Political Geographies in a Global World: Arendtian Reflections* BY SEYLA BENHABIB

For Hannah Arendt, one of the principal concerns of political philosophy was to “think the new” in human affairs. As the art of making distinctions, thinking had to bring to bear upon political phenomena categories that would enable one to grasp the novelty of what had transpired, but without losing a sense of the past. The history of philosophy, therefore, should not be treated as a source of eternal dogma, but as the repository of distinctions, categories, and arguments that would still orient one in the present. Arendt, as is well known, named this the “activity of the pearl diver” (Arendt, 1978a: 212; cf. Benhabib, 1996: 91-101). I begin this essay in an Arendtian spirit with an attempt to think the new in our political world.

One of the most commonly heard contentions in the aftermath of September 11 was that even if the terrorist attacks on the World Trade Center and the Pentagon equaled war in the civilian and property damages they inflicted, in the deliberateness and precision with which they were executed, and in the brazenness with which they violated customary moral, legal, and international norms, the United States Congress could not actually declare “war”: not because the enemy was as yet unknown, but because a state can declare war only against another state. The idea that a

democratic nation-state would declare war on a global network of loosely organized sympathizers of a religious or civilizational cause strained all categories of international law with which the world has lived since 1945, and in which nation-states are the principal recognized actors.¹

Recall Max Weber’s classically modernist definition of the state as “the legitimate monopoly over the use of violence within a recognized and bounded territory” (Weber, 1978: 904-905). Modern statehood is based on the coupling together of the principles of territoriality, administrative and military monopoly, including the use of violence, and the legitimacy to do so. When states decay, dissolve, or secede, these three principles fall asunder. Their territory can become a staging ground for operations not only of guerrilla warfare, but of drug smuggling, weapons production, contraband, and other illegal activities; administrative and military competence is overtaken by units at the substate level such as warlords, commandos, traditional chieftains, or religious leaders; and legitimacy loses its representational quality in that there is no longer a unified people to whose will it either refers or defers—legitimacy either flows from the barrel of a gun or from other sources of supra- and subnational ideological worldviews, be these race-, religion-, or civilization-based.

The decaying and weak nation-states of the contemporary world bear similarities as well as differences to the totalitarian regimes of the mid-twentieth century. The breakdown of the rule of law; the destruction of representative and democratic institutions; the pervasiveness of violence and the universalization of fear are features of both state forms. The totalitarian regimes of the mid-twentieth century, however, although at times they mobilized “the movement” against the state bureaucracy, by and large strengthened and rebuilt the state by rendering it subservient to their ideologies. But the postmodern/quasi-feudal states of the present, like Afghanistan, Chechnya, Bosnia, and Rwanda, emerge as a result not of the strengthening but of the destruction of the territorial and administrative unity of the state in the name
of subunits, which are then globally networked. As Hannah Arendt has shown us, totalitarian movements also had globalizing ambitions in that they touted supranational ideologies like pan-Germanism and pan-Slavism (Arendt, 1968 [1951], part 3). Yet the global ideologies of today’s terror movements are both larger and smaller in range—instead of the ideology of linguistic or cultural unity among Slavic or Germanic nations, for example, we are dealing with ideologies aimed at tribes, ethnicities, or, paradoxically, at a vision of a community of believers that transcends them all—namely the Islamic umma [community of the faithful]. The new unit of totalitarianism is the terrorist cell, not the party or the movement; the goal of this new form of war is not just the destruction of the enemy but the extinction of a way of life. The emergence of nonstate agents capable of waging destruction at a level hitherto thought to be only the province of states and the emergence of a supranational ideological vision with an undefinable moral and political content, which can hardly be satisfied by ordinary political tactics and negotiations, are the unprecedented aspects of our current condition.

As in the previous century, democracies, faced with this novel form of totalitarianism, confront unique challenges. The presence of an enemy who is neither a military adversary nor a representative agent of a known state creates confusion as to whether it is the police and other law enforcement agencies or the military who should take the lead in the investigation and struggle; the lines between acts of crime and acts of war are blurred. The concept of an “internal enemy,” which has been promoted since September 11, 2001, against suspect groups through surveillance, wiretapping, and stricter immigration controls, is not one that democracies can live with. The category of the terrorist as an “internal enemy,” as one who is among us, even if not one of us, strains the democratic community by revealing that the rule of law is not all inclusive and that violence lurks at the edges of everyday normalcy. Our thinking about foreigners, refugees, and asylees is colored by the image of others as potential enemies; the “other” becomes the criminal.
Against this background, Hannah Arendt’s reflections on the paradoxes of the state-centric system in the West and its collapse during the interwar period in Europe gain a momentous significance. Just as Arendt offered us paradoxes—creative and productive ones—I, too, will approach the question of borders, boundaries, and crossings in a state-centric world in a spirit of paradoxical reflection. We may be at a point in history when the state-centric system is waning: global terrorism and the global influx of people are part of the same maelstrom. Yet our thinking and acting, laws as well as institutions, practices as well as alliances, are governed by state-centric terms that presuppose the unity of territoriality, the state’s monopoly over the legitimate use of the means of violence, and the attainment of legitimacy through representative institutions. Yet in the treatment of “others” within and without its borders, the always present tensions among the two constituent aspects of the nation-state, territoriality and democratic legitimacy, reveal themselves. Arendt characterized this tension as the paradoxes in our thinking about the “rights of man.” I name these philosophical and political puzzles an inquiry into “political geographies.”

