CHAPTER 1
NO SPACE. NOWHERE. REFUGEES AND THE PROBLEM OF HUMAN RIGHTS IN ARENDT AND RICŒUR

Refugees and migrants are no recent problem for the international community; far from it, the response to forced migration was a topic throughout the 20th century, and it became a major issue during the establishment of the United Nations Human Rights Framework after World War II. In this chapter, I want to address two approaches to human rights in relation to the problem of refugees, Hannah Arendt's and Paul Ricœur's, and I want to ask whether they can help us to decipher the human rights question as it relates to those people who flee from the political space in which they may or may not have de jure citizens' rights but certainly have lost them de facto. Before I do this, I will, however, contextualize why the question of migration and refugees has become such a defining issue in recent years.

1. The Challenge of Human Rights in Contemporary International Politics

At present, a yearning for "solid" identity concepts has once again become a social and political reality in many countries, just as identity concepts were becoming more "fluid" (Bauman) due to cultural globalization and pressures from major global transformations. People who cling to an identity that has clear contours increasingly turn against anyone who does not seem to belong to "them." Migrants, asylees, and refugees, proponents of a restrictive immigration policy in Western countries say, create a security problem. Liberals romanticize those who cross the border. They ignore other responsibilities, especially for their own citizens in the USA or in the European Union who are ignored in liberal democracies. To promote a "welcome culture" (as the response to the refugees has been called in Germany in 2015), we hear, is irresponsible because of its strain on the receiving societies. It only creates incentives for more and more migrants and refugees wanting to come to the USA or the EU. They threaten not only "our" national security but also "our" national identity. "We" need to protect "us" before protecting "them".

1.1 THE CONDITIONAL APPROVAL OF HUMAN RIGHTS: POLITICAL REALISM

Politically speaking, there are three conflicting schools of how to approach the issue of migration, and also other human rights issues: *political realism, nationalism,* and *cosmopolitanism*. Even though critiqued from the Left and the Right, political realism is still the predominant approach in Western democracies: proponents of this view want to offer some support, especially when it matches national interests economically. However, it cautions against too much solidarity and too

much commitment for the migrating groups. Politics is all about compromises between conflicting claims, they argue, and therefore, politics must be realistic with respect to migration issues, too. It must, first, balance the international humanitarian obligations with national obligations. Second, it must balance the concerns of migrating persons with the concerns of law-abiding citizens (or law-abiding migrants). Third, it must take seriously the anxieties raised on a cultural level when a country is 'overflowed' with migrants who will transform the cultural identity considerably. Finally, however, realists argue, migration never solves the problems in the home countries. These arguments are certainly not to be easily dismissed. Yet, from an ethical point of view, they do not respond to the consequences for the individuals who do not disappear because of a political theory. They may well become, in effect of political realism, the "collateral damage" of political compromises. The question is whether this is acceptable for a political ethics. The critical political ethics that I want to argue for in this book questions any political-ethical approach that does not entail individual, social, and political responses to the violations of human rights.

1.2 The Critique of Human Rights: Nationalist Populism

Over the last decades, the realist approach to human rights has been criticized from two sides, namely cosmopolitanism and nationalism. Populist movements that tend towards the latter approach have re-created a narrative that seems to respond to many people's yearning of social belonging. It offers an appealing interpretation to those who are disoriented by their experiences of social transformation. Indeed, in the West, the transformation of industries, the overall globalized economy with its changing labor conditions, the changes of demography, the transformation of social institutions such as the family, and the growing cultural diversity due to immigration have changed societies considerably. Nationalist populism feeds a nativist narrative, idealizing a social bond that often does not exist at all but that is promoted as an imagery of a homogeneous past that is under attack from "liberal" groups as well as from "illegal immigrants." Migrants and refugees create the perfect platform for populist national politics: *they* do *not* belong; their presence threatens the very identity that must be safeguarded and restored. In the USA, for instance, Donald Trump's campaign slogan "Make America Great Again", together with his politics of "America First", entails a well-known roadmap, echoing the Western nationalist politics of the 19th and 20th century. The US president takes every possible opportunity to communicate the backbone of his political message: foreigners, Muslims, migrants, or refugees are not welcome in the USA. By now, Trump's party has almost unanimously shifted from its previous approach of political realism (that it shared with many mem-

bers of the Democratic Party) to this nationalist populist politics. Likewise, in Europe, more and more elections turn in favor of the same kind of nationalist parties. Whereas political realism embraces compromises and takes the effort to balance international and national interests, as well as ethical and political imperatives, nationalist politics denies that there can even be a moral claim on a nation that is not strictly tied to its national interest.

Whereas the realist position agrees with the premise of moral responsibility in principle (though often not in practice), it is entirely questioned by the nationalist politics. This political shift towards populism, fueled with the narrative of the threatened white Christian identity on the one hand, and xenophobia and islamophobia on the other, has two important ramifications that are ethically relevant: *first*, the moral appeal to empathy or compassion seems to penetrate less and less the thick emotional wall of indifference to any fellow-feeling towards perceived "outsiders." In the USA, moral indifference to the suffering of migrants is justified as an appropriate response, because it is not the asylum seekers and migrants who face a crisis but the American people; hence, US citizens must be protected against migrants and refugees, foreigners, and culturally nonconforming individuals who threaten the cultural identity of the country. Though empirically, the group that is addressed by and adheres to this narrative does not necessarily profit in practical matters, a good part of the narrative concerns the elevation of their social identity: their way of life seems to be finally dignified and attended to "again" where it was seen as outdated and not worth anybody's attention.[1] Without a doubt, however, the real profiteer of the ethno-nationalist narrative are the political leaders (or parties). Every public leader knows that political emotions can be easily ignited; as Martha Nussbaum has recently argued from a liberal perspective, they are needed to create the bond between the civil life and the political life, including the political representation, the constitution, or the political ideas of the polity.[2] When emotions are exploited and used to promote a national identity that pits one group against another or other groups within the same polity, however, a political stance becomes merely a tool in a political strategy and easily transgresses into political demagogy. Using the "othering" of others for an identity politics is such a line: it creates two different classes of human beings – one worthy of respect, care, and compassion, and one whose needs, dignity, and rights do not count politically. This moral division between different people defines the Republican Party in the USA, the Front Nationale in France, the Fidesz

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1   A. R. Hochschild, *Strangers in their Own Land: Anger and Mourning on the American Right*, New York 2016.

2   See M. Craven Nussbaum, *Political Emotions: Why Love Matters for Justice*, Cambridge MA 2013. Cf. for a discussion chapter 13 in this volume.

Party in Hungary, the Law and Justice Party (PiS) in Poland, the Alternative für Deutschland (AfD) in Germany, and all other nationalist populist parties that attack both the political realism and the cosmopolitanism of the Western political landscape.

Second, for many, the mere appeal to international law, to treaties, to conventions, or human rights is no option in this situation, because it has not brought changes that it promised over the last seven decades, in spite of all the UN human rights efforts and policies. Even where these were transformed into domestic laws, the parliaments in Europe as well as the US Congress are pushing hard on legal reforms or appointments of government-friendly judges. Fighting their policies in the courts (as important as it is) adds to the sentiment that the scope of human rights is identical with the scope of legal justice. When human rights interpretations are, however, almost entirely limited to their legal dimension, they lose some of their relevance for personal moral identities, the moral stances of societies, and the vision of politics as securing and promoting the rights and well-being of people.

1.3 The Defense of Human Rights: Cosmopolitanism

The alternative to political realism and national populism, theoretically, though not practically promoted, fostered, and embraced by the international community since 1948, is a cosmopolitan political ethics that acknowledges the nation states and national interests, yet transcends these in the name of universal rights.[3] The idea of cosmopolitanism emerged as a response to the first wave of globalization in early modernity, the Western, Christian colonization of the "New World" by European powers, and it became tied to the project of enlightenment when Kant evoked it in his famous essay on "perpetual peace", arguing for a universal right to hospitality.[4] Kant's concept of hospitality is central to current renewals of cosmopolitanism, most prominently argued for by Seyla Benhabib who combines the universal obligation to hospitality (though not residency) that Kant argues for, with a political theory of human dignity and human rights. Kant, like Francesco de Vitoria who fought hard for the recognition of the "humanity" and dignity of the American Indians in the 16th century, argues for a universal right to

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3   Cf., for example, S. Benhabib, *The Rights of Others: Aliens, Residents, and Citizens,* Cambridge/New York 2004. S. Benhabib, *Another Cosmopolitanism,* Oxford/New York 2006. S. Benhabib, *Dignity in Adversity: Human Rights in Troubled Times,* Cambridge/Malden, MA 2011. A good overview of the discussion in light of recent immigration policies in the US can be found in R. Sharpless, *Cosmopolitan Democracy and the Detention of Immigrant Families,* in: New Mexico Law Review 47/1 (2017), 19–63.

