

with territorial sovereignty. While the *demos*, as the popular sovereign, must assert control over a specific territorial domain, it can also engage in reflexive acts of self-constitution, whereby the boundaries of the *demos* can be readjusted. The politics of membership in the age of the disaggregation of citizenship rights is about negotiating the complexities of full membership rights, democratic voice, and territorial residence.

## “The right to have rights”: Hannah Arendt on the contradictions of the nation-state

The previous chapter analyzed Kant’s formulation and defense of cosmopolitan right and argued that the text left unclear which of the following premises justified the cosmopolitan right to hospitality: the right to seek human association, which in fact, could be viewed as an extension of the human claim to freedom; or the premise of the sphericity of the earth’s surface and the juridical fiction of the common possession of the earth. Kant’s discussion of cosmopolitan right, whatever its shortcomings, delineates a new terrain in the history of political thought. In formulating a sphere of right – in the juridical and moral senses of the term – between domestic constitutional and customary international law, Kant charted a terrain onto which the nations of this world began to venture only at the end two world wars. Kant was concerned that the granting of the right to permanent residency (*Gastrecht*) should remain a privilege of self-governing republican communities. Naturalization is a sovereign privilege. The obverse side of naturalization is “denationalization,” or loss of citizenship status.

After Kant, it was Hannah Arendt who turned to the ambiguous legacy of cosmopolitan law, and who dissected the paradoxes at the heart of the territorially based sovereign state system. One of the great political thinkers of the twentieth century, Hannah Arendt argued that the twin phenomena

of “political evil” and “statelessness” would remain the most daunting problems into the twenty-first century as well (Arendt 1994, 134; [1951] 1968; see Benhabib [1996] 2003). Arendt always insisted that among the root causes of totalitarianism was the collapse of the nation-state system in Europe during the two world wars. The totalitarian disregard for human life and the eventual treatment of human beings as “superfluous” entities began, for Hannah Arendt, when millions of human beings were rendered “stateless” and denied the “right to have rights.” Statelessness, or the loss of nationality status, she argued, was tantamount to the loss of all rights. The stateless were deprived not only of their citizenship rights; they were deprived of any human rights. The rights of man and the rights of the citizen, which the modern bourgeois revolutions had so clearly delineated, were deeply imbricated. The loss of citizenship rights, therefore, contrary to all human rights declarations, was politically tantamount to the loss of human rights altogether.

This chapter begins with an examination of Arendt’s contribution; thereafter, I develop a series of systematic considerations which are aimed to show why neither the right to naturalization nor the prerogative of denaturalization can be considered sovereign privileges alone; the first is a universal human right, while the second – denaturalization – is its abrogation.

### **Imperialism and the “End of the Rights of Man”**

In *The Origins of Totalitarianism*, first published in Britain in 1951 as *The Burden of Our Times*, Arendt wrote:

Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to a community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion . . . *We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation.* (Arendt [1951] 1968, 177. My emphasis.)

The phrase “the right to have rights” and Arendt’s resounding plea for the acknowledgment of the right of every human being to “belong to some community” are introduced at the end of part II of *The Origins of Totalitarianism*, which is called “Imperialism.” To understand Arendt’s philosophical intentions, it is necessary to follow the broad outlines of this discussion. In the opening sections of “Imperialism,” Arendt examines the European “scramble for Africa.” Her thesis is that the encounter with Africa allowed the colonizing white nations such as the Belgians, the Dutch, the British, the Germans, and the French to transgress abroad those moral limits

that would normally control the exercise of power at home. In the encounter with Africa, civilized white men regressed to levels of inhumanity by plundering, looting, burning, and raping the "savages" whom they encountered. Arendt uses Joseph Conrad's famous story, "The Heart of Darkness," as a parable of this encounter. The "heart of darkness" is not in Africa alone; twentieth-century totalitarianism brings this center of darkness to the European continent itself. The lessons learned in Africa seem to be practiced in the heart of Europe.

Arendt's attempt to locate in the European scramble for Africa some distant source of European totalitarianism, and in particular of racial-extermination policies, is brilliant, although it remains historically as well as philosophically underexplored. Throughout this discussion she examines distinct historical episodes as illustrating the breakdown of the rule of law: the destruction of the ideal of citizens' consent through secret administrative decisions and imperialist manipulations, as in the case of British rule in India and French rule in Egypt; the fragility of principles of human rights to govern interactions among human beings who, in fact, have nothing but their humanity in common, as evidenced by the colonization of Africa; the instrumentalization of the nation-state for the plundering greed of the bourgeois classes, an experiment in which all major European nations more or less took part. Her discussion of imperialism, which begins with the European "scramble for Africa," concludes with "The Decline of the Nation-State and the End of the Rights of Man."