_The Decline of the Nation-State and the “End of the Rights of Man”_

More than a quarter-century after her death in 1975, Hannah Arendt has emerged as the political theorist of the post-totalitarian moment. The author of _The Origins of Totalitarianism_—the first major philosophical treatise to deal with totalitarianism as a political regime, and a work that forever changed our understanding of politics and human nature—Arendt emphasized the special importance of an autonomous public realm. She saw the public sphere, as distinct from the family and the economy, as the arena in which we are uniquely able to express our human capacity to jointly address common concerns. Totalitarianism has been
its greatest enemy, but the distinctive values of public life have suffered as well from the pressures of the capitalist economy and administrative bureaucracy, and from the invasive presence, in the media in particular, of intimate sexual stories that are properly the concern of the private domain.

It is not only her insights about the significance of a vibrant and free public sphere in democratic civil societies, East and West, that earn Arendt the title of the "theorist of the post-totalitarian moment." It is also Arendt, the theorist of minority rights and statelessness, of refugees and deported peoples, whose words strike the deepest chord in a world shaken by civil wars and ethnic massacres, cultural self-determination movements, and weak nation-states. In *The Origins of Totalitarianism*, Arendt writes that something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to a community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. . . . *We become aware of the existence of a right to have rights* (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation (Arendt, 1968 [1951]: 177; my emphasis).

The phrase "the right to have rights" and Arendt's resounding plea for the acknowledgment of the right of every human being to "belong to some community" are introduced at the end of part two of *The Origins of Totalitarianism*, which is called "Imperialism."
To understand Arendt’s philosophical intentions it is necessary to follow the broad outlines of this discussion. In the opening sections of “Imperialism,” Arendt examines the European “scramble for Africa.” Her thesis is that the encounter with Africa allowed the colonizing white nations such as the Belgians and the Dutch, the Germans and the French, to transgress moral and civil limits abroad that would normally control the exercise of power at home. In the encounter with Africa, civilized white men regressed to levels of inhumanity by plundering, looting, burning, and raping the “savages” whom they encountered. Arendt uses Joseph Conrad’s *Heart of Darkness* as a parable of this encounter. The “heart of darkness” is not in Africa alone; twentieth-century totalitarianism brings this center of darkness to the European continent itself. The lessons learned in Africa seem to be practiced in the heart of Europe.

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

Through an analysis whose significance for contemporary developments is only too obvious after the events in the former
Yugoslavia, Arendt subsequently turns to the nationalities and minorities question that emerged in the wake of World War I. The dissolution of the multinational and multiethnic empires like the Russian, the Ottoman, and the Austro-Hungarian, and the defeat of the Kaiserreich, led to the emergence of nation-states, particularly in the territories of East-Central Europe, which enjoyed neither religious, linguistic, nor cultural homogeneity. The successor states of these empires, including Poland, Austria, Hungary, Czechoslovakia, Yugoslavia, Bulgaria, Lithuania, Latvia, Estonia, the Greek and the Turkish republics, controlled territories in which large numbers of so-called national minorities resided. On June 28, 1919, the Polish Minority Treaty was concluded between President Woodrow Wilson and the Allied and associated powers to protect the rights of minorities who made up nearly 40 percent of the total population of Poland at that time and consisted of Jews, Russians, Germans, Lithuanians, and others. Thirteen similar agreements were then drawn up with various successor governments “in which they pledged to their minorities civil and political equality, cultural and economic freedom, and religious toleration” (Fink, 1972: 331). Not only were there fatal unclarities in how a “national minority” was to be defined, but the decision that the protection of minority rights applied only to the successor states of the defeated powers, whereas Great Britain, France and Italy were exempted from the extension of the minority treaties to their own territories, created cynicism about the motivations of the Allied powers in supporting minority rights in the first place (Fink, 1972: 334). This situation led to anomalies whereby, for example, the German minority in Czechoslovakia could petition the League of Nations for the protection of its rights but the large German minority in Italy could not. The position of Jews in all successor states was also unsettled: if they were a “national minority,” was it in virtue of their race, their religion, or their language that they were to be considered as such, and exactly which rights would this minority status entail? Besides rights to the free exercise of religion and instruction in Hebrew schools, what edu-
cational and cultural rights would be granted to populations as diverse as the Austrian Jews, the Russian Jews, and the Turkish Sephardic community in the former territories of the Ottoman Empire, to name but a few instances?

