

## Undocumented Migrants: An Arendtian Perspective<sup>1</sup>

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Perhaps more than ever before, we live in a situation in which, as Hannah Arendt put it in her 1943 article, “We refugees”, “passports or birth certificates, and sometimes even income tax receipts, are no longer formal papers but matters of social distinction”.<sup>1</sup> In what constituted a drastic shift in policy, many Western governments curtailed legal means of entry and residence for foreigners from the mid-seventies onward.<sup>2</sup> States stopped admitting economic migrants. The signatory states of the Schengen agreement and the TREVI group pushed asylum policies towards the lowest common denominator on a European Level. Following the fall of the Berlin wall, measures like the third country rule, the introduction of visa requirements for refugee-producing countries, and the extension of the policing of borders have made it almost impossible to claim or obtain political asylum in the European Union.

These measures have not been able to stop immigration. They have, however, illegalised work migration and driven many potential asylum-seekers underground. Many foreigners already living on the territory found themselves, in different ways and to different degrees, illegalised.

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These people include rejected asylum-seekers, visa overstayers, and immigrants whose residence permit has not been renewed for a variety of reasons, such as losing employment, growing dependent on welfare benefits, or having committed a crime, including having violated foreigner-specific restrictions.<sup>3</sup> As a result, we find on the territory of Western Europe a growing number of people who are not citizens and, lacking any formal right to residence and work, not even “denizen,” according to Hammar’s definition of the term.<sup>4</sup> Official estimates put the number of persons without valid documents (“sans papiers”) at around 3 million for the European Union in the late 1990s, with increases each year of 500,000.<sup>5</sup>

The Catholic Church estimates that there are one million undocumented foreigners in Germany alone.<sup>6</sup>

This group is the subject of an increasingly hostile discourse on “illegal immigrants”, “bogus asylum-seekers” and, since September 11<sup>th</sup>, “international terrorism”. This paper explores what a rereading of the work of Hannah Arendt can contribute to the analytical and political task of giving an alternative meaning to the presence of this group in our societies. An early post-national thinker, Arendt carves clearings into a thinking caught in a framework centred on the unity of nation, state, and territory, thus opening new ways of thinking and acting. She shows us the stateless as a victim, as an emblematic philosophical figure, and as an important political actor.

### **Hannah Arendt today**

The last ten to fifteen years have seen a lot of careful exegesis of Arendt’s work, as well as imaginative applications of her concepts to the contemporary moment.<sup>7</sup> To some extent,

independently of content or concepts, her style of thinking has inspired writers across disciplines.<sup>8</sup> This work has relied on a wide range of interpretations of Arendt. This diversity of uses is credit to the richness of her work and has been fruitful. But there are also some missed opportunities in these discussions: an opportunity to read different parts of her work together, an opportunity to capture the most original Arendt, and an opportunity to make Arendt's work, as a whole, most relevant to the present-day.

The most imaginative applications of her work have sometimes chosen not to explore the inner unity of her work. Many of those who have, have done so from within established traditions of political theorizing. Discussions about whether or not Arendt is a communitarian, a liberal, a modernist, an anti- or postmodernist, or a feminist have made her accessible as a resource for the theoretical tradition and has clarified parts of her work and tensions within it.<sup>9</sup> Yet, if we try to make her fit any one of these pre-conceived labels, we are in danger to lose sight of the originality of her work.

There has been some debate regarding the basis of her own rethinking of politics. An isolated reading of "The Human Condition" led many to reproach her with a nostalgic longing for the Greek past. A focus on the experiences described in Part III of "The Origins of Totalitarianism" induced Margaret Canovan to emphasise Arendt's anti-modern and especially her anti-marxist traits.<sup>10</sup> I argue for a reading that, instead, places statelessness at the centre of her work.<sup>11</sup>

Arendt, herself a refugee and for years a stateless person, was one of the few in her time to engage with what she analysed as the "newest mass phenomenon in contemporary history": statelessness. Following the upheavals of the First World War, she witnessed the emergence of

an increasing number of people for whom there was “no appropriate niche in the framework of the general law”.<sup>12</sup>

She was unique in her attention to statelessness, and a reading that takes this experience seriously can gauge the originality of her work. A reading of Arendt’s work that places statelessness at its centre provides a thread connecting “On Totalitarianism” and “The Human Condition”, and her reflections on power, states, and revolutions. Arendt on statelessness is also Arendt on states. The reading presented here can be an important resource in our current attempts to interrogate the state and to think democratic politics beyond it.

### **The Migrant as Victim: Total Domination**

Against a discourse that, not unlike now, tended to ignore the presence of these groups according to the principle that what must not be, cannot be, she shows us the stateless as victims.

In chapter 9 of “The Origins of Totalitarianism”, Arendt analysed very clearly what it means to be “illegalised” in one’s very existence. She begins from the fundamental observation of the illegal’s rightlessness. I discuss what this rightlessness entails for today’s *sans papiers* in light of recent research. Then I present Arendt’s interpretation of the political dimension of their situation. For her, the stateless suffer from a deprivation more fundamental than any material deprivation or denial of specific rights. It is a deprivation that cannot be thought of within the model of a political community: the stateless are deprived of the right to have rights and are subject to “total domination”. We thus find one of the elements of totalitarianism within formally democratic societies.

### Rightlessness Today

Arendt observed that to be stateless is to be “an outlaw by definition.” The stateless person “without right to residence and the right to work had of course constantly to transgress the law. He was liable to jail sentences without ever committing a crime.” Having been forced beyond the pale of law, the stateless has “no rights whatsoever and lives under the threat of deportation”.<sup>13</sup> He lacks any form of social, economic, or legal protection. Because he simply does not exist in terms of the law, he is exposed to the arbitrary rule of the executive -- he is left “completely at the mercy of the police”.<sup>14</sup> The stateless share with the subjects of totalitarian countries the destruction of their juridical personality, the life in a realm of lawlessness, and an arbitrary form of domination that dominates each individual “in every aspect of their life”.<sup>15</sup>

One might wonder whether migrants with rights in other countries are really rightless. In Arendt’s time, as in ours, it has been difficult to distinguish between stateless persons, refugees, and other kinds of migrants. Then, as now, refugees often claim statelessness in order to avoid being deported. States have also often de-nationalised refugees for political reasons. Arendt cited legal experts who then, as today, tend to resolve this ambiguity by arguing that all refugees can be considered stateless.<sup>16</sup> Ultimately, her analysis, which I follow, is based on the argument that undocumented migrants –subject to deportation- are rightless to the extent that they want to stay on the territory.

