

Isolation and Human Rights: Arendt and the Charter at Forty

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Great excitement greeted the *Canadian Charter of Rights and Freedoms* because it promised to deliver constitutionally enshrined equality rights (among other things) to all Canadian citizens. Those who had been formerly excluded from full civil and social participation because of social inequalities, prejudice, and bias would now be included in a new social compact. And, as the title of the conference that inspired this paper suggests, that promise was also that those isolated as a result of those exclusions, no longer would be.

In the last five years, because authoritarian politics have sprouted globally, many turned to classic analyses of mid-20th century European fascism, including Hannah Arendt's monumental *Origins of Totalitarianism*. While *Origins* is infamous for suggesting a continuity between Nazism and Stalinist authoritarianism, it is less well known for its remarkable analysis of the relationship between isolation and human rights. Isolation is the key term in Arendt's analysis of totalitarianism, and it is also central to her critique of the 18th century discourse of the rights of "man and citizen." This is because those who are not members of a national state are cut out of the comity of basic political institutions, and thus are unable to organize, work, and deliberate with others. Arendt identifies such forms of dispossession, dislocation, and isolation as precursors to totalitarianism insofar as isolation leaves human beings dominated by a sense of worldlessness and superfluity, prepared to surrender their capacity for thinking to the compulsory force of logic that drives totalitarian terror.

For Arendt, the dangers of relying on the state to ensure human rights were most powerfully illustrated by the plight of the millions of displaced people in the years between the wars,

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since those without claim to membership in a national state were not protected by the law. On the basis of this insight, Arendt draws attention to the important limits of state-based legal rights. While her argument foregrounds the experience of refugees, in the Canadian context, it is perhaps helpful to consider those who are not formally excluded from citizenship, but who are increasingly understood to be non-Canadians. This includes the incarcerated and immigrant detainees, but also others who may have full formal citizenship rights, but informally are seen as threats to the nation: Indigenous people, other racialized people, the poor, the houseless, and so on. For that reason, it seems important to follow Arendt's arguments carefully to see if they are pertinent for understanding the limits to the promises of the *Charter of Rights and Freedoms*.

Looking at the millions of denationalized and displaced persons in Europe between the wars, Arendt noticed that the so-called "inalienable rights of 'man'" showed themselves to lack every protection and reality at the very moment when they could no longer take the form of rights belonging to citizens of a state. On Arendt's analysis, the very figure who should have embodied the "rights of man" *par excellence* — the refugee — instead signaled "the concept's radical crisis."¹ Without membership in a state, denationalized and displaced persons were unable to make any claims to legal protection at all, and yet were still subject to criminal law. The calamity that Arendt accordingly saw was not that the stateless and therefore rightless were not equal before the law, "but that no law existed *for* them."² Indeed, in one of the most fascinating observations of the book, she notes that the only way that stateless people can come into contact with law is by *breaking* it:

The stateless person without right to residence and without the right to work, had of course constantly to transgress the law ... 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 ... as a criminal, even a stateless person will not be treated worse than another criminal, that is, he will be treated like everyone else. Only as an offender against the law can he gain protection from it.³

This contradiction — or "perplexity" as she calls it — raised the question of whether modes of political belonging other than the national state system might avoid this dilemma, a question to which I return at the end of this paper. Isolation, in short, is an important nodal point for thinking about criminal law, international human rights law, and human rights.

This leads us to the idea of totalitarianism. By totalitarianism, Arendt meant what she called the "novel form of rule" which establishes "total domination" by the state — not only over the lives and movements of people, but also over their thoughts, ideas, and capacity to think. Far from being simply arbitrary, totalitarian forms of rule claim to obey the very laws of History or Nature that positive law has always claimed as its own source. Here Arendt is thinking of the racism (the so-called "Laws of Nature") underpinning Nazism and the claim to historical necessity underpinning Stalinist rule. Under constitutional (non-totalizing) forms of government, positive law is designed to establish boundaries between people and channels for communication which create a political "space" for laws to be contested on the grounds of justice and for deliberation about the meaning of those laws. Totalizing forms of rule, on the

1 Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1976) at 203.

2 *Ibid* at 295-96.

3 *Ibid* at 285.

other hand, press people against each other. This is not just a figure of speech. On the contrary, the isolation that Arendt is pointing to is one in which the space afforded by the rule of law is destroyed, and terror is its result. This form of rule, totalitarianism, aims at creating one out of many, and thus attempts to destroy the essential plurality of human beings.

Significantly for Arendt, totalitarian rule not only *produces* isolation, it can also only reign over those who are already isolated. As she says, “[i]solation may be the beginning of terror; it certainly is its most fertile ground; it always is its result.”⁴ In this regard, if power comes from people acting together, isolation makes human beings powerless. Arendt was not looking to explain the *causes* of this movement of totalitarianism — this would have required a diagnostic she didn’t think she could obtain. Rather, she was looking to its *origins*. Writing after the cataclysm of the Second World War, she saw these origins in a potent (and non-inevitable) combination of factors: anti-Semitism, imperialism, racism, and most importantly as I have said, the massive displacement and denationalization of people in the wake of the First World War. As Arendt says: “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 lost all other qualities and specific relationships — except that they were still human.”⁵ Arendt’s methodological breakthrough, as original as it was breathtakingly obvious after she said it, was that the referent for the great “Declarations of the Rights of Man and Citizen” was not the presumed human subject full of dignity and firmly attached to inalienable rights, but rather the human being, stripped of the qualities of legal and social personhood, and so infinitely exposed to power in its rawest form: violence.

