

The Right to Have Rights: Democratic, not Political

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(forthcoming in *Political Theory*)

What I propose, therefore, is very simple: it is
nothing more than to think what we are doing.

Arendt, *The Human Condition*

Witness to times of growing migration, Hannah Arendt formulates a critique of the modern political tradition which continues to draw ever new readers to her work.¹ The point she makes is that modern democracies deprive large numbers of people of their “right to have rights”, that is, their right to be a citizen among others.² If this argument strikes an intuitive chord among scholars concerned with border politics, migration and human rights it also leaves behind a fundamental puzzle. The puzzle is how to understand the basis of this right. From whence does it derive its normative force?

To Arendt, the events that unfolded before, during and after the Second World War revealed the limits of the modern political tradition. The fact that millions of people were excluded from their political communities and reduced to a state of sheer natural existence demonstrated the urgency of finding “a new political principle” by which to safeguard human dignity on earth.³ Setting out to retrieve this principle, Arendt turns her attention to the human condition of natality, which is her name for the capacity of human beings to initiate something new which cannot be expected from whatever may have happened before. The claim she makes is that it is through political action, and the new beginning that it engenders that human beings can safeguard human dignity on earth. Still, while many political theorists readily can

accept that what goes on between human beings is unpredictable they usually have a hard time squaring this view of political action with a normative basis. The problem is that a normative basis by definition would seem to require the very opposite of natality, a general law or regulative code from which to assess and judge action. Arendt offers nothing of the sort. The result is that while there is today a growing literature on the right to have rights, there is fundamental uncertainty as to what underwrites its power:⁴

If we insist that we must treat all humans as being entitled to the right to have rights, on the basis of which philosophical assumptions do we defend this insistence? Do we ground such respect for universal human rights in nature, in history or in human rationality? One searches in vain for answers to these questions in Arendt's text.⁵

The purpose of this article is to show that the normative basis of the right to have rights becomes less puzzling if one enquires into the significance of "the principle" referred to by Arendt. When asking for a new political principle by which to guarantee human dignity on earth Arendt is not referring to a regulative ideal, be it one based in nature, history or reason. Following in the path of Montesquieu, she alludes to the principle which animates political action and sets a certain form of government in motion. As Montesquieu argues, there is a difference between the nature and principle of a government. The former is its political structure, whereas the latter is "that by which it is made to act."⁶ The point is that different governments are inspired by different principles of action, and that one cannot have the one without the other. Monarchies are animated by a principle of honour, republics by a principle of virtue and despotic governments by a principle of fear.⁷

Arendt praises Montesquieu for his discovery that "each form of government has its own innate principle which sets it into motion", and in her work she also develops an

understanding of politics that follows this basic insight about the significance of political action for the constitution of government.⁸ However, on one crucial point Arendt seems to disagree. For unlike Montesquieu, she does not connect political action to a specific *form* of government. The human capacity to engender a new beginning is considered independently of an enquiry into the difference between forms of governments. In this article, I will seek to show that this neglect on Arendt's side to follow out the connection between natality and the form of government that it enacts is the main reason for the perplexities surrounding the right to have rights. In an attempt to work out the normative basis of the right to have rights, I will make two arguments.

The first argument concerns the status of the human condition of natality. Instead of interpreting natality as a universal condition from which to base the right to have rights I shall argue that we ought to understand natality and the right it enacts from the historical position in which it is claimed. As Arendt makes clear in *The Origins of Totalitarianism*, it is the failure of the modern democratic tradition to live up to its own standard of human right which prompts her to search for a new political principle. This means that when Arendt articulates the idea that human beings have a right to have rights she stands in the shadow of a particularly modern form of democratic government, one which Montesquieu himself never had the chance to reflect upon. If Montesquieu should be credited for discovering the principle as a central category of political action, it is thus Arendt—perhaps the most relentless critic of the modern democratic tradition—who through her reflections on the limits of this tradition directs us to its principle. Despite appearances to the contrary, I shall argue that Arendt belongs to our foremost *democratic* thinkers, and by following her trains of thought on the beginning of modern democracy it becomes possible to retrieve the principle which animates the right to have rights.

The second argument concerns the characterization of this principle. If it has become commonplace to associate the right to have rights with a principle of freedom—expressed in the form of a “taking” or “claiming” of right—I shall argue that this interpretation only tells us half of the story. It fails to show how the act of freedom is able to bind itself into a constitution. The principle of responsibility is what achieves this move, and the key to this principle is to be found in the American and the French revolution. What happens in the revolutionary shift from divine to popular right is that the people takes the place of God as guarantor of right. It becomes its own source of authority in political affairs. This replacement is at once liberating and imposing. The removal of an external limitation on political affairs creates a sense of absolute freedom, but also a sense of absolute responsibility. As I will argue, this burden of responsibility—coeval with the birth of modern democracy—is the animating principle behind the right to have rights. The reason is that it is only by sharing this burden that human beings can take it on, and this is precisely what membership in a democracy does. By making us into an equal among others it limits and defines a responsibility we cannot plausibly shoulder on our own.

The article falls into three parts. It begins with an examination of the right to have rights, and the problems associated with establishing its foundation. It then shows how Arendt’s turn to Montesquieu’s notion of the principle responds to these problems. The attractiveness of the principle resides in the fact that it is tied to a specific form of government, and the form of government coeval with the human condition of natality is the democratic government originating with the American and the French revolution. The final part returns to the discussion on the elusive foundation of the right to have rights. It shows that this right is based on a principle of responsibility, and that this principle offers an immanent democratic standpoint from which to criticise the politics of exclusion carried out in the name of the people.

The elusive foundation of the right to have rights

Peoples are everywhere in the making. The establishment of new political institutions by which to cope with migration and statelessness bears witness to this, and so does the prolonged and controversial process of people-making taking place in Europe and elsewhere. If we listen to Arendt, it is not by chance that contemporary societies are concerned with border politics, or that they are confronted with a growing number of people without papers (*sans papier*). The situation has its root in the modern tradition of popular sovereignty. Statelessness is not the result of overpopulation or lack of space. It arises from a certain form of political organization, one which divides the world into separate and sovereign peoples. The problem with this organization is that if you lose citizenship in one country you run the risk of losing your political status altogether since the exit from one country gives you no right to automatically enter another. What is unprecedented with modernity is “not the loss of a home but the impossibility of finding a new one.”⁹

Still, Arendt does not merely aspire to draw our attention to the problem of statelessness. She is also perceptive to the fact that insofar as this condition is the outcome of a certain form of political organization it cannot be dismissed as a natural or historical fact. It raises a question of *right*, a right which appears in full bloom and comes to our attention precisely at the point of its denial:

We become aware 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 emerged who had lost and could not regain these rights because of the new global political situation.¹⁰

Arendt concedes that this right is difficult to pin down. For “[a]lthough everyone seems to agree that the plight of these people consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights.” Setting out to answer this question Arendt finds that they lost their homes, their protection by the government, and above all they lost their right to belong to a political community, “a place in the world which makes opinions significant and actions effective.”¹¹ But the uncertainty as to what is lost does not end there. For despite a growing literature on the right to have rights no one seems to know the *basis* of this right. This uncertainty is unfortunate, not only because it plays into the hands of those who contest its existence. The trouble is that it also affects its defenders. In the absence of a plausible answer as to what underwrites the right to have rights it may be tempting to resort to more traditional sources of right in the form of nature or history, neither of which is able to offer a source of critique against the politics of rightlessness. To see why, let us recapitulate the problems associated with grounding right in nature or history.