All undocumented migrants -- as opposed to tourists -- share this rightlessness as the limit function of their political existence on the territory, even though the degree to which they can claim rights elsewhere will affect the impact this rightlessness has on their quality of life. They share rightlessness despite immense differences in the material living conditions, which also

depend on the available social networks<sup>17</sup>, and on the degree of regulation in a given society.<sup>18</sup>

Research into the life-worlds of *sans papiers* is only now getting on its way revealing the multiple vulnerabilities resulting from this situation.<sup>19</sup>

Because *sans papiers* cannot appeal to laws regulating work relations, they are at least, in legal terms, defenceless against the most severe forms of exploitation on the labour market. Most have to endure dangerous working conditions, long hours, and low pay. They can be hired and fired at will and can never be sure they will be paid. For example, Anderson reports that it is not uncommon in the British building trade and among cleaning brigades to take on irregular workers for a month and then fire them without pay.<sup>20</sup>

Illegality of residence adds to the vulnerability of prostitutes who, in case they give evidence to the police, are not just threatened by revenge by the procurers' networks, but also by deportation.<sup>21</sup> Domestic workers often face physical and sexual abuse unconstrained by any public supervision.<sup>22</sup> Illegality also foreshadows the lives of those foreigners whose residence and work permits depend on a marriage or on a specific employer. This is the case, for example, for "legal" Polish migrant workers in Germany<sup>23</sup> and domestic workers in Italy.<sup>24</sup>

The lack of legal protection affects all areas of life. It is often the *sans papiers* who have the most to lose by attracting attention. One of the most pressing concerns of the *sans papiers* in Leipzig, Germany interviewed by Alt is the threat of racist attacks.<sup>25</sup> Alt reports on an interviewee who was beaten up by skinheads in the tramway: "In that moment, his greatest fear was that one of the passengers would call the police: 'They have IDs, I don't. That's why I was happy when I could run away'".<sup>26</sup>

Especially in a highly regulated society like Germany, and to a lesser extent France, *sans papiers* live in constant fear of detection. Families often abstain from going out separately in order to avoid being separated by deportation.<sup>27</sup> They avoid places frequented by police. Their very rightlessness forces them to be over-conforming in terms of the law.<sup>28</sup>

The *sans papiers*' rightlessness is most manifest when he is directly confronted with the state apparatus: in numerous forms of harassment for those who still see a chance of applying for papers or some form of assistance, after arrest in detention centres, and during the deportation itself. Detention of foreigners in so-called "waiting zones" at airports, in purpose-built detention centres, but also in prisons has proliferated throughout Europe since the late eighties.<sup>29</sup> The most common practice is detention prior to deportation itself, though to the concern of NGOs and the UNHCR, pre-admission detention for asylum-seekers and detention during the determination procedure are becoming increasingly common.<sup>30</sup> Conditions in detention centres are often degrading and, in many ways, worse than for criminal nationals. In many countries, detention is ordered by the police and not subject to juridical review. In six member states of the European Union, including the United Kingdom, pre-deportation detention is not legally limited in time. Detainees are unprotected against staff assaults. The fact that they do not know why they are being held and for how long causes immense mental distress.<sup>31</sup> Deportations are carried out violently also against the resistance of the deportee. During the procedure, officers regularly tie deportees' hands and feet and close their mouth with adhesive tape. Between 1998 and 2000, these practices led to the deaths of Joy Gardiner (United Kingdom), Semira Adama (Belgium), Marcus Omofuma (Austria), and Aamir Ageeb (Germany).

Arendt's analysis of total domination has gained additional relevance for migrants in the time since September 11<sup>th</sup>. The 2001 Anti-terrorism, Crime and Security Act in the UK, for example, gave powers to the executive that potentially extend the situation of rightlessness to all non-citizens whether or not they are illegal. Upon certification as a "suspected international terrorist" by the secretary of state, a non-UK citizen can be detained without charge or trial for an unspecified period if his or her removal or deportation from the UK is prevented as a result of the UK's international obligations or for practical reasons.<sup>32</sup>

### *The Denial of the Right to have Rights*

Whereas present research often focuses exclusively on the *sans papiers*' loss of legal status or material need, Arendt's interpretation emphasizes the loss of political status. The stateless is denied the fundamental human capacity to act. The denial of agency is also implicit in the fact that nothing he does makes any difference to his illegal status.

For those who are outlawed by definition, the "deprivation of legality, i.e., of all rights, no longer has any connection with specific crimes".<sup>33</sup> It is in this context that we must understand Arendt's emphasis on the innocence of those subject to total domination. This innocence does not just add to our concern about how unjust their treatment is, it also underlines the implicit denial of agency. She writes, their "innocence ... was their greatest misfortune. Innocence in the sense of a complete lack of responsibility was the mark of their rightlessness as it was the seal of their loss of political status".<sup>34</sup>

Had they been persecuted for anything they did or said, this would at least have acknowledged the fundamental human capacities of action and speech. It would also have entailed, in retrospect

at least, the attribution of a certain choice, however minimal it might be, to comply and be spared -- a choice that the subject of the most intolerant regime retains. "One had at least to be an enemy of tyranny in order to be persecuted by it".<sup>35</sup> Here again, the stateless, to the extent that he cannot or does not want to leave the country, finds himself in a situation that bears similarity to the one of the "objective enemy", as identified by the totalitarian regime. It is the situation of the Jew facing biological anti-semitism who, unlike the victim of traditional cultural anti-semitism, cannot even change his faith to influence his situation.<sup>36</sup>