Through an analysis whose significance for contemporary developments is only too obvious after the civil wars in the former Yugoslavia in the mid-1990s, Arendt subsequently turns

to the nationalities and minorities question which emerged in the wake of World War I. The dissolution of the multinational and multiethnic empires such as the Russian, the Ottoman, and the Austro-Hungarian and the defeat of the Kaiserreich led to the emergence of nation-states, particularly in the territories of east-central Europe, which enjoyed neither religious, nor linguistic, nor cultural homogeneity. The successor states of these empires – Poland, Austria, Hungary, Czechoslovakia, Yugoslavia, Bulgaria, Lithuania, Latvia, Estonia, and the Greek and the Turkish republics – controlled territories in which large numbers of so-called national minorities resided. On June 28, 1919, the Polish Minority Treaty was concluded between President Woodrow Wilson and the Allied and associated powers, to protect the rights of minorities who made up nearly 40 percent of the total population of Poland at that time and consisted of Jews, Russians, Germans, Lithuanians, and others. Thirteen similar agreements were then drawn up with various successor governments "in which they pledged to their minorities civil and political equality, cultural and economic freedom, and religious toleration" (Fink 1972, 331). Not only was there a fatal lack of clarity in how a "national minority" was to be defined, but the fact that the protection of minority rights applied only to the successor states of the defeated powers, whereas Great Britain, France, and Italy refused to consider the generalization of the minority treaties to their own territories, created cynicism about the motivations of the Allied powers in supporting minority rights in the first place (ibid., 334). This situation led to anomalies whereby, for example, the German minority in Czechoslovakia could petition the League of Nations for the protection of its rights but the large

German minority in Italy could not. The position of Jews in all successor states was also unsettled: if they were a “national minority,” was it by virtue of their race, their religion, or their language that they were to be considered as such, and exactly which rights would this minority status entail? Other than the rights to the free exercise of religion and instruction in Hebrew schools, what educational and cultural rights would be granted to populations as diverse as the Austrian Jews, the Russian Jews, and the Turkish Sephardic community in the former territories of the Ottoman empire, to name but a few instances?

For Arendt, the gradual discord within and the resulting political ineptitude of the League of Nations, the emerging conflicts between so-called national minorities themselves, and the hypocrisy in the application of the minority treaties – all were harbingers of developments to come in the 1930s. The modern nation-state was being transformed from an organ which would execute the rule of law for all its citizens and residents into an instrument of the nation alone. “The nation had conquered the state, national interest had priority over law long before Hitler could pronounce ‘right is what is good for the German people’” (Arendt [1951] 1968, 275).

The perversion of the modern state from being an instrument of law into one of lawless discretion in the service of the nation was completed when states began to practice massive denaturalizations against unwanted minorities, thus creating millions of refugees, deported aliens, and stateless peoples across borders. Refugees, minorities, stateless and displaced persons are special categories of human beings created through the actions of the nation-state. In a territorially bounded

nation-state system, that is, in a “state-centric” international order, one’s legal status is dependent upon protection by the highest authority that controls the territory upon which one resides and issues the papers to which one is entitled. One becomes a *refugee* if one is persecuted, expelled, and driven away from one’s homeland; one becomes a *minority* if the political majority in the polity declares that certain groups do not belong to the supposedly “homogeneous” people; one is a *stateless person* if the state whose protection one has hitherto enjoyed withdraws such protection, as well as nullifying the papers it has granted; one is a *displaced person* if, having been once rendered a refugee, a minority, or a stateless person, one cannot find another polity to recognize one as its member, and remains in a state of limbo, caught between territories, none of which desire one to be its resident. It is here that Arendt concludes:

We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation . . . The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the “nature” of man . . . the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. (Arendt [1951] 1968, 296–297)

As Frank Michelman has observed in an illuminating essay, "Parsing 'A Right to Have Rights,'" "As matters have actually developed . . . the having of rights depends on receipt of a special sort of social recognition and acceptance—that is, of one's juridical status within some particular concrete political community. The notion of a right to have rights arises out of the modern-statist conditions and is equivalent to the moral claim of a refugee or other stateless person to citizenship, or at least juridical personhood, within the social confines of some law-dispensing state" (Michelman 1996, 203). But what kind of a moral claim is the one advanced by the refugee and the asylee, the guest worker and the immigrant, to be recognized as a member? What kind of a right is entailed in the right to have rights?

