

Taking Responsibility for the Right to Have Rights: Hannah Arendt and the Shortcomings of International Law

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Abstract:

The current situation in Gaza reveals a fundamental shortcoming of international law, namely that it always depends on sovereign nations for its implementation. This means that human rights do not have a universal basis, but rather depend on the political interests of the different nations of the world. Already in 1951, Arendt identified this problem. She proposed that a right to have rights is needed, that is, the right to belong to a political community. This paper argues that this right to have rights can overcome the shortcomings of international law because it has its basis in the universal human capacity of speech and action. It concludes that individuals, through speech and action, can take responsibility for the right to have rights by excluding themselves from the law. In this way, our rights do not depend on a nation, but on our fellow human beings.

1. Introduction

Since the beginning of the war between Israel and Hamas in Gaza, human rights and the effectiveness of international law have been the topic of extensive debate. While Israel claims that it is merely fighting a defensive war, international organisations have accused the country of using disproportionate violence, especially against Palestinian civilians. According to Human Rights Watch, the Israeli government is committing “crimes against humanity, ethnic cleansing, and acts of genocide” in Gaza (Human Rights Watch 2025). Moreover, the United Nations has reported that Israel has been “committing war crimes and the crime against humanity of extermination” (United Nations 2024). At the same time, international law institutions, such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), have undertaken action as well. The ICC has issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu and his Defence Minister Yoav Gallant for “war crimes and crimes against humanity committed on the territory of the State of Palestine” (Kahn 2024). Moreover, South Africa accused Israel of genocide at the ICJ. Although the ICJ has not ruled on this case yet, it did already order Israel to, among other things, “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip” (International Court of Justice 2024).

Despite the verdicts of these international organisations, many of Israel’s allies, most notably the United States and Germany, have refrained from putting much pressure on the Israeli government to ensure the human rights of Palestinian civilians. Their reasons for this seem to be political, rather than humanitarian in nature. After all, the same countries immediately condemned Russia for its violations of human rights in its war on Ukraine. This reveals a fundamental shortcoming of international law and our idea of human rights, namely, the fact that they are subordinated to political interests. Institutions like the ICC and ICJ depend on individual

nations to enforce their decisions. While these nations are legally bound to implement the orders of the ICC and ICJ, they can simply choose to ignore those that they do not agree with politically. This fundamentally undermines the idea of universal human rights. After all, this means that international law only protects the lives of people who are deemed valuable enough by a sufficient number of countries.

Unfortunately, this is not a new phenomenon. Already in 1951, Hannah Arendt addressed this problem in *The Origins of Totalitarianism*. She argued that, while we commonly regard human rights as something inalienable that every human being can lay claim to, the 20th century had proven that this was not the case. After all, the Jewish population of Nazi Germany could not lay claim to anything once the government decided that they were no longer Germans. This, for Arendt, showed that human rights do not exist and that your rights can only be guaranteed by a political community with laws and institutions. For this reason, she proposed the notion of a “right to have rights,” that is, a right to belong to such a political community (Arendt 1973, 296). However, nations have always had the sovereign right to decide who they include and exclude from their laws and institutions. Thus, the question remains how such a right could be enforced. Arendt had little faith in international law to do this, because, just as in the example above, it, depends on these same nations for the implementation of its decisions (298). For this reason, for the right to have rights to be effective, it must, in one way or another, transcend the sovereign power of nations to decide who does and does not have rights. This is the aim of this paper.

While the current situation in Gaza shows the need for a discussion on human rights and the role of international law, this paper does not aim to evaluate the situation itself. Rather, it examines whether Arendt’s right to have rights is a good alternative to the idea of universal human rights that can circumvent the shortcomings of international law. It does this by analyzing several of Arendt’s writings that address the right to have rights and international law. First, it examines how the right to have rights should be understood. Secondly, it illustrates Arendt’s conception of

law and its inherent shortcomings. Lastly, it shows why the right to have rights can overcome the shortcomings of international law. The following question will be central throughout this paper: How does Arendt's right to have rights overcome the inherent shortcomings of international law?

2. Situating the Right to Have Rights

Arendt's notion of the right to have rights has been the topic of extensive debate, because, after dedicating no more than a few pages to it in *The Origins of Totalitarianism*, she never mentioned it again in any of her later publications. Moreover, her analysis was far from conclusive. She criticised the idea of universal human rights for having no basis, but she did not really offer a basis for the right to have rights either. After all, the right to have rights seems to face the same difficulty as universal human rights, namely, that sovereign nations decide to whom they grant rights, rather than a universal standard. Arendt did remark that humanity itself should be the basis for the right to have rights, but she also conceded that “[i]s by no means certain whether this is possible” (Arendt 1973, 298). Because Arendt never solved this herself, the main question regarding the right to have rights has become the question of what exactly the basis for the right to have rights is. Seyla Benhabib, one of the most renowned scholars on Arendt's conception of human rights, argues that it is simply impossible to find a real basis for the right to have rights. According to her, this does not mean that we should discard it in the same way that Arendt discarded universal human rights. Rather, the right to have rights should be understood as “a moral claim to membership” that arises from our common humanity (Benhabib 2004, 56). In this way, humanity cannot guarantee the right to have rights, but it can be the foundation for a moral claim. This idea has been received rather critically, because it seems unlikely that Arendt would understand the right to have rights merely as a moral claim. After all, universal human rights could just as well be used as the basis for a moral claim and this would not necessitate her to come up with an alternative to them.