In fact, as Arendt notes, the stateless can improve his legal – if not in all cases, his actual – position by committing a crime: "The best criterion by which to decide whether someone has been forced outside the pale of law is to ask if he would benefit by committing a crime. If a small burglary is likely to improve his legal position, at least temporarily, one may be sure he has been deprived of human rights ... Even if he is penniless he can now get a lawyer, complain about his jailers, and he will be listened to respectfully".<sup>37</sup>

When Arendt writes about the stateless' "rightlessness", she does not primarily think of the deprivation of a number of discrete rights that one could list. She notes that formulas such as life, liberty, or equality before the law are terms designed to solve problems within a political community. The stateless' deprivation is more fundamental; they are deprived of the "right to have rights" -- the basic right to belong to an organised community.<sup>38</sup>

Total domination, according to Arendt, is thus fundamentally opposed to human freedom, but not to a negative freedom in the sense of an undisturbed privateness. In fact, the stateless "might enjoy more freedom of movement than a lawfully imprisoned criminal or .... enjoy more freedom of opinion in the internment camps of democratic countries than they would in any ordinary

despotism, not to mention in a totalitarian country.” The point is that neither physical safety nor “freedom” of opinion affects what matters about their situation. “Their freedom of movement ... gives them no right to residence ... and their freedom of opinion is a fools’ freedom; nothing they think matters anyhow”.<sup>39</sup>

The stateless loses a freedom that can only be realised by acting together in the public realm. The stateless’ “fundamental deprivation is manifested first and above all in the deprivation of a place in the world which makes opinion significant and actions effective”.<sup>40</sup> With the loss of a realm of action, speech, and human relationships, the stateless loses some of the essential characteristics of human life. The stateless is thrown back into a “state of nature.”<sup>41</sup>

### **The Migrant as Figure: The Aporias of State-centred Thinking**

Some of the passages cited might leave us wondering whether Arendt, in depicting the stateless as living in “conditions of savages”,<sup>42</sup> is not colluding in the very dehumanisation she describes. However, a one-sided “catastrophic” reading of Arendt’s perspective on statelessness would be misleading.<sup>43</sup> To see how the stateless turn into privileged political actors in her work, it is important to analyze what the stateless shows us as an “emblematic philosophical figure”.<sup>44</sup>

What Arendt described as the “sufferings of more and more groups of people to whom the rules of the world around them have ceased to apply”<sup>45</sup> casts doubt on the very rules in question. The stateless is the “other” -- the “limit concept” of established political thinking that centres on the unity of the sovereignty of the state, nation, and territory and exposes its contradictions.

### *The Nation-State*

The nation-state links the sovereignty of the state, territorial and ethnocultural closure, and the democratic claims of representative democracy. While formally democratic, the model of political membership as articulated in the French Revolution entailed “the formal delimitation of the citizenry; ... the legal rationalisation and ideological accentuation of the distinction between nationals and foreigners; the articulation of the doctrine of national sovereignty and of the link between citizenship and nationhood”.<sup>46</sup> The world is ideologically, and in institutional practice, constructed as neatly divided in territorially based, national, sovereign units.

From the perspective of the stateless, this model is exposed as a power-produced construction and its exclusionary consequences unmasked. By definition, the stateless questions the distinction between national citizen and foreigner because he is neither. In doing so, he questions the equation of man with the citizen on which the system of nation-states bases its legitimacy.

Arendt explicitly addresses the ethnocultural element of modern nationhood. We can take from her an analysis of how ethnocultural closure followed the construction of the modern state. Writing on the French Revolution, Arendt emphasises that in 1789, the “nation had conquered the state”. The state, inherited from the absolutist regime, “has been transformed from an instrument of law into an instrument of the nation”.<sup>47</sup> The privileges of the aristocracy were abolished, but popular sovereignty was, in the very historical moment of its birth, equated with national sovereignty. The democratic idea of government “by the people, for the people” has from then on been thought of as to be realised in ethnically defined, culturally homogenous collectives. The Minority Treaties confirmed this development after the First World War. Their

real significance was “the recognition that millions of people lived outside normal legal protection and needed an additional guarantee of their elementary rights from an outside body”. They made explicit “that only nationals could be citizens, only people of the same national origin could enjoy full protection of legal institutions”, and that “the law of a country could not be responsible for people of a different nationality”.<sup>48</sup>

The ethnocultural element might not be equally important for all modern nation-states. There is a long tradition of contrasting the French (civic) to the German (ethnic) tradition of nationhood.<sup>49</sup> According to the “ideal type” of French citizenship, the nation is defined in a purely political manner in relation to the territorial and institutional framework of the state.

However, the stateless’ exclusion is not only due to the equation of political community with a pre-politically constituted nation. For the stateless, who is neither a member of the nation nor a member of the state, it is not that decisive whether the nation creates the state or the state creates the nation. At the very least, the stateless on French territory, by definition, shows the practical failure of the ideology of the French revolution, according to which “the only foreigner in France is the bad citizen”.<sup>50</sup>

The stateless problematises also the other two elements of the trinity of nation, state, and territory. In moving or having moved, he undermines and exposes the exclusionary consequences of the territorial closure of political community. By laying open the divergence between those present in the public space and the apparatus that claims to be representing them, he leads us to question the idea of a sovereign state that, in its power to decide “in the last instance”, places itself above the present inhabitants of the territory. The stateless induces us to grow fully aware

of the anti-democratic implications of the fact that in the modern nation-state, it is, in any case, the state that constitutes the citizenry, and not the other way round.<sup>51</sup>

Arendt writes on the “damage” the stateless inflicts, the distinction between nationals and foreigners, and on the legal structure of the state. Which side is she on in the clash between stateless and nation-state? Arendt values the nation-state as a solid man-made structure in which people could feel at home and for which inhabitants can take responsibility. In “The Origins of Totalitarianism,” she wrote on the decline of the nation-state against the background of the experience of what had followed: race imperialism. Whatever its historical merits, it seems clear that for her, under the conditions created by an international economy, the nation-state is at least no longer a viable model. It is worth remembering that Arendt actively opposed the foundation of a Jewish nation-state in Palestine.<sup>52</sup> She agitated against a solution of the Jewish question “that merely produced a new category of refugees, the Arabs, thereby increasing the number of stateless and rightless by another 700,000 to 800,000 people”.<sup>53</sup>

### Human Rights

In both Arendt’s time and today, what is opposed to the particularity of membership in the nation-state is the idea of individual and universal human rights. Following the “natural law” tradition of classical liberalism, the French Revolution had declared them to be innate, inalienable, and independent of any government. The *sans papiers* should therefore embody the concept of human rights more than anybody else: “If a human being loses his political status, he should according to the implications of the inborn and inalienable rights of man come under

exactly the situation for which the declarations of such general rights provided”.<sup>54</sup> Ironically, it is exactly the stateless that reveals the crisis of human rights.