The temptation to appeal to nature as a standpoint from which to criticise contemporary practices of exclusion and outlawing should not be underestimated. As Arendt remarks, it was precisely one of the advantages of the so called natural rights of men that they were considered to exist independent of history, and thereby also of the privileges which history had accorded certain strata of society. By appealing to nature, the men of the revolution thought it possible to fashion an independent standpoint from which to criticise the injustices they experienced in the present. The contention is that irrespective of their current historical status all human beings are precisely that, *humans*. Subject to the same human nature they possess rights which spring directly from their capacity as men—life, liberty and the pursuit of happiness in the American context; equality, liberty and protection of property in the

French. It does not matter if one adopts the American or the French formulation of the natural rights of men. The central point, as Arendt writes, is that insofar as these rights spring directly from nature they “should remain valid and real even if only a single human being existed on earth; they are independent of human plurality and should remain valid even if a human being is expelled from the human community.”¹²

In hindsight, we know that appeal to the natural rights of men did little to protect citizens once they were expelled from the political community. According to Arendt, this is not by chance. When nature itself becomes the carrier of right and wrong it inevitably turns against the ones it should protect, not because there is something evil in human nature, but because the appeal to nature takes away the role of political judgment. We become, as she says, superfluous.¹³ On this point Arendt gives Burke right. To contest injustices by appealing to human nature will not do. It will only end up in the right of the naked savage.¹⁴ The fact that all those who lost their national rights also lost their human rights bears witness to this. It demonstrates that no matter how “inalienable” or “self-evident” we claim the human right to be, it only applies to those who already *have* it, that is, to those who are recognized as citizens of a particular community:

If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.¹⁵

With this in mind, it could be tempting to follow Burke and conclude that the right to have rights should be understood from within the historical context of a specific constitutional

state; as “the right of Englishmen” rather than the inalienable “right of man”.¹⁶ Rights, it could be argued, are not something that we possess by virtue of being human. They are qualities that we grant each other through political convention. Arendt herself gives some hints in this direction when she, praising Burke for his “pragmatic soundness”, points to the abstractness of human rights. At the same time, Arendt cannot follow Burke’s example and base the right to have rights on political convention. To base the right to have rights on existing political conventions would in effect be to exclude the very people that the right is supposed to protect, namely those who lack citizenship and so remain bare human life. Instead of protecting them in their capacity as humans it would fall back upon the political order which causes their outlawing. The result would again be tautological reasoning: “the right to have rights is the right of those who have rights”.¹⁷

But if neither nature nor history can serve as a normative basis for the right to have rights, what could? It is often argued that the great achievements of political philosophy have been formulated in times of crisis. As Sheldon Wolin remarks, this is due to the fact that exceptional times call for more than mere critique and interpretation. The political philosopher must now “reconstruct a shattered world of meanings and their accompanying institutional expressions.”¹⁸ Arendt certainly lives in exceptional times. The growing emergence of statelessness and the culmination and “solution” to this problem in the form of the Holocaust shook the very foundations of the modern democratic system. Arendt belongs to the philosophers who try to pick up the pieces of this shattered world and begin again. Standing between past and future, she finds herself in a condition of having to think “without banisters”. This is difficult, but it also provides her with the opportunity to look upon the past with “undistracted” eyes.¹⁹

It is in this spirit that Arendt undertakes a more profound reflection on her own political tradition. What she proposes is a reconsideration of the human condition from the vantage

point of the historical experience of totalitarianism.²⁰ Doing so, she finds that a life without speech and action “is literally dead to the world”. It has “ceased to be a human life because it is no longer lived among men”, and it is this condition which makes it vulnerable to persecution.²¹ To be human is to act, which means that it is only by inserting oneself into the world—by speaking and acting together with others—that human beings are able to rise out of their natural existence and contest their own exclusion. Arendt refers to this human capacity for action as natality: “men are equipped for the logically paradoxical task of making a new beginning because they themselves are new beginnings and hence beginners.”²² The radical conclusion she draws is that modern political thought has misunderstood the significance of its own foundations. The right to have rights cannot be grounded, be it in nature or history. It only exists in its actualization.

This performative or political reading of the right to have rights has the merit of avoiding the fallacy of the natural and the historical account.²³ Instead of falling into the trap of conferring the right on those who already enjoy citizenship in a political community it makes political action itself into the guarantor of right. As such, the political reading has received a particular salience among scholars concerned with border politics, migration and human rights.²⁴ The reason is that when the right to have rights resides in political action—when it comes into being in the act of claiming or taking it—the stateless, the migrants and the refugees gain a new standing vis-à-vis contemporary democratic states. Rather than being passive victims of a politics of exclusion they become political agents in their own right, capable of bringing something into being which did not exist before. As Cristina Beltran argues, this performative aspect is what is most significant about the way migrants today lay claim to the public realm: “By taking to the streets and claiming space and rights, immigrants and their allies created relational spaces of freedom and common appearance where none existed before.”²⁵

Still, the political reading has not gone uncontested. What is unsettling about Arendt's understanding of political action as a performative or "lawless" freedom is that it destabilizes the entire edifice on which modern political thought is based.²⁶ By making the right to have rights dependent on political action there is no basis of this right, other than the one we are able to accomplish through our own acts. If the crisis of the twentieth century has taught us anything, Arendt writes, it is "the simple fact that there are no general standards to determine our judgements unfailingly, no general rules under which to subsume the particular cases with any degree of certainty."²⁷ To many theorists, this means that while Arendt is among the foremost critics of her generation her own response to the crisis is haunted by a normative lacuna. For if there is no general standard to fall back upon, on what basis can she conclude that political exclusion is *wrong*? As Seyla Benhabib argues, Arendt "leaves us with a disquiet about the normative foundations of her own political philosophy."²⁸

There are two problems in particular which worry political theorists with a political reading of the right to have rights. First of all, political action is by no means reserved only for the excluded ones. Citizens as well as non-citizens are involved in the claiming of right. The problem is that these groups are not on an equal footing. In the words of Peg Birmingham: "To argue that it is up to individuals to claim rights through a debate is to miss the political urgency: those who desperately appeal to human rights are often those who are in no position to be recognized as claimants before a tribunal that has already decided against them."²⁹ The struggle between citizens and non-citizens, or between "the haves" and the "have nots" may therefore well turn out to work in favour of the former, and thereby leave a large part of the human population without legal protection. Against this scenario, it would seem as if a political reading has no other recipe than more of the same sort in the form of speech and action. Second, and accordingly, this means that whether there *is* such a thing as a right to have rights all depends on our own involvement. There is nothing else to fall back

upon. Maybe we act, or maybe we don't. The right to have rights springs up between us whenever we engage in politics, which also implies that it runs the risk of vanishing the moment we disperse.

