

The Enduring Relevance of Arendt's Understanding of the Harm of Statelessness

By James Draper

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Abstract

This paper examines Hannah Arendt's understanding of the harm of statelessness, exploring how it can illuminate our understanding of statelessness today. I argue that the harm Arendt identifies is two-fold, it consists in both (i) the lack of human rights protection associated with not being a citizen, and (ii) the alienation from the political community inherent in not being a citizen. I argue that the 'right to have rights' posited by Arendt as the appropriate response to such harms should not only be understood as being the right to access human rights x , y , and z , but should also be understood as being the right to have standing in the political community as an agent worthy of bearing such rights. Such an understanding of the 'right to have rights', a phrase often mobilised in discourse surrounding statelessness, can help us to engage with the problems of alienation and marginalisation facing stateless persons.

1. Introduction

We often speak of the right to a nationality as ‘the right to have rights’, but the exact content of this is often left unspecified. Stateless persons around the world are routinely denied access to fundamental human rights, be it through indefinite detention, exclusion from basic education and healthcare services, denial of free movement, or other rights-violating actions. It is not clear, however, that the harm of statelessness itself *consists in* the violation of these rights. A further relevant consideration may be one’s position as a stateless person relative to the political community.

One of the few philosophers to engage with statelessness, Hannah Arendt, presented her understanding of statelessness in *The Origins of Totalitarianism*. In this paper I explore its relevance for our understandings of statelessness today. I begin by outlining how Arendt understands the harm of statelessness, which is two-fold: it consists in (i) the lack of human rights protection, and (ii) the alienation from the political community. As a response to such harms, Arendt posits the existence of ‘the right to have rights’. I argue that given the enduring relevance of both aspects of the harm of statelessness, we should understand the right to a nationality, or the ‘right to have rights’, not only as being concerned with the right to access human rights X, Y, and Z, but also to be the right to have standing in the political community as an agent worthy of bearing such rights.

2. The Two-fold Harm of Statelessness

The cases of statelessness that concerned Arendt stemmed from quite different considerations from those that bring about statelessness today; her concern stems from the background of the Nazi regime and the ‘scramble for Africa’, where those considered outside of the bounds of the political community could be drastically mistreated. Although we face different challenges in relation to statelessness today, her analysis of the *harm* of statelessness has enduring relevance today. Arendt highlights the process of dehumanization faced by stateless persons through their reduction to ‘mere’ humans:

[O]nce they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth.¹

The harm identified here by Arendt is two-fold: it consists in the lack of human rights protection (their rightlessness) and in their alienation from the community (that they are the ‘scum of the earth’). In this section, I aim to explicate these two aspects of harm, and to demonstrate their enduring relevance for statelessness today.

2.1. Lack of Human Rights Protection

Even in its nascent stage, the human rights regime that has come to dominate international law and politics had elements that could be almost universally agreed upon: both *universality*² (in that human rights are assigned to people *qua* humans) and *inalienability* (in that there is no situation in which they do not apply to human beings: “one cannot stop being human, no matter how barbarously one is treated”³). Arendt’s analysis, however, aims to demonstrate that such rights *are* alienable, at least in practice, in that they are in fact ascribed to *citizens* rather than to human beings *qua* human beings. Her analysis was not conceptual, but rather demonstrated that human rights could be comprehensively removed for stateless persons, since human rights were predicated on the assumption of their protection through the nation-state system:

¹ Arendt, *The Origins of Totalitarianism*, 267.

² Universal, in the sense I use it here, refers to the universal *ascription* of human rights, not to any purported timelessness.

³ Donnelly, *Universal Human Rights*, 10.

[T]he moment that human beings lacked their own government and had to fall back upon their minimum human rights, no authority was left to protect them and no institution was willing to guarantee them.⁴

She argued that in many cases, stateless persons could actually benefit from committing crimes, as they would in such cases at least have some standing before the law.⁵ The dependence of human rights protection on the system of nation-states has been characterised by Arendt as the “aporia”⁶ of human rights. Whilst the normative significance of human rights might be universal, their ascription is dependent on nation-states, and so those outside of this system are excluded.