One of these critics is Jan Maximilian Robitzsch. According to him, Arendt did identify a foundation for the right to have rights, namely, humanity as a “fact” or a “reality” (Robitzsch 2017, 160). Robitzsch understands Arendt’s conception of humanity as the fact that the world has become increasingly interconnected and institutionalized. In *The Origins of Totalitarianism*, Arendt argued that “we have really started to live in One World” (Arendt 1973, 297). Robitzsch interprets this as the idea that a crime that is committed on the other side of the world no longer goes unnoticed for us. In this way, the increasing interconnectedness of the world makes it more difficult to commit crimes without punishment (Robitzsch 2017, 160). However, in *The Origins of Totalitarianism*, Arendt regarded the fact that the world has become one as a problem, rather than a solution: “Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether” (Arendt 1973, 297). For her, this meant that people who were exiled could simply be refused a legal dwelling on earth by the different countries of the world. Robitzsch acknowledges this and concludes that Arendt was simply wrong in identifying humanity as the basis for the right to have rights. (Robitzsch 2017, 162). It is probably true that humanity as an interconnected whole cannot guarantee the right to have rights. After all, this interconnected whole can simply decide to exclude a certain group of people. Nonetheless, this does not mean that there is no basis for the right to have rights.

Anya Topolski interprets Arendt’s notion of humanity differently. According to her, for Arendt, humanity refers to our universal capacities for speech and action. She argues that it is not possible to find a basis for the right to have rights that guarantees it with certainty. Rather, there is only a “post-foundational ground for human rights” (Topolski 2012, 2). This means that there always remains a gap between the universality and the realisation of human rights. Through the capacity of action and speech, which are universal for all human beings, we create relations with others. These relations are, then, the foundation for the right to have rights. In this way, Topolski understands the right to have rights as “a factual political right [...] supported by the

web of relations, the social-ontology, that is plurality” (6). This means that the right to have rights has its foundation in something real, namely, our capacity to create relations, which Arendt also calls human plurality. However, while these relations really exist and every human being has the capacity to form them, they are not necessary. Thus, relations can be broken or just never come about. In this way, Topolski argues that the right to have rights has a post-foundational basis, because it is grounded in something real that is constituted by a universal human capacity, but, at the same time, this ground can disappear at any moment. This is probably one of the most comprehensive interpretations of the right to have rights that grounds it in Arendt’s understanding of the human condition that she developed in *The Human Condition*, but it does ignore the specific context in which Arendt proposed the right to have rights.

While Robitzsch was right in dismissing the interconnectedness as a possible basis that could guarantee the right to have rights, it is definitely true that this development was fundamental for Arendt’s understanding of the right to have rights. After all, for Arendt, it was only because there was no longer a place on earth outside national borders that a right to have rights became necessary. She remarked that “we became aware of a right to have rights [...] only when millions of people emerged who had lost and could not regain these rights because of the new global political situation” (Arendt 1973, 296-7). Thus, the right to have rights is closely connected to the interconnectedness of the world. For this reason, the question should not only be what basis the right to have rights has, but also how it is connected to this specific global situation. Interestingly, after proposing humanity as the foundation for the right to have rights, Arendt mentioned international law: “it should be understood that this idea [that the right to have rights has its foundation in humanity] transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states” (298). This means that Arendt believes that the right to have rights can, in one way or another, transcend the power of

nations to decide who is included and excluded from a political community. In this way, it seems to be an alternative to international law that can circumvent national sovereignty.

While some scholars have written on Arendt's conception of international law, this has not been connected to the right to have rights in much detail. According to Natasha Saunders, Arendt attempted to "reimagine the nature of the communities to which the right to have rights would correspond" (Saunders 2021, 441). She argues that the law is never a sufficient guarantee for our rights. For this reason, Arendt came up with the right to have rights, which grounds rights in political practice, rather than in the law. However, as we have seen, political practice that is confined to sovereign nations cannot sufficiently guarantee our rights. For Saunders, this means that an international political community should be created, which can guarantee the right to have rights (442). Unfortunately, Saunders does not really explain what such a community would look like and how it should be created. Moreover, this would mean that, as long as such a community does not exist, the right to have rights cannot be guaranteed. Jan Klabbers offers an alternative solution. According to him, large international organizations are part of the problem, rather than the solution, because they only strengthen national sovereignty. After all, the same governments that would have to be reprimanded for violating human rights are represented in them. (Klabbers 2012, 245). Thus, for him, any form of global governance does more damage than it does good. Rather, he argues, we should regard rights not as something we receive from above, but as something that is constituted by ourselves (Klabbers 2012, 246). This means that the right to have rights should not be guaranteed by international law institutions, but by ourselves. Just like Saunders, Klabbers does not go into much detail to explain what this would look like.