Confronted with this radical uncertainty about the direction of the political reading some theorists have sought to establish a more universal standpoint from which to ground the right to have rights. In this endeavour, one often refers to Arendt's remark that since there is no natural or historical foundation in politics the right to have rights "should be guaranteed by humanity itself."³⁰ Benhabib finds this guarantee in reason. As she argues, the right to have rights concerns us "as human beings as such", and is "moral in the Kantian sense of the term".³¹ Like Benhabib, Birmingham underscores that "we must go beyond the debate about what is legitimate and illegitimate and provide a universal basis for the right to have rights."³² In her reading, however, this basis is sourced in ontology rather than in reason. It resides in "the event of ontology", and this event encompasses both a principle of beginning and a principle of givenness. The former consists in a desire to appear and display oneself in the company of others, whereas the latter takes the form of gratitude for what exists.³³

This attempt to find a universal principle from which to ground the right to have rights must be regarded as a very un-Arendtian way of thinking politics. As Arendt repeatedly points out, politics is historical insofar as it offers "particular answers" to "particular questions".³⁴ It cannot be subsumed under a universal formula. At the same time, one cannot ignore the uncertainty associated with the political reading of the right to have rights. As stressed by both Benhabib and Birmingham, it engenders a normative lacuna which has to be accounted for if right is not to collapse into might. But what if we instead of dismissing the political reading were to look this normative lacuna in the eye and ask ourselves what is so disquieting about it. Why do we find it so difficult to stay in the awareness that the right to have rights has no other guarantee than the one we accomplish through our own deeds?

What is unbearable about this claim, I will argue below, is precisely what moves us to embrace a right to have rights. The insight that our rights depend on nothing but our own action is disquieting, but this is the point. It *is* unbearable, a burden too heavy for humans to shoulder. The hidden framework of the modern democratic tradition consists in its lack of foundation, and it is this normative lacuna which has to be hedged by means of right. What Arendt is doing when claiming a right to have rights—in her own sense of the term in the form of speech and action—is to enact a responsibility which, if not limited and divided between equals denies us the right to be human.

The attractiveness of Montesquieu

In several of her books, Arendt comes back to Montesquieu's notion of "the principle" which accompanies political action.³⁵ She regards it as a great discovery, and it is not difficult to see its attractiveness. The principle has two central features, both of which solve critical problems in her attempt to make political action into the basis of right: it is contingent without being arbitrary, and it is normative without being regulative. Let us therefore begin by looking into Arendt's adoption of Montesquieu, before we go on to examine what she leaves out from her discussion: the connection between the human condition of natality, on the one hand, and the form of government that it enacts, on the other.

In *The Spirit of the Laws*, Montesquieu distinguishes between the nature and principle of governments. As he argues, the nature of a government refers to "that by which it is constituted"; the king in a monarchical government, the people in a republic and the tyrant in a despotic government. The principle refers to "that by which it is made to act"; honour in monarchies, virtue in republics and fear in despotic governments.³⁶ Contrary to the alleged legalism of Montesquieu, he thus conceives of law as an institution situated in a larger social

context. The principle of honour, virtue and fear is a public sensation which engenders on-going commitment to the government in question and in this way upholds and secures its continuing existence. The contention is that government is a matter of relations, and this is why political action becomes crucial. Just as some motors will only “go” on petrol, different governments have different drives which set them in motion.³⁷

The first thing to notice about this understanding is that while political action is contingent—it is not subjected to a law of nature or history—it is not arbitrary. The reason is that political action is tied to a specific *form* of government, which in turn bestows it with direction and meaning. To Arendt this aspect is of great relevance in the understanding of politics. By introducing “history and historical process into the structures of government” Montesquieu strikes a unique balance between the Greek concern with the difference between forms of governments, on the one hand, and the modern concern with history as a process of change, on the other.³⁸ Before Montesquieu, the structure of governments were thought of as “unmoved and unmovable”, and “the only principle of change connected with forms of government was change for the worse”, as when an aristocracy would degenerate into oligarchy.³⁹ For Montesquieu, however, the forms of governments are closely tied to historical experience, and more important still, they are set in motion *by* history. They do not exist unless people keep enacting them.

At the same time, Montesquieu does not follow the modern trajectory in his understanding of law. The advantage of introducing historical process into the structures of governments is that while it makes motion into the basis of politics it is still delimited by this structure, and not as in totalitarian governments unbound in its imitation of the “inevitable” laws of nature or history.⁴⁰ The emphasis that Montesquieu puts on history can be seen in his dismissal of Hobbes’s attempt to make fear into a natural principle of mankind. By this move, Montesquieu writes, Hobbes “attributes to mankind before the establishment of society what

can happen but in consequence of this establishment”.⁴¹ In Arendt’s terms, we could say that what Hobbes does is not to stabilize government in order for humans to be able to move freely within it—which for her is the definition of law—but to “stabilize” the humans themselves. They become nature, and thereby robbed of their human capacity to initiate something new and unforeseen into this world.⁴²

It is against this background that one ought to understand Arendt’s interest in Montesquieu’s principles of action. On the one hand, they show that political action is contingent. It does not follow a general law of nature or history. On the contrary, the principle of an action “becomes fully manifest only in the performing of the act itself”. It is “manifest in the world as long as the action lasts, but no longer.”⁴³ On the other hand, this performative understanding of action does not mean that what goes on between human beings is arbitrary. Principles “do not operate from within the self as motives do...but inspire, as it were, from without.”⁴⁴ What Arendt means is that honour, virtue and fear are not merely psychological motives, but they are more general aspirations that “map out certain directions” in politics.⁴⁵ Belonging to no one, yet enacted by everyone they give a certain form to politics. To act from a principle is therefore not to act arbitrarily. It is to act politically, and what this entails varies depending on the government in question: “Just as it is the pride of a citizen in a republic not to dominate his fellow-citizens in public matters, so it is the pride of a subject in a monarchy to distinguish himself and be publicly honoured.”⁴⁶

The second thing to notice about Montesquieu’s principles is that while they are normative—they offer “standards of right and wrong”—they are not regulative.⁴⁷ The difference is that whereas regulative ideals tell us what ought to be, principles are not theoretical maxims. Their normativity consists in their capacity to move, and not to proscribe action. This means that while principles orient action they overflow the rules that they enact: “Hedged in by law and power, and occasionally overwhelming them, lie the origins of motion

and action.”⁴⁸ The principle of fear, for example, is not prescribed in a despotic government. Nor is virtue laid down in the laws of the republic. Fear and virtue are rather the public sensations which continue to draw ever new actors to support their case. This is not to say that people always act in accordance with these principles, or that there are no other political principles influencing their actions. The point made by Montesquieu is that while all societies are home to a mixture of aspirations there is always one dominant principle which spurs the others in a direction favourable to the government in question, and as such allows us to say that the government in question is “republic”, “monarchical” or “despotic”.⁴⁹ This principle constitutes its condition of possibility, for “if these principles are no longer heeded and the specific criteria of behaviour are no longer held valid, the political institutions themselves are jeopardized.”⁵⁰

This evaluative aspect is of particular relevance to Arendt. In political theory, one often thinks of normativity as a matter of what “ought” to be as opposed to what “is”. For example, one sees justice as a regulative ideal against which political relationships can be measured and evaluated. However, Montesquieu’s notion of the principle shows that instead of turning to a regulative ideal from which to judge political action—be it sourced in nature, history or reason—it is possible to make political action *itself* into the normative basis of politics. The principle of virtue, honour and fear do not only set a particular form of government in motion. They also have an evaluative role to play. As Arendt writes, they provide “the criteria according to which all public life is led and judged.”⁵¹ In a republic, for example, political action is judged on the basis of how well it protects public virtue against private corruption, and in a monarchy it is judged on the basis of how well it guards honour against baseness and disgrace.