4   I. Kant, *To Perpetual Peace. A Philosophical Sketch, Perpetual Peace and Other Essays on Politics, Practice and Moral Practice,* translated by Ted Humphrey, Indianapolis 1983 (orig. 1795), 107–144.

hospitality. With this, he addressed European "visitors" of the colonies and the "New World." Even though Kant does not argue for the hospitality of *European* societies towards immigrants but vice versa, for the due hospitality of the colonies, Kant's reasoning about the "right to visit" that is not a "right to residence", must be seen in the context of colonialism. Critiquing this approach as too "soft" on the human rights violations that the West committed in the name of rights they mostly attributed exclusively to themselves, J.K. Gani argues from a critical race studies' perspective; he holds that Kant's cosmopolitan vision cannot be separated from the epistemology and context of European and American colonialism; to abstract his political theory from this historical context, Gani holds, results in a distortion and a far too optimistic assessment of the human rights theory. Furthermore, when taken as blueprint for the duties towards refugees, migrants, and asylum seekers, the proponents ignore the record of the European or US history of racism and their human rights violations. Yet, this is what Kant says about his fellow Europeans:

> The inhospitable conduct of the civilized states of our continent, especially the commercial states, the injustices which they display in visiting foreign countries and peoples (which in their case is the same as conquering them) seems appallingly great.[5]

Taking up de Vitoria's arguments of a "natural right", Kant argues politically *and* ethically, establishing a universal hospitality right that combines the humanity of *all* human beings with a political theory that allows for arrangements and contracts between guests and hosts beyond this basic protection right. This was indeed, I would hold, an important milestone for the establishment of international law that matters up to today: Kant's Europe had no strict borders between nation states; rather, the territory belonged to the sovereigns who treated it (and, often enough the inhabitants) as their property or at least as their realm of control and power. Seen from this perspective, Kant's effort to insert a political ethics into the politics of his time is as important as the acknowledgment of his contemporaneity to European racism. Both contexts, this means, matter in the reading of Kant's text. In contrast to the colonizers of the African and American continents, today's migrants do not come to the host countries to seize their land and property, as J. Waldron succinctly remarks: "They come not because they want to seize resources; they come because they want to be in the vicinity of, and to associate themselves with, the open economic networks that characterize a prosperous modern society."[6]

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5 Ibid. Cf. G. W. Brown, *The Laws of Hospitality, Asylum Seekers and Cosmopolitan Right: A Kantian Response to Jacques Derrida*, in: European Journal of Political Theory 9/3 (2010), 308–327.

6 J. Waldron, *Exclusion: Property Analogies in the Immigration Debate*, in: Theoretical Inquiries in Law 18/2 (2017), 469–489, 481.

Recalling this historical context of the emergence of human rights elucidates the fact that the ethics of universal human rights rests upon experiences of rights violations to which the human rights norms respond; they must be wrested from their adversaries at any given time, even when these adversaries are masked as their defenders. I agree with Garrett W. Brown: "[…] the fact that history has not lived up to the demands of cosmopolitan hospitality in its purest form does not mean that it is not something we ought to do, or that the theory itself is corrupt and 'perverted'."[7] Rather than giving up on universal human rights and the respective obligations, it is necessary to implement policies that are in line with them.

The idea of cosmopolitanism drives implicitly the idea of universal human rights, which is the centerpiece of the political ethics of the United Nations. It subjects any policy to the imperative to create the conditions for every individual – and not just citizens of a polity – to live a life in dignity and decency. This political ethics clashes with national populist politics but also constrains a political realism that balances human rights claims with other interests, instead calling for often-necessary prioritizations among human rights. In practice, it can certainly be questioned whether any country ever lived up to the vision of the "United Nations", as the human rights reports by several non-governmental organizations show on a regular basis. However, it makes a difference whether the human rights regime is watered down by political realism or whether it is abandoned entirely by a nationalist political theory that is centered on the "ethnos" rather than the "demos" (Benhabib). Thus, the shift from the realist approach that Western countries clearly backed over the last decades, to an ethno-nationalist approach that is promoted by the right-wing parties in Europe and the US, may easily be overlooked when it comes to migration politics. In the US, for example, immigration policies resulted in the deportation of millions and millions of people already since the 1990s, and the removal of undocumented migrants was a declared policy after the September 11 2001 attacks.[8]

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7   G. W. Brown, *The Laws of Hospitality,* 313. For a discussion of EU policies cf. also G. W. Brown, *The European Union and Kant's idea of Cosmopolitan Right: Why the EU is not Cosmopolitan*, in: European Journal of International Relations 20/3 (2014), 671–693.

8   According to the Institute of Migration Policies, 12 million people were removed from the US in the two terms of the Clinton administration, counting both border and interior removals; more than 10 million were removed under the Bush administration, and more than 5 million under the Obama administration, of which more than 3 million people were removed at the border. Summarizing Obama's policies, the report states: "While the Obama administration record is characterized by much higher removals than preceding administrations, it also shows less focus on increasing absolute numbers of overall deportations and a higher priority on targeting the removals of recently arrived unauthorized immigrants and criminals. The administration also

Likewise, European countries responded to the terror attack with increased security measures.[9]

If empathy or compassion, hospitality and solidarity, a sense of justice understood as equality, or the political will to at least narrow the gap between the principle of universal rights and national interests are missing in practice and as lived morality, laws still function as prescriptive norms of a political ethics of a polity. The human rights framework provides such norms, offering a framework for actions, policies, and laws aimed at securing the dignity and rights of every human being. However, as the history throughout the 20th century, the wars at the beginning of the 21st century, and the overall human rights violations in almost all countries clearly demonstrate, these norms are ineffective unless they correspond with the values, cultural and social norms, and the self-understanding of moral agents. Without a basic coherence between social values, moral norms, and policies, the prescriptions remain detached, abstract, and ineffective. Hence, the current shift of policies either echoes the change of values, thereby responding to the will of "the people", or they spark value shifts that weaken the cosmopolitan ethic in favor of an ethno-national framework. Either way, the universal human rights regime is at a greater risk than ever before since its declaration in 1948.

The *Universal Declaration of Human Rights* does not determine how exactly the corresponding policies are implemented. Some say that this is the biggest weakness of the human rights framework, rendering it a rhetorical bluster that does not matter too much in our policies anyway. However, what would be the alternative, given the threats we face today? Furthermore, if understood as a political-ethical framework that *requires* being spelled out in the concrete, actual ethical judgments and politically contextualized assessments, it calls for thorough contextual political-ethical discernment. *First*, such a discernment is obviously often complex and complicated, and experts and citizens may well differ in their judgments. However, this is exactly why practical reasoning, exercised in legal cases as well as in ethics, is a part of the process of decision-making.[10] *Second*, the abstractness of moral norms reflects but also conceals their own history. One re-

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placed a much lower priority on removing those who had established roots in U.S. communities and had no criminal records." Cf. M. CHISHTI/S. PIERCE/J. BOLTE, *The Obama Record on Deportations: Deporter in Chief or Not?*, Migration Policy Institute January 26, 2017, https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not.

9   Cf. chapter 4 in this volume.

10   Cf. P. RICŒUR, *The Just*, Chicago 2000. J. Waldron argues to interpret human dignity strictly as a legal concept, but there is no reason why legal philosophy and political ethics should not inform each other, even though they may overlap practically in many ways. J. WALDRON, *Dignity, Rank, and Rights*, New York 2012.

sponse to the critics of human rights may – and must – be to unfold the rationale
behind the norms by way of historical narratives. When we want to explain why
human dignity matters, it is not enough to say that it is what human beings de-
serve, or that it constitutes their status as persons. Rather, it is necessary that,
among others, the right to migrate, refuge and asylum and the respective duty of
hospitality that resulted in a cosmopolitan political theory and ethics since early
modernity, is the result of a very torn history. Moral values build upon a *sense* of
justice that may be spontaneous but that can also become a habitus when an-
chored in the narratives of injustice and justice, and fostered as a virtue ethics that
"aims for the good life with and for others in just institutions," as Ricœur famous-
ly put it.[11] The task of ethics is therefore twofold: in order to unfold the histories
concealed in the human rights norms, one needs to confront the personal, social,
and historical memories that may well be painful and are hard to embrace. *Second*,
in addition to retrieving these histories, norms must be justified, an endeavor that
ethical theory has long grappled with. Western countries who dismiss their re-
sponsibilities towards refugees beg the question why the richest countries on
earth cannot care for people fleeing their countries while many of the poorest
countries do indeed live up to their obligations.