#### The many meanings of "the right to have rights"

Let me begin by analyzing the phrase "the right to have rights." Is the concept "right" being used in an equivalent fashion in the two halves of the phrase? Is the right to be acknowledged by others as a person who is entitled to rights in general of the same status as the rights to which one would be entitled after such recognition? Clearly not. The first use of the term "right" is addressed to humanity as such and enjoins us to recognize membership in some human group. In this sense this use of the term "right" evokes a *moral imperative*: "Treat all human beings as persons belonging to some human group and entitled to the protection of the same." What is invoked here is a *moral claim to membership* and a *certain form of treatment compatible with the claim to membership*.

The second use of the term "right" in the phrase "the right to have rights" is built upon this prior claim of membership. To have a right, when one is already a member of an organized political and legal community, means that "I have a claim to do or not to do A, and you have an obligation not to hinder me from doing or not doing A." Rights claims entitle persons to engage or not in a course of action, and such entitlements create reciprocal obligations. Rights and obligations are correlated: rights discourse takes place among the consociates of a community. Such rights, which generate reciprocal obligations among consociates, that is, among those who are already recognized as members of a legal community, are usually referred to as "civil and political" rights or as citizens' rights. Let us then name the second use of the term "right" in the phrase "the right to have rights" its *juridico-civil usage*. In this usage, "rights" suggests a triangular relationship between the person who is entitled to rights, others upon whom this obligation creates a duty, and the protection of this rights claim and its enforcement through some established legal organ, most commonly the state and its apparatus.

The first use of the term "right" in the phrase "the right to have rights" does not show the same discursive structure as its second use: in the first mention, the identity of the other(s) to whom the claim to be recognized as a rights-bearing person is addressed remains open and indeterminate. Note that for Arendt such recognition is first and foremost a recognition to "membership," the recognition that one "belongs" to some organized human community. One's status as a rights-bearing person is contingent upon the recognition of one's membership. Who is to give or withhold such recognition? Who are the

addressees of the claim that one "should be acknowledged as a member"? Arendt's answer is clear: humanity itself; and yet she adds, "It is by no means certain whether this is possible." The asymmetry between the first and second uses of the term "right" derives from the absence in the first case of a specific juridico-civil community of consociates who stand in a relation of reciprocal duty to one another. And what would this duty be? The duty to recognize one as a member, as one who is protected by the legal-political authorities and as one who is to be treated as a person entitled to the enjoyment of rights.

This claim and the duty it imposes upon us are "moral" in the Kantian sense of the term, because they concern us as human beings as such, thus transcending all cultural, religious, and linguistic affiliations and distinctions that distinguish us from each other. Arendt, though her thinking is thoroughly Kantian, will not follow Kant. But it is important to recall Kant's arguments here.

Let us bracket for the moment Kant's justification of the categorical imperative. Let us assume that the moral law in one of its many formulations is valid and let us focus on the *Zweck an sich* (end-in-itself) principle, namely: "Act in such a way that you treat humanity in all your actions as an end, and never as a means only." For Kant, this moral law legitimizes the "right of humanity in one's person," that is, the right to be treated by others in accordance with certain standards of human dignity and worthiness. This right imposes negative duties upon us, i.e., duties which oblige us never to act in ways that would violate the right of humanity in every person. Such violation would occur first and foremost if and when we were to refuse to enter into civil society with one another, that is,

if we were to refuse to become legal consociates. The right of humanity in our person imposes a reciprocal obligation on us to enter into civil society and to accept that our freedom will be limited by civil legislation, such that the freedom of one can be made compatible with the freedom of each under a universal law. The right of humanity leads Kant to justify the social contract of civil government under which we all become legal consociates (Kant [1797] 1994, 133-134). In Arendtian language, the right of humanity entitles us to become a member of civil society such that we can then be entitled to juridico-civil rights. The moral claim of the guest not to be treated with hostility upon arriving in the lands of another and his or her claim to temporary hospitality rest upon this moral injunction against violating the rights of humanity in the individual person. It is not the common possession of the earth, but rather this right of humanity, and the right to freedom which follows from it, that serves as the philosophical justification for cosmopolitan right.

