereignty is to be distinguished from sovereign powers, from what Loughlin (2003) calls the agency of government. Without sovereignty, which is the institutional expression of the autonomy of the political, there can be no right—either as a matter of institutional and relational practice or as a space within which it is possible to safely articulate new rights claims. I believe that this fundamental point is generally neglected in discussion of human rights and citizenship. I consider also that such neglect might be remedied if we considered the organized assault on sovereignty in the name of freedom *qua dominium* (private property) that has occurred over the last 30 years or so. Free Trade Agreements are a powerful instrument of international governance at present, but they do not accommodate human rights, and I would suggest that by their nature, they cannot. It is not accidental that Hayek (2013, especially 261–7), the principal intellectual exponent of the powerful doctrine of neoliberalism, explicitly argues against human rights (with the principles of nondiscrimination and equality that they entail) in favor of *dominium*. The political valence and significance of the idea of sovereignty is perhaps understood only when it is

under such open attack. The relative success of neoliberal doctrine in consort with the organizational power of the corporation at this time in disabling sovereignty, both as an idea and as a practice, throws into stark relief the relative stability of an order of state formation oriented in terms of sovereignty from the period of 1945 until the 1970s.

In his chapter, Robert Glover shows some sympathy with this argument that sovereignty is the condition *sine qua non* for right. He draws on Bonnie Honig's work to suggest that how the empirical state at any one time operates, and whether it does so in congruence with the state's role as the public authority of civil philosophy, or not, is dependent on the agents who are responsible for the work of the state. When we consider the rights claims of asylum seekers, it is important, Glover suggests, that we revisit the conception of sovereignty. It may not be inherently opposed to the claims of asylum seekers. Rather, what is at issue may be whether positive law is adequate to its moral purpose (here Glover draws on Lon Fuller's jurisprudence via its interpretation by Kristen Rundle), and therefore it is of importance that there be debate about the question of legality, what it is, and what it requires by way of human agency. In this discussion, Glover rejects the argument of Agamben (after Schmitt) that collapses sovereignty into sovereign power.

Jessica Whyte's chapter is something of an outlier in relation to the other chapters, but not in relation to the current historiography of human rights. She is sympathetic with Samuel Moyn's argument that a depoliticized discourse of human rights has been captured by what she calls "the military-humanitarian complex," which centers on an alliance between a coalition of powerful Western states that have arrogated to themselves "the right to protect" and the international civil society of humanitarian NGOs such as Amnesty International and Médecins Frontières. She is concerned with the officially self-designated human rights movement over the last 50 years as it has become enmeshed in Western military operations, and become increasingly militarized. Her examples are powerful. The provocation of her chapter resides in the proposition that it may be an error to assume that this militarization represents a corruption of human rights. What is more essential is to ask how it has been possible for human rights to be militarized. Perhaps this development is "neither accidental nor arbitrary." Whyte's profound skepticism about human

rights is allied with her disquiet about an “ideological closure that asserts that there is no alternative to human rights.” It is clear that Whyte is as interested in an emancipatory politics as the rest of the contributors, but that she has come to the conclusion that it has to be wrested away from the language of rights. Rights is a moral discourse; it invites a politics of compassion and protection, not an emancipatory politics of self-determination. This is a powerful chapter, and extraordinarily provocative in its well-made argument that human rights have been co-opted to weaken the traditional opposition to war. Since the other contributors think that rights discourse is central to emancipatory politics, or to put it another way, that a modern emancipatory politics cannot do without the idea of subjective right, this point of disagreement is a powerful challenge to the reader of this collection to investigate this question further.

This collection of essays belongs to the normative and conceptual universe of political philosophy of the relational and “Continental” kind. Its coherence centers on the proposition that the question of right is political in nature. This means that it is only politics that can address the question of right, as this emerges and is declared in a particular historical context. Put differently, it is the autonomy of the political that is the guarantor of right, so far as there can be one. Right, then, is more a matter of discursive and relational practice than it is of positive-legal institutional enforcement. It is not that the latter is not needed, but that it has to be undertaken in a way that is oriented in terms of and accountable to the discursive and relational practice of right. The disagreements in this collection center on how the autonomy of the political is to be understood, and I think this becomes evident in the difference of emphasis between the two co-editors in the introduction and afterword, and their respective chapters. There is agreement that the practical bearer of the autonomy of the political is the political community, but the disagreement concerns how the political community is to be conceptualized. Is sovereignty constitutive of the political community in the sense of giving it form, and thereby practical existence, or is the citizen-subject community itself sovereign? On the first of these conceptual alternatives, sovereignty is expressed as the constitutional authority of the state. It is not that the state is sovereign, for sovereignty and the state are the same thing, and this is not to be reduced to government for it demarcates the constitutional field in which government operates. Sovereignty