   As none other than Hannah Arendt has argued, the Human Rights Declara-
tion has never been more than a rhetorical fig leaf, evading the central require-
ment for those who are expelled from humanity. In the next section, I will turn to
her critique that goes to the heart of the effort to transform the cosmopolitanism
into a critical political ethics.

2. *Hannah Arendt's Claim of Human Rights as Political Rights*

Hannah Arendt pointed to the concrete historical context of statelessness in two
major texts: in an essay published in English as *The Rights of Man* and in German as
Es gibt nur ein einziges Menschenrecht, and in the famous ninth chapter of the *Origins
of Totalitarianism*.[12] In these two works, Arendt explains her reservation, if not op-
position, to the Human Rights regime that became the guiding framework of in-
ternational relations after World War II – and she does so because of refugees' and
minorities' loss of rights that the world witnessed in the first half of the century.[13]
Her analysis has become prominent again during the more recent refugee crisis
in Europe. It is therefore instructive to look into Arendt's reasoning that made her

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11 P. Ricœur, *Oneself as Another*, Chicago 1992, 172.

12 H. Arendt, *Es gibt nur ein einziges Menschenrecht*, in: *Die Wandlung*, 4, Fall (1949), 754–770;
H. Arendt, *The Origins of Totalitarianism*, New York 1968.

13 For a recent analysis of Arendt's position cf. S. Benhabib, 2004. Since my interest is the rela-
tionship between Arendt and Ricœur, I will not examine Benhabib's otherwise important study.

so skeptical of the UN Human Rights Declaration. On Arendt's account, the root problem of the 20th century's forced migration was the statelessness of the refugees. Providing a historical analysis, Arendt points to the fact that stateless refugees arose at the end of the 19th century in the context of a new geopolitical order that emerged in Eastern Europe and Russia after World War I. It is this war, Arendt holds, which "shattered the facade of Europe's political system to lay bare the hidden frame"[14]. The "hidden frame", Arendt implies, is a rule that guides the early modern transnational colonialism. However, exclusionary politics are at work, too, *within* European nation-states in the 19th and 20th century, leaving millions of people without any civil or *political* rights. At the same time, this does not affect the facade of their inalienable *human* rights. Arendt is outraged to the point of bitterness that even after World War II and the Shoah, the international community has fallen into exactly the same trap as it did after World War I, declaring 'human' rights inalienable, without reconsidering the effects on those who are not protected in their own countries. Arendt's opposition is both theoretical and practical, I would hold: it is theoretical with respect to how we understand human rights, and practical insofar as she did not expect the problem of statelessness to disappear. As we know today, she could not have been more correct viewing the current violations of human rights, while her theoretical case against the *United Nations Declaration of Human Rights* is still open to debate.

Arendt makes her case in view of the history of the 20th century, and this context of her argument must not be glossed over. She presupposes that up to the demise of the post-World War I political order, people who migrated or fled from their countries still had the option of relocating somewhere else. While she does not deny the hardship that accompanies every emigration, migration to another country or 'spot on the earth' was possible, at least in principle. I leave it to historians to verify her account – for me, what matters right now is the shift that occurred, in Arendt's view, within the globalized political order after World War I. During the 1920s, Arendt holds, Eastern European states and Russia, in particular, gained the national right to declare hundreds of thousands of people *stateless*. These stateless people, stripped of their citizens' rights and legal protection, together with the minorities within states, became most vulnerable to discrimination and persecution. Minorities became vulnerable, too, because they fell under so-called laws of exception in their states, but stateless people were 'denationalized', 'expatriated', or 'deported'. Wherever they went, it seemed, they were declared not only by the states but also by civil society: 'not wanted'. Slowly, they became the "rightless" people that foreshadowed the victims of the politics of Nazi totalitarianism only a few years later, in the 1930s and 1940s.

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14 H. ARENDT, *The Origins of Totalitarianism*, 267.

> The first loss which the rightless suffered was the loss of their homes, and this meant the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world. This calamity is far from unprecedented; in the long memory of history, forced migrations of individuals or whole groups of people for political or economic reasons look like everyday occurrences. What is unprecedented is not the loss of a home but the impossibility of finding a new one. Suddenly, there was no place on earth where migrants could go without the severest restrictions, no country where they would be disseminated, no territory where they could found a new community of their own. This, moreover, had next to nothing to do with any material problem of overpopulation; it was a problem not of space but of political organization.

> The second loss which the rightless suffered was the loss of government protection and this did not imply just the loss of legal status in their own, but in all countries.[15]

After World War I, the League of Nations, predecessor of the United Nations in many ways, became the institution responsible for stateless people, but it was rendered toothless because of the political structure of international law that was still centered on the sovereignty of nation states. Space, we can see, matters: the practices of denationalization, expulsion, deportation, and detention in concentration camps existed long before Hitler's so-called "*Endlösung*" or "Final solution" began in 1941, i.e. the Shoah as total destruction of the Jewish people. Long before the totalitarian regime was installed, a vicious circle had set off the dynamic of expulsion: politics echoed the social rejection of certain groups, which in turn was fueled by the laws against these groups. Together, civil society and their political representatives made every effort to avoid having to live alongside certain minorities, political dissidents, or, again and again, "the" Jews.

Arendt reads the reference to inalienable human rights, which the United Nations Universal Declaration of Human Rights of 1948 takes up from the early modern natural law tradition, as "*merely*" natural rights, namely as unconnected to any right to political membership. Indeed, the concept of human rights could be interpreted in different ways: for example, some interpreters read it from the perspective of the *theological* natural law tradition of medieval Christian theology, which always viewed them as distinct from social or political rights. Others read it from the perspective of secular political philosophy, in light of the early modern reinterpretation of natural law theory.[16] As Hans Joas has recently shown, this

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15 Ibid. 293.

16 As Sumner Twiss has shown, the normative justification of human rights was, however, never fully articulated so it was open to several different interpretations. S. B. Twiss, *History, Human Rights, and Globalization,* in: Journal of Religious Ethics 32/1 (2004), 39–70. In light of this history that is confirmed by Linda Hogan's recent work, Arendt's interpretation follows the natural law theory that was dominant in the Western theories of human rights. Cf. L. Hogan, *Keeping Faith with Human Rights,* Washington 2015.

secularized version identifies the human as "sacred", exempted from any utilitarian reification or, as Ricœur calls it, sacrification.[17] Human rights are, in this tradition, primarily natural or "subjective" rights, which render all human beings inviolable and inalienable.

Against this background, Arendt's interpretation is polemical.[18] In her account, the modern history of secularization begins with the establishment of Human Law over against Divine Law, the great promise of enlightenment, but it creates a paradox: the separation of political rights and natural rights. The latter do not offer any protection against the violations of rights by states:

> The Declaration of the Rights of Man at the end of the eighteenth century was a turning point in history. It meant nothing more nor less than that from then on Man, and not god's command or the customs of history, should be the source of Law. […] the declaration indicated man's emancipation from all tutelage and announced that he had now come of age.[19]

In the beginning, the "Rights of Man" promised a protection of the individual against the state:

> Therefore throughout the nineteenth century, the consensus of opinion was that human rights had to be invoked whenever individuals needed protection against the new sovereignty of the state and the new arbitrariness of society.[20]

Yet, the shift from Divine Law to Human Law results in a paradox with the political emphasis of the concept of the "people": because the state is regarded as the expression of the sovereignty of the *people* (not the prince or king), those who do not belong to the "people," lose any protection.[21] Echoing Edmund Burke's critique of human rights, an "ironical, bitter, and belated confirmation" of his polemic against natural rights,[22] Arendt acknowledges that, separated from the political sphere, human rights are merely abstract rights that cannot be enforced. While she may disagree with Burke on national rights, Arendt agrees that rights must be conceived as *political* rights rather than natural rights. Looking at the phenomenon of the loss of citizenship, Arendt holds, for the stateless people the in-

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17 H. Joas, *The Sacredness of the Person: A New Genealogy of Human Rights*, Washington 2013.

18 The US Bill of Rights that applies the rights to a particular political community is explicitly exempted from her critique. In Arendt's view, this constitution echoes how human rights can be established: as political foundations of a particular polity.

19 Arendt was certainly aware of the essay her friend Walter Benjamin had written on political and divine violence; cf. W. Benjamin, *Critique of Violence*, in: M. Bullock/M. W. Jennings (ed.), *Selected Writings 1913-1926*, Cambridge, MA 1996, 236–252.

20 H. Arendt, *The Origins of Totalitarianism*, 290.

21 The ethnic and racial redefinition of the political category of the 'people' in the 19th century interrelates with the rise of the new, evolutionary race theory after Darwin and the population genetic studies over the course of the 19th and early 20th century.