One might imagine that the proliferation of international law since Arendt wrote *The Origins of Totalitarianism* might have rendered her analysis out-of-date. In fact, however, in spite of the right to a nationality itself being inscribed as a human right in the Universal Declaration,⁷ and in spite of the institution of important legal instruments such as the 1954 Convention relating to the Status of Stateless Persons⁸ and 1961 Convention on the Reduction of Statelessness,⁹ citizenship is ultimately determined by the state, and functions as “a practical prerequisite for accessing political and juridical processes and for obtaining economic, social and cultural rights”.¹⁰ Volker Türk, Director of International Protection at UNHCR, has described the situation thus:

There is a fundamental contradiction in a world of nation-states in which millions of individuals are not recognised as belonging to any state.... Yet the scourge of statelessness persists, affecting the lives of individuals and communities the world over.... The fate of the stateless is harmful for the individuals concerned since they do not exist for the State, are invisible and deprived of the fundamental rights associated with nationality.¹¹

Few countries have ratified the 1954 Convention, and the situation of stateless persons remains precarious.¹² Those who are unable to produce proof of identity or nationality risk indefinite detention and unnecessary imprisonment, which is “one of the most pervasive and most difficult problems faced by stateless persons”,¹³ since without identity documentation, or a ‘home state’, states do not know to where stateless persons can be deported. Perks and Clifford point to the example of Ahmed Ali Al-Kateb, a stateless Palestinian man detained in Australia from 2000 to 2003.¹⁴ Kingston, Cohen and Morely point out that lack of nationality is often an obstacle in access to healthcare.¹⁵ We can see the enduring relevance of Arendt’s analysis in the fact that stateless persons are still routinely denied access to fundamental human rights, which are protected through the system of states.

2.2. Alienation from the Political Community

For Arendt, the harm of statelessness does not only consist in the lack of practical recognition of one’s human rights. The stateless person is also faced with the denial of their status within the political and social community as a person worthy of partaking in public life. She writes:

⁴ Arendt, *The Origins of Totalitarianism*, 292.

⁵ *Ibid.*, 286.

⁶ By ‘aporia’, Arendt means that whilst both the universality of rights and the nation-state system are individually plausible, they are in contradiction. The term is taken from the German text: Arendt, *Elemente und Ursprünge totaler Herrschaft*, chap. 9.

⁷ *The Universal Declaration of Human Rights*, sec. 15.

⁸ Hereinafter: 1954 Convention.

⁹ Hereinafter: 1961 Convention.

¹⁰ Weissbrodt and Collins, ‘The Human Rights of Stateless Persons’, 265.

¹¹ UNHCR, ‘Remarks by Volker Türk, Director of International Protection’.

¹² UNHCR, ‘Protecting the Rights of Stateless Persons’.

¹³ Weissbrodt and Collins, ‘The Human Rights of Stateless Persons’, 267.

¹⁴ Perks and Clifford, ‘The Legal Limbo of Detention’.

¹⁵ Kingston, Cohen, and Morley, ‘Debate’.

*The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.*¹⁶

Though some of Arendt's critics have taken issue with the end of this quotation,¹⁷ it should be clear that 'nobody wants even to oppress them' is written in a tone "of bitter irony rather than contempt".¹⁸ In *We Refugees*, Arendt writes that "passports or birth certificates, and sometimes even income tax receipts, are no longer formal papers but matters of social distinction".¹⁹ The alienation from the community faced by stateless persons is not only in their lack of access to civic rights such as the right to vote, it is a deeper exclusion from the public sphere. Stateless persons, pushed outside of the bounds of the political community, can be victimised and neglected, and they suffer in this way precisely because of their marginalisation from the community. More fundamentally, however, in the context of a world organised in terms of states, "the loss of a polity itself expels him from humanity".²⁰

The marginalisation of stateless persons persists today in the communities in which they live. The Institute on Statelessness and Inclusion explicates their plight:

*Being slated as outsiders, not just by their country but by all countries, may indeed make the stateless easy targets for victimisation within society as they may be seen as less deserving of compassion, protection and support.*²¹

A striking example of the marginalisation of stateless persons can be found in the plight of the Bidun in Kuwait, who have been systematically denied claims to nationality since the mid-1980s,²² and where cases of denationalisation seem to have been politically motivated.²³ Stateless persons are not only unable to participate in public life because they lack of legal status within the community, but also because they often live in precarious situations which leave them unable to effectively participate. Batchelor points out that statelessness is "not merely a legal problem, it is a human problem",²⁴ and Tucker points out that stateless persons are often "undocumented, invisible, under researched and living on the margins of society".²⁵ In Myanmar, "systematic discrimination renders the Rohingya stateless, while their status as a stateless population acts as validation for further discrimination and persecution".²⁶ Statelessness today, as Arendt saw, is not only concerned with legal recognition of rights, but is bound up with the social contexts in which it exists, and such alienation from the community is an important aspect of the harm of statelessness that we ought not to fail to recognise.

3. 'The Right to Have Rights'

For Arendt, the 'right to have rights' was posited as the solution to the problem of statelessness, and

¹⁶ Arendt, *The Origins of Totalitarianism*, 295–96.

¹⁷ See, for example, Rancière, 'Who Is the Subject of the Rights of Man?', 64.

¹⁸ Schaap, 'Enacting the Right to Have Rights', 13.

¹⁹ Arendt, 'We Refugees', 119.

²⁰ Arendt, *The Origins of Totalitarianism*, 297.

²¹ van Waas, de Chickera, and Albarazi, 'The World's Stateless'.

²² Bencomo, 'Kuwait - Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression'.

²³ 'Kuwait Urged to Stop Stripping Citizenship'.

²⁴ Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 159.

²⁵ Tucker, 'The Humanitarian Side of Statelessness; Statelessness within the Framework of the Millennium Development Goals', 12.

²⁶ Zawacki, 'Defining Myanmar's "Rohingya Problem"', 19.

such a right has often been understood as the right to citizenship. Justice Warren, for example, claimed that “[c]itizenship is man’s basic right, for it is nothing less than the right to have rights”.²⁷ Arendt writes:

*We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.*²⁸

Though this is expressed as *two* rights in the above quote, they have generally been understood to be *one* fundamental right; indeed, the later title of this section was ‘There Is Only One Human Right’.²⁹ They can be identified as one right because, for Arendt, speech and action (one’s ‘actions and opinions’) are only meaningfully possible in the political community. Action “corresponds to the human condition of plurality”, and plurality itself is the “*conditio per quam*”³⁰ (sufficient condition) of political life. Arendt does not mean by this that one literally cannot *act* outside of the political community, but rather that *action*, as distinct from *labour* and *work* in the Arendtian framework, takes place between people; it is the “political activity par excellence”.³¹ The right not to be excluded from the political community, as the right to have status as a human who can meaningfully act in the public sphere, is then the right which is denied to stateless persons. The protection of this (emergent³²) right is for Arendt the solution to the ‘aporia’ of human rights; it functions as a condition for the inclusion into the political sphere, where rights function.

Some critics, however, have taken issue with the idea that one can be ‘outside’ of the political community. Rancière accuses Arendt of “extolling the brightness of the political sphere of appearance against the ‘dark background of mere givenness’”.³³ Whereas for Arendt, “it is only by virtue of participating in politics that a shared reality is constituted”,³⁴ for Rancière, the idea that there is a sphere outside of politics is inconceivable; the idea of such a realm “relates less to reality and more to Arendt’s rigid opposition between the realm of the political and the realm of private life”.³⁵

Though interesting, this debate is not of great relevance for taking alienation from the political community to be a serious concern in how we respond to statelessness. Arendt’s opposition between the public and private sphere is not necessary for the recognition that stateless persons are, in virtue of their statelessness, *practically* excluded from the political community. In the same way that Arendt’s concern that human rights are predicated on the nation-state system does not need to deny the normative significance of human rights, the alienation of stateless persons from the political community, in terms of their practical inability to have their voice heard, is of importance regardless of whether stateless persons are ‘outside of the political’ in a meaningful sense. Gibney writes:

²⁷ Justice Warren, in *Perez v. Brownell*, 356, 64 (U.S. Supreme Court 1958), 356.