So far we have discussed the significance of political action for the constitution of government. But what about Arendt’s own understanding of political action? What form of

government does it adhere to? This is the point where Arendt's thinking becomes more difficult to follow. She argues that what guides political action is the human condition itself in the form of natality. Natality is a beginning which initiates something altogether new, and therefore a beginning which cannot be recuperated or addressed in the present. Like the event of birth, it has the character of a miracle: "The miracle that saves the world, the realm of human affairs, from its normal, "natural" ruin is ultimately the fact of natality, in which the faculty of action is ontologically rooted."⁵²

This argument might give the impression that Arendt is offering a meta-condition for *all* governments, as if natality is what conditions monarchy, republicanism and despotism alike. However, Arendt's situating of the discussion of natality in modernity is telling. She explicitly says that natality was unfamiliar to the Greeks, and when concluding her discussion of the various principles addressed by Montesquieu she argues that each of them should be regarded as "authentic elements of the human condition".⁵³ The discovery attributed to Montesquieu, that each form of government has its own innate principle therefore opens up a new path in the interpretation of political action. It implies that when Arendt turns to natality she is not discussing the human condition *par excellence*. She is discussing the human condition concomitant with a form of government Montesquieu himself never had the chance to observe: modern democracy.

The closest Arendt comes to examine this form of government is when she addresses the American and the French Revolution. In *On Revolution*, she explicitly connects natality with the birth of modern democracy. The question she raises is whether it is possible to conceive of the birth of a political community that is not a work of death.⁵⁴ By drawing a distinction between the American and the French revolution, she wants to refute the common conviction that revolutions by necessity are achieved through violence, and that terror is the price one has to pay for political freedom. There is another way to conceive of a new

beginning, and Arendt finds the traces of this alternative in the American Revolution.⁵⁵ As she argues, the Declaration of Independence “presents us with one of the rare moments in history when the power of action is great enough to erect its own monument.” It is “the perfect way for an action to appear in words”.⁵⁶ She admits that this performative act of founding carries with it a measure of complete arbitrariness. By engendering a new beginning, it is not part of a chain of cause and effect.⁵⁷ Still, to her it is possible to alleviate this arbitrariness in the birth of modern democracy once we acknowledge the principle that accompanies it. What saves the act of beginning from its own arbitrariness is that “beginning and principle...are not only related to each other, but are coeval.”⁵⁸

The principle of responsibility

What is the principle coeval with the beginning of modern democracy? Arendt refers to a wide range of principles in her treatment of the revolution, such as “mutual promise and common deliberation”, “political freedom” and “public happiness”.⁵⁹ Among these, political freedom has a prominent standing. It often comes back in Arendt’s own writings on political action, and it is also the principle which she regards as most vital for the exercise of politics. At the same time, freedom is not a principle particular for modern democracy. It can be found also in other forms of governments, such as the republic of ancient Greece.

In order to retrieve the principle which sets modern democracy in motion it is therefore necessary to undertake a more specific analysis. In this context, it is important to recall what Arendt writes about the birth of modern democracy. As she points out, it is one thing to overthrow a government, quite another to establish a new one. If “the end of rebellion is liberation...the end of revolution is the foundation of freedom”.⁶⁰ Accordingly, we need to distinguish between two forms of political action, the one that releases and the one that binds,

or hedges. What concerns us here is the latter, for it is only this act which results in a democratic form of government. To borrow Arendt's own language, it creates a lasting freedom by introducing the revolutionary process *into* the structure of government. To retrieve the principle which animates this revolutionary process we shall take a closer look at the democratic moment of founding.

Modern democracy is a form of government preoccupied with its own foundations. What happens in the revolutionary shift from the king to the people is that the political order no longer can derive its legitimacy from an appeal to divine or natural authority. The people now becomes its own source of authority in political affairs, and with this shift arises the question of how to account for its authority. If the king rules by divine right, by what right does the people rule? The conflict that surrounds this question has given rise to a paradox of founding which in recent years has attracted much attention among political theorists. The paradox consists in the fact that while the people is the only legitimate source of political authority it cannot settle a conflict on its own constitution.⁶¹ Rousseau is among the first to call attention to this problem, and later it was to become a central theme among the men of the revolution.⁶² In order to found a legitimate people, Rousseau writes in a passage clearly influenced by Montesquieu, "the social spirit which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them."⁶³

If Rousseau was the one who saw most clearly the problem of founding, and the men of the revolution were the ones who provided its solution in the form of the natural rights of men, ours is the time when this problem has gone from a mere theoretical consideration to a living and tangible fact, and no one articulated *this* fact better than Arendt. Modern democracy, she notes, is a government preoccupied with its own foundations. In order to come into being it needs an "absolute" by which to break the vicious circle inherent in

founding.⁶⁴ The trouble is that since the American and the French Revolution this absolute is sought in nature or history, both of which suffer from serious problems. Instead of safeguarding human dignity it leads either to a real or literal regression from civilization to nature in the form of a savage existence, or to a regression back into a distant past which then is allowed to preside over political relationships in the present.⁶⁵ The task of political theory is therefore to find a new political principle which can guarantee human dignity on earth. Arendt finds this principle in the realm of action. As she argues, it is futile to search for an absolute by which to break the vicious circle of democratic founding, “for this ‘absolute’ lies in the very act of beginning itself.”⁶⁶

We have now reached a central point in Arendt’s attempt to avoid the fallacy associated with natural and historical right. Recall that neither resort to nature nor history could serve as a normative basis of the right to have rights. Both fail to guarantee human dignity; the resort to nature because it undermines the role of political judgment, the resort to history because it is biased towards those who already belong to a political community. What Arendt says here, however, is that once we acknowledge the absolute which accompanies political action it is possible to break out of the vicious circle of democratic founding. What then is the absolute which lies in the act of beginning itself, and as such saves the act of democratic founding from its own arbitrariness? I believe that there are two possible interpretations of this argument, and that only one is able to show how political action may establish a lasting freedom.