22 H. Arendt, *The Origins of Totalitarianism*, 293.

vocation of some abstract "inalienable" rights offers no protection: "The stateless people were as convinced as the minorities that loss of national rights was identical with loss of human rights, that the former inevitable entailed the latter."[23]

Faced with the new problem of statelessness, it is clear that Burke's *national* rights do not offer – either *de jure* or *de facto* – the protection that would have helped refugees: their rights do not translate into the right to a space to dwell, a community, and a polity to which they belong. Under the condition of the "one world", i.e. a world that is divided into different nation states, with no uncovered territory, the loss of citizenship is *de facto* the loss of any right: "Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether."[24]

Arendt's point is this: when people have nowhere to stay and nowhere to go as *members* of a polity, they become merely persons in the "abstract"; stripped of their right to political participation. When they are rendered merely "natural persons", they become "nothing but a man", in the "abstract nakedness of being nothing but human", "mere existence", thrown back into "a peculiar state of nature"[25] – all formulations that show the bitterness Arendt felt that it was exactly this "state" that was declared as a right of the human being: The loss of human rights was not the loss of this "natural state" but the loss of belonging:[26]

> The great danger arising from the existence of people forced to live outside the common world is that they are thrown back, in the midst of civilization, on the natural givenness, on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some Commonwealth and yet, since they are no longer allowed to partake in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific animal species. The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human

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23 Ibid. 292.

24 Ibid. 297.

25 Ibid. 301.

26 Ibid. 300. Arendt addresses the very complex issue of human dignity, human rights, and political recognition of rights far too carelessly in these few pages; she juxtaposes the private life in Greek society, the "givenness" of 'mere existence' ruled by the "law of difference" with the public sphere, which is ruled by the "law of equality". The latter, she holds, is a political achievement: "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." (ibid.). She critiques the Human Rights Declaration for conflating the "law of difference" based on the "givenness" of one's "single, unique, unchangeable" individuality and the "law of equality" as a principle of political justice, without explaining how exactly the law of equality can incorporate the law of difference. Her underlying critique became the object of multiple studies in the latter half of the 20th century. Charles Taylor, most prominently, provided an important interpretation, claiming that the concept of human dignity entails exactly these two sides, namely the respect for equality and difference. Cf. CH. TAYLOR, *Multiculturalism and the Politics of Recognition: An Essay,* Princeton, N.J. 1992.

being in general – without a profession, without a citizenship, without an opinion, without the deed by which to identify and specify himself – and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within an action upon a common world, loses all significance.

The United Nations Universal Declaration of Human Rights, Arendt holds, does not respond to *this* discrepancy between "mere" human rights and political rights; human rights are merely a rhetorical reference to "natural rights"; they are *not* a political-legal concept precisely *because* they are rights that cannot be enforced in a political space. They are remnants of a political order that does not apply any longer. They presuppose a membership that is no longer defined metaphysically or theologically but strictly politically. Because the political order is organized around the notion of the sovereign state and its interactions with other states based on contracts that very much adhere to the national interests of the con-tracting states, the human rights regime, Arendt seems to imply, is extra-legal and in this way extra-political: there is no way to hold states accountable. Hence, the "stateless people" are denied national rights, while the Human Rights Declara-tion does not make an effort to deal with the necessity of membership in any dif-ferent way. Moreover, the rhetoric of "dis-placed" persons that replaced the termi-nology of statelessness after World War II is a slap in the face for those who are not just displaced but *expelled* from any political order. It misrecognizes the most vul-nerable groups, because it cannot, in the legal meaning of the word, regard them as victims of injustice but must consider them, legally, as objects of practices that are legitimate according to the national laws. The structural failure of account-ability and the lack of an international (criminal) justice system that holds na-tions accountable go hand in hand with the appeal to charity on the part of civil society.

> We became aware of the existence of a right to have rights (and that means to live in a frame-work 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. […]
>
> Not the loss of specific rights, then, but the loss of a community willing and able to guaran-tee any rights whatsoever, has been the calamity which has befallen ever-increasing num-bers of people. Man, it turns out, can lose all so-called Rights of Man without losing his es-sential quality as man, his human dignity. Only the loss of polity itself expels him from hu-manity.[27]

Hence, we are faced with two different narratives on human rights. The first nar-rative is that of the United Nations Declaration of Human Rights; their propo-nents, grounding human rights in the natural law tradition or its secular version that 'sacralizes' the human person, are the implied addressees of Arendt's polem-

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27 Ibid. 296–297.

ic because they do not respond to the political nature of rights. Hence, they have no answer to the breakdown of national responsibilities to protect their citizens: in declaring groups as non-eligible, nation states have established the very problem to which the human rights regime aims to respond, but without having the necessary enforcement measures against the states. Moreover, the UN Declaration presupposes that human beings do in fact belong to a community, thereby ignoring the long-existing problem of stateless people or minorities without rights. The second narrative is Arendt's own. It goes back to Edmund Burke but transforms to fit the current globalized world: there is "no longer any 'uncivilized' spot on earth, because whether we like it or not we have really started to live in One World."[28] To respond to this specific political situation, Arendt claims that the only task that the international community has is to secure the literal and symbolic "space" in which every human being can belong as a member of a community, and this is what she calls the unconditional "right to have rights".

If it is true, however, that Arendt's elaborations are historically situated, we can see from today's perspective, that the United Nations have in fact embraced at least three of her concerns: first, they have created the International Criminal Court of Justice that does hold perpetrators of crimes against humanity accountable in a legal sense. Second, it has created an international procedure of humanitarian intervention under the title of the "Responsibility to Protect" Doctrine. Whatever the shortcomings of these two strategies may be, they have given the United Nations a legal authority that connects the protection of a "natural" right with the "political" right, and they explicitly require nation states to respect and promote the human rights of their constituents. Third, we can observe efforts to take up the issue of statelessness, first in the 1954 *Convention Relating to the Status of Stateless Persons*, which prohibits any discrimination for reasons of nationality. It defines a "stateless person" as someone "who is not considered as a national by any State under operation of its law"[29]. The 1961 *Convention on the Reduction of Statelessness* specifies further:

> Art 1(1) Discrimination on the basis of race, colour, descent, or national or ethnic origin is often the root cause of statelessness. Moreover stateless populations are particularly vulnerable to further discrimination. It is necessary that States legislate both to prevent such discrimination from happening, and to protect vulnerable people when they are subject of discrimination.[30]

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28 Ibid.

29 United Nations Refugees Agency (UNHCR), *Convention Relating to the Status of Stateless Persons,* 1954, 3. http://www.unhcr.org/un-conventions-on-statelessness.html.

30 Minority Rights Group International, *International Convention on the Elimination of Racial Discrimination – Statelessness and Human Rights Treaties – Quick Reference Guide,* 2017, http://minorityrights.org/publications/international-convention-elimination-racial-discrimination-statelessness-human-rights-treaties-quick-reference-guide/.

The UN Anti-discrimination Convention, in the 1965 version, addresses discrimination against citizens even though not affecting distinctions states make between citizens and non-citizens.[31] Unfortunately, however, current practices still point to the crucial target of Arendt's critique, namely that the human rights regime still does not sufficiently respond to the challenge of stateless people. In an interview given in 2009, Heiner Bielefeld, human rights scholar and then German HR Rapporteur to the UN, accused the European Union of *exteriorizing* their responsibility towards refugees through contracts with neighboring countries such as Turkey or Libya.[32] Today, we can add that refugees and migrants are *kept in transit*, sometimes even in long-term refugee camps that span generations. In both cases, being kept outside the borders or having to live in refugee camps, refugees and/or migrants are *de facto* "stateless", rendered without rights, because their rights are not enforced. The situation has become worse both on a social and on a political level: the same reflex that was observable a century ago against denationalized groups and/or minorities returns today, for example, in some member states of the European Union: socially, migrants and refugees are "foreigners", "illegals", "not us"; but perhaps more importantly, they have no political rights and often only reduced protection rights.

The German philosopher Christoph Menke urges us to take Arendt's insights seriously, in order to better understand the problem of the refugee crisis that was shaking up European politics in the wake of the 2015 refugee surge.[33] He identifies a mistaken alternative in the current debate: on the one hand, there is the political realism that is based on national interests; it regards the refugee problem as a national political issue only, rendering refugee rights negotiable and subordinate to the interests of the host countries; on the other hand, there is the position that humanitarian aid is a universal obligation, trumping any national interests, in effect ignoring the social consequences of such a politics of hospitality. Critiquing both

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31 "Art. 1.2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens. 3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality." United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination, Resolution 2106 (XX),* New York 1965/1969, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

32 H. Bielefeldt, *"Es gibt nur ein einziges Menschenrecht". Interview mit Heiner Bielefeldt,* in: hannaharendt.net 5/1 (2009), 1–11, 9. He acknowledges that Arendt saw clearer than others the flaws of international law but also points to the developments of the human rights regime over the last decades.