has to be adequate to its task, as one of providing for the autonomy of politics as this is expressed in the effective activity of government in serving sovereignty, in checks and balances in relation to the powers of government, *and* in the provision of a safe and civil relational space for the conduct of politics. On the second of these, sovereignty inheres in “the people” understood as a political collective agent that engages in an ongoing and fundamental political question of how it constitutes itself. In the afterword, Peg Birmingham cites Balibar on this question: “This means for Balibar that the citizens themselves are the site of constituting power of the political; the citizen-subject becomes sovereign in the sense that citizens, constituted by political participation, are ‘the subjects of their own incorporation in a system of guarantees and constitutional controls’ (Balibar 2004b, 317).” I find this formulation to be confusing in seeming to suggest that political participation is the prior term, and then shifting to the idea that “a system of guarantees and constitutional controls” is instead to be regarded as the prior term. However, I acknowledge that this confusion is symptomatic of contemporary democratic theory, and perhaps it is better accepted as a phenomenon that demands further enquiry. There is then we hope some intellectually provocative dissonance between the two voices of the co-editors, and partly for this reason we have provided for an afterword as well as an introduction. But we also wanted to take the reader in, and then out of the collection, and, in addition, to use the afterword to provide some commentary on an important theorist in this field, Étienne Balibar, who was otherwise neglected within the substantive chapters included here.

“Perplexities of the Rights of Man”: Arendt on the Aporias of Human Rights

Ayten Gündoğdu

Writing after World War II, Hannah Arendt inquired into the challenges posed by massive scales of population displacements in the twentieth century, which rendered millions of people “stateless.” Those who were stateless, she argued, found themselves in a condition of rightlessness as they lost not only their citizenship rights but also their human rights (Arendt [1951] 1968, 281–2). Arendt identified a paradox in this precarious condition: Precisely when the stateless appeared as nothing more than human, it proved very difficult, if not impossible, for them to claim the allegedly inalienable rights they were entitled to by virtue of being born human. She took this paradox as a symptom of the “perplexities of the Rights of Man” and offered one of the most powerful criticisms of human rights.

Arendt’s critical analysis of human rights has received much scholarly attention. While some political theorists have turned to her critique to grapple with the challenging problems posed by the contemporary plight of noncitizens to the existing institutional and normative frameworks of human rights (Benhabib 2004), others have deployed it to rethink the politics of human rights in terms of democratic and associational practices of claiming rights (Ingram 2008; Isaac 1996). Yet another group of scholars have drawn on Arendt’s critique for the purposes of finding less conventional foundations and justifications for human rights (Birmingham 2006; Parekh 2008).

This chapter joins these scholarly efforts to rethink human rights along Arendtian lines. However, it also makes the argument that this rethinking is enabled by an overlooked dimension of Arendt’s critique: its *aporetic* nature.

Arendt's critique is aporetic as it is centered on the perplexities or paradoxes pervading its object of study, as the title of the section on human rights in *The Origins of Totalitarianism* indicates (i.e. "perplexities of the Rights of Man" or "die Aporien der Menschenrechte" in the German version) ([1951], 1968, 290; [1955] 1986, 601).¹ In addition, it is aporetic in the sense that it puts into practice a mode of thinking that Arendt associates mainly with Socrates. Aporetic thinking starts with ordinary concepts of political life (e.g. justice, happiness, and courage), calls into question their conventional understandings and opens up the possibilities of thinking them anew. I argue that Arendt undertakes such an aporetic inquiry in response to the crisis of human rights in the early twentieth century.

Attending to this aporetic dimension, which illuminates the *methodological* orientations of Arendt's inquiry, is crucial since her analysis, which has proved to be inspiring for many, has not been immune to criticism. In one of the most powerful criticisms provided to date, Jacques Rancière (2004) has argued that Arendt's analysis of human rights paralyzes our political imagination with the paradoxes it introduces and makes it impossible for us to consider the democratic potentials of modern rights declarations. In Rancière's reading, Arendt's critique traces the origins of problems such as statelessness to the paradoxes in the early formulations of human rights and attributes to these rights an inevitable destiny of inefficacy or failure. Examining the methodological orientations of Arendt's critique is crucial to address this deeply embedded skepticism about its premises and conclusions.