The first interpretation says that the absolute which accompanies the birth of modern democracy, and saves the world from falling into a condition of “natural ruin” is freedom. What happens when the people takes the place of God as guarantor of right is that there is no longer any external limitation on human affairs. In the absence of a divine guarantor in politics there arises a sense of absolute freedom, and it is this freedom which accompanies the

act of the revolution. Instead of human beings possessing freedom by nature or by divine grace it now lies in their power to take or claim right. They are no longer chained to any law, and herein resides their human dignity: “Men *are* free—as distinguished from their possessing the gift for freedom—as long as they act, neither before nor after; for to *be* free and to act are the same.”⁶⁷ The problem with this interpretation is that it remains within the purview of what Arendt calls liberation. By arguing that the absolute consists in claiming or taking right one equates the principle of the revolution with the activity of liberating oneself from an existing order of right. It is still unclear how this newly won freedom is able to issue in a lasting constitution. What is lacking is the principle which animates the *binding* of freedom.⁶⁸

The second interpretation is the one able to accomplish this step. According to this reading, the absolute which accompanies the birth of modern democracy is responsibility. With the lack of an external limitation on political affairs comes not only the sensation of absolute freedom, but absolute responsibility. Human beings must now take responsibility for the absence of a higher order in political affairs. The problem is that the absence of God as guarantor of right is enormous in its omnipotence, and by taking its place human beings are put in a most inhuman condition. They find themselves in a condition of absolute or unlimited responsibility.⁶⁹ The result is that from this moment on there is no way to be a bystander in politics, for whether human beings act or remain passive is in the end irrelevant. They are still responsible for its outcome. This sensation of absolute responsibility is what animates the binding of freedom. The reason is that it is only by sharing this burden that human beings can take it on, and this is precisely what the right to have rights does. By granting everyone a right to citizenship it establishes a room for freedom, a constitution in which everyone are equally responsible for deciding and judging what is right and wrong.⁷⁰

In the remaining part of the section I will draw out the implications of this interpretation for the right to have rights. The aim is to show that when Arendt argues that there is no

guarantee of the existence of this right except the one we accomplish through our own deeds she is not merely reflecting on the human condition. She is *doing* something, and what she is doing is to enact a principle of responsibility innate to the modern form of democracy. It is this principle which animates her claim that human beings have a right to have rights, and allows her to conclude that it is wrong to exclude human beings from participation in political affairs.

By making this suggestion, I will follow Arendt's own thinking in one important respect. Principles, as she argues, "do not operate from within the self as motives do, but they inspire from without". This goes for her own writings as well. Accordingly, in examining the principle behind the right to have rights I will not lay claim to have access to Arendt's own inner motives or aspirations. The principle of responsibility should not be regarded as something that she herself intends, but it should be understood as a general political principle which moves and guides her actions. With this in mind, let us begin where Arendt herself begins. Asked if there was any specific event that influenced her turn to the political she answers that her political awakening happened the day the Reichstag burnt down in Berlin in 1933. "From that moment on", she says, "I felt responsible".⁷¹

This may seem like a displaced comment, almost heretic insofar as it seems to blame the victims rather than the perpetrators.⁷² For how can she be responsible for something done by others to her? In the light of what we have just argued, however, this testimony from someone about to lose the right to have rights is perhaps not that unexpected. In several of her pieces, Arendt describes the loneliness that afflicts the person who loses the right to belong to a political community. To be stateless is to be without equals, which "to the human mind can only be the supreme tragedy of God".⁷³ What humans suffer in a condition of statelessness is political death. Instead of being able to speak and act together with others they become nature, "the scum of the earth". No longer perceived as humans, they can be subjected to a wrong

without anyone drawing the conclusion that a crime against humanity has been committed.⁷⁴

As a stateless person one is therefore not only deprived of citizenship. One is dismissed from humanity itself. We are humans only in our capacity as citizens, and losing our citizenship we are “disallowed all common human responsibilities.”⁷⁵

This argument is animated by the principle of responsibility, and it must therefore be distinguished from the Aristotelian version of man as a political animal. According to Aristotle, man is political by nature which means that an individual who lives outside of the state cannot be human. It “must be either a beast or a god.”⁷⁶ This description does not capture what Arendt means by statelessness. In keeping with the absolute freedom and responsibility that arises in the shift from divine to popular right, the situation of the stateless person is best characterized by an inverted form of omnipotence. It consists in the burden of having to bear the entire world within oneself without assistance of others. However, omnipotence in the clothes of a human makes a most precarious creature. The problem is that since human beings only can act freely and take responsibility in the company of others, a stateless person will be perceived as the most *irresponsible* person on earth. Responsible for everything one is in effect responsible for nothing, and therefore not accountable to a discourse of right and wrong. One is placed outside of all human power and law: “Innocence, in the sense of complete lack of responsibility, was the mark of their rightlessness as it was the seal of their loss of political status.”⁷⁷

To be stateless is therefore not to be a beast or a god. It is indeed to be human, but to find oneself in a condition of being deprived of all common human responsibilities. Politically speaking, Arendt writes, the stateless are “the only totally nonresponsible people”. They are “the absolutely innocent ones; and it is precisely this absolute innocence that condemns them to a position outside, as it were, of mankind as a whole.”⁷⁸ This interpretation helps to explain why Arendt regards membership in a political community as such a prized status in modern

democratic life, for it is only through this status as a citizen that we can remain what we are: human beings prone to action and judgment. Absent natural and divine authorities in political affairs, it is what guarantees our human dignity. It is also for this reason that it is better to be a criminal than an outlaw, for as someone who can be prosecuted and so held to account in the eyes of others we can at least regain some kind of human equality.⁷⁹

Arendt's definition of the stateless as someone whose condition paradoxically is improved when committing a crime cuts to the heart of the matter.⁸⁰ The problem is that living outside of the jurisdiction of the law the stateless have constantly to transgress the law in order to live and make a living. Still, unlike criminals who are charged for their deeds the stateless find themselves outside the pale of the law. Their predicament "is not that they are not equal before law, but that no law exists for them".⁸¹ This predicament is not the animal condition in which man is a wolf to man. The wolf who takes the sheep is neither guilty nor not guilty. He is innocent in the more profound sense of being beyond right and wrong. The problem is that humans are susceptible to right and wrong. They judge their own acts and those of their fellows in these terms. Accordingly, to become nature is to be vulnerable to the worst form of persecution; that of not even being tried by law.⁸² It is thus with great satisfaction that Arendt reports on her own arrest in Germany and the fact that she eventually had to flee the country illegally: "I thought at least I had done something! At least I am not "innocent" No one could say that of me!".⁸³

The principle of responsibility, I have argued so far, guides Arendt in claiming a right to have rights. The question is whether this principle, apart from guiding political action also can serve as a normative standard by which to *judge* it. Does it offer a way to distinguish right from wrong? One of the most original aspects of Montesquieu's notion of the principle is that it harbours a normativity which goes beyond a regulative understanding of right. The principle of honour, virtue and fear are at once principles of action and principles of

judgment. In a monarchy, for example, the government is both enacted by the principle of honour and evaluated on its terms. It follows that as a noble man who treats a peasant as an equal we would violate the principle of honour which upholds the monarchical form of government. By not distinguishing ourselves from the peasant we jeopardize the normative basis of monarchy itself. In a republic, it is the other way around. As citizens who strive for our own private good without regard for the community as a whole we violate the principle of public virtue which upholds the republican form of government. By not acting out of love for country and law we corrupt the normative basis of the republic.