33 Ch. Menke, *Zurück zu Hannah Arendt – die Flüchtlinge und die Krise der Menschenrechte*, in: Merkur, Jun 2 (2016).

positions, Menke emphasizes Arendt's point, namely that human rights are not an endowment of human nature if this means that we "have" them independently of any social or political mediation. Modern natural law theory applies such a naturalized version of rights, resting upon private, subjective rights. This tradition, Menke explains, is so ingrained in the modern consciousness that its two historical sources are easily overlooked: on the one hand, the liberal position of private property rights – proponents of classical liberalism declared their property, land, and rights their *possession* – and on the other hand, the equal rights position – proponents of the welfare state declared rights to a fair share and equal access to these possessions. Both approaches leave little room for the interpretation of the *political* nature of the rights, resting on Arendt's Aristotelian-based insight that humans are primarily political beings. If there is, today, only "One World", as Arendt held already before globalization became the defining framework of international relations, this means that nobody can be outside of *this* one political order – we live in a human or globalized "One World" with no other spatial boundary than the planet itself. Refugees, who are denied the right to membership of this order of the One World, are not "merely" denied some more or less specific human rights – they have literally nowhere to dwell or belong. Menke holds, with Arendt, that we (still) misunderstand human rights when we interpret them as natural subjective rights, and he therefore calls for a radical reconceptualization of rights in the name of "belonging", as the well-known political right to membership in the one global political community.

> The refugee does not say anymore: I want or need this or that (as a human being, I have a right to it). Now, the refugee says: I am, merely as human, a member, a social part, a part of the social. The response that bangs back to him, is well-known; it is loud enough. The response is: not here, and not now. No member or part of us! But this really only says something about the polity that speaks in this way. In telling the refugee that he is, as human being, no member of our polity, it says that we, as members of our polity, are not human beings: only Germans, not human beings. [34]

I have said that there is an ongoing debate on Arendt's critique of human rights. As we have seen, however, it is directed against the liberal-naturalizing version of human rights, and it is a critique of the misunderstanding – or denial – of the cur-

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34 „Mit dem Recht auf Rechte ändert sich die Situation radikal. Der Flüchtling sagt nicht mehr: Ich will oder brauche das oder jenes (und habe als Mensch ein Recht darauf). Der Flüchtling sagt jetzt: Ich bin (bloß als Mensch) ein Mitglied, ein sozialer Teil, ein Teil des Sozialen. Die Antwort, die ihm entgegenschallt, ist bekannt; sie ist laut genug. Die Antwort lautet: Nicht hier und nicht jetzt; kein Mitglied oder Teil von uns! Aber das sagt in Wahrheit nur etwas über uns, über das Gemeinwesen, das so spricht. Indem unser Gemeinwesen dem Flüchtling sagt, dass er als Mensch kein Mitglied unseres Gemeinwesens ist, sagt es über uns, dass wir als Mitglieder unseres Gemeinwesens keine Menschen sind: bloß Deutsche, keine Menschen." ibid. 51.

rent globalized world that demands answers for those who are declared stateless or who are not protected by the states they happen to live in. I have also said, however, that the Human Rights regime itself has transformed considerably over the last decades, establishing the International Criminal Court of Justice, limiting national sovereignty in cases of a failure to grant basic protection rights to people who live in a state's territory, and focusing on stateless people. The major target of Arendt's critique, however, still waits for a response by the international community. According to the 2019 Report issued by the UNHCR, more than 70 million people are currently forcibly displaced worldwide – compared to 48 million people only a decade ago – and half of these are minors. More than 40 million people are *internally* displaced, and the vast majority of refugees, nearly four in five refugees, live in neighboring countries.[35] The human rights *practice* concerning refugees and migrants clearly calls for the shift Arendt and Menke urge us to make – but whether the turn from "natural" to "political" rights is sufficient, is a question I want to explore now. It is here that Paul Ricœur's reflections on Arendt's theory of power to act is helpful. I will discern where Ricœur stands in relation to Arendt's critique, but I will do that, following his own strategy, by way of a detour through his ethical theory.

3. *Paul Ricœur's Concept of Human Rights as Moral Right*
3.1 Ricœur's Ethics

Ricœur, I hold, goes along with Arendt's Aristotelian position that human beings can only thrive together with others; self-constitution and the actualization of human capabilities are indeed dependent on *mediations* in personal relations and in social and political institutions. His theory differs, however, from Arendt's *political* theory, because Ricœur explicitly calls "aiming at the good life with and for others in just institutions" not a political but an ethical endeavor, which unfolds in his "little *ethics*".[36] It entails both an ethics of the good life and the morality of normative claims. The capable human being, the phrase Ricœur uses for the concept of moral agency, defines his anthropology, and it is the human capability to respond to others and be held accountable by others that grounds human dignity as respect for precisely this capability.[37] Hence, Ricœur would be opposed to Arendt's claim that all that matters is the right to membership in the polity; the human condition as *zoon politikon*, the political nature of sharing each other's lives in a polity that is today the global polity, is not as decisive for Ricœur's concept as it

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35 UNHCR, *Global Trends. Forced Displacement 2018*, UNHCR New York June 19, 2019, https://www.unhcr.org/5d08d7ee7.pdf.

36 P. Ricœur, *Oneself as Another*, 172.

37 P. Ricœur, *The Course of Recognition,* Cambridge, MA 2006.

is for Arendt's. Arendt errs, if you wish, on the side of the political, rendering the human condition so completely intertwined with the political that the critical force of ethics, entailed in the concept of recognition and responsibility, i.e. the capability to respond and the necessity to be held accountable and hold others accountable, can be easily overlooked.

Ricœur insists on the Kantian philosophy of *respect* together with the Hegelian philosophy of *recognition*. Ricœur, who sometimes called himself a post-Hegelian Kantian, shares with Arendt the concern for the inter-personal, social and political mediations that separate them both from the liberal tradition of early modern natural law theory. Self-esteem and self-respect, Ricœur emphasizes, however, are not just *effects* of political membership; rather, they unfold in the mutual recognition of agents who mutually ascribe to each other the capability to act morally, namely the capability to respond to each other and to be held accountable for their actions. Without going into too much detail here, I want to stress that Ricœur's concept illuminates the weak spot in Arendt's own approach: as the English title of one of her famous books betrays, if having a political nature is taken as the "human condition", this is still a quasi-natural, anthropological capacity. Arendt brushes over the genuine *moral* dimension of agency that Ricœur emphasizes; he insists on Kant's concept of moral autonomy as capability and as a demand to distance oneself from one's own teleological aiming at the good life.[38] There are certainly many topical overlaps and similarities in what Arendt and Ricœur address in their philosophies – but Arendt's *political* theory seems to absorb any *moral* (i.e. normative) theory, and her philosophy of dialogical reflection or judgment absorbs any explicit *ethical* (i.e. value-based) theory. For Ricœur, in contrast, the mutual recognition of agents *as* agents matters as ethical underpinning of the political. The capability to respond to the other in their aiming for a good life and the accountability for one's actions complement each other, being played out in the different spheres of personal, civil, and political interaction and practices. Political practices or actions therefore cannot be separated from their ethical dimension – ultimately, the point of those practices is that they must secure the possibility of recognition and respect of the inter-agents. Institutional political practices and their inherent rules and norms, institutionalized as laws, are legitimized only insofar as they are grounded in the overall responsibility to mediate the desires and needs for recognition of all while responding with highest priority to the needs of the most vulnerable individuals or groups in particular.