The fate of the stateless, when they appear in great numbers, calls attention to the fact that for all practical matters, the rights of man are still identified with the rights of citizens. As Arendt noted: “The Rights of Man proved to be unenforceable – even in countries whose constitution was based upon them – whenever people appeared who were no longer citizen of any sovereign state”.<sup>55</sup> The decades that have followed the writing of Arendt’s original text have witnessed the erection and elaboration of a global human rights regime based on the Universal Declaration of Human Rights of 1948 complemented by regional protection mechanisms. But as the right of the state to grant or refuse residency remains unchallenged the situation, and the situation for the increasing number of *sans papiers* has not changed: Threatened by immediate deportation, they simply lack the presuppositions for making an individual public appearance as a subject of human rights.

For Arendt, the stateless exposes the abstract, formal, individualistic, and above all, apolitical character of the concept of human rights. Arendt observes that “from the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an ‘abstract’ human being who seemed to exist nowhere, for even savages lived in some kind of social order”.<sup>56</sup> For Arendt, the concept of man underlying the Enlightenment notion of inalienable human rights is unrealistically worldless and atomistic: “The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships except that they were still human. The

world found nothing sacred about being human. And in view of objective political conditions, it is hard to say how the concept of man upon which human rights are based – that he is created in the image of god (in the American formula), or that he is the representative of mankind, or that he harbors within himself the sacred demands of natural law (in the French formula) – could have helped to find a solution to the problem”.<sup>57</sup>

The title of Arendt’s chapter, “The Decline of the Nation-State and the End of Rights of Man”, suggests a strong link between a political thinking and reality centred on the nation-state and the concept of human rights. Natural human rights suddenly appear not as a solution to the problem of statelessness against the nation-state, but as part of the same discourse as the latter.

The stateless questions the identification of man and citizen, thereby disrupting the discourse in which abstract human rights transferred to nature and the sovereignty of the state refer to each other and turn against the self-determination of the concrete plurality of human beings.

For Arendt, the French Revolution confronts us “with the serious attempt to reduce the political to the natural”; a move that always arouses suspicions as to its ideological functions. The concept of individual, natural, innate rights is revealed as the means by which the sovereign state transfers the foundation of its power from god to nature. As Arendt writes, “The French declaration of human rights was from the start aimed at establishing a source of political power and authority, it claimed to be the foundation of the state and not only the fundamental means to prevent the state from abusing his power. The state itself was meant to be based on the natural rights of man”.<sup>58</sup> An appeal to the notion of innate human rights might then affirm the sovereignty of the state based on the promise to enforce them.

The stateless shows that rights are precisely not “independent of human plurality” of history and society. Arendt reminds us of the need for a practical political solution to the problems of human organisation, as opposed to a philosophical, theoretical one. A political solution that seems all the more without alternative, as history has shown that in the end, as Arendt wrote, “no one seems to be able to define what these general human rights, as distinguished from the rights of citizen really are”.<sup>59</sup> Arendt insists, “Equality, in contrast to all that is involved in mere existence, is not given to us, but is the result of human organization insofar as it is guided by the principle of justice. 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”.<sup>60</sup>

Arendt is doubtful about the existence of any transcendental norms. This has disturbed many and brought against her the accusation of an irresponsible anti-foundationalism, a political existentialism, and a Nietzschean aestheticism.<sup>61</sup> Yet, she affirms the “existence of a right to have rights”. It is the right “to live in a framework where one is judged by one’s actions and opinions”.<sup>62</sup> Arendt’s right to have rights is precisely not an abstract right, but a claim rooted in the concrete plurality of human beings -- the fundamental human condition that we share the world with others who are both like and unlike ourselves. It is the right to participate in the discourse of plural human beings. The right to have “rights” is also the right to belong to a community that then only determines what the “rights” and “duties” of its members are. These secondary “rights” and “duties” are then not of a prepolitical nature, but the outcome of a historically particular public debate.

### **The Migrant as Political Actor: The Power of Concerted Action**

Arendt does not show us the *sans papiers* only as victims, or as a disturbing signifier on the level of philosophical representation. By questioning state-centred thinking, the migrants appear also as political actors whose public appearance can be potentially explosive and liberating. I discuss how Arendt's concept of the conscious pariah can help us understand the impact of the *sans papiers* movement, and how her concept of power is illustrated by their collective action.

### *The Pariah as a Privileged Actor*

It is important in this context to bear in mind the emphatic sense that action and politics carry for Arendt. The capacity to act is “the capacity to begin”, the capacity to create the new, and to do the unexpected. Action is boundless. It is tied to the human condition of natality. With action and speech, we insert ourselves into the human world, and this insertion is “like a second birth”.<sup>63</sup> Human agency can assert itself even in the midst of seemingly automatic historical processes: “If it is true that action and beginning are the same, it follows that a capacity to perform miracles must likewise be within the range of human faculties. It is in the very nature of every new beginning that it breaks into the world as an ‘infinite improbability’”.<sup>64</sup> Action is inseparably linked to freedom. Arendt asserts, “Men are free – as distinguished from their capacity to freedom as long as they act, neither before nor after; for to be free and to act are the same”.<sup>65</sup> Politics derives its *raison d'être* from this freedom as experienced in action. Politics and freedom are two sides of the same coin.<sup>66</sup>

Arendt's emphasis in parts of “The Human Condition” on the Greek hero, who is concerned with the display of his excellence as one of few equals, earned her the accusation of an antidemocratic elitism.<sup>67</sup> Jennifer Ring has usefully emphasised another dimension of Arendt's theory of action

by demonstrating that besides the Greek aristocrat, the pariah, history's outsider, is an important actor in Arendt's work.<sup>68</sup>

The pariah has figured prominently in her books. Her fascination for the pariah is connected to her interest in the Jewish question. She presents Bernhard Lazare as the model of the "conscious pariah". Lazare believed that the Jew should come out openly as the representative of the pariah "since it is the duty of every human being to resist oppression." His case shows that "as soon as the pariah enters the arena of politics, and translates his status into political terms, he becomes perforce a rebel".<sup>69</sup> Because the stateless embodies the contradictions of the arrangements that exclude him, his public appearance is explosive and potentially liberating.