For Arendt, the gradual discord within, and the resulting political ineptitude of the League of Nations, the emerging conflicts between “national minorities” themselves, the hypocrisy in the application of the Minority Treaties were harbingers of developments to come in the 1930s. The modern nation-state was being transformed from an organ that would execute the rule of law for all its citizens and residents into an instrument of the nation alone. “The nation has conquered the state, national interest had priority over law long before Hitler could pronounce ‘right is what is good for the German people’” (Arendt, 1968 [1951]: 155).

The perversion of the modern state from being an instrument of law into one of lawless discretion in the service of the nation was completed when states began to practice massive denaturalizations of unwanted minorities, thus creating millions of refugees, deported aliens, and stateless peoples across borders. Refugees and minorities, stateless and displaced persons, are special categories of human beings “created” through the actions of the nation-state. In a territorially bound nation-state system—that is, in a “state-centric” international order—one’s legal status is dependent on protection by the highest authority that controls the territory upon which one resides and issues the papers to which one is entitled. One becomes a refugee if one is persecuted, expelled, and driven away from one’s homeland; one becomes a minority if the political majority in the polity declares that certain groups do not belong to the supposedly “homogeneous” people; one is a stateless person if the state whose protection one has hitherto enjoyed withdraws such protection, as well as nullifying the papers it has so far granted; one is a displaced person if, having been once rendered a refugee, stateless, or a minority, one cannot find another polity to recognize one as its member, and
remains in limbo, caught between territories, none of which desire one to be its resident. It is here that Arendt concludes:

_We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation. . . . The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the “nature” of man. . . . [that] the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible”_ (Arendt, 1968 [1951]: 177-178; my emphasis).

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

_The Many Meanings of “The Right to Have Rights”_

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

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

The first use of the term “right” in the phrase “the right to have rights” does not show the same discursive structure as its second use: in the first mention, the identity of the other(s) to whom the claim to be recognized as a rights-bearing person is addressed remains open and indeterminate. Note that for Arendt such recognition is first and foremost a recognition to “membership,”
the recognition that one “belongs” to some organized human community. One’s status as a rights-bearing person is contingent upon the recognition of one’s membership. But who is to give or withhold such recognition? Who are the addressees of the claim that one “should be acknowledged as a member”? Arendt’s answer is clear: humanity itself. And yet she adds, “It is not clear that this is possible.” The asymmetry between the first and second uses of the term “right” derives from the absence in the first case of a specific juridico-civil community of consociates who stand in a relation of reciprocal duty to one another. And what would this duty be? The duty to recognize one as a “member,” as one who is protected by the legal-political authorities and treated as a person entitled to the enjoyment of rights.

This claim and the duty it imposes on us are “moral” in the Kantian sense of the term because they concern us as human beings as such, thus transcending all cultural, religious, and linguistic affiliations and distinctions that distinguish us from each other. Let us assume that the moral law in its many formulations is valid and let us focus on the “Zweck an sich” (end-in-itself) principle, namely: “Act in such a way that you treat humanity in all your actions as an end, and never as means only.” For Kant, this moral law legitimizes the “right of humanity in one’s person,” that is, the right to be treated by others in accordance with certain standards of human dignity and worthiness. This right imposes negative duties upon us, duties that oblige us not to act in such a way as to violate the right of humanity in every person. Such violation would occur first and foremost if and when we would refuse to enter into civil society with each other, that is, if we were to refuse to become legal consociates. The right of humanity in our person imposes a reciprocal obligation on us to enter into civil society and to accept that our freedom will be limited by civil legislation, such that the freedom of one can be made compatible with the freedom of each under a universal law. The right of humanity leads Kant to justify the social contract of civil government under which we all become legal consociates. In Arendtian
language, the right of humanity entitles us to become a member of civil society such that we can then be entitled to juridico-civil rights. Arendt’s construction is totally Kantian, but not her philosophical argumentation or justification. Why?