Arendt herself was skeptical about such justificatory philosophical discourses, seeing in them a form of metaphysical foundationalism. For this reason, she was able to offer a political but not a conceptual solution to the problems posed by the state prerogative of denationalizations. The right to have rights, in her view, transcends the contingencies of birth which differentiate and divide us from one another. The right to have rights can be realized only in a political community in which we are judged not through the characteristics which define us at birth, but through our actions and opinions, by what we do and say and think. "Our political life," writes Arendt, "rests on the assumption that we can produce equality through

organization, because man can act and change and build a common world, together with his equals and only with his equals . . . We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights" (Arendt [1951] 1968, 301).

In contemporary terms Arendt is advocating a "civic" as opposed to an "ethnic" ideal of polity and belonging. It is the mutual recognition by a group of consociates of each other as equal rights-bearing persons that constitutes for her the true meaning of political equality. Despite its perversions through the Dreyfus affair, France, for this reason, remained for Arendt *la nation par excellence*. Could it be, then, that the institutional, even if not philosophical, solution to the dilemmas of human rights is to be found in the establishment of principles of civic nationalism? Of course, civic nationalism would entail a *jus soli*-based mode of acquiring citizenship, that is, the acquisition of citizenship rights through birth on the territory or through a citizen mother or father. *Jus sanguinis*, by contrast, means the acquisition of citizenship rights through ethnic lineage and descent alone, usually – but not always – through proof that the father was a member of a particular ethnic group. *Jus sanguinis* is based on the conflation of the *ethnos* with the *demos*, of "belonging to a people" with "membership in the state." Undoubtedly, Arendt defends an ideal of the civic nation based upon a *jus soli*-mode of citizenship acquisition. Yet her diagnosis of the tensions inherent in the ideal of the nation-state suggests that there is a deeper malaise in this institutional structure, a deeper perplexity about the "decline of the nation-state and the end of the rights of man."

To put the issue sharply: Arendt was just as skeptical about the ideals of world government as she was about the possibility of nation-state systems ever achieving justice and equality for all. World government would destroy the space for politics in that it would not allow individuals to defend shared public spaces in common (an assumption which underestimates the potentialities for planetary politics). The nation-state system, on the other hand, always carried within itself the seeds of exclusionary injustice at home and aggression abroad.

### Arendt on the nation-state

It remains one of the most puzzling aspects of Hannah Arendt's political thought that, although she criticized the weaknesses of the nation-state system, she was equally skeptical about all ideals of a world government. Arendt's philosophical and political ambivalence toward the nation-states has complex dimensions. The nation-state system, established in the wake of the American and French Revolutions, and bringing to culmination processes of development at work since European absolutism in the sixteenth century, is based upon the tension, and at times outright contradiction, between human rights and the principle of national sovereignty.

The modern state has always also been a specific nation-state. This is the case even when this nationalism is civic in form, as is usually associated with the North American, French, British, and Latin American models, or ethnic, as is usually associated with the German and east-central European models. The citizens of the modern state are always also

members of a nation, of a particular human group which shares a certain history, language, and tradition – however problematically this identity may be constituted.

It is in her writings on Zionism that we find the key to Arendt's critique of nationalism. In an essay published in 1945 called "Zionism Reconsidered," Arendt criticized all nationalisms, Zionism of Theodor Herzl's type not excluded, for their claim that "the nation was an eternal organic body, the product of inevitable growth of inherent qualities; it explains peoples, not in terms of political organizations, but in terms of biological superhuman personalities" (Arendt [1945] 1978, 156). For Arendt, this kind of thinking was prepolitical in its roots, because it applied metaphors drawn from the domain of prepolitical life, such as organic bodies, family unities, and blood communities, to the sphere of politics. The more that nationalist ideologies stressed aspects of identity which preceded the political, the more they based the equality of the citizens on their presumed commonality and sameness. Equality among consociates in a democratic *Rechtstaat* should be differentiated from sameness of cultural and ethnic identity. Civic equality is not sameness, but entails respect for difference.

It is important to note that after the Holocaust and the attempted extermination of European Jewry, Arendt's support for a Jewish homeland changed. Although she never accepted Zionism as the dominant cultural and political project of the Jewish people, and chose to live her life in a multinational and multicultural liberal-democratic state, the catastrophes of World War II made Arendt more appreciative of the moment of new beginning inherent in all state formations. "The restoration of human rights," she observed, "as the recent example of

the State of Israel proves, has been achieved so far only through the restoration or establishment of national rights" (Arendt [1951] 1968, 299). Arendt was too knowledgeable and shrewd an observer of politics not to have also noted that the cost of the establishment of the state of Israel was the disenfranchisement of the Arab residents of Palestine, and hostility in the Middle East until the present. She hoped throughout the 1950s that a binational Jewish and Palestinian state would become a reality (see Benhabib [1996] 2003, 43–47).