Arendt wrote, "those few refugees who insist on telling the truth, even to the point of indecency, get in exchange for their unpopularity one priceless advantage: history is no longer a closed book to them and politics is no longer a politics of gentiles. Refugees driven from country to country represent the vanguard of their peoples".<sup>70</sup> There are strong indications that more and more *sans papiers* have opted to take history into their own hands throughout Europe in the past decade. France's immigrants have a long history as political actors, and *sans papiers* have begun fighting for their right to stay and work as early as the 1970s.<sup>71</sup> The last decade has, however, witnessed an unprecedented degree of militancy. The now legendary founding event of the present movement was the occupation of the Parisian church, Saint-Bernard, by 300 West African *sans papiers* in 1996. The eviction of the protesters and the consequent deportation did not prevent the spreading of the movement throughout France.

1997 saw the foundation of the "Caravan of Migrants" in Germany. In Northern Italy, migrants organised a month of protests in spring 2001, a development that gains special significance

considering that Italy has only recently turned from an emigration to an immigration country.<sup>72</sup> *Sans papiers* in Switzerland had their first national demonstration in September 2001, and have continued to fight for collective regularisation after government initiatives to consider their fate on a case-by-case basis.

A closer look at the French movement reveals what warrants speaking of those activists as conscious pariahs who really do “translate their status in political terms.” In their self-designation as “sans papiers”, they define themselves not by having fled as “refugees”, not by having come in as “immigrants”, not even by moving as “migrants”, but by the mere fact that they are in France without the required documents for residence and work. As Madjiguène Cissé, a spokeswoman of the French movement, put it in a speech in 1997, “We are here. That was our first rallying cry. We are here. We are men and women who chose to live in France. Each of us has tried his best on his own to get hold of documents and it did not work out. That is why we came together and occupied a church to show to people what is going on”.<sup>73</sup>

The *sans papiers* have defended this political stance against the authorities. These would often close both eyes to the *sans papiers*’ presence as long as there are no political demands, and sometimes even grant amnesty as long as it is as an exception for an individual case. A spokesperson of the group of the *sans papiers* de Saint-Bernard quotes one of the policemen sent to evacuate the church: “Return to your homes quietly, disappear into nature, and there will be no arrests”.<sup>74</sup>

Militants have also repeatedly resisted attempts to divide them into “worthy” and “unworthy”. In view of increasingly restrictive legislation, supportive organisations had in the preceding years often receded to the defence of individual cases at the cost of collective struggles. In a practice of

“self-censorship”, they had only presented to the authorities the cases that had the greatest prospect of benevolent consideration, thereby inevitably employing the criteria defined by the state itself. The *sans papiers* de Saint-Bernard have repeatedly been advised to dissolve the group and concentrate on the fight for the right to stay for the families amongst them, but they opted to stay together.<sup>75</sup> The insistence on solidarity and collective action has been the great strength of the French *sans papiers*.

Less than perhaps any other group, they can be incorporated via a model of identity politics. Their status is purely imposed by the state. They ask not for recognition of their status, but for the end of their identity.

### *The Portable Polis and Social Power*

Arendt asserts the primacy of plurality and of concerted action to all formal political institutions. She insists on the primacy of plurality, the fact that human beings share the world with others who are both the same and different. She insists it is political action itself that creates public space: “The public realm rises directly out of acting together, the sharing of words and deeds. Thus action not only has the most intimate relationship to the public part of the world common to us all, but it is the one activity that constitutes it”.<sup>76</sup> Arendt presents us with a model of the political realm that is, at times, “astonishingly portable” (Ring 1991: 439). For Arendt, as for the Greeks, “the polis properly speaking is not the city-state in its physical location; it is the organisation of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be. ‘Wherever you go, you will be a polis’: These watchwords of Greek colonization express the conviction that

action and speech create a space between the participants, which can find its proper location almost at any time and anywhere”.<sup>77</sup>

Thus, Arendt helps us appreciate the political meaning of the *sans papiers*’ protests. With their actions, they create spaces of public freedom. It is worth contrasting this perspective with the official view on these events. Rather than as a hostile seizure of public space from the outside, these actions appear as democratic re-conquests against the state. Etienne Balibar brings out this point: “Paradoxically, the struggles of the *sans papiers* – perceived by the government as disturbances of the public order, as blackmailing out of despair or products of a conspiracy the wire-pullers of which have to be identified among the immigrants’ ‘criminal sons’ – have been and are privileged moments in the development of an active citizenship (or of direct participation in public affairs) without which precisely there is no *cit * but just a statist form cut off from society and paralysed in its own abstraction”.<sup>78</sup>

Protesters have met fierce repression from the authorities and police. Occupied churches and building are cleared of protesters. Activists are deported despite resistance. The protests have, however, continued and have not been curbed in the climate hostile to migrants after September 11<sup>th</sup> 2001.