In these particular pages Arendt does not give a philosophical argument against foundationalist discourses that would ground human rights on nature or history; instead, she produces what we may call a “zeitgeschichtliche Diagnose”:

Man of the twentieth century has become just as emancipated from nature as eighteenth-century man was from history. History and nature have become equally alien to us, namely, in the sense that the essence of man can no longer be comprehended in terms of either category. On the other hand, humanity, which for the eighteenth century in Kantian terminology was no more than regulative idea, has today become an inescapable fact. The new situation, in which “humanity” has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights or the right of every individual to belong to humanity, should be guaranteed by humanity itself (Arendt, 1968 [1951]: 178).

It is the political realities of the twentieth century that have rendered the ideals of nature and history hollow as philosophical foundations. The Kantian ideal of humanity, far from being merely regulative, has now become “an inescapable fact” with moral resonance. The addressees as well as claimants of the “right to have rights” are humans themselves. To deepen the perplexities of Arendt’s reflections, it will be necessary to return to Kant’s formulation of “cosmopolitan right” in his essay on “Perpetual Peace.”
Written in 1795, upon the signing of the Treaty of Basel by Prussia and revolutionary France, Kant’s essay on “Perpetual Peace” has enjoyed a considerable revival of attention. What makes this essay particularly interesting under the current conditions of political globalization is the visionary depth of Kant’s project. Kant, as is well known, formulates three “definitive articles for perpetual peace among states.” These read: “The Civil Constitution of Every State Should Be Republican”; “The Law of Nations Shall Be Founded on a Federation of Free States”; and “The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality” (Kant, 1914 [1795]: 434-443; 1957: 92-103). Much scholarship on this essay has focused on the precise legal and political forms these articles could or would take, and on whether Kant meant to propose the establishment of a world federation of republics rather than a league of sovereign nation-states (Voelkerbund) (see Benhabib, 2001: 361-387).

What remains obscure and frequently not commented on is the third article of perpetual peace, the only one Kant himself explicitly designates with the terminology of the “Weltbuergerrecht.” The German reads: “Das Weltbuergerrecht soll auf Bedingungen der allgemeinen Hospitalitaet eingeschraenkt sein” (Kant: 1914, 443). Kant himself notes the oddity of the locution of “hospitality” in this context, and remarks that “it is not a question of philanthropy but of right.” In other words, hospitality is not to be understood as a virtue of sociability, as the kindness and generosity one may show strangers who come to one’s land or who become dependent on one’s act of kindness through the circumstances of nature or history; hospitality is a “right” that belongs to all human beings insofar as we view them as potential participants in a world republic. But the “right” of hospitality is odd in that it does not regulate relationships among individuals who are members of a particular civil entity and under whose jurisdiction they
stand; rather, the “right” of hospitality is situated at the boundaries of the polity; it delimits civic space by regulating relations among members and strangers.

Hence, the “right of hospitality” occupies that space between human rights and civil rights, between the right of humanity in our person and the rights that accrue to us insofar as we are members of specific republics. Kant writes:

Hospitality (Wirtbarkeit) means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility. It is not the right to be a permanent visitor (Gastrecht) that one may demand. A special beneficent agreement (ein . . . wohltätiger Vertrag) would be needed in order to give an outsider a right to become a fellow inhabitant (Hausgenossen) for a certain length of time. It is only a right of temporary sojourn (ein Besuchsrecht), a right to associate, which all men have. They have it by virtue of their common possession (das Recht des gemeinschaftlichen Besitzes) of the surface of the earth, where, as a globe, they cannot infinitely disperse and hence must finally tolerate the presence of each other (Kant, 1914: 443; 1957: 103).

Kant distinguishes between the “right to be a permanent visitor,” which he calls Gastrecht, from the “temporary right of sojourn” (Besuchsrecht). The right to be a permanent visitor can be awarded only through a freely chosen special agreement that goes beyond the call of moral duty and legal right; Kant names this a “wohltätiger Vertrag.” It is a special privilege the republican sovereign can award certain foreigners and strangers who, for example, abide in their territories, who perform certain functions, who represent their respective political entities, or who engage in long-term trade.
The right of hospitality, by contrast, entails a claim to temporary residency only that cannot be refused if such refusal would involve a violation of the rights of humanity in the person of the other. To refuse sojourn to victims of religious wars, to victims of piracy or ship-wreckage when such refusal would harm them, is untenable, Kant writes. What is unclear in Kant’s discussion is whether such relations among peoples and nations involve acts of supererogation or whether they entail indeed claims concerning “the rights of humanity in the person of the other.” We may see here the juridical and moral ambivalence that affects discussions of “the right of asylum” and “the rights of refugees” to this day. Are the rights of asylum and refuge “rights” in the sense of being reciprocal moral obligations that, in some sense or another, are grounded upon our mutual humanity? Or are these “right claims” in the legal sense of enforceable norms of behavior individuals and groups can hold each other to, and in particular, force sovereign nation-states to comply with? Kant’s construction provides no clear answer. The right of hospitality seems to entail a moral claim with potential legal consequences in that the obligation of the receiving states to grant temporary residency is anchored in a republican cosmopolitical order, which itself requires the voluntary compliance of the member states.