In a similar vein, it is important to see that the principle of responsibility worked out in this article does not only guide Arendt in claiming a right to have rights. As a standard of right and wrong it also provides an immanent standpoint from which to judge political action in a democratic form of government. It helps us to see why the exclusion of human beings from political life corrupts the normative basis of democracy. The problem is that it burdens particular individuals and groups with a responsibility which ought to be publicly shared and divided between equals, and Arendt herself bears witness to this.⁸⁴

On the one hand, the responsibility that she takes upon herself in the face of her own persecution is unbearable, and we can feel this weight or burden on her. How can she be responsible? She is a victim and not a perpetrator. On the other hand, we cannot blame the situation on God or the German “nature”.⁸⁵ In a democratic form of government, there is no higher law able to guarantee right and wrong. In this respect, Arendt is right. She is responsible for what happens to her. What is wrong, however, is that she is forced to be alone in this. When Arendt through word and deed disputes her own exclusion she enacts a principle which says that in the absence of a natural and divine foundation in political affairs human beings must share the burden of determining what is right and wrong by dividing it

equally. To exclude her from the political community and condemn her to statelessness is therefore to commit a wrong. It violates the first right of democracy: the right to have rights.

Conclusion

Ours is a time of global institutional change. It would perhaps be premature to refer to this situation as a condition of statelessness, but there is a sense to which the modern state has lost its privileged position in the exercise of democratic politics. Partly through its own acts of outsourcing and outlawing, partly through pressure from global actors and economic structures it has assisted in creating a growing class of “precarious” people around the world: migrants, refugees, stateless persons, but also citizens without secure jobs.⁸⁶ This production of precarious life, which today is fostered politically by a privatization of responsibility—if you fail to achieve political, social or economic security, the argument goes, the responsibility falls on *your* shoulder—has prompted both citizens and non-citizens to look for other institutions than the state to realize their political hopes, be they global legal institutions, non-governmental organizations or regional entities. In this respect, one could say that the state is undergoing a democratic crisis and that we all share in an emergent condition of statelessness, a condition of being deprived of “a place in the world which makes opinions significant and actions effective.”⁸⁷ How could one reclaim democracy?

The weakening of the state as the self-evident centre of democratic politics has in recent years resulted in a normative pull towards a political reading of the right to have rights. The advantage of this view is that it puts action at the heart of the debate. By arguing that the right to have rights is activated whenever human beings take action against exclusion it detaches right from its association with a particular state. As James Ingram argues, the right to have rights can emerge “wherever people organize to claim rights they have been denied—not only

within the framework of a constitutional state, but against any authority that should be more accountable to those over whom it wields power.”⁸⁸ It offers what Monika Krause, after Arendt, calls “a portable polis”.⁸⁹

In this article, I have too stressed a political view of the right to have rights. I have argued that it only comes into being in the act of claiming or taking it. However, I have demonstrated that while the right to have rights can be detached from its association with a particular state it is still contingent on a certain form of government. The right to have rights is not a right that we share in our capacity as political beings, for one can be a political being also in a republic or a monarchical form of government.⁹⁰ It is what we share in our capacity as *democratic* beings, that is, as beings having to assume responsibility for the absence of a higher law in politics. This argument changes the analysis in a significant way. It means that in order to safeguard human dignity on earth it is not enough to emphasize the activity of right takers. One needs to show how this activity may result in a binding of freedom. This is the missing link in the political reading of the right to have rights, and it reflects Arendt’s own reluctance to connect political action with a democratic form of government.

Arendt was no friend of democracy. She associates it with a distorted form of politics, one based on rule and command. Nevertheless, in recent years her work has become an important source of reference among those concerned with reclaiming democracy vis-à-vis contemporary states. As I have tried to show in this article, this is not by chance. Arendt’s turn to Montesquieu’s notion of the principle opens up a different understanding of modern democracy, one based on relations rather than commands.⁹¹ As Rousseau once remarked, it “would require gods to give men laws”, but then he never experienced the revolutions in the late eighteenth century.⁹² What it takes is not a God, but an acknowledgment of the freedom and responsibility that arises in its absence. The central point I have made in the article is that the normative lacuna that emerges with the removal of an external limitation on political

affairs is both liberating and imposing. What happens is that the world now depends not only on what we do, but on what we *refrain* from doing. Inaction becomes as significant for politics as action.⁹³ This insight is unbearable, but therein resides the normative basis of the right to have rights. By granting everyone an equal share in judging what is right and wrong it limits and defines a responsibility we cannot shoulder on our own. What we learn from Arendt is that when a state fails to achieve this task, it fails as a democracy.

¹ Previous versions of this article have been presented at APSA in Seattle 2011, and at workshops and university research seminars at the University of Western Sydney, the Whitlam Institute, the University of St Gallen, the University of Lucerne, and the University of Antwerp. I would like to thank the participants for helpful and insightful comments. Special thanks to Charles Barbour, Joachim Blatter, Peg Birmingham, Matthew Clayton, Bonnie Honig, Nikolas Kompridis, Andrew Shaap, Anna Stiliz, Miguel Vatter and Anna Yeatman. The final draft of the paper also benefitted from comments made by three anonymous reviewers from *Political Theory*.

² Hannah Arendt, *The Origins of Totalitarianism*, (New York: Schocken Books, [1951] 2004), 376.

³ Arendt, *The Origins*, xxvii.

⁴ See, among others, Jeffrey Isaac, “A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights”, *American Political Science Review* (1996), 90, 1: 61-73; Frank Michelman, “Parsing ‘A Right to Have Rights’”, *Constellations* (1996), 3, 2: 200-208; Jean Cohen, “Rights, Citizenship and the Modern Form of the Social: Dilemmas of Arendtian Republicanism”, *Constellations* (1996), 3.2: 164-89; Hauke Brunkhorst, “Rights and the Sovereignty of the People in the Crisis of the Nation-State”, *Ratio Juris* (2000), 13, 1: 49-62; Seyla Benhabib, *The Rights of Others* (Cambridge: Cambridge University Press,

2004), ch. 2; Serena Parekh, "A meaningful place in the world: Hannah Arendt on the nature of human rights", *Journal of Human Rights* (2004), 2, 1: 41-53; Jacques Rancière, "Who is the Subject of the Right to Have Rights?", *The South Atlantic Quarterly* (2004), 103, 2/3: 297-310; Peg Birmingham, *Hannah Arendt and Human Rights. The Predicament of Common Responsibility* (Bloomington: Indiana University Press, 2006); James Ingram, "What is a Right to have Rights? Three Images of the Politics of Human Rights", *American Political Science Review* (2008), 102, 4: 401-416; Bonnie Honig, *Emergency Politics. Paradox, Law, Democracy* (Princeton and Oxford: Princeton University Press, 2009); Andrew Schaap, "Enacting the Right to have Rights: Jacques Rancière's Critique of Hannah Arendt", *European Journal of Political Theory* (2011), 10, 1: 22-45; Hans Lindahl, "Give and Take: Arendt and the Nomos of Political Community", *Philosophy and Social Criticism* (2006), 32, 6: 785-805; Samantha Besson, "Human Rights and Democracy in a Global Context: decoupling and recoupling", *Ethics & Global Politics* (2011), 4, 1: 19-50; Miguel Vatter, "The Right to have Rights as a Natural Right: Towards a Bipolitics of Rights", APSA panel paper (2011); Ayten Gündoğdu, "Perplexities of the Rights of Man: Arendt on the Aporias of Human Right", *European Journal of Political Theory* (2012), 11, 1: 4-24; Charles Barbour, "Between Politics and Law: Hannah Arendt and the Subject of Rights", in M. Goldoni and C. McCorkindale (eds), *Hannah Arendt and the Law* (Oxford, Portland: Hart Publishing, 2012), 307-321; James Bohman, "Citizens and Persons: Legal Status and Human Rights in Hannah Arendt", in Goldoni and McCorkindale (eds) *Hannah Arendt and the Law*, 321-335.