For Arendt, there is a strong link between the shared public realm and social power. She states that human beings, by acting together by their joint presence, discover among themselves a potency quite disproportionate to their individual resources. In her famous re-definition of power in contrast to individual strength and instrumental violence, Arendt wrote, “power corresponds to the human ability not just to act, but to act in concert. Power is never the property of an

individual: it belongs to a group and remains in existence only so long as the group keeps together”.<sup>79</sup>

The experience of the power “that springs up whenever people get together and act in concert”<sup>80</sup> is reflected in many activists’ accounts. By leaving the clandestinity forced upon them and entering the public, they have, as individuals, re-gained a feeling of existence. “Before, we were only shadows”, one woman put it. With their struggle and the experience of solidarity they have reconquered a sense of dignity and power they had been denied.<sup>81</sup> Madjiguène Cissé, for example, describes a case of direct confrontation with the violence of the state apparatus: “we have gained a status as sans papiers. To name but one example: it has now become possible for us to go to the police headquarters in Paris and say: ‘we are the sans papiers of Saint-Bernard and we have business in this building.’ And it does work. You could not have imagined this before the struggle of the sans papiers. That sans papiers come to a policeman who is told every morning: ‘go through Paris and look for sans papiers’; that sans papiers come to him and say: I am a sans papiers, I have a few things to do here. This has been very important”.<sup>82</sup>

## **Conclusion**

Against a discourse that denounces “illegal immigrants” and “bogus asylum seekers” in the same breath as it targets “international terrorism”, Arendt offers an alternative analytical perspective on today’s undocumented migrants.

1. I conceptualised the specific situation of domination these migrants find themselves in as “total domination”, a situation of radical rightlessness. The analysis of rightlessness invites

comparison among excluded groups across history that brings out similarities and differences in future research. How does modern migration management compare with medieval banishment and totalitarian domination? Such scholarship might offer analytical grounds for new solidarities in the face of similar forms of domination. These are especially pertinent in the face of the new powers many states assumed in the wake of September 11<sup>th</sup>, which extend rightlessness among non-citizen, and to some extent citizen as well.

2. The migrants' situation raises the question of post-national membership in a particularly urgent way, and Arendt's work offers a distinct perspective on the current debate. It is a perspective that shows the political suffering created by the system of nation-states, but also cautions against hasty celebrations of post-national citizenship.

Arendt is an early theorist of the post-national. Race imperialism and the chaos of the interwar years for her were already symptoms of the practical exhaustion of the nation-state. Many commentators have picked up on further signs of this exhaustion of national citizenship in the period since the 1970s.<sup>83</sup> The difficulty lies in distinguishing the symptoms of the crisis of the nation-state citizenship from the beginnings of a resolution of the problems caused by it.

For Arendt, statelessness is not a symptom of specific policies. Instead, it reveals the inner contradictions of the nation-state. She offers a democratic critique not just of the nation-state, but of the sovereign state itself and by implication any top-down institution.

Practices on other scales, for example, such as the urban, the professional level, or the global level, do not by itself overcome the democratic deficit of top-down citizenship. The appeal to supra-national formal legal guarantees or an abstract cosmopolitanism may also be a symptom of the hollowing out of the national-state more than a solution. Dual citizenship and arrangement to

accommodate a select group of migrants may just contribute to hierarchization of the population by legal status, as discussed by Morris.<sup>84</sup>

Arendt's critique of the state is based not on abstract legal principles, but on the primacy of the concrete plurality of the present population. Rather than recite the abstract cosmopolitanism of the Enlightenment, she discusses an institutional alternative to the sovereign state: the council system, which is based on direct representation and active participation of the citizen, organised on a local level, building up in a pyramidal structure to a federal system. She observed this form emerge spontaneously whenever action asserted itself against history. While not a realistic blueprint for policy, as a vision guiding reform, it calls for the democratic reconstruction of citizenship on all institutional levels.

3. Arendt's concept of power helps us to make sense of the successes of migrants' mobilisation in the face of severe repression and an initial extreme lack of material and symbolic resources. While there is little systematic research on the outcomes of the movement, we do know participants themselves have gained a sense of recognition and respect. Since the late 1990s, the movement was able to reframe the immigration debate.<sup>85</sup>

The *sans papiers* have succeeded in mobilising support from parts of the broader public. In gathering this support, they have not only strengthened the cause of undocumented immigrants. They have challenged others to make choices vis-à-vis them as illegal residents and with that vis-à-vis their own state. They are encouraged to rethink their own citizenship practices in a democratic way. These practices of solidarity across the line drawn by the state between citizen and non-citizen could be the beginning of an active citizenship that changes the state and affects everyone who is part of the state.

The current immigrants rights movement in the US, with a firm focus on the question of civic status and illegality, shows that despite the setbacks after September 11<sup>th</sup>, the challenge to reconstruct state-citizenship in a democratic way remains a practical as well as a theoretical one.

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<sup>1</sup> Hannah Arendt (1982) *The Jew as Pariah*. New York: Grove Press, 65.

<sup>2</sup> In the United Kingdom, successive governments limited the citizenship rights of former colonial subjects from 1962 onwards. Following the worldwide economic recession, Germany stopped recruiting guest workers in November 1973, France officially closed its borders in 1974.

<sup>3</sup> For a useful overview of the variety of groups affected in France, see Nathalie Ferré, “La production de l’irrégularité” in Didier Fassin, Alain Morice, and Catherine Quimina (ed.) (1997) *Les lois de l’inhospitalité*. Paris: Édition la Découverte, pp 47–65; for Germany, see Rolf Weitkamp, “Spielball des deutschen Arbeitsmarktes. Zur rechtlichen Hierarchisierung von MigrantInnen” in BUKO (ed.) (1995) *Zwischen Flucht und Arbeit. Neue Migration und Legalisierungsdebatte*. Hamburg: Verlag Libertäre Assoziation, pp. 93–119 and Harald Lederer, “Typologie und Statistik illegaler Zuwanderung nach Deutschland” in E. Eichendorfer (1999) *Migration und Illegalität*. Osnabrück: Universitätsverlag Rasch, pp 53–73.

<sup>4</sup> Thomas Hammar (1990) *Democracy and the Nation State*. Avebury: Aldeshot.