The right to seek human association, or in the literal translation of the German, “to offer oneself to civil association (Gesellschaft) with others” is for Kant a fundamental human right; in fact, it is the core of what it means to be a “Weltbürger.” In true Enlightenment fashion, Kant celebrates the ship and the camel (“the desert ship,” as he calls the latter) for reducing distances, breaking down barriers among local communities, and bringing the human race together. To deny “the possibility of seeking to communicate with prior inhabitants,” or “ein Verkehr zu suchen” (Kant, 1914: 444; 1957: 103), is contrary to cosmopolitan right.

Kant’s dilemma was how to accept the expansion of commercial and maritime capitalism in his time, insofar as these developments brought the human race closer together, without
condoning European imperialism in general or approving the confinement to the parish walls of self-protecting communities. The cosmopolitan right of hospitality is a right precisely because it is grounded upon the fundamental premise of the commonality of humanity in each and every person and the freedom of the will of each, which also includes the freedom to travel beyond the confines of one’s cultural, religious, and ethnocentric walls.

While Kant’s focus fell, for understandable historical reasons, on the right of temporary sojourn, my concern is with the unbridgeable gap he suggests exists between the right of temporary sojourn and permanent residency. The first is a right, the second a privilege; granting the first to strangers is an obligation for a republican sovereign, whereas allowing the second is an “act of beneficence.” The rights of strangers and foreigners do not extend beyond the peaceful pursuit of their means of livelihood upon the territory of another. What about the right to political membership then? Under what conditions, if any, can the guest become a member of the republican sovereign? How are the boundaries of the sovereign defined? Kant envisages a world condition in which all members of the human race become participants in a civil order and enter into a condition of “lawful association” with one another. Yet this civil condition of lawful coexistence is not equivalent to membership in a republican constitution. Kant’s cosmopolitan citizens still need their individual republics to be citizens at all. This is why he is so careful to distinguish a “world government” from a “world federation.” A “world government,” he argues, would be a “soulless despotism,” whereas a world federation (eine foederative Vereinigung) would still permit the exercise of citizenship within bounded communities (Kant, 1914: 453; 1957: 112).

Kant and Arendt on the Right to Political Membership

I have recalled at length Kant’s argument concerning “the cosmopolitical right to temporary sojourn” because this discussion
contains in nuce many of the dilemmas that still govern our thinking about the status of foreigners and immigrants, refugees and asylum seekers. We are still unsure whether the claims of refugees and asylum seekers articulate international obligations, the violation of which should lead to sanctions against sovereign states, or whether, vis-à-vis such claims, the prerogative of the political sovereign holds.

We should note how close Kant and Arendt are on this score. Just as Kant leaves unexplained the conceptual step that would lead from the right of temporary sojourn to the right of membership, so too Arendt could not base "the right to have rights" (that is, to be recognized as a member of some organized human community) on some further philosophical principle. For Kant, granting the right to membership remains the prerogative of the republican sovereign and involves an act of "beneficence."

In his commentary on Kant’s construction of cosmopolitan right, Jacques Derrida notes the chasm that exists between the ethical imperative of “hospitality”—the receptivity to the other; the responsibility toward the other—and the impossibility of ever institutionalizing the ethical fully in juridico-legal form. (Derrida, 2001: 11 ff.; 17 ff.) Responsible politics, a politics of responsiveness, is situated in this intermediate space created by the obligation to respond to the other and the necessity of creating institutions that circumscribe this obligation to the circle of one’s legal and political consociates. For Derrida, the inconclusive nature of Kant’s as well as Arendt’s reflections is indicative of their refusal to compromise the ethical and the moral in the name of the political.