⁵ Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* (London: Sage Publications, 1996), 82.

⁶ Baron de Montesquieu, *The Spirit of Laws* (New York: Prometheus Books, [1748], 2002), 19.

⁷ Montesquieu, *The Spirit of Laws*, Book III.

⁸ Hannah Arendt, *Essays in Understanding*, ed. J. Kohn (New York: Schocken Books, 1994), 331-335. For Arendt's understanding of law, see M. Goldoni, C. McCorkindale (eds), *Hannah Arendt and the Law* (Oxford, Portland: Hart Publishing, 2012).

⁹ Arendt, *The Origins*, 2004, 372.

¹⁰ Arendt, *The Origins*, 2004, 376.

¹¹ Arendt, *The Origins*, 372-76.

¹² Arendt, *The Origins*, 378.

¹³ The problem is thus not that natural right could not "guarantee" human dignity in the sense of securing its compliance. No law can guarantee anything. If it could, there would be no need for law in the first place. The problem is that natural right undercuts the faculty of political judgment.

¹⁴ Arendt, *The Origins*, 381.

¹⁵ Arendt, *The Origins*, 381.

¹⁶ Edmund Burke, *Reflections on the Revolution in France*. Ed. L.G. Mitchell, (Oxford: Oxford University Press, 1993), 58ff.

¹⁷ Rancière, "Who is the Subject", 302.

¹⁸ Sheldon Wolin, *Politics and Vision* (Princeton and Oxford: Princeton University Press, 2004), 9.

¹⁹ Arendt, *Between Past and Future* (New York: Penguin, 1993), 28.

²⁰ Arendt, *The Human Condition*, 2nd edition (Chicago and London: The University of Chicago Press, 1998), 5; Margaret Canovan, *Hannah Arendt. A Reinterpretation of her Political Thought* (Cambridge: Cambridge University Press, 1992).

²¹ Arendt, *The Human Condition*, 176.

²² Arendt, *On Revolution* (New York: Penguin Books, 1990), 211.

²³ James Ingram distinguishes between three versions of a “political” reading, one understood in terms of implementation, one understood in terms of laws and institutions, and a third based on the activity of the rights-claimants or holders themselves. When I refer to the political reading I have the latter version in mind. Ingram, “What is a Right to have Rights?”.

²⁴ See among others Honig, *Emergency Politics*; Rancière, “Who is the Subject of the Right to have Rights?”; Ingram, “What is a Right?”; Monika Krause, “Undocumented Migrants: An Arendtian Perspective”, *European Journal of Political Theory* (2008), 7, 3: 331-348; Cristina Beltrán, “Going Public: Hannah Arendt, Immigrant Action and the Space of Appearance”, *Political Theory* (2009), 37, 5: 595-622; Patricia Owens, “Reclaiming “Bare Life”: Against Agamben on Refugees”, *International Relations* (2009), 23, 4: 567-82.

²⁵ Beltrán, “Going Public”, 597.

²⁶ Arendt, “Willing”, in *The Life of the Mind* (San Diego, New York, London: Harcourt Inc, 1978), 27.

²⁷ Hannah Arendt, ”Remarks on ‘The Crisis Character of Modern Society’”, *Christianity ad Crisis* (1966), 26, 9: 112-14. Quoted from Hannah Arendt, *Responsibility and Judgement*. Ed. Jerome Kohn. (New York: Schocken Books, 2003), vii.

²⁸ Benhabib, *The Reluctant Modernism*, 82.

²⁹ Birmingham, *Hannah Arendt*, 11.

³⁰ Arendt, *The Origins*, 379.

³¹ Benhabib, *The Rights of Others*, 58.

³² Birmingham, *Hannah Arendt*, 12.

³³ Birmingham, *Hannah Arendt*, ch. 1-3.

³⁴ Arendt, “Remarks on ‘The Crisis Character’”, quoted from *Responsibility and Judgment*, vii.

³⁵ *Essays*, 331-335; *Between Past and Future*, 143-71; *The Promise of Politics*, ed. J. Kohn (New York: Schocken Books, 2005), 41-62, 63-69, 93-200; *The Human Condition*, 190-191; *On Revolution*, ch. 3, 4, 5.

³⁶ Montesquieu, *The Spirit of Laws*, Book III.

³⁷ Louis Althusser, *Politics and History. Montesquieu, Rousseau, Marx*, tr. B. Brewster (London, New York: Verso, 2007), 46.

³⁸ Arendt, *Essays*, 331.

³⁹ Arendt, *Essays*, 331.

⁴⁰ Arendt, *Between Past and Future*, 41-90; “Willing”, 19-51.

⁴¹ Montesquieu, *The Spirit of Laws*, 4.

⁴² Arendt, *Essays*, 342.

⁴³ Arendt, *Between Past and Future*, 152.

⁴⁴ Arendt, *Between Past and Future*, 152.

⁴⁵ Arendt, *Essays*, 335.

⁴⁶ Arendt, *Essays*, 332.

⁴⁷ Arendt, *Essays*, 335.

⁴⁸ Arendt, *Essays*, 335.

⁴⁹ Montesquieu, *The Spirit of Laws*, xv.

⁵⁰ Arendt, *Essays*, 332.

⁵¹ Arendt, *Essays*, 332.

⁵² Arendt, *The Human Condition*, 247. As Arendt argues, the problem of the new has its “historical origin” in theology, and it was Augustinus who first saw the connection between Christianity and the problem of the new: “That a beginning be made man was created”. “Willing”, 18-19. For the genesis of natality, see Miguel Vatter, “Natality and Biopolitics in Hannah Arendt”, *Revista de Ciencia Política* (2006), 26, 2: 137-159;

⁵³ Arendt, *The Human Condition*, 247; *Essays*, 338.

⁵⁴ Arendt, *On Revolution*, 20.

⁵⁵ According to Arendt, the French revolution failed to deliver the freedom it claimed for itself, for it was driven by “the social question”, which in her understanding is non-political: “Insofar as we all need bread, we are indeed all the same, and may as well unite into one body.” *On Revolution*, 94.