<sup>5</sup> International Organization for Migration (2000) *World Migration Report 2000*, International Labor Organization (2004) *Towards a fair deal for migrant workers in the global economy*. Geneva: International Labour Office; see Charles Pinkerton, Gail McLaughlan,

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John Salt (2004) *Sizing the illegally resident population in the UK*, Home Office Online Report 58/04 for a survey of recent efforts to measure the illegal population.

<sup>6</sup> See Jörg Alt (1999) *Illegal in Deutschland*. Karlsruhe: von Loeper Literaturverlag, p. 48, but also his updated “Groessenschaetzungen fuer Deutschland” available at [www.joerg-alt.de/publikationen/materialanlagen/materialanlagen.mtml](http://www.joerg-alt.de/publikationen/materialanlagen/materialanlagen.mtml) (last accessed December 2006).

<sup>7</sup> Among key works of that period are Margaret Canovan (1992) *Hannah Arendt: A Re-Interpretation of Her Political Thought*. Cambridge: Cambridge University Press, Jeffrey Isaac (1992) *Arendt, Camus and Modern Rebellion*. New Haven: Yale University Press, Maurizio Passerin d’Éntreves (1994) *The Political Philosophy of Hannah Arendt*. London: Routledge, Seyla Benhabib (1996) *The Reluctant Modernism of Hannah Arendt*. London: Sage Publicartions, Richard Bernstein (1996) *Hannah Arendt and the Jewish Question*. Oxford: Polity. For recent contributions by many pioneering and influential Arendt scholars see the special issue of *Social Research* (2002), 69/2. Among the many contribution to the centennial of her birth Elizabeth Young-Bruehl (2006) *Why Hannah Arendt matters*. New Haven: Yale University Press stands out.

<sup>8</sup> see e.g. the work of Judith Shklar (ed with Stanley Hoffman) (1998) *Political Thought and Political Thinkers*. Chicago: Chicago University Press or Giorgio Agamben (2000) *Means Without End*. Minneapolis: University of Minnesota Press.

<sup>9</sup> See Seyla Benhabib (7), Dana Villa (1999) *Politics, philosophy, terror: essays on the thought of Hannah Arendt*. Princeton: Princeton University Press. George Kaleb (1984) *Hannah Arendt, politics, conscience, evil*. Totowa: Rowman and Allanheld, Bonnie Honig ed.

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- (1995) *Feminist interpretations of Hannah Arendt*. University Park: Pennsylvania University Press.
- <sup>10</sup> Margaret Canovan (1978) “The Contradictions of Hannah Arendt’s Political Thought”, *Political Theory* 6: 5–26.
- <sup>11</sup> Richard Bernstein (7); see also Marie-Claire Caloz-Tschopp (2000) *Les sans-État dans la philosophie de Hannah Arendt*. Lausanne: Editions Paliot.
- <sup>12</sup> Hannah Arendt (1968) *The Origins of Totalitarianism*. New York: Harcourt Brace Jovanovich, 278.
- <sup>13</sup> *Ibid.*, 286.
- <sup>14</sup> *Ibid.*, 283.
- <sup>15</sup> *Ibid.*, 456.
- <sup>16</sup> Simpson, quoted in Arendt (9) 281; Ian Brownlie (1998) *Principles of Public International Law*. Oxford: Clarendon Press, 560.
- <sup>17</sup> Godfried Engbersen, “The Undocumented Outsider Class: Illegal Immigrants in Rotterdam” in Eichendorfer (3), pp. 213–233.
- <sup>18</sup> Bill Jordan, “Undocumented Brazilian Workers in London: Identities, Decisions, and Strategies” in Eichendorfer (3), pp. 177–195.
- <sup>19</sup> See Khalid Koser (1998) “Vom Regen in die Traufe: Vom Asylsuchenden zum Illegalen Einwanderer,” *Argument* 40: 231–240 and Godfried Engbersen, “The Undocumented Outsider Class: Illegal Immigrants in Rotterdam” in Eichendorfer (3), pp. 213–233; on the Netherlands. Philip Anderson, “From the Wailing Wall to the ‘Dignified Juggler’: Making a Living as an Undocumented Migrant in the United Kingdom” in Eichendorfer

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(ed.) (3), pp. 157–177; and Franck Düvell and Bill Jordan (1999) “Immigration, Asylum, and Citizenship: Social Justice in a Global Context” *Imprints* 4:15–36 report on the UK. Fassin, Morice, and Quiminal (3) on France. For the situation in Germany, see Alt (6), and Katja Dominik et al. (1999), *Angeworben, eingewandert, abgeschoben. Ein anderer Blick auf die Einwanderungsgesellschaft Bundesrepublik Deutschland*. Münster: Westfälisches Dampfboot Verlag.

<sup>20</sup> Anderson (19).

<sup>21</sup> Andrea Krüger, “Dienstleistung, Demut und Devisen” in BUKO (3).

<sup>22</sup> Anderson (19); Salvatore Pittà (1999) “Know your rights! Gegen die Rechtlosigkeit illegalisierter Hausangestellter” *Widerspruch* 19: 192–94.

<sup>23</sup> Norbert Cyrus, “In Deutschland arbeiten und in Polen leben. Was die neuen WanderarbeiterInnen aus Polen bewegt,” in BUKO (3).

<sup>24</sup> Felicitas Hillmann, “Zuwanderungskontrolle all’italiana: peruanische Einwanderinnen in Mailand,” in Eichendorfer (3), pp. 195–212.

<sup>25</sup> Alt (6).

<sup>26</sup> *Ibid.*, 187.

<sup>27</sup> Almut Wilms-Schröder and Anna Dal Molin, “Mensch ist Mensch. Gespräche mit illegalisierten Roma-Frauen” in BUKO (3).