From the point of view of the "capable human", Ricœur holds, self-care, friendships with particular others, the care for these others' well-being, and the con-

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38 Cf. for the further implications for critical political ethics chapter 13 in this volume.

cern for the distant others are already intertwined. While friendship is the model of successful mutual recognition in close relationships, hospitality and the practice of welcoming the stranger is a practice of the "gift", a non-reciprocal giving that is, however, still rooted in the overall pursuit of recognition, aimed at transforming hospitality into mutuality through conversation, interpretation, and translation. Regarding, for example, the "culture of welcoming" that so many individuals in the German (and European) civil societies practiced in 2015 and 2016 – and continue to practice – it can be interpreted as exactly such a "gift" that entails non-reciprocal recognition, while aiming at mutuality of recognition and respect. Such a culture of hospitality starkly contrasts with the culture of exclusion, dehumanization and xenophobia that the national populists of today continue to express. Ricœur does not reduce hospitality to charity or solidarity without a link to rights or justice, but at the same time, he does not believe that granting refugees membership rights will suffice. Instead, his "little ethics" requires us to go back and forth between the teleological striving and the deontological obligation, acknowledging practical compromises, prudential judgments, and tragic dilemmas in the "real life" of inter-personal actions and political practices. Because Ricœur is sensitive to all three levels of ethical reflection, i.e. teleology, deontology, and *phronesis* or prudence in ethical and practical-political questions, and because he spells it out not only in the sphere of individual ethics but also in the sphere of political-social ethics, his approach provides better conceptual tools for the dialectical relationship between the ethical life, morality, and political practices when compared with Arendt's theory of political and public power. Furthermore, it also provides a critique of Menke's approach that regards the right to belong and membership not so much from the perspective of the victims of exclusion, deportation, and expulsion, but primarily as a question of moral integrity for the (hospitality or rights-granting) agents – as if the "otherness" of the other challenged, first and foremost, the self and his/her moral identity instead of challenging the way they both interact. In contrast, Ricœur insists, with Levinas and against Hegel, that the encounter with the other is not merely the occasion for the self to encounter his/her own alterity but that the other must be attended to by starting from their perspective, summoning the self with his/her own needs, desires, and rights. Without the attention to the other (and the other's otherness), the hermeneutics of understanding through interpretation and translation would be superfluous.

3.2 Power and Authority: Ricœur's Critique of Hannah Arendt

Arendt's theory of power, like Ricœur's, is opposed to the tradition of Hobbes' so-cial contract, on the one hand, and opposed to an ethnic understanding of community as *Volk*, on the other hand; power is, as Ricœur states in his analysis of Ar-endt's text *On Violence*,[39] the public expression of action, which is anchored in the initiative, the new beginning that Arendt had called natality.[40] Ricœur explicitly endorses Arendt's approach, stating: "It is as citizens that we become humans."[41] Power, then, as the public expression of action, creates something new, and it is in the exchange of pluralistic opinions that political action, i.e. praxis emerges.

Ricœur agrees, to put it in Weber's terms, that this concept of power *(Macht)* as collective inter-action from which something new emerges, as the "legitimate use of violence", is countered by a concept of power that is understood as "domina-tion between the governors and the governed", as in the authoritarian model of command and obedience[42] – in German *Herrschaft*, not *Macht*. Yet, for Ricœur, Arendt's philosophical turn to the plurality of civic engagement is not enough: quite to the contrary, Ricœur urges philosophy not only to *attend* to public opinion but, approvingly quoting Habermas' discourse ethics, to provide a *critical discourse on the public discourse* – a critique that necessarily must have a normative standard.

> One might say, with Habermas, that the philosopher should not hold a discourse of citizens – practical discourse – but a discourse on the discourse of citizens – a discourse no longer practical, but critical – and that this critical discourse calls for reference to a regulatory idea which itself lays claim to truth and no longer to opinion.[43]

Now, taking into account that interaction between agents is framed in line with the "little ethics", which provides a dialectic between the teleological strivings and the deontological demands and requiring practical compromises when no other resolution is available, how does this agency play out within a framework of critical political ethics? The law or legal order is an important mediation of and for the agents, and it has a particular force and binding power that can easily be mistaken for a merely legal norm in accordance with the model of domination *(Herrschaft)*, rather than simultaneously as a moral norm in accordance with the model of power *(Macht)*. Yet, the legitimacy of legal norms rests upon the political task or responsibility to keep legality and morality together. Legal norms, this means, must enable respect and recognition among all agents and not just com-

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39 P. Ricœur, *Power and Violence*, in: Theory, Culture & Society 27/5 (2010), 18–36.

40 Likewise, for Arendt, power "corresponds to the human ability not just to act but to act in concert". Ibid. quoting Arendt, 21.

41 P. Ricœur, *The Just*.

42 Ibid. 21.

43 Ibid. 29.

mand, to be responded with obedience. The relationship between public discourses and the legal order is so complex, Ricœur holds, because *any* normative order conceals the fact that it originates in the *common action* of people; its origin in "common power" is easily "forgotten", transforming what once was the creative power of public action into its residue, the assumedly extrinsic force of the law.

> […] the forgotten – precisely because it is not a past having being, but the force of the being-together that we are without seeing it – is not of a substantial nature. It is in fact our common power.[44]

The common action (political interaction in discourses and political deliberations) and common power links the political to the ethical as the undercurrent or other side, invisible or forgotten, of the political. Once it is revealed, the function of institutionalized power is clear: it is to mediate everyone's desire to aim for the good life with and for others and thereby enable mutual respect and recognition. What legitimizes the norms of institutional power is not an imaginary social contract of the past that *constrains* the power of individuals in the present and future, but exactly the opposite: power is institutionalized ethical and moral agency oriented towards *creating something new*; it thereby reflects the innovative power of any action – Arendt's natality. Why is power institutionalized agency? Because agency is neither "natural" nor "private" but necessarily socially mediated; furthermore, agency already entails a sense of justice (often through experiences of injustice); it *aims for* just institutions that organize or structure the way social agents or collectives interact.[45]

Arendt's politico-communitarian interpretation of the human condition is therefore incomplete, if not insufficient: first, even though it *does* account for the social and political mediation, it does not account for the mutuality of recognition and respect as the normative orientation of any interaction, including social interactions and practices of political institutions. This norm of mutual recognition (or maybe more correctly: mutual recognition as a regulative idea), I would hold, is indeed to be "globalized" today exactly because Arendt is right: we live in One World, with multiple interrelations between cultures, societies, states, and last but not least, economies. Second, even though Arendt's approach *does* account for the legitimizing foundation of the law in public opinion, it does not provide the *critical*, i.e. moral criterion of the public discourse. Ricœur, in contrast, holds that public discourse *must* be oriented towards justice; the law cannot do

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44 Ibid. 28.

45 This is close to what Iris Marion Young has in mind in her last, unfinished work: I. M. YOUNG, *Responsibility for Justice*, Oxford/New York 2011. Cf. chapter 13 in this volume for the implications of her approach for critical political ethics.

without this orientation, because not plural public opinion as such but justice as an ethical norm legitimizes its sanctioning norms or binding force. Political justice is, as Ricœur makes clear, rooted in the *sense* of justice that is reflected in moral emotions such as outrage, shame, or compassion. This sense of justice – often expressed publicly in demonstrations or by social movements – is transformed into the normative principle of justice, as Ricœur showed in *Oneself as Another,* that in turn guides the necessary institutional mediations of agents' capabilities.[46] Hence, the creative public power of our "common actions", the public power to create something new *as such* is insufficient for separating political authority from the violence of mere domination. It requires the critical discourse of normative ethics: the political-legal order, reflected in positive law, requires the normative standard of justice as mutual recognition and respect for the "capable self." This holds true for the international political order as well as for any national or transnational political order, such as the European Union.

With this, we can now address the question of human rights. To understand the difference between the moral and the political concept of human rights we need to go back to the shift in the concept of the *ius naturale* that occupied much of the political thought in early modernity.[47] The Hobbesian concept of sovereignty, Ricœur argues,[48] transforms the moral concept of the natural law tradition into the concept of political agency driven by prudence: it changes the metaphysical, yet moral underpinning of legitimizing power into the political calculation of individuals who aim to overcome their state of fear and instead live in peace: because Hobbes presupposes that the state of nature is based upon violence and the "war of all against all", the delegation of power to the sovereign – as the one who represents the multitude – is aimed at mitigating the fear of death. The "articles of peace", otherwise "called laws of nature", as Hobbes says,[49] are not of a metaphysical but of a political nature, paradoxically redefined by him as "laws of nature". Ricœur demonstrates how Hobbes changes the *moral* concept of the *ius naturale*, no longer a quality attached to a person as such, as it was still understood by Grotius in line with the medieval scholastic tradition, into what Ricœur calls a "para-ethical" concept:[50] the Hobbesian "law of nature" that forces persons into the social contract *imitates* rather than expresses "the rules of a morality of

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46 P. Ricœur, T*he just*; P. Ricœur, *Reflections on the Just,* Chicago 2007.

47 Cf. for a historical account: B. Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law,* Atlanta, GA 1997, 1150–1625.