What can we conclude from the historical and institutional contradictions of the idea of the nation-state? Is Arendt's begrudging acceptance of this political formation a concession to political realism and historical inevitabilities? Could Arendt be saying that no matter how contradiction-fraught the nation-state may be as an institutional structure, it is still the only one that defends the rights of all who are its citizens – at least in principle, even if not in practice?

Ironically, Arendt had a very clear understanding of the limitations of the nation-state when it aspired to become the state of a supposedly homogeneous nation. "The real goal of the Jews in Palestine," she wrote, "is the building up of a Jewish homeland. This goal must never be sacrificed to the pseudo-sovereignty of a Jewish state" (Arendt [1945] 1978, 192). Arendt distinguished the grand French idea of the "sovereignty of the people" from "the nationalist claims of autarchical existence" (*ibid.*, 156). "People's sovereignty" refers to the democratic self-organization and political will of a people, who may or may not share the same ethnicity, but who choose to constitute themselves as a sovereign and self-legislating body politic.



This idea of popular sovereignty is distinct from nationalism, which presupposes that "the nation was an eternal organic body" (ibid.). Arendt believed that this kind of nationalism, in addition to being conceptually false, becomes most virulent when it is rendered historically obsolete: "as for nationalism, it was never more evil or more fiercely defended than since it became apparent that this once great and revolutionary principle of the national organization of peoples could no longer either guarantee true sovereignty of the people within or establish a just relationship among different peoples beyond the national borders" (ibid., 141). Arendt clearly saw that to attain true democratic sovereignty and to establish justice beyond borders, one needed to go beyond the state-centric model of the twentieth century. She hoped, against hope, that extensive local democracy, in which Jews and Arabs would participate commonly, and a federative state structure, integrated within a larger community of peoples in the Mediterranean, would flourish (see Benhabib [1996] 2003, 41-43).

Nevertheless, in her reflections on the paradoxes of the right to have rights, Arendt took the framework of the nation-state, whether in its ethnic or civic variants, as a given. Her more experimental, fluid, and open reflections on how to constitute democratically sovereign communities, which did not follow the model of the nation-state, were not explored further. I want to suggest that the experiment of the modern nation-state could be analyzed in different terms: the formation of the democratic people with its unique history and culture can be seen as an ongoing process of transformation and reflexive experimentation with collective identity in a process of democratic iterations. Here I take my cue from Arendt and

I depart from her. The contradiction between human rights and sovereignty needs to be reconceptualized as the inherently conflictual aspects of reflexive collective-identity formation in complex, and increasingly multicultural and multinational, democracies.

### Kant and Arendt on rights and sovereignty

In chapter 1, I recalled at length Kant's argument concerning the cosmopolitan right to temporary sojourn. Kant clearly showed the tensions that arise between the moral obligation we owe each human being to grant them sojourn on the one hand, and the prerogative of the republican sovereign on the other not to extend this temporary right of stay to permanent membership.

We should note how close Kant and Arendt are on this score. Just as Kant leaves unexplained the philosophical and political step that could lead from the right of temporary sojourn to the right of membership, so too Arendt could not base "the right to have rights," i.e., to be recognized as a member of some organized human community, upon some further philosophical principle. For Kant, granting the right to membership remains the prerogative of the republican sovereign and involves an act of "beneficence." For Arendt, the actualization of the right to have rights entails the establishment of republican polities in which the equality of each is guaranteed by the recognition of all. Such acts of republican constitution-making transform the inequalities and exclusions among human beings into a regime of equal rights claims. Arendt herself is deeply aware of the lingering paradox that every act of republican

constitution establishes new “insiders” and “outsiders.” While the ark of political equality extends to protect *some*, it can never extend shelter to *all*, for then we would not have individual polities but a world state, to which Arendt is just as intensely opposed as Kant himself was.