In the first section of the chapter, I delineate the main contours of aporetic inquiry by turning to Arendt's discussion of Socrates in *The Life of the Mind* and *Promise of Politics*. Arendt's understanding of "aporia" is crucially different from its conventional understanding as a paralyzing structure. Indeed, as her discussion of Socrates indicates, facing up to the perplexities arising from our prevailing assumptions about key concepts is the very condition of possibility for thinking these concepts anew. Since the goal of this section is to identify and explain what Arendt finds promising in the example of Socrates, I focus exclusively on her interpretation of Socrates, without questioning the validity of her claims about the Socratic method.² The second section reconstructs the main arguments of Arendt's critique of human rights, elaborated particularly

in *The Origins of Totalitarianism* and *On Revolution*, in the light of the discussion of Socratic aporetic inquiry. On the basis of this interpretive work, the third section analyzes the distinctive aspects of Arendt's critique of human rights, particularly in response to the criticisms raised by Jacques Rancière. Read as an aporetic inquiry, Arendt's critique does not attribute an inevitable destiny to the paradoxes of human rights. As different from more recent criticisms of human rights, especially the one offered by Giorgio Agamben, Arendt's analysis attends to the multiple, equivocal, and contingent historical trajectories of these rights. Most importantly, it recognizes the possibility that the paradoxes of human rights can be politically navigated to contest inequality, as can be seen in Arendt's analysis of the Dreyfus Affair and her rearticulation of "a right to have rights."

Aporetic thinking: Methodological orientations of Arendt's critique

Arendt's critique of human rights takes its starting point from the puzzling condition of the stateless who found themselves deprived of not only citizenship rights but also human rights. Resisting the temptation to understand this troubling condition as "an unfortunate exception to an otherwise sane and normal rule" ([1951] 1968, 267–8), Arendt analyzes it as a symptom of some paradoxes deeply embedded in human rights since their early formulations in the 1789 Declaration of the Rights of Man and Citizen.

On the one hand, these rights were assumed to be natural; individuals were entitled to them by virtue of being born as human beings (Arendt [1963] 1990, 149). As distinct from rights that took their ground from history and changed from one community to the other, the rights of man were derived from human nature that was assumed to be universally shared and relatively stable (Arendt [1951] 1968, 298; 1949, 35). They were the rights attached to all human beings abstracted from any belonging or membership in a political community ([1963] 1990, 149). On the other hand, the declaration of these allegedly natural, abstract, and inalienable rights was coeval with the emergence of the nation-state. Within the context of the nation-state, "rights of man" came to stand

for “national rights” ([1951] 1968, 230). In an international system organized around the principle of nationality, human rights seemed to be unenforceable in the case of individuals deprived of citizenship in any sovereign state, as manifested in the condition of millions of stateless who lost their political membership and became nothing but human ([1951] 1968, 299).

Arendt’s inquiry is centered on the “perplexities” or aporias of human rights, and we usually associate these terms with some kind of an irresolvable logical quandary that is in many ways paralyzing for thought. Indeed, this is the meaning that is implicit in Jacques Rancière’s recent criticisms of Arendt:

She makes them [Rights of Man] a quandary, which can be put as follows: either the rights of the citizen are the rights of man—but the rights of man are the rights of the unpoliticized person; they are the rights of those who have no rights, which amounts to nothing—or the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen of such or such constitutional state. This means that they are the rights of those who have rights, which amounts to a tautology. . . . Either a void or a tautology, and, in both cases, a deceptive trick, such is the lock that she [Arendt] builds. (Rancière 2004, 302)

In this rendering, an analysis centered on paradoxes is debilitating as it locks thought in a binary logic. Human rights are either the rights of those who are cast as subjects without any rights (e.g. stateless or poor) or merely the rights of citizens who already have rights. Arendt’s reading, Rancière argues, blinds us to the political possibilities that release us from the paralyzing grip of these conundrums as it fails to see how the equivocality in the declaration, arising from the simultaneous invocation of “man” and “citizen” as the subject of rights, opens up spaces for political contestation.

In what follows, I provide an alternative account that foregrounds the critical potentials of Arendt’s inquiry by revisiting her analysis of aporetic thinking in her discussion of Socrates. In my rendering, thinking through perplexities and paradoxes is far from paralyzing. In fact, aporetic thinking can be seen as the very condition of possibility for rearticulating human rights beyond the binaries that prevail in the conventional understandings of these rights (e.g. man/citizen, universal/particular, nature/history). This reinterpretation recasts “tension and contradiction,” as Jill Frank puts it in a different context,