According to Giorgio Agamben in Homo Sacer: Sovereign Power and Bare Life (1998), the inability of international law to bend the will of the sovereign to recognize certain others as members is emblematic of the nature of sovereign power in modernity. Whereas Derrida underscores the necessity as well as the impossibility of ever mediating the political satisfactorily with the ethical, for Agamben the paradoxes in the formula, “the right to have rights,” reveal the arbitrariness of modern sovereign power. In a
brilliant and obscure synthesis of Carl Schmitt and Michel Foucault, Agamben argues that modern sovereign power is based on the mythical figure of the "homo sacer"—the one who can be killed by the state but who cannot be sacrificed. (Agamben, 1998: 126 ff.) The modern state can refuse refugees and asylees admittance but cannot sacrifice them, even if such refusal would result in their death. The political theology of modern sovereignty cannot be contained by the language of universal rights, and at no other point is the arbitrariness of sovereign power more evident than when it guards its borders, defines the rights of aliens and foreigners to enter its territory, and denies admission to some.

*The "Right to Have Rights"
under Conditions of Globalization*

When Hannah Arendt wrote that "the right to have rights" was a fundamental moral claim as well as an insoluble political problem, she did not mean that aliens, foreigners, and residents did not possess any rights. In certain circumstances, as with Jews in Germany, Greek and Armenian nationals in the period of the founding of the republic of Turkey (1923), German refugees in Vichy France—to name but a few cases—entire groups of people were "denaturalized" or "denationalized" and lost the protection of a sovereign legal body. For Arendt the institutional and theoretical solutions to this problem were not at hand. Institutionally, several arrangements have emerged since World War II that express the learning process of the nations of this world in dealing with the horrors of this century: the 1951 Geneva Convention relating to the Status of Refugees; the creation of the UN High Commissioner for Refugees (UNHCR); the institution of the World Court—and most recently, through the treaty of Rome, of an International Criminal Court. These are institutional developments for protecting those whose right to have rights has been denied. While procedures of constitutional review, which are
becoming more prevalent in European political practice through the development of the European Court of Human Rights, can help protect the basic rights of ethnic, religious, linguistic, sexual, and other minorities from the whims of the majority, the UN conventions remain nonenforceable humanitarian guidelines, as the tragedy of the war in Kosovo demonstrated very well.

The “right to have rights” transcends the facticity and contingencies of birth that differentiate and divide us from one another. The “right to have rights” can be realized only in a political community in which we are judged, not through the characteristics that define us at birth, but through our actions and opinions, by what we do and say and think. “Our political life,” writes Arendt, “rests on the assumption that we can produce equality through organization, because man can act and change and build a common world, together with his equals and only with his equals. . . . We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights” (Arendt, 1968 [1951]: 181).

In contemporary terms Arendt is advocating a “civic” as opposed to an “ethnic” ideal of polity and belonging. It is the mutual recognition by a group of consociates of each other as equal right-bearing persons that constitutes for Arendt the true meaning of political equality. Despite its perversions through the Dreyfus affair, France, for this reason, remained for Arendt “la nation par excellence.” Could it be then that the institutional, even if not philosophical, solution to the dilemmas of human rights is to be found in the establishment of principles of civic nationalism? Of course, civic nationalism would entail a jus soli-based mode of acquiring citizenship: the acquisition of citizenship rights through birth on the territory or through a citizen mother or father. Jus sanguinis, by contrast, means the acquisition of citizenship rights through ethnic lineage and descent alone, usually—but not always—through proof that the father was a member of a particular ethnic group. Jus sanguinis is based on the conflation of the ethnos with the demos, of “belonging to a nation”
with "membership in the state." Undoubtedly, Arendt defends an ideal of the civic nation based upon a *jus soli* mode of citizenship acquisition. Yet her diagnosis of the tensions inherent in the ideal of the nation-state suggests that there is a deeper malaise in this institutional structure, a deeper perplexity about the "decline of the nation-state and the end of the rights of man." To put the issue sharply: Arendt was just as skeptical about the ideals of world government as she was about the possibility of nation-state systems ever to achieve justice and equality for all. World government would destroy the space for politics in that it would not allow individuals to define shared public spaces in common (an assumption that underestimates the potentialities for planetary politics). The nation-state system, on the other hand, always carried within itself the seeds of exclusionary injustice at home and aggression abroad.

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

The modern state has always also been a specific nation-state. This is the case even when this nationalism is civic in form, as is usually associated with the American, French, and Latin American models, or ethnic, as is usually associated with the German and East-Central European models. The citizens of the modern state are always also members of a nation, of a particular human group who share a certain history, language, tradition, however problematically this identity may be constituted.
It is in her writings on Zionism that we find the key to Arendt’s critique of nationalism. In an essay published in 1948 and called “To Save the Jewish Homeland: There is Still Time,” Arendt criticized all nationalisms—the Zionism of Theodor Herzl’s type not excluded—for the thesis that “the nation was an eternal organic body, the product of inevitable growth of inherent qualities; it explains peoples, not in terms of political organizations, but in terms of biological superhuman personalities” (Arendt, 1978b [1948]: 156). For Arendt, this kind of thinking was prepolitical in its roots, because it applied metaphors drawn from the domain of prepolitical life, such as organic bodies, family unities, and blood communities, to the sphere of politics. The more nationalist ideologies stress aspects of identity that precede the political, the more they base the equality of the citizens on their presumed commonality and sameness. But equality among consociates in a democratic Rechtstaat should be differentiated from sameness of cultural and ethnic identity. Civic equality is not sameness, but entails the respect for difference.