I am arguing, then, that in Kant’s as well as Arendt’s work we encounter the same tension-filled conceptual construction: first and foremost are universalist moral claims concerning the obligations we owe to each other as human beings. For Kant, this is the obligation to grant refuge to each human being in need, whereas for Hannah Arendt this is the obligation not to deny membership or not to deny the right to have rights. Yet for each thinker this universalist moral right is politically and juridically so circumscribed that every act of inclusion generates its own terms of exclusion. For Kant, there is no *moral claim* to permanent residency; for Arendt, there is no escaping the historical arbitrariness of republican acts of founding whose ark of equality will always include some and exclude others. Republican equality is distinct from universal moral equality. The right to have rights cannot be guaranteed by a world state or another world organization, but only by the collective will of circumscribed polities, which in turn, willy-nilly, perpetrate their own regimes of exclusion. We may say that Arendt’s and Kant’s moral cosmopolitanism founders on their legal and civic particularism. The paradox of democratic self-determination leads the democratic sovereign to self-constitution as well as to exclusion.

Is there a way out of these dilemmas? Philosophically, we need to begin by taking a closer look at the two horns of this dilemma: the concept of rights on the one hand and that of

sovereign privilege on the other. Their assumptions concerning republican sovereignty lead Arendt and Kant to believe that exclusionary territorial control is an unchecked sovereign privilege which cannot be limited or trumped by other norms and institutions. I want to show that this is not the case and that cosmopolitan rights create a network of obligations and imbrications around sovereignty. My argument will proceed at the conceptual as well as institutional level.

Since Arendt penned her prophetic analysis of the “Decline of the Nation-State and the End of the Rights of Man,” institutional and normative developments in international law have begun to address some of the paradoxes which she and Kant were unable to resolve. When Arendt wrote that the right to have rights was a fundamental moral claim as well as an insoluble political problem, she did not mean that aliens, foreigners, and residents did not possess *any* rights. In certain circumstances, as with Jews in Germany, Greek and Armenian nationals in the period of the founding of the republic of Turkey (1923), and German refugees in Vichy France – to name but a few cases – entire groups of people were denaturalized or denationalized, and lost the protection of a sovereign legal body. For Arendt, neither the institutional nor the theoretical solution to this problem was at hand. Institutionally, several arrangements have emerged since World War II that express the learning process of the nations of this world in dealing with the horrors of this century: the 1951 Geneva Convention Relating to the Status of Refugees and its Protocol added in 1967, the creation of the UN High Commissioner on Refugees (UNHCR), and the formation of the World Court, and most recently of an International Criminal Court through the Treaty of Rome, are

developments intended to protect those whose right to have rights has been denied.

Furthermore, significant developments in international law point in the direction of the *decriminalization* of migratory movements, whether these be caused by the search for refuge or asylum, or by immigration proper. The right to have rights today means the recognition of the universal status of personhood of each and every human being independently of their national citizenship. Whereas for Arendt, ultimately, citizenship was the prime guarantor for the protection of one's human rights, the challenge ahead is to develop an international regime which decouples the right to have rights from one's nationality status (see ch. 5).

Legal scholars distinguish between the juridical, social, and individualist perspectives dominant in refugee law (Hathaway 1991, 2-8). The first refugee definitions from 1920 until 1935 were formulated in response to the denial of formal protection through the state of origin. Hathaway observes that "The withdrawal of *de jure* protection by a state, whether by way of denaturalization or the withholding of diplomatic facilities such as travel documents and consular representation, results in a malfunction in the entire legal system. Because the then existing international law did not recognize individuals as subjects of international rights and obligation, the determination of responsibilities on the international plane fell to the sovereign state whose protection one enjoyed" (*ibid.*, 3).

In response to massive denaturalizations which occurred in the interwar period in the newly established republics of Europe, the League of Nations extended protection to groups of persons whose nationality had been withdrawn

from them. Also, people without passports were recognized as entitled to legal protection. This is the historical background of Arendt's considerations on statelessness. Since that time, the definition of a Convention refugee under international law has been expanded to accommodate individuals who are the helpless casualties of broadly based social or political occurrences, and assistance is offered to ensure the refugee's safety and well-being. A further set of developments in the system of international refugee protection has led to the inclusion of individuals who are in search of escape from perceived injustice or persecution in their home state. Article 14 of the Universal Declaration of Human Rights anchors the right to asylum as a universal human right. The text of the article reads: "Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" (quoted *ibid.*, 14). Nevertheless, while the right to seek asylum is recognized as a human right, the *obligation to grant asylum* continues to be jealously guarded by states as a sovereign privilege. In this sense, and despite considerable developments of international law in protecting the status of stateless persons, as well as of refugees and asylees, neither Kant nor Arendt were wholly wrong in singling out the conflict between universal human rights and sovereignty claims as being the root paradox at the heart of the territorially bounded state-centric international order.