48 P. Ricœur, *The Course of Recognition*, 161–174.

49 Ibid. 165, quoting Hobbes' Leviathan.

50 Ibid. 170.

obligation".[51] The freedom to agree to the social contract entails the normative dimension only as the prudent calculation of the individual agent who trades a part of his (sic!) freedom for peace *under the condition* that others do this, too. The moral ideal of mutual recognition of "capable agents" is reduced to a trade-off of a reciprocal agreement, culminating in the power of the sovereign who acts as the representative of all:

> I authorize and give up my right of governing myself to this man, or assembly of men, on the condition that thou give up thy right to him, and authorize all his actions in like manner.[52]

For Hobbes, it is merely a short step from the power *(Macht)* that resembles Arendt's "acting together" and that legitimizes the authority of institutions, to the domination *(Herrschaft)* of the sovereign;[53] domination departs from its role of responsibility for justice and falls back into the model of "command and obedience." This, Arendt and Ricœur agree, *converts* the creative power of "common action" into violence, transforming innovative power into coercive power, the constraining, authoritative domination of the state *over* its constituents. Arendt and Ricœur both agree that this concept of sovereignty or power as domination is a root problem of modern political philosophy, motivating Ricœur at the end of his life to reexamine the Hegelian ethics (and politics) of recognition as an alternative to a political theory of the social contract.[54]

In Ricœur's approach, the boundaries of justice are not necessarily linked to those of a national community; I think he would have agreed with Arendt that we do indeed live in a globalized world, the *One World*. From our first detour through the "capable self" as definition of moral agency, we concluded that the distant other is one figuration of the "other" who may not be my friend, but for whom – and to whom – I am still responsible. Seen from this ethical perspective, responsibility towards the other is not informed or defined by mere self-interest, because that contradicts the very understanding of myself as capable, i.e. responsible agent. Neither is it rooted in our shared membership or sharing of the one world; certainly, as Menke has stressed, my *responsibility* towards the other is a necessary part of my own ethical self-understanding and hence connected to the sense of justice that *motivates me* to "aim at the good life with and for others." It is true that the responsibility towards the other is, first and foremost, part of the ethics of the good life, actualized, for example, in the hospitality towards refugees

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51 Ibid.

52 Ibid. 169, quoting Hobbes' Leviathan.

53 Cf. P. Ricœur, *Power and Violence*, 21. For a similar critical analysis of Hobbes cf. C. Gearty, *Liberty and Security,* Cambridge 2013.

54 Cf. P. Ricœur, *Power and Violence*. Cf. also how Ricœur relates Hobbes to Hegel's recognition theory in P. Ricœur, *The Course of Recognition,* 161–174.

who are among those the "good life" includes, and whom the one who is not in transit welcomes into his or her life. Yet, I have claimed, Ricœur's ethics does exactly *not* stop there – the image of a harmonic "good life" or "buen vivir", recently taken up in Latin American intercultural philosophy and ethics, ignores the deontological dimension and may also be far too forgetful of the other side, namely the refusal of solidarity and justice, especially on a global scale. Ricœur acknowledges, of course, the plurality of public opinions, which often define the "good life" in mutually exclusive terms: refugees are not only welcomed by *some*, they are also, by some others, seen as a threat to their identity, standard of life, or their overall way of living. And still others would take a mediating position, such as, in the German controversy, discourse ethicist Konrad Ott has done.[55] Reflecting on this public – necessarily plural – discourse, the philosophical *critical* discourse "calls for reference to a regulatory idea which itself lays claim to truth", to quote Ricœur's critique of Arendt via Habermas again – or, in his own words, philosophy must refer to the moral claim that addresses the agent, as the capable self, in the form of the negative categorical imperative, which Ricœur defined as imperative not to act in a way that will produce or prolong evil: "Because there is evil, the aim of the 'good life' has to be submitted by test of moral obligation."[56] It is important to note that "evil" is no empty category in Ricœur's ethics but spelled out as misrecognition, disrespect, and injustice – rooted in the same sense of justice that informs the notion of the good life; evil is inverted justice, expressed in the sense and feeling of indignation. The *sense* of justice and the *principle* of justice critically correlate, but their normative root is the acknowledgment of humans' potential for evil.[57]

While we can understand the moral underpinning of human agency, and we can also understand the intertwining of personal and public action and its legitimization of institutional power, especially the law – the question still is whether these reflections help us to better understand what a human rights regime would look like for Ricœur. Let me note here that Ricœur does not give statelessness the same systematic status as Arendt does – although I think he *should* have given the category of space more attention in his ethical writings, especially the space of "transit", which alongside the category of time entails the "transitions" Ricœur was so interested in. For my context here, however, it is Ricœur's engagement with Arendt's concept of authority that I will finally turn to.

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55 Unfortunately, Ott analyzes the public opinion with a prejudice for the 'realist' position, which he does not lay open. His text lacks exactly the critical analysis that discourse ethics must add to the plural voices in the public. K. Oʈʈ, *Zuwanderung und Moral,* Stuttgart 2016.

56 P. Ricœur, *Oneself as Another,* 218.

57 P. Ricœur, *Fallible Man*, Chicago 1965.

The question is this: is the UN human rights regime structurally powerless against the sovereignty of nation states, because it lacks the mechanisms of enforcement and it needs to be realized by the same leaders of the states who often represent the power over rather than the power to act in common? How can human rights be entrusted to dictators or regimes that may have signed the UN Human Rights Declaration but have no intention of implementing it? In other words, does the human rights regime entail an inherent force that may help to transform the factual model of domination into one of power in Weber's and Arendt's sense? Does the ethical interpretation of the "capable human" that contrasts with the "fearful human" in the state of nature also require the departure from the prudential Hobbesian model of political theory? Can the human rights regime help to transform the power-as-domination model, so to speak, into a legitimate concept of institutionalized responsibility that mediates the desires and needs for recognition of all while responding with highest priority to the needs of the most vulnerable individuals or groups, as I have claimed above, all institutions must do? Once we understand human rights as the *moral*-political foundation of human interactions and practices, the Declaration of Universal Human Rights and the accompanying conventions entail a *conceptual* critique of the political concept of *Herrschaft* or domination; linking human rights to the "capable self", they clearly point to the concept of *Macht* that is rooted in memories of injustice, the response-ability and accountability of agents, and their ability to establish just institutions – in short, they point to the *ethical* dimension of human agency. It is here that the notion of authority becomes virulent, for Ricœur as much as for Arendt. For, from where would its *political* authority come if *not* from the "people", contesting the violence of regimes, norms, and practices that contradict the ethical orientation?

Arendt grants that there is, and must be, a hierarchy in any political order – there are persons who are respected and recognized for and in their authority, and every polity needs institutionalized authority. However, this authority needs to be distinguished, even separated conceptually, from the sovereign power of domination; rather, it is strictly bound to the concept of political action that requires *legitimization* as much as *duration*.

> […] politics is expected to provide for action the durability and solidity that it lacks. This is why an aspect of legitimation is always needed, that would at the same time be an aspect of durability.

Paradoxically, power does indeed need "durability" in its institutional form, but at the same time power is, because it is *creative power*, always necessarily volatile and unpredictable. Hence, at stake is the relation between *innovation* (the creative dimension of the power to) and the durability and continuity of a *foundation*. This relation, Ricœur holds, is as complex as the relationship between power and vio-

lence: "In my view, it is in the relation between foundation and innovation that there exists an enigma much larger than that of the relation between power and violence to which we are party."[58] Almost desperately searching for models of foundation that can secure the power of the common action of citizens, Arendt reverses the hermeneutic turn to the authority of tradition, returning to what Ricœur calls the *tradition of authority*. The model of authority, the foundation that Arendt has in mind, is exactly not authoritarian, totalitarian, or the power of the sovereign but stems from those who have pursued real "innovations" in history, actualizing the power to create something new politically. In other words, the tradition of authority is linked to past revolutions, understood as the overthrow of domination *(Herrschaft)* by the collective power of political agents *(Macht)*. But, Ricœur holds, Arendt is far from clear on this, and far more ambiguous than one might want her to be.

> This is why at the last moment Hannah Arendt, as if grabbing a lifebuoy, catches hold of the American Revolution, the last one to have succeeded, according to her, because [Ricœur quotes Arendt] 'the founding fathers, as, characteristically enough, we still call them, founded a completely new body politic, without violence and with the help of a constitution'.[59]

Obviously perplexed by her simultaneous admiration for the Roman *civitas*, for Machiavelli, *and* for the Founding Fathers of the American Constitution, Ricœur disagrees with these images or models of foundations that secure the authority that she is looking for. But today, we may reconsider Arendt's turn to the foundation of power as collective action, and hold her words against her critique of the renewal of human rights: the 1948 *United Nations' Universal Declaration of Human Rights* can then, at least for my generation, be read as the expression of the "common action" of the immediate postwar politicians who responded to a world war. Rather than – correctly – critiquing the justification of human rights with the reference to human nature, we would read the Declaration as a document of another "foundation story," as revolutionary as the narratives Arendt is considering. The Human Rights Declaration would then be a founding narrative that takes the US Bill of Rights further, namely to the international level, declaring human rights as universal rights and international law cosmopolitan. What keeps us from understanding the *Universal Declaration of Human Rights* as the public expression of *the* "united nations" *citizens'* common action, based upon their common ethical orientation? Seen in this light, the *Declaration* is not only the concrete historical result of global outrage and horror after the Shoah, but interprets these experiences as normative regulatory ideas that set a moral counterpoint to *any* human rights violation. In other words, the sense of justice originates in the experience of injus-

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58 P. Ricœur, *Power and Violence*, 34 f.