²⁸ Arendt, *The Origins of Totalitarianism*, 297.

²⁹ This is in the German version of the text, as ‘*Es gibt nur ein einziges Menschenrecht*’, as is noted in Menke, ‘The “Aporias of Human Rights” and the “One Human Right”’, 741.

³⁰ Arendt, *The Human Condition*, 7.

³¹ *Ibid.*, 9.

³² One criticism of Arendt’s ‘right to have rights’, is that it cannot be said to be a ‘right’, since rights only function within the political sphere for Arendt, and since stateless persons are precisely outside of such a sphere. Given that the focus of this paper is to examine the relevance of Arendt’s argument, a full analysis of the nature of rights in Arendt’s political philosophy takes us beyond its scope. In brief, Arendt’s understanding of the ‘right to have rights’ conceives of it as an ‘emergent’ right which is generated under the condition of plurality, through what she terms ‘natality’. For a more complete analysis, see Benhabib, ‘Feminist Theory and Hannah Arendt’s Concept of Public Space’; Birmingham, ‘The An-Archic Event of Natality and the “Right to Have Rights.”’

³³ Rancière, ‘Does Democracy Mean Something’, 55.

³⁴ Schaap, ‘Enacting the Right to Have Rights’, 14.

³⁵ Rancière, ‘Who Is the Subject of the Rights of Man?’, 64.

*The stateless typically are not free-floating, deracinated individuals, moving aimlessly around the globe. They are usually people settled in particular societies, albeit lacking legal recognition of and appropriate protection for their status as residents.*³⁶

In practical terms, *recognition* as actors who have the status of rights-bearers in the community that is denied to stateless persons. Alienation from the political community is an important aspect of the harm of statelessness, and it should as such be taken seriously in our policy responses to statelessness. Taking seriously the alienation that stateless persons face in relation to the wider community will mean making sure that the voices of stateless persons are heard. Legal recognition of statelessness, facilitating access to rights of residence and, where appropriate, fast-tracked access to citizenship are all measures that can be taken to reduce the institutional alienation faced by stateless persons. Engaging with alienation must also involve taking steps to address the more informal discrimination and marginalisation that stateless persons often face. It is not easy to stop people being seen as ‘outsiders’, but a wider understanding of statelessness amongst the general public would certainly be helpful here. Although statelessness is clearly a human rights concern, it is also a matter of being recognised as an actor with a status that merits rights in the first instance. Those denied a nationality are not only denied access to rights, but are also denied their status as equal persons in the political community. As such, when we talk about the right to a nationality as ‘the right to have rights’, it is important to bear in mind the two-fold harm of statelessness as it can be understood through a reading of Arendt. ‘The right to have rights’ is not only the right to access human rights, but the right to equal participation as the member of a community who is ascribed rights in the first instance.

4. Conclusion

I have explicated Arendt’s understanding of the harms of statelessness, which are the lack of human rights protection and the alienation from the political community, and demonstrated their enduring relevance. Given their enduring relevance, we should take seriously Arendt’s conceptualisation of the right to a nationality, or ‘the right to have rights’, as being concerned not only with accessing other human rights, but moreover with the significance of one’s status as an equal, rights-deserving member of the political community. The existing discourse surrounding stateless persons often makes reference to the ‘right to have rights’, but a fuller understanding of the harm of statelessness will help us to better understand the plight faced by stateless persons, and how we can best respond to it. Understanding that stateless persons, in that they are not *recognised* as members of the political community, are alienated from it, is an important step forwards. Understandings which not only address statelessness as an issue of access to human rights, but moreover as an issue of alienation and marginalisation, will allow us to design policy responses which address this under-appreciated aspect of statelessness.

³⁶ Gibney, ‘Statelessness and the Right to Citizenship’, 50.

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