This paper attempts to give a detailed description of Arendt's right to have rights and the way in which it can overcome the shortcomings of international law. As we have seen, Robitzsch showed that the right to have rights was Arendt's response to an increasingly interconnected world.

Moreover, Topolski illustrated that, while this right cannot be guaranteed by necessity, our universal capacity for speech and action is its post-foundational ground. The rest of this paper will attempt to combine these two characteristics of the right to have rights and, in this way, answer the question of how Arendt's right to have rights overcomes the inherent shortcomings of international law.

3. Defining the Right to have Rights

In *The Origins of Totalitarianism*, the specific context in which Arendt discussed the right to have rights was the enormous rise in statelessness among people who fled one of the many wars in Europe around the beginning of the 20th century. According to her, because this group of stateless people had become so big, no European country wanted to grant them asylum anymore. This became problematic because “there was no longer any ‘uncivilized’ spot on earth, because whether we like it or not we have really started to live in One World” (Arendt 1973, 297). This enormous group of stateless people had nowhere to go, because every part of the earth had become incorporated in one country or another. For this reason, exiled people had no choice but to reside illegally in a country that refused to take them in, meaning that they were excluded from the protection of the law. This, for Arendt, proved that the traditional conception of inalienable human rights was nothing but a fiction. After all, it showed that human rights did not depend on human nature, but merely on the willingness of a government to give you citizenship. Therefore, “[m]an, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity” (297). The fact that the whole world had become divided into sovereign countries gave these countries immense power, because they could now decide who did and did not belong to humanity anymore. After all, as we will see in more detail below, Arendt regarded our participation in a political community as a prerequisite for truly being human.

The right to have rights is, then, concerned with the right to belong to humanity. According to Arendt, this is not something given, because the fact that we belong to the human species does not immediately make us human: “a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man” (Arendt 1973, 300). The main problem with human rights, for Arendt, is the fact that they treat human beings as solitary individuals who would still have human rights, even if they were the only human being alive: “they [human rights] are independent of plurality and should remain valid even if a human being is expelled from the human community” (298). Arendt argues that this is a myth, because we are not even truly human if we live in complete solitude. The same is true for the group of stateless people that is forced to stay illegally in a specific country. They are not seen as equal human beings, but merely as ‘refugees’. In this way, it is no longer important *who* they are, because they are only seen for *what* they are. According to Arendt, “[t]he fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective” (296). Every place in the world has become regulated by countries, and, therefore, you can be refused access to it. A refugee, for example, is secluded to a spot that is located outside of a society, and their opinions and actions become inconsequential there. They are completely at the mercy of the state: “[t]he prolongation of their lives is due to charity and not to right” (296).

The right to have rights is, then, concerned with taking away the power over who is human from individual countries. After all, if countries can even decide whether we are allowed to participate in humanity, even our humanity is not a given, let alone human rights. Moreover, according to Arendt, individual countries are not to be trusted with this power. She argues that “the ‘alien’ is a frightening symbol of the fact of difference as such, of individuality as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy” (Arendt 1973, 301). Rather than incorporating ‘alien’ people,

a country is more concerned with disposing of them. This became very clear in the case of the stateless people, when for all countries the leading question became: “How can the refugee be made deportable again?” (284). This, of course, took on an even more frightful reality in Nazi Germany, where the Jewish population lost their rights and was systematically murdered. Thus, individual countries cannot be trusted with the power to decide who can participate in humanity and who cannot. The right to have rights must, then, be understood as the right to be consequential. This means, on the one hand, that our actions and opinions matter and, at the same time, that we are someone, rather than something to be disposed of. Below, this is examined in more detail.

4. Becoming Consequential in the World

Arendt primarily discusses the question of how we become consequential in the fifth chapter of *The Human Condition*, entitled “action,” where she argues that human beings make an appearance in the world through action and speech. According to Arendt, “[i]n acting and speaking, men show who they are, reveal actively their unique personal identities and thus make their appearance in the human world” (Arendt 1998, 179). However, here, she does not refer to just any form of activity or speech. After all, the stateless people did not lose their capacity for action and speech, but still lost their consequentiality. For Arendt, the activities and speech through which we reveal ourselves are only possible under the condition of equality and distinction, which she regards as the essential characteristics of human plurality (175). The reason for this is that we are never in control of this process of revealing. Only to the people around us, with whom we act and speak, can we reveal who we are through these activities. However, if only one person can speak, while the other cannot, or if two people just mindlessly repeat the words of someone they admire, they do not appear to each other. In these cases, there is no equality or distinction between them. They both remain *something* rather than *someone*. Both of them

remain inconsequential, because they are no longer constitutive of the world. This could be illustrated by the example of a soccer game. If only one of the two players is allowed to kick the ball, there is no longer a game going on. It is just one person kicking a ball in isolation and another sitting on the ground.

Interestingly, this is exactly what Arendt accuses totalitarianism of doing, namely making everyone inconsequential. According to her, a totalitarian state is characterized by a complete isolation of its members: “the common ground upon which lawlessness can be erected and from which fear springs is the impotence all men feel who are radically isolated” (Arendt 1994, 337). In this isolation, no one has the ability anymore to be a constitutive part of the state. Rather, they are just pawns without any agency, which can be eliminated at any moment. Arendt argues that in a totalitarian state, there are no longer normal positive laws, but only “laws of movement” (340). These laws of movement are only tasked with achieving a goal in the future, for example a classless or racially pure society, as was the case for Nazism and Bolshevism. Free individuals are merely a threat to the achievement of this goal and, therefore, they are isolated and “every means is taken to ‘stabilize’ men, to make *them* static, in order to prevent any unforeseen, free, or spontaneous acts that might hinder freely racing terror” (342). Thus, for Arendt, the leading principle of totalitarianism is that everyone must become inconsequential, that is, that they have no impact on the world whatsoever.

How, then, do we become consequential? According to Arendt, both speech and action always take place against the background of our relations to other people, who are also constitutive of them: “the actor always moves among and in relation to other acting beings, he is never merely a ‘doer’ but always and at the same time a sufferer” (Arendt 1998, 190). For this reason, action and speech are both unpredictable and boundless. On the one hand, we are never the only constitutive factor of an action or opinion and can, therefore, never predict what effects they will have. At the same time, because we stand in relation to other people, the consequences

of our actions always reach further than we can even imagine. After all, “every reaction becomes a chain reaction [...] and every process is the cause of new processes” (190). Thus, we always reveal ourselves by acting and speaking in relation to others but, at the same time, we are never in control of the results of these actions and opinions. Nonetheless, in this way, we are constitutive of a community as a whole. The goal of the right to have rights can, then, be regarded as the opposite of the totalitarian principle, namely, to make sure that everyone is consequential. This depends on the relations that we form with others through speech and action, but these relations can disappear or never even come about. However, it remains the question why, apart from ethical reasons, someone else’s right to have rights should be our concern. After all, is it not enough if we have a few people around us to act and speak with?

5. The Consequences of Inconsequentiality

In *The Origins of Totalitarianism*, Arendt already argued that the emergence of large groups of stateless people is a dangerous development. According to her, “[t]he 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 their natural givenness, on their mere differentiation” (Arendt 1973, 302). As we have seen, for Arendt, human beings can only appear to others through speech and action. For this reason, people who are not allowed to speak and act as equal and distinct human beings can never appear as *someone*, but only as *something*. According to Arendt, they have become “a human being in general” and, at the same time, “different in general” (302). This means that, paradoxically, while their only characteristic has become the fact that they are a member of the human species, this is also exactly what sets them apart from humanity. After all, for Arendt, what makes us human is speech and action. She argues, then, that human beings are not equal by nature, but that this is something that we ourselves create: “Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization

insofar as it is guided by the principle of justice" (301). The law, for example, is one of the biggest equalizers, because everyone, regardless of their strength, intelligence or looks, is equal in front of the law. However, when a group of people is dehumanized, this threatens the equality between people, even if they are regarded as outsiders. After all, equality is not something given, but created and, therefore, can disappear again.

According to Arendt, the danger is, then, that "a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages" (Arendt 1973, 302). This means that, by creating a category of human beings, who are no longer considered human, we ourselves become barbarians. Thus, by dehumanizing the other, we dehumanize ourselves. We become *something*, rather than *someone*, namely, a barbarian. Homi K. Bhabha interprets this quote in the context of nationalist movements that actively aim to dehumanize minorities. For him, these nationalists are the barbarians, but they do not necessarily become dehumanized themselves (Bhabha 2019, 404). Arendt argued that, whereas barbarians used to threaten civilization from outside before, they now threaten it from inside because there is no longer an outside anymore. According to Bhabha this means that "the barbarians are no longer at the gates" because now "the barbarians police the gates" (404). However, for Arendt, barbarians are dangerous because they "threaten to destroy what they cannot understand" (Arendt 1973, 302). Here, she is referring to civilization or, rather, communities that have created equality between their members. Thus, it is not necessarily the case that the barbarians are now policing the gates, but rather that they are destroying them. For Arendt, the greatest danger of these barbarians seems to be that they destroy a community from the inside out. The question, then, is, who are the barbarians? This becomes clear if we look at a community that has probably produced the highest form of barbarism: Nazi Germany.

In several essays, Arendt examined the responsibility of the German people for Nazism. After the Second World War, Arendt wanted to make a clear distinction between guilt and responsibility regarding the crimes of the Nazis. The reason for this was that the notion of a collective guilt of the German people had become a predominant expression. According to Arendt, this was very problematic, because it essentially absolved the individuals who had really committed the crimes from their guilt, “for where all are guilty, no one is” (Arendt 2020, 464). For this reason, she made a clear distinction between “political (collective) responsibility” on the one hand, and “moral and/or legal (personal) guilt” on the other (Arendt 2003, 150 - 151). This means that guilt is always an individual affair, while responsibility can be extended to the whole of society. Thus, it is possible to be responsible for something that you have not done yourself, while it is not possible to be guilty of it. According to Arendt, the German people were, then, collectively responsible for the crimes of Nazism. For her, collective responsibility means that “the idea of humanity [...] has the very serious consequence that in one form or another men must assume responsibility for all crimes committed by men and that all nations share the onus of evil committed by all others” (Arendt 1994, 131). This must not be understood as an ethical responsibility, but very literally as the fact that our actions and opinions have been constitutive of a community in which horrible things could take place. The barbarians are, then, not only the people who push others out of humanity, but everyone who is constitutive of a society. After all, they should take responsibility for their community and preserve the equality that keeps it together.

This responsibility is, then, a result of the human condition. According to Annabel Herzog, the idea of collective responsibility finds its roots in Arendt’s conception of boundlessness in *The Human Condition*. She argues that everyone is collectively responsible for the world, because we are all part of “an endless chain reaction of presence that changes the human world” (Herzog 2004, 45). This means that we are all collectively responsible for a community and, in an

interconnected world, for the world as such, because we are constitutive of it. Even if thousands of kilometres away people are being pushed out of humanity, we should take responsibility for it. After all, we are a part of the same community, and if it is destroyed, we will be the next to lose our right to have rights. This brings us to the law, because, for Arendt, the function of the law is to prevent communities from destroying themselves.

6. The Function of the Law

In *The Human Condition*, Arendt argued that any community is constantly under threat because action and speech are boundless. This means that even the most insignificant member of the community can change the whole through their activities and opinions: “the smallest act in the most limited circumstances bears the seed of the same boundlessness, because one deed, and sometimes one word, suffices to change every constellation” (Arendt 1998, 190). This, for Arendt, reveals that action and speech are not only able to establish relationships and communities, but are also very capable of destroying them. Thus, “[t]he boundlessness of action is only the other side of its tremendous capacity for establishing relationships, that is, its specific productivity” (191). According to Arendt, the law is, then, tasked with limiting the boundlessness of action and speech. She regards the law as a boundary or limit, not unlike a fence that delineates private property. In this way, the law has to “protect and to make possible [a people’s] political existence” (191). For Arendt, speech and action are the fundamental capacities for politics. Therefore, the role of the law is to set limits to the boundlessness of action and speech to make sure that they do not destroy the political space that makes them possible. For example, if there is no law and a group of people decides to murder someone, this changes the entire community in which it takes place. This would make everyone fear each other, because no limit is set on this action.

The importance of the law becomes most clear if we look at a situation where it is absent. According to Arendt, this is the case for tyrannies, which are characterized by lawlessness and fear. Here, every individual is constantly afraid of all others who are perceived as a threat: “Fear, the inspiring principle of action in tyranny, is fundamentally connected to that anxiety which we experience in situations of complete loneliness” (Arendt 1994, 336). The reason for this fear is the fact that every individual is isolated and perceives all others together as a way more powerful entity than themselves. This means that “the common ground upon which lawlessness can be erected and from which fear springs is the impotence all men feel who are radically isolated” (337). If, in a certain community, anyone can come to kill or imprison you at any moment, everyone becomes a threat. This makes it impossible to form relationships with others through action or speech, because there is no condition of equality and distinction between yourself and others. After all, everyone else is perceived as an indistinct mass of potential murderers that is way more powerful than you are yourself.

The law, then, is tasked with ensuring the existence of the preconditions for speech and action, that is, equality and distinction. In this way, it preserves a space for politics. However, the law is not what keeps a community together. According to Arendt, this is the task of power, which she understands as a potential that arises whenever people speak and act with each other: “power is something that mysteriously [comes] into being whenever men act ‘in concert’ and disappears, not less mysteriously, whenever one man is all by himself” (Arendt 1994, 338). When you are alone, you only have your natural strength to rely on. However, when you work together with others, together you are capable of much more than you ever would on your own. This is true for a small group of people, but also for an entire community. A community is, then, preserved through a specific organization of people, where everyone has their own task, which brings about power. The law is tasked with preserving a space where this power can come about. Unfortunately, the opposite of power, impotence, can make communities fall apart: “[w]hat first

undermines and then kills political communities is loss of power and final impotence” (Arendt 1998, 200). As we have seen above, lawlessness can lead to impotence. However, this is not the only situation that can result in impotence. The same is true for the presence of a large group of stateless people.

In *The Origins of Totalitarianism*, Arendt compared the condition of the stateless to the condition of outlawry. Someone who is outlawed is, as the word suggests, placed outside of the law and can, therefore, be legally killed by anyone (Arendt 1973, 302). This creates a strange exception to the law, where the law suspends itself in regard to the outlaw. After all, the law does not prescribe that the outlaw should be killed, nor does it make the act legal. Rather, it merely places the outlaw outside of its jurisdiction so that, without making it legal, their murder is condoned. The situation of the stateless is similar. They reside in a community where everyone is equal in front of the law, except for them. This is a problem for the law, because a category of people has emerged in the community that does not fall under it. In this way, one could say that a gap emerges, because now the law cannot contain the boundlessness of speech and action as effectively as before. For this reason, the space for politics that is delineated by the law and the community itself no longer overlap. Through the presence of the stateless, a certain lawless space is opened up in the community. This creates two categories of people in the community, namely, those who are included in the law and those who are excluded from it. This is what makes dehumanization possible and which, in turn, creates barbarians that destroy a community from the inside out. A fundamental shortcoming of the law is, then, that, while it is supposed to preserve a community, it is undermined by the fact that a nation can decide to exclude people from the law. The same is true on an international level.

7. Two Conceptions of Law

While Arendt has not explicitly examined international law itself, in one of her most famous studies of law, in *The Promise of Politics*, she touched upon this topic. Here, she examined the difference between the Greek and Roman conception of law. According to Arendt, the ancient Greeks are probably most famous for a war of annihilation, namely, their destruction of Troy. She argues that this is not a coincidence, but that it coincides with their conception of law (Arendt 2005, 163). For the ancient Greeks, politics was limited to the *polis*, where individuals could compete with each other as equals and reveal themselves as unique human beings. However, they regarded anything that happened outside of the *polis* as fundamentally unpolitical (165). For this reason, once they left the city, the conditions of equality and distinction no longer applied. This is also reflected in their conception of law: the *nomos*. According to Arendt, the *nomos* was understood as a limit or a border that delineated the space for politics, not unlike how the city walls mark the inside of the city. In this way, it is similar to her conception of law in *The Human Condition*: “The Greeks countered [...] limitlessness with the *nomos*, limiting action to what happens between men within a polis and when, as inevitably happened, action drew the polis into matters lying beyond it, such matters were referred back to the polis” (189). For the Greeks, war was not a question of politics, but merely a contest of strength. For this reason, it was only natural that they would destroy their enemy, while, within the *polis*, this would be unthinkable.

Arendt contrasts this with the Roman conception of law: the *lex*. According to her, the *lex* was aimed at preventing the annihilation of the other by incorporating them into the Roman Empire. Whenever Rome fought a war, they did not destroy their enemy, but rather included them into the Empire. Here, “law is something that links human beings together, and it comes into being not by diktat or by an act of force but rather through mutual agreement” (Arendt 2005, 179). Thus, in contrast to the Greeks, the Romans regarded their enemies in war as distinct and

equal. For them, politics was not restricted to the Roman Empire, but was extended beyond it. This was probably the first introduction of international law, because it made the space between nations political: “The Roman politicization of the space between people marks the beginning of the Western World” (189). The *lex*, then, creates a community between different peoples, where everyone can engage with each other based on equality and distinction. In the current world, this is even more strongly the case, because most countries on earth are connected through treaties and agreements, whether these are trade agreements or agreements on international aviation.

The *lex* and *nomos*, then, illustrate two different approaches to international relations. The *nomos* marked anything outside of the *polis* as a lawless space where equality and distinction did not apply. The *lex*, on the other hand, was aimed at subjecting the space between nations to the law and, in this way, connecting different people under equal and distinct conditions. However, if the Romans, all of a sudden, had decided to annihilate a nation they had conquered, this would undermine the *lex*. After all, what would stop them from doing the same to the nations they had already incorporated into their empire or the nations they had not conquered yet? This, then, is the problem of international law. While it gives law to the space between nations, for example, in the form of agreements and treaties, it remains dependent on individual nations. In this way, while international law does create an international space for politics, it is constantly being undermined, just like national laws are by the exclusion of certain groups of people. Here, again, an exception can take place. However, there is a way to overcome this power of nations, namely, by taking responsibility for the right to have rights.

8. An Alternative to International Law

In her essay, “Civil Disobedience,” Arendt examined the possibility of avoiding the abuse of power by a government. Here, she proposed a conception of law that finds its basis in the people, rather than in a constitution or a court. In this way, for her, the law is never something passive

that is imposed on us from above, but rather something that we are always an active part of. She explains this through the example of the Supreme Court in the United States. During the Vietnam War, the Supreme Court refused to rule on the question of whether the Vietnam War was legal. For Arendt, this revealed a clear problem of the law, namely that those in power can simply ignore it. She remarked that “precisely in crucial issues the Supreme Court has no more power than an international court: both are unable to enforce decisions that would hurt decisively the interests of sovereign states” (Arendt 1972, 100 - 101). However, this does not mean that we are simply at the mercy of politicians or the Supreme Court. Rather, according to Arendt, the law finds its foundation in the power of the people. This is the power that was also mentioned above, namely, the possibilities that are opened up through the relations that people form within a community. According to Arendt, a state, or at least the United States, then, depends on a “horizontal version of the social contract” which “limits the power of each individual member but leaves intact the power of society” (86). This means that the people give their consent to a government to make use of their collective power, among other things, through voting. However, they can also revoke their consent again.

The law is, then, never something that is set in stone. Rather, “[a]ll political institutions are manifestations and materializations of power; they petrify and decay as soon as the living power of the people ceases to uphold them” (Arendt 1972, 140). Thus, if a group of people feels that a certain law is unjust, they can revoke their consent to it. This is the essence of civil disobedience. This is not something that you can do on your own, but only together with others. According to Arendt, “[t]he civil disobedient [...] acts in the name and for the sake of a group; he defies the law and the established authorities on the ground of basic dissent, and not because he as an individual wishes to make an exception for himself and to get away with it” (76). Moreover, for Arendt, civil disobedience should not be seen as a threat to the law, but rather implies the greatest form of consent to it. She understands consent as the “active support and continuing participation

in all matters of public interest” (85). This is exactly what civil disobedience is. According to Verity Smith, this form of civil disobedience should be understood as “constitutional maintenance,” which keeps the constitution alive by constantly undermining it (Smith 2010, 106). In this way, the entirety of the constitution can be preserved, because smaller parts of it are constantly contested.

Arendt’s conception of civil disobedience can be regarded as a solution to the problem of international law and the power of nations to exclude people from humanity. With the act of civil disobedience, a group of people deliberately excludes itself from the law, rendering themselves inconsequential. However, they do not lose their right to have rights this way, but rather affirm their power. According to Arendt, “[w]hat first undermines and then kills political communities is loss of power” because “[w]here power is not actualized, it passes away” (Arendt 1998, 200). Civil disobedience is a way of protecting a political community through the actualization of power. When a group of people is pushed out of humanity by a government that excludes them, people can take responsibility for the right to have rights by deliberately excluding themselves. This means that they refuse to be constitutive of a community that violates the right to have rights. In this way, the right to have rights, or rather, taking responsibility for it, can overcome the shortcomings of international law.

9. Conclusion

This paper has examined the shortcomings of international law in enforcing the right to have rights. The law seems to fail at this task for two reasons. On the one hand, national laws in a fully interconnected world can be used to exclude people as well as to include them. At the same time, international law, understood as a system of treaties, agreements and laws that make a space for action and speech possible between nations, cannot guarantee our right to have rights because it depends on the different sovereign nations for its implementation. The main problem here is

that governments from all over the world have acquired the power to decide who does and does not belong to humanity. This is exactly what we see now in Gaza. While the ICC and ICJ have attempted to halt human rights violations in Gaza, a number of powerful nations have decided that they do not value the lives of the Palestinians enough to seriously pressure Israel. Just as in the case of stateless people or refugees, this creates a category of people who are included in our interconnected world, but, at the same time, excluded from it. They have been made inconsequential and dispensable, that is, they are no longer judged for who they are, but rather for what they are.

The right to have rights must, then, be understood as the right to be consequential. While Robitzsch argued that the interconnectedness of the world should be understood as the foundation for the right to have rights, we have seen that this is merely its cause. This paper has shown that the foundation of the right to have rights is the universal human capacity for action and speech. Following Topolski, it has argued that this must be understood as a post-foundational ground, because the relationships that are formed with action and speech are not necessary and can be broken at any moment. Moreover, the right to have rights can be seen as a response to the fact that countries have acquired the power to decide who does and does not belong to humanity, because they can refuse people from participating in action and speech. As we have seen, the law cannot prevent nations from abusing this power. This is also not necessarily its task, because it is mainly tasked with preventing a community from destroying itself. Nonetheless, the exclusion of a large group of people from action and speech, that is, from being consequential, has dangerous consequences for a community. The reason for this is that it undermines the conditions of equality and distinction that are necessary for a political community.

While the law is fundamentally unable to guarantee the right to have rights, this failure, at the same time, makes it possible to enforce it. The reason for this is that, from a position of power, people can deliberately exclude themselves from the law, while, of course, still being included in

it. This exclusion, rather than not being allowed to be constitutive of the world, is the choice to deliberately stop being constitutive of it because you want no part in this community that is pushing people out of humanity. In this way, laws can be corrected and governments can be forced to comply with the law. Because a community is fundamentally built on power, a decrease in power threatens the community. However, by withholding their consent from a government, people can deliberately threaten the community that they deem to be wrong. This is the basis for the right to have rights. Of course, if no one takes their responsibility for the right to have rights, nothing will change, and a community will be slowly threatened from the inside. The same is true for the world. If people withhold their consent from a system that pushes some people out of humanity, they can threaten its existence, not because they are pushed out of humanity, but because, from a position of power, they refuse to be constitutive of it anymore.

To conclude, Arendt's right to have rights must not be seen as an essential human right, but is rather something that is possible because of the universal human capacity for action and speech. When someone's right to have rights is taken away, this threatens the space that makes action and speech possible. For this reason, people have to take responsibility for the right to have rights by exploiting the fundamental shortcomings of international law.

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Appendix 1. Author Instructions for The Review of Politics

Aims and scope

The Review of Politics publishes high-quality original research that advances scholarly debates in all areas of political theory. We welcome manuscripts on the history of political thought, analytical political theory, canonical political thought, contemporary political thought, comparative political thought, critical theory, or literature and political thought. While quality of scholarship and clear contribution to progressing scholarly debates are the key criteria for inclusion, we also strive to publish cutting-edge research in a way that is maximally accessible to as wide an audience as possible.

We also have a substantial book review section that offers high-quality reviews of new books about political theory, philosophy, and intellectual history.

Founded in 1939 by Waldemar Gurian, *The Review of Politics* has published articles by authors as distinguished and diverse as Hannah Arendt, John Kenneth Galbraith, Jacques Maritain, Yves R. Simon, Talcott Parsons, Clinton Rossiter, Edward Shils, Leo Strauss, and Eric Voegelin.

Manuscript length

Normal length of published manuscripts is 8,000-11,000 words. The entire manuscript, including notes and quotations, should be double-spaced.

Author anonymity

Because manuscripts are evaluated anonymously they should not bear the author's name or institutional affiliation. Please remove all references or acknowledgments that might indicate the identity of the author.

Please note for the final approved manuscript for publication.

- If the author is outside the USA, include the author's university affiliation and country centered under their name and in italics at the top of the first page.
- If the author is inside the USA, include the university affiliation, city, two-letter state abbreviation, and USA centered under their name and italics at the top of the first page.

Abstract and keywords

All article submissions should include an abstract of 100-150 words.

Manuscript preparation and style

The Review of Politics follows the Chicago Manual of Style for standards of citation, punctuation, and other editorial considerations.

Figures and tables

Appendices, tables, and figures should be numbered consecutively throughout the article and be included on separate pages appearing after the reference section. Each figure must be submitted electronically as a separate file. Electronic versions should be submitted as TIFF or

EPS files at 100% of a suitable final size. Charts, graphs, or other artwork should be professionally rendered and computer generated.

There is no charge for including color figures in the online version of the journal but it must be clear that color is needed to enhance the meaning of the figure, rather than simply being for aesthetic purposes.

Language editing services

Contributions written in English are welcomed from all countries. Authors, particularly those whose first language is not English, may wish to have their English-language manuscripts checked by a native speaker before submission. This is optional, but may help to ensure that the academic content of the paper is fully understood by the editor and any reviewers. Cambridge offers a service which authors can learn about [here](#). Please note that the use of any of these services is voluntary, and at the author's own expense. Use of these services does not guarantee that the manuscript will be accepted for publication, nor does it restrict the author to submitting to a Cambridge published journal.

Use of artificial intelligence (AI) tools

We acknowledge the increasing use of artificial intelligence (AI) tools in the research and writing processes. To ensure transparency, we expect any such use to be declared and described fully to readers, and to comply with our [plagiarism policy](#) and best practices regarding citation and acknowledgements. We do not consider artificial intelligence (AI) tools to meet the accountability requirements of authorship, and therefore generative AI tools such as ChatGPT and similar should not be listed as an author on any submitted content.

In particular, any use of an AI tool:

- **to generate images** within the manuscript should be accompanied by a full description of the process used, and declared clearly in the image caption(s)
- **to generate text** within the manuscript should be accompanied by a full description of the process used, include appropriate and valid references and citations, and be declared in the manuscript's Acknowledgements.
- **to analyse or extract insights** from data or other materials, for example through the use of text and data mining, should be accompanied by a full description of the process used, including details and appropriate citation of any dataset(s) or other material analysed in all relevant and appropriate areas of the manuscript
- must not present ideas, words, data, or other material produced by third parties without appropriate acknowledgement or permission

Descriptions of AI processes used should include at minimum the version of the tool/algorithm used, where it can be accessed, any proprietary information relevant to the use of the tool/algorithm, any modifications of the tool made by the researchers (such as the addition of data to a tool's public corpus), and the date(s) it was used for the purpose(s) described. Any relevant competing interests or potential bias arising as a consequence of the tool/algorithm's use should be transparently declared and may be discussed in the article.

Supplementary materials

Material that is not essential to understanding or supporting a manuscript, but which may nonetheless be relevant or interesting to readers, may be submitted as supplementary materials. Supplementary materials will be published online alongside your article, but will not be published in the pages of the journal. Types of supplementary materials may include, but are not limited to, appendices, additional tables or figures, datasets, videos, and sound files.

Supplementary materials will be published with the same metadata as your parent article, and are considered a formal part of the academic record, so cannot be retracted or modified other than via our article correction processes. Supplementary materials will not be typeset or copyedited, so should be supplied exactly as they are to appear online. Please make sure you are familiar with our [detailed guidance on supplementary materials](#) prior to submission.

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