It is important to note that after the Holocaust and the extermination of European Jewry, Arendt’s support for a Jewish homeland changed. Although she never accepted Zionism as the dominant cultural and political project of the Jewish people, and chose to live her life in a multinational and multicultural liberal democratic state, the catastrophes of World War II made Arendt more appreciative of the moment of new beginning inherent in all state formations. “The restoration of human rights,” she observed, “as the recent example of the State of Israel proves, has been achieved so far only through the restoration or establishment of national rights” (Arendt, 1968 [1951]: 179). Arendt was too knowledgeable and shrewd an observer of politics not to have also noted that the cost of the establishment of the state of Israel was the disenfranchisement of the Arab residents of Palestine, and hostility in the Middle East for the next century. She hoped throughout the 1950s that a binational Jewish and Palestinian state would become a reality (see Benhabib, 1996: 43 ff.).
What can we conclude from the historical and institutional contradictions of the idea of the nation-state? Is Arendt's begrudging acceptance of this political formation a concession to political realism and historical inevitabilities? Could Arendt be saying that no matter how contradiction-fraught the nation-state may be as an institutional structure, it is still the only one that defends the rights of all citizens—at least in principle, even if not in practice?

I want to suggest that the experiment of the modern nation-state could be analyzed in different terms: the formation of a democratic people with a specific history and culture could be seen as an ongoing reflexive transformation and experimentation with collective identity. Here I take my cue from Arendt and I depart from her. The so-called contradiction between human rights and national sovereignty needs to be reconceptualized today as the inherently conflictual aspects of reflexive collective identity formation in complex and increasingly multicultural and multinational democracies.

The struggle between the universal and the particular, between the principles of human rights and the sovereignty of a concrete people, is one of inclusion and exclusion. The boundaries of the "we" are contested and contestable, but not only within the imagined community of the "we, the sovereign people." For the nation-state system sovereignty always means control over a bounded territory. The we become one by defining, controlling, and closing their borders to "others": strangers, aliens, and refugees. The modern state system is based on the principle of "territorially bounded" citizenship. There are others within as well as without the sovereign people. Our question today is: can the territorially defined principle of popular sovereignty that we have inherited from the Treaty of Westphalia be reconciled with the principle of respect for universal human rights in an increasingly globalized world? Can democracies live with the juridical illusion of closed borders? Clearly not. Precisely because the principles of sovereignty and human rights are constitutive of the modern nation, it is their interplay, judicial as well as political,
in institutional as well as cultural, that will define the experience of
democratic identities. Arendt saw the dissolution of the Westphalia model in Europe but not its transformation; the old had
collapsed but the new was not yet in sight.

There are several developments in the domain of international
law since the 1948 United Nations Declaration of Human Rights
that suggest the tension-filled relationship between human rights
principles and sovereignty claims has been subject to a new and
emergent paradigm of cosmopolitan right. The establishment of
the European Union has been accompanied by a European Char-
ter of Human Rights—still in the process of ratification by mem-
ber states—and by the formation of a European Court of Human
Rights. Following the UN Declaration of Human Rights, many
other organizations and charters have placed individual rights at
the center: they include the International Covenants on Civil and
Political Rights and on Economic, Social, and Cultural Rights; the
International Labor Organization; and the Inter-American Sys-
tem for the Protection of Human Rights (Jacobson, 1997: 75).

To be sure, these declarations are not agreements that have
been signed and ratified by all nations of the world. In many
cases, they are simply general declarations of intent rather than
legally binding commitments. The European Charter on Human
Rights becomes the law of the land only if it is incorporated into
domestic law through the will of national legislatures. In interna-
tional law, the will of the sovereign state can be bound only by vol-
untarily self-incurred treaty obligations. There is no sovereign to
force the sovereign. Nevertheless, however abstract and neces-
sarily vague these universal principles of human rights may be, they
are slowly being transformed from declarations of intent into gen-
eralizable norms, capable of enforcement and litigation in the
case of specific violations. This transformation of human rights
codes into generalizable norms that should ideally govern the
behavior of sovereign states is one of the most promising aspects
of contemporary political globalization processes.
We are witnessing this development in at least three related areas:

_Humanitarian interventions._ The theory and practice of humanitarian interventions the United States and its NATO allies appealed to in order to justify their actions in Bosnia and Kosovo suggest that when a sovereign nation-state violates the basic human rights of a segment of its population on account of their religion, race, ethnicity, language, and culture, there is a generalized moral obligation to end genocide and ethnic cleansing. In such cases human rights norms trump state sovereignty claims. No matter how controversial in interpretation and application they may be, humanitarian interventions are based on the growing consensus that the sovereignty of the state to dispose over the life, liberty, and property of its citizens or residents is not unconditional or unlimited. State sovereignty is no longer the ultimate arbiter of the fate of its citizens or residents. The exercise of state sovereignty even within domestic borders is increasingly subject to internationally recognized norms that prohibit genocide, ethnocide, mass expulsions, enslavement, and forced labor.

_Crimes Against Humanity._ The concept of crimes against humanity, first articulated by the Allied powers at the Nuremberg trials of Nazi war criminals, suggests that there are certain norms in accordance with which state officials as well as private individuals are to treat one another, even, and precisely under, conditions of extreme hostility and war. Genocide, ethnic cleansing, mass executions, rape, cruel and unusual punishment of the enemy, such as dismemberment, are proscribed, and all can constitute sufficient grounds for the indictment and prosecution of individuals who are responsible for these actions, even if they are or were state officials, or subordinates who acted under orders. The refrain of the soldier and the bureaucrat—"I was only doing my duty"—is no longer an acceptable ground for abrogating the rights of humanity in the person of the other—even when, and especially when, the other is your enemy.
Transnational Migrations. The third area in which international human rights norms are creating binding guidelines upon the will of sovereign nation-states is that of international migration. Humanitarian interventions deal with the treatment by nation-states of citizens or residents within the boundaries of their territory; crimes against humanity concern relations among enemies or opponents in nationally bounded as well as extra-territorial settings. Transnational migrations, by contrast, concern the rights of individuals, not insofar as they are considered members of distinct bounded communities but insofar as they are human beings simpliciter, when they come into contact with, seek entry into, or want to become members of territorially bounded communities. As international human rights norms are increasingly invoked in immigration, refugee, and asylum disputes, territorially delimited nations are being challenged not only in their claims to control their borders but also in their prerogative to define the "boundaries of the national community" (Jacobson, 1997: 5).

Despite these hopeful developments, we have not yet overcome the "political theology of sovereignty." The new world international order is fragile, as the political always is, but a new consciousness about cosmopolitan right is also developing. While conventional international right applies to relations among sovereign state unities, cosmopolitan right concerns the interactions among human beings as inhabitants of the earth and as world citizens. Humanitarian interventions, crimes against humanity, and increasingly transnational migrations are spheres governed by this new legal paradigm.

During his exchange with Hannah Arendt on the question of "crimes against humanity," Karl Jaspers argued that these should be more properly named "crimes against humaneness" (Menschlichkeit). In the absence of a sovereign with the power of enforcement in international relations, it made no sense to speak of "crimes against humanity" (Verbrechen gegen die Menschheit), argued Jaspers, for there was no recognized authority that could enforce these rights and punish nations in the event of their violation (Arendt and Jaspers, 1992: 413 ff.). Arendt, however,
insisted that the category made sense even in the absence of a world authority with the power of enforcement. For her the Nuremberg trials and their establishing charter of 1945 were unprecedented in declaring “crimes against humanity” illegitimate, rendering null the defense that because they were committed in the name of the state, they were not punishable by an international tribunal (see Benhabib, 1996: 180 ff.).

By recognizing crimes against humanity as a justiciable action, mankind created a “new moral fact.” There is an equivalent in the international arena to the republican acts of new beginnings Arendt celebrated in politics (Arendt, 1963: 54 ff.). Just as every act of founding a new republican body creates a new institutional and moral matrix that did not exist before in human affairs, so too, such acts of “founding” can take place in the international arena through the conclusion of charters, treaties, and conventions to which sovereign nations bind themselves. Arendt thought that only the restoration of their national rights could guarantee disempowered minorities the rights of membership; she also thought that an organized humanity could act as a guarantor of the rights of the dispossessed through the creation of an international normative order, even if it had no executive power. The challenge that we face today is how to preserve the fragile and hopeful gains that have been made toward a more just world order, and which is now under threat by terrorism and war among nations and the authoritarian violations of civil rights of citizens and foreigners at home.

Notes

1Parts of this discussion have appeared in Benhabib (2002).

References


Notes on Contributors

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