Given that such calamitous experience was the result and the cause of totalitarian rule, Arendt was particularly interested in isolation’s relationship to the remarkable ease with which some lives could lose their quality of being social and political and, in becoming stateless, could also become rightless. She comes to notice this by asking: what *grounds* the claim to human rights? On most readings, human rights are understood to be guaranteed by states that claim sovereignty over those in their territory. At the same time, the revolutionary “declarations of rights” that founded the modern institution of citizenship, and also articulated the contours of contemporary human rights discourse, assert the unity of the human race and the equality of all who compose it. There is thus a tension between the universal and the particular, between human beings *as such*, and those who are *citizens*, right from the beginning of the modern discourse of human rights. As Arendt says, “[t]he survivors of extermination camps, the inmates of concentration and internment camps could see ... that the abstract nakedness of being nothing but human was their greatest danger.”⁶ Patiently and often chillingly, Arendt shows the transparency of the process by which people were prepared for the concentration and internment camps. Talking of these people as first stripped of a place to belong and then of others with whom to act — people stripped of all of the social, civil, and political textures of life — she described the process of preparing “living corpses” as coolly rational.⁷

4 *Ibid* at 462.

5 *Ibid* at 299.

6 *Ibid* at 300.

7 *Ibid* at 447.

So, we become superfluous to the world when dislocated and dispossessed because then we are no longer *of* it. Arendt's phrase "superfluous to the world" gets at the condition of being without all of what it means to be human; being deprived not just of *a place or a home* in the world, but also, as I have said, of something *to do with others* in that world and of having a voice to think and speak with as you do that work. Being taken from the social texture and forms of life in this way, Arendt says, leaves us not just dislocated, but lonely:

Loneliness is not solitude. Solitude requires being alone whereas loneliness shows itself most sharply in company with others ... For the confirmation of my identity I depend entirely on other people; and it is the great saving grace of companionship for solitary men that it makes them "whole" again, saves them from the dialogue of thought in which one remains always equivocal, restores the identity which makes them speak with the single voice of one unexchangeable person.⁸

There are many examples we can use to speak about this experience: in this moment, perhaps the most apt is not just the experience of those incarcerated, but also the experience of walking while black or trans or native. In this respect, the rise of white Canadian nationalism is a non-trivial example of the limits of the national state system. Being taken from the social texture and forms of life is the very process that leaves us vulnerable to the law in its form as force *without* rights. This is one of Arendt's greatest insights into the functioning of law under conditions of totalitarianism: what she meant by being made "superfluous to the world" is being made the object of the law, *but not its subject*.

Thus, I think it's useful to seriously consider Arendt's claim that the fates of human rights and the nation-state are bound together such that the decline and crisis of the one necessarily implies the end of the other. The incarcerated, immigrants held in detention without cause, as well as the poor, the racialized, and the houseless, are subject *to* but not *of* law. The precise ways that these people are cast out of the comity of political and social life cast light onto the ways that rights are not, as many would like to think, inalienable, supra-historical, and supra-judicial, but are rather representative of historical articulations of a certain kind of world order; one that begins with the 18th century *Declaration of the Rights of Man and of the Citizen*. Arendt's analysis brings to light the difference between birth and nation in the case of the refugee of course, but it is also helpful in thinking about the immigrant detainee who is held within a national territory, but whose belonging is contested. These too, are human beings who are living outside the system of nations, rights, laws, and international order.

What to make of all of this? For Arendt, the nation-state itself was in decline even in the middle of the 20th century. That was because on her analysis, the scales had tipped from the universalizing mechanism of the state, and towards the more tribal notion of the nation, which in its most egregious form, has a logic of race and therefore racism at its base. In the current political order in Canada, the logic of racism and tribalism is no doubt on the rise. The new meaning of the Canadian flag today — held high by white nationalists — shows this all too clearly. In this sense, if Arendt poses the question of whether there are modes of non-nationalist belonging, her analysis does not reach to the current moment entirely, in that she was relatively convinced that the universalizing logic of the state was what held the particularism of the nation in check. Nonetheless, the subtlety of Arendt's position means understanding the

8 *Ibid* at 476.

human person as a social being, one who *requires* place, and membership of a community, to *be* free.

In the end, the very possibility of ethical relation depends upon a certain dispossession from national modes of belonging: we must belong to something in order to be there for each other. Arendt wanted to maintain a right to such belonging, but drew serious doubts about the extent of that belonging in the system of national states. Instead, she wanted a rule of law based on certain kinds of human rights that govern a polity — and the word “polity” is precisely the alternative to the nation-state, even if it’s based on the classical city-state. She did not want that rule of law to be bound by a nation, a national group, a national majority, or even a national minority. For if the state she wanted is a nation-state at all, it will have to be vigorously opposed to nationalism, making it a nation-state that will nullify itself as such.