⁵⁶ Arendt, *On Revolution*, 130; Bonnie Honig, “Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic”, *American Political Science Review* (1991), 85, 1:97-113.

⁵⁷ Arendt, *On Revolution*, 206.

⁵⁸ Arendt, *On Revolution*, 212.

⁵⁹ Arendt, *On Revolution*, 214, 123.

⁶⁰ Arendt, *On Revolution*, 142.

⁶¹ See, among others, Claude Lefort, *Democracy and Political Theory*, tr. D. Macey (Cambridge: Polity, 1988); Jacques Derrida, “Force of Law: The Mystical Foundation of Authority”, in *Deconstruction and the Possibility of Justice*, eds. D. Cornell, M. Rosenfeld, D.G. Carlson (London: Routledge, 1992); Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001), *Emergency Politics*; Sofia Näsström, “What Globalization Overshadows”, *Political Theory* (2003), 31, 6: 808-834, “The Legitimacy of the People”, *Political Theory* (2007), 35, 5: 624-58; Seyla Benhabib, *Another Cosmopolitanism*, ed. R. Post (Oxford: Oxford University Press, 2006); Kevin Olson, “Paradoxes of Constitutional Democracy”, *American Journal of Political Science*, (2007), Vol. 51, No 2: 330-343; Arash Abizadeh, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders”, *Political Theory* (2008), 36, 1: 37-65; Jason Frank, *Constituent Moments. Enacting the People in Postrevolutionary America* (Durham and

London: Duke University Press, 2010); Paulina Ochoa, *The Time of Popular Sovereignty: Process and the Democratic State* (Penn State University Press, 2011).

⁶² J-J Rousseau, *The Social Contract and other later Political Writings*, ed. V. Gourevitch (Cambridge: Cambridge University Press, 1997); Emmanuel Sieyès, *Political Writings*, ed. M. Sonenscher (Indianapolis/Cambridge: Hackett Publishing, 2003); Thomas Jefferson, *The Life and Selected Writings of Thomas Jefferson*, ed. A. Koch, W. Peden (New York: Modern Library, 1944), 436.

⁶³ Rousseau, *The Social Contract*, 71.

⁶⁴ Arendt, *On Revolution*, 161.

⁶⁵ For a critical analysis of such a historicizing move in contemporary democratic theory, see Näsström, "The Legitimacy of the People".

⁶⁶ Arendt, *On Revolution*, 204. See also "Willing", 28-39.

⁶⁷ Arendt, *Between Past and Future*, 153; "Willing", 27.

⁶⁸ This is also Andrew Schaap's critique of Arendt, and the reason why he turns to Rancière as a more promising thinker of democracy: "From an Arendtian perspective, the struggle of the *sans papiers* for the right to have rights can only be understood as a struggle for liberation that would establish the conditions of possibility for the actualization of freedom...Rancière, in contrast, enables us to recognize the struggles of the *sans papiers* as exemplary political action precisely because they make something of the right to have rights." Schaap, "Enacting the Right", 39. As I seek to show below, there is a different way to interpret Arendt on this point.

⁶⁹ As Arendt points out, "revolutions are often predetermined by the type of government it overthrows", which means that the revolutionary act gets "channeled into concepts which had just been vacated." *On Revolution*, 155. See also Lefort on "the empty place" in *Democracy and Political Theory*, and Hans Blumenberg on "reoccupied positions" in *The Legitimacy of*

the Modern Age (Cambridge: MIT Press, 1983). Following Montesquieu's distinction, this understanding suggests that while the *nature* of the governments overthrown in the revolution are different in the American and the French case— limited monarchy respectively absolute monarchy – the *principle* is the same insofar as both revolutions occupy the place of a divine guarantor.

⁷⁰ This argument should be distinguished from Birmingham's reading of responsibility. According to Birmingham, there is a "predicament of common responsibility inherent in the event of natality itself", and "this predicament, which is inherent in the human condition, does not discourage Arendt from seeking a foundation for the right of human beings born to have rights." Birmingham, *Hannah Arendt*, 3. The argument defended here differs from this view in two respects. First, the principle of responsibility is not human, but democratic. It belongs to a modern form of democratic government. Second, the "common" in Arendt's understanding of responsibility is not inherent in the human condition, but it arises through a limitation of an absolute responsibility coeval with the birth of modern democracy. It is this limitation which *is* the common or the public in a democratic form of government.

⁷¹ Arendt, *Essays*, 5; *The Origins*, ix.

⁷² This was a recurrent accusation against Arendt after her publication of *Eichmann in Jerusalem*. See Arendt, *Essays*, 15-17; Mary McCarthy, in *Between Friends. The Correspondence of Hannah Arendt and Mary McCarthy 1949-1975*, ed. C. Brightman (New York: Harcourt Brace and Company, 1995), 144-155.

⁷³ Arendt, *Essays*, 336.

⁷⁴ Agamben, *Homo Sacer*; Judith Butler, *Frames of War. When is Life Grievable?* (London, New York: Verso, 2009); Roberto Esposito, *BIOS. Biopolitics and Philosophy* (Minneapolis, London: University of Minnesota Press, 2008).

⁷⁵ Arendt, *The Origins*, 381.

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- ⁷⁶ Aristotle, *The Politics and the Constitution of Athens*, ed. S. Everson (Cambridge: Cambridge University Press, 1996), 13-14.
- ⁷⁷ Arendt, *The Origins*, 374.
- ⁷⁸ Arendt, *Responsibility and Judgment*, 150.
- ⁷⁹ Arendt, *The Origins*, 381, 363-64.
- ⁸⁰ Arendt, *The Origins*, 363-64.
- ⁸¹ Arendt, *The Origins*, 375.
- ⁸² Arendt, *The Origins*, 364.
- ⁸³ Arendt, *Essays*, 5.
- ⁸⁴ For a more elaborate account of such corruption of democracy, see Sofia Näsström and Sara Kalm, "A Democratic Critique of the Production of Precarious Life." Unpublished manuscript.
- ⁸⁵ Arendt, *Essays*, 121-32.
- ⁸⁶ Judith Butler, *Precarious Life* (London and New York: Verso, 2004); Zygmunt Bauman, *Collateral Damage* (London: Polity, 2011), Guy Standing, *The Precariat. A New Dangerous Class* (London: Bloomsbury, 2011).
- ⁸⁷ Arendt, *The Origins*, 376.
- ⁸⁸ Ingram, "What is a Right to have Rights?", 413.
- ⁸⁹ Krause, "Undocumented Migrants", 342.
- ⁹⁰ To Arendt a despotic government is animated by a principle of terror which "freezes" men into inaction, and it is therefore questionable whether one can regard the government as political at all. Arendt, *Essays*, 337; "Willing", 199.
- ⁹¹ For another attempt to read Arendt against herself on the question of democracy, see Patchen Markell, "The Rule of the People: Arendt, Arche and Democracy", *American Political Science Review* (2006), 100, 1: 1-14.

⁹² Rousseau, *The Social Contract*, 69.

⁹³ This is another way of saying that we are totally chained to our own actions. For without external limits, nothing stands between ourselves and the world. We are truly alone.