59 Ibid. 33.

tice that entails the sense that "something is wrong". If the relationship between innovation and foundation, or between power and authority, is guiding us, then an interpretation of the *human rights regime* becomes visible in a way that strikingly differs from the scholastic, metaphysical natural law tradition. It is an interpretation that Ricœur linked to the forgotten dimension of normativity: "A forgetting which is not of the past. In this sense, a forgetting without nostalgia. A forgetting of that which constitutes the present of our living-together."[60] In this sense, human rights may be seen as "the closest reality, constitutive at each moment of present living-together, and the most hidden – and in this sense always forgotten"[61]; they are, in other words, the institutionalized power of our public action, our power to create a new order that responds to the "One World," in which the boundaries of nation states do not coincide with the boundaries of rights and responsibilities.

Menke is right: as long as we understand human rights as possessions of individual agents that we either want to secure or want to acquire as individuals, we are indeed caught in a struggle for recognition that resembles the Hobbesian imagery more than Hegel's understanding of mutual recognition and social freedom.[62] Human rights are the norms that spring from the "right to have rights" – not because it is this right that is the condition of our belonging to the world, but because it captures exactly what moral agency (Ricœur's "capable self") is about – yet, what must be secured by others and by political institutions. Human rights are the expression of what it means to be a capable agent – one who is, at the same time, vulnerable to the actions of others, and dependent on all the social and political mediations that are articulated in the different rights.[63]

Because the creative power as public expression of action is so easily "veiled" and "forgotten" in the norms that bind us, the public discourse as well as the institutionalized normative orders require the critical discourse of ethics that reminds the public of the historical experiences of injustice that motivated the power to act and establish political regimes guided by human rights. Ethical critique is therefore not detached from public moral discourses, but it has its particular role to play in them regarding the normative claims people make. Hence, it cannot just mirror the "facticity" of social values and social norms but rather, it must scrutinize them in view of the regulative idea that *ought* to guide collective actions. With Kant, Ricœur formulates it as a moral, categorical imperative:

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60 Ibid. 25.

61 Ibid. 26.

62 Cf. for the Hegelian reinterpretation of freedom as social freedom: A. Honneth, *Freedom's Right. The Social Foundations of Democratic Life,* New York 2014; F. Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom*, Cambridge, MA 2000.

63 Cf. chapter 5 in this volume.

> Act solely in accordance with the maxim by which you can wish at the same time that what ought not to be, namely evil, will indeed not exist.[64]

If in fact we should bring our desire for the good together with our actions, and if we can only *wish* that, among other human rights violations, forced migration *ought to end*, then we *must act* – together – so that it *will* indeed no longer exist as a reality for millions of people. If international institutions, together with nation states, do not reflect this maxim, then they lose their legitimacy, because their good wishes are indeed only empty rhetoric. That refugees and migrants are not being stripped of their rights; that they find a space to dwell; that they are not forced to live in transit for a long time and not being held in detention or even in concentration camps, as is currently the case at the US-Mexican border – *this*, I believe, every human being must – and indeed will – wish to be the maxim of their actions, if the migrants' and refugees' stories are told in a way that resonate with those who ought to become their neighbors. Certainly, this is a *moral* claim. Furthermore, it comes with a *political-ethical* claim, calling for the transformation of the international order and international law to hold states accountable who violate the human rights of people in transit or migrating. But it is also a moral claim that calls for the habituation of our *personal sense of justice*. Because we do indeed share the "one world," we necessarily interact with the strangers of this globalized world; we interact with them directly or indirectly, either by indifference and rejection, or by solidarity that shares the responsibility for justice among the many.[65]

At the end of his analysis of Arendt's work, Ricœur takes exactly such an ethical turn, paving the way for an alternative to Arendt's *polity* and the foundation of her vision in the American Revolution that she ultimately traces back to the Roman *civitas*. Ricœur, instead, argues for the authority of the "capable human", as the alternative foundational symbol, correlating it to the common power of people inter-acting: this is the refugee Aeneas, the figuration of the responsible human of Troy:

> […] behind Rome there was Troy, represented by Aeneas carrying his father Anchises on his back. And, under Troy, how many buried foundations?[66]

I believe that the human rights regime, of all international regimes we can think of, has exactly the revolutionary innovative power of those who have said "no" to the violation of human rights before. These persons call for our common action,

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64 P. Ricœur, *Oneself as Another*, 217. P. Ricœur, *Fallible Man*.

65 Again, I refer to chapter 13 in this volume for a further elaboration on this thought.

66 P. Ricœur, *Power and Violence*, 35.

call for another "augmentation" of a revolution,[67] the power to create something new. Arendt deserves every credit for having emphasized the political dimension of this responsibility, even though I believe that we should turn to Ricœur and others to re-emphasized its moral foundation.

In reading Arendt, Ricœur calls, with her, for a reversal from violence to creative power; he founds it, against her, in the moral responsibility of all humans who, like Aeneas, carry the burden of others on their shoulders. The most vulnerable, singular human person, suffering, yes, but also capable to speak, to remember, to act, and to be responsible as a human being,[68] serves as Ricœur's founding figuration of human rights. It gives the volatile, innovative and creative power of common action the duration or continuity that it needs, resulting in the institutionalized power of the political order. Aeneas, by the way, is one of the many refugees the Greek and Roman mythology remembered in both countries' narratives. Aeneas, who is fleeing and who has lost all rights, is *still* carrying his father on his back. For Ricœur, not the Roman *civitas* or the "Founding Fathers" of the American Revolution, but Aeneas is the more appropriate founding figure of human rights – a human being who does not lose his dignity *in transit*, because he does not lose his capability to respond. What better "founding figure" for the renewal of the international institutions could we have? After all, it is Aeneas and his sisters and brothers who keep us from being blinded by the multiple facades of dominating powers who love the sweet rhetoric of human rights but hate to carry the burden of their realization. If Aeneas is the symbol of the authority behind the human rights regime, it is upon all of us, the inhabitants of the *One World*, to spell out the actions, practices, and institutions that are in accordance with Ricœur's three levels of agency, namely our plural ethical orientations, our universal normative obligation to fight evil and violence, and the practical and political compromises that are necessary because tragedies are unavoidable in our personal and in our shared political life.[69] This task, then, paves the way for the approach I am pursuing. It is distinct from a realist approach that prioritizes national interests in the case of conflicts of human rights and national rights; it is distinct from a nationalist approach that has no place for universal human rights that every human being can claim; and it differs from a cosmopolitan approach insofar as it presupposes the *One World* as the globalized space of the planet in which the right to be protected rests upon the moral capability to respond to the other as a neighbor.

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67 Ibid.

68 P. Ricœur, *The Course of Recognition*.

69 P. Ricœur, *Oneself as Another*.

Judaism, Christianity, and Islam all share an ethics that begins with a divine "No" to undignified lives, and a divine "Yes" to every individual human's dignity. This commonly shared ethical norm of "love of one's neighbor", is, for example, linked to the Abrahamic tradition, creating a particularly "thick" narrative ethics. In the Christian context, the norm of "neighborly love" cannot be understood without Christianity's story that begins with a young Jewish woman who lives under the occupation of a foreign power, poor, engaged but not married, pregnant, and in transit. In Jewish, Christian, and Islamic ethics, it is impossible to determine abstractly whom one ought to love without overriding every individual's otherness and uniqueness. The neighbor, the stranger, and the enemy are others who are defined as such in particular contexts. Neighbors emerge from interactions between two sides who *become* neighbors for each other when they *encounter* each other as neighbors: one must therefore strive to become *the other's* neighbor as well as letting the other become a neighbor to oneself. Whether it is possible to transform a relationship of strangers to becoming neighbors is a question of practice – just as it is a question of practice whether hostility can be transformed into hospitality and neighborly love. When we push human rights to the background of our politics or when we merely define them as abstract rights, we lose the close link between humanness and humaneness, between self-identity and moral identity: rendering others ineligible to human rights, undeserving of our humaneness and moral response, ultimately annihilates our own humaneness that can only be actualized in the ways we treat others.

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