<sup>28</sup> Gaserow, Vera (1995) “... und bloß nicht ins Krankenhaus. Illegale in Berlin,” in BUKO (3), pp 19–27 (Hamburg: Verlag Libertäre Assoziation, 1995); Schröder and Dal Molin (27)

<sup>29</sup> Helmut Dietrich, “Le centres de rétention et les refugié(e)s en RFA” in Marie-Claire Caloz-Tschopp (ed.) (1998) *Hannah Arendt, les sans-État et le ‘droit d’avoir des droits’*, 189–

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- 99, Paris: L'Harmattan; Michael Berger, "Abschiebehaft in Westeuropa" in *Kampagne gegen Abschiebehaft* (ed.) (2001) *Nachbereitungsreader zum Vernetzungstreffen der Abschiebehaftgruppen*, Leipzig: Eigenverlag.
- <sup>30</sup> UNHCR (1996) *Detention of Asylum-Seekers in Europe*. Genf: UNHCR; Jane Hughes and Ophelia Field "Recent Trends in the Detention of Asylum Seekers in Western Europe" in Jane Hughes and Fabrice Liebaut (ed.) (1998) *Detention of Asylum Seekers in Europe: Analysis and Perspectives*, 5–49. The Hague: Kluwer Law International.
- <sup>31</sup> Hughes and Field (30), 43–6.
- <sup>32</sup> International Bar Association (Task Force on International Terrorism) (2003) *International Terrorism: Legal Challenges and Responses*. Ardsley: Transnational Publishers.
- <sup>33</sup> Arendt (12), 295.
- <sup>34</sup> *Ibid.*
- <sup>35</sup> *Ibid.*, 433.
- <sup>36</sup> *Ibid.*, 432.
- <sup>37</sup> Arendt (12), 286–7.
- <sup>38</sup> *Ibid.*, 296–7.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> *Ibid.*, 296.
- <sup>41</sup> *Ibid.*, 297.
- <sup>42</sup> *Ibid.*, 302.
- <sup>43</sup> For an example of such a catastrophic reading, see Hans-Magnus Enzensberger (1994) *Die große Wanderung*. Frankfurt/Main: Suhrkamp.

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- <sup>44</sup> Marie-Claire Caloz-Tschopp, “La figure-sujet des sans-Etat dans l’œuvre de Hannah Arendt,”  
in Caloz-Tschopp (11), 30-47.
- <sup>45</sup> Arendt (12), 267.
- <sup>46</sup> Rogers Brubaker (1992) *Citizenship and Nationhood in France and Germany*. Cambridge:  
Harvard University Press. 35.
- <sup>47</sup> Arendt (12), 230.
- <sup>48</sup> *Ibid.*, 275.
- <sup>49</sup> Hans Kohn (1944), *The idea of Nationalism*, New York: Macmillan; Rogers Brubaker (46)
- <sup>50</sup> Tallien, quoted in Rogers Brubaker (46)
- <sup>51</sup> For an explicit opposition of a *democratic* and a state-centred perspective on citizenship, see  
Angus Stewart (1995) “Two Conceptions”, *British Journal of Sociology* 46: 63–78.
- <sup>52</sup> Arendt (1), 134–61.
- <sup>53</sup> Arendt (12), 290.
- <sup>54</sup> *Ibid.*, 300.
- <sup>55</sup> *Ibid.*, 293.
- <sup>56</sup> *Ibid.*, 291.
- <sup>57</sup> *Ibid.*, 299–300.
- <sup>58</sup> *Ibid.*, 138.
- <sup>59</sup> Arendt (12), 393.
- <sup>60</sup> *Ibid.*, 301.

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- <sup>61</sup> Martin Jay, “The Political Existentialism of Hannah Arendt”, in Martin Jay (ed.) (1996) *Permanent Exiles: Essays on the Intellectual Migration from Germany to America*. 237–56. New York: Columbia University Press.
- <sup>62</sup> Arendt (12), 296–7.
- <sup>63</sup> Arendt (1958) *The Human Condition*. Chicago: Chicago University Press, 176.
- <sup>64</sup> Hannah Arendt (1961) *Between Past and Future*. London: Faber and Faber, 171.
- <sup>65</sup> *Ibid.*, 153, her emphasis.
- <sup>66</sup> *Ibid.*, 99.
- <sup>67</sup> Margaret Canovan (10), 26.
- <sup>68</sup> Jennifer Ring (1991) “The Pariah as Hero: Hannah Arendt’s Political Actor”, *Political Theory* 19: 433–452.
- <sup>69</sup> Arendt (1), 71.
- <sup>70</sup> Arendt (1), 66.
- <sup>71</sup> Catherine Withol de Wenden (1994) “Immigrants as Political Actors in France”, *West European Politics* 17(2): 91–109; Johanna Simeant (1998) *La cause des sans-papiers* Paris: Presse de Sciences Po.
- <sup>72</sup> Nicole Montagna (2001) “La primavera dei migranti”, *Posse* 2: 12–14.
- <sup>73</sup> Madjiguène Cissé (1997) “Sans Papiers: Wir sind da! Die Bewegung der Illegalen in Frankreich”, *Interim* 433: 12-14.
- <sup>74</sup> Claire Rodier “Le mouvement de sans-papiers en France,” in Caloz-Tschopp (8), 186
- <sup>75</sup> Cissé (72)12-14.
- <sup>76</sup> Arendt (63), 198.

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<sup>77</sup> Ibid.

<sup>78</sup> Etienne Balibar “Le droit de cité ou l’apartheid” in Etienne Balibar et al. (ed.) (1999) *Sans-Papiers: l’archaïsme fatal*. Paris: Editions La Decouverte, 113.

<sup>79</sup> Hannah Arendt (1970) *On Violence*. London: Allen Lane, 44.

<sup>80</sup> Ibid., 52.

<sup>81</sup> Fassin (3), 107-123.

<sup>82</sup> Cissé (72), 12.

<sup>83</sup> Saskia Sassen (2006) *Territory, Authority, Rights*. Chicago: Chicago University Press.

Yasemin Soysal (1994) *Limits of Citizenship*. Chicago: University of Chicago Press,

Engin Isin (ed.) (2000) *Democracy, Citizenship and the Global City*, New York:

Routledge.

<sup>84</sup> Lydia Morris (2002) *Managing Migration: Civic Stratification and Migrants' Rights*. London: Routledge.

<sup>85</sup> Catherine Lloyd (2003) Anti-Racism, racism and asylum-seekers in France, in: *Patterns of Prejudice